

Federal Court



Cour fédérale

**Date: 20130613**

**Docket: T-1763-12**

**Citation: 2013 FC 647**

**Halifax, Nova Scotia, June 13, 2013**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**OSAMA ABUSHENAF**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The Citizenship Judge recommended to the Minister that Mr. Abushenaf be granted citizenship, notwithstanding that he was not physically present in Canada for at least 1,095 days (three years) of the four years immediately preceding his application. She applied one of the three tests this Court has given to the meaning of “residence” within the context of s. 5(1)(c) of the *Citizenship Act*; *Koo (Re)*, [1993] 1 FC 286 (TD), which defines residence as the place where one “regularly, normally or customarily lives” or has “centralized his or her mode of existence.”

[2] The Minister appeals that decision, not on the grounds that it was unreasonable for the Citizenship Judge to apply *Koo (Re)*, but rather on the grounds that Mr. Abushenaf had originally misrepresented his residency situation which required the Citizenship Judge to make a credibility finding. The Minister submits that she did not, so that, therefore, the decision should be set aside.

[3] In his residence calculation submitted in June 2010, Mr. Abushenaf stated his date of arrival in Canada as being 13 January 2000, his date of permanent residence 15 June 2008 and his application for citizenship date as being 20 June 2010. He stated the number of days in issue was 1,103, and that he was physically present for all those days. The form specifically warns that if an applicant submits misleading or fraudulent information, he may be charged with a criminal offence and his citizenship application may be refused.

[4] The form also required him to list his work and education history in the past four years. He stated that from May 2007 through to March 2009 he worked for Schlumberger Oil Fields Services of Dartmouth. There is a handwritten notation that he was working shifts on a rig. It is not clear who made the handwritten notation.

[5] In any event, his application was vetted by a Citizenship official prior to submission to the Citizenship Judge. The Citizenship official reported that in her interview with Mr. Abushenaf it became clear that he had been absent from Canada for some of the relevant period. He “had not declared these absences as they were employment related and he did not know that this was required.” He was asked to redo a residence calculation. It turns out that he was absent 585 days, which left him short of 1,095 days of actual physical presence. Apart from a vacation which he had

omitted, the absences are accounted for by his work. He basically worked two weeks or more on oil rigs outside Canada and then returned to his wife and children in Nova Scotia, where his life was clearly centralized.

[6] Mr. Abushenaf produced a letter from Canada Revenue Agency, International Tax Service Office, dated 18 August 2009. The letter indicates that they were writing to him with respect to his request for a determination of residency status. It states:

In our opinion, you have maintained significant residential ties with Canada. As a result, we consider you to be a factual resident while you are living outside Canada. The term “factual resident” means that even if you leave Canada, you are still considered a resident of Canada for income tax purposes.

[7] Note the term “factual resident” rather than “deemed resident”.

[8] All of this was sent to the Citizenship Judge who met with Mr. Abushenaf and his wife. His position, which has not been contested, is that he had explained his work on offshore oil rigs as a drilling engineer, and that he was misled by the advice given by Canada Revenue Agency, which was why he had not listed his absences from Canada for work purposes as absences. The Citizenship Judge had also noted that he had arrived in Canada in 2000.

[9] In her notes accompanying her recommendation, the Citizenship Judge remarked that he had originally declared that he had not been absent from Canada at all, and that he worked on rotation on oil rigs.

[10] She did not specifically refer to the letter from the Canada Revenue Agency, which was in the file, but, apart from interviewing his wife, also verified his employment.

[11] The Minister's complaint is that there was no specific finding that Mr. Abushenaf was credible. However, it is implicit in the Citizenship Judge's reasoning, and indeed, in the circumstances, she could not have done an in *Koo (Re)* analysis at all had she not believed Mr. Abushenaf.

[12] Misrepresentations may be innocent, negligent or fraudulent. This error on the part of Mr. Abushenaf is easily explained, and indeed he did explain it to both the Citizenship Officer and to the Citizenship Judge.

[13] If the reasons are not as fulsome as the Minister would like, in the sense there was not a specific statement along the lines that "I accept Mr. Abushenaf's explanation and find that he was not in any way intending to misrepresent his situation", one can have recourse to *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708. The record confirms that the Citizenship Judge's conclusion was reasonable.

**ORDER**

**FOR REASONS GIVEN;**

**THIS COURT ORDERS that:**

1. The appeal from the decision of the Citizenship Judge, dated 25 July 2012, approving the application for citizenship of Osama Abushenaf, is dismissed.
2. There shall be no order as to costs.

“Sean Harrington”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1763-12

**STYLE OF CAUSE:** MCI v OSAMA ABUSHENAF

**PLACE OF HEARING:** HALIFAX, NOVA SCOTIA

**DATE OF HEARING:** JUNE 12, 2013

**REASONS FOR ORDER  
AND ORDER:** HARRINGTON J.

**DATED:** JUNE 13, 2013

**APPEARANCES:**

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