

Federal Court



Cour fédérale

Date: 20160722

Docket: T-2136-15

Citation: 2016 FC 854

Ottawa, Ontario, July 22, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

ASMA JALEES BAJWA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Respondent, Ms. Asma Jalees Bajwa, is a citizen of Pakistan who came to Canada and became a permanent resident on January 17, 2001. She applied for Canadian citizenship on September 19, 2010 and subsequently appeared for a hearing before a citizenship judge. On November 25, 2015, the judge issued a decision, concluding that Ms. Bajwa had resided in Canada for the number of days required to meet the residency requirements for Canadian

citizenship under the *Citizenship Act*, RSC 1985, c-29 [Act]. The Minister of Citizenship and Immigration has applied for judicial review of this decision.

[2] As explained in more detail below, I am allowing this application. The judge applied the residency test described by Justice Muldoon in *Pourghasemi, (Re)*: [1993] FCJ No 232 [*Pourghasemi*], which requires an applicant to establish that he or she has been physically present in Canada for 1095 days during the four year period preceding the application. However, the judge's decision does not contain an intelligible analysis from which the Court can understand how he concluded that Ms. Bajwa had demonstrated the number of days of physical presence in Canada necessary to meet this test.

II. Background

[3] To meet the residence requirement for Canadian citizenship, which is prescribed by section 5(1)(c) of the Act, Ms. Bajwa was required to prove that she resided in Canada for at least 1095 days between September 19, 2006 and September 19, 2010 [the Relevant Period]. She submitted both an application and a subsequent Residence Questionnaire [RQ], which referred to different numbers of absences and different total days of absence from Canada during the Relevant Period.

[4] A Citizenship and Immigration Canada officer subsequently prepared a File Preparation Analysis Template [FPAT], the information in which includes the following:

- A. Ms. Bajwa's application declared 6 absences for a total of 279 days in the Relevant Period. Her RQ declared 5 absences for a total of 288 days. The

officer calculated 10 absences during the Relevant Period for a total of 336 days of absence and 1124 days of physical presence in Canada;

- B. The information obtained from an Integrated Customs Enforcement System [ICES] report issued by the Canada Border Service Agency, the application, and the RQ indicates 10 trips. There are 3 foreign entry stamps, 2 foreign exit stamps and no Canada stamps. The ICES report lists 3 bridge entries and, when Ms. Bajwa was presented with this information so that exit dates from Canada could be established, she declared 7 days for 3 trips;
- C. The information provided by Ms. Bajwa is not active, and she is unable to substantiate her presence in Canada through documentation for the vast majority of the Relevant Period;
- D. Ms. Bajwa's work history is conflicting, in particular her association with a project in Connecticut, US as noted in her Linked In profile;

[5] On November 24, 2015, Ms. Bajwa appeared for a hearing before the citizenship judge.

III. Impugned Decision

[6] In his decision, the judge noted that Ms. Bajwa declared different lists of absences in her application and her RQ. He also referred to the revised list prepared by the officer as calculating 1127 days of presence and 336 days of absence during the Relevant Period. The judge observed that Ms. Bajwa had provided addresses for residences related to the entire Relevant Period, that

the documentation was weak because most of the rent was paid in cash, but that Ms. Bajwa clarified some apparent contradictions and overlapping dates during the interview.

[7] The judge also noted that Ms. Bajwa had serious difficulties integrating into the Canadian workforce, that not all her activities were properly documented, but that some official interactions with Canadian institutions had been provided. He referred to a court dispute with her landlord, documentation about real estate activity, bank accounts, letters from companies confirming her activities, a notice of assessment, and the support of social assistance.

[8] In his analysis, the judge acknowledged that there were many contradictions and confusing statements in the file, including the different lists of absences from Canada as between the application and the RQ. However, he stated that, after an extensive hearing, he had the opportunity to verify that the Respondent had many interactions with the Canadian institutions typical of a person who has established her residence in Canada. The judge also stated that he did not have solid elements to dispute the declared days of physical presence in Canada during the Relevant Period.

[9] Referring to the test in *Pourghasemi*, the Judge found that, on a balance of probabilities, Ms. Bajwa had demonstrated that she resided in Canada for the number of days she claimed to reside in Canada and therefore met the residence requirements under section 5(1)(c) of the Act.

IV. Issues and Standard of Review

[10] The Minister raises as issues in this application the following positions:

- A. The judge erred in his application of the test for residence in *Pourghasemi*;
- B. The judge's conclusion that Ms. Bajwa had satisfied the residence requirement under section 5(1)(c) of the Act was not supported by the evidence; and
- C. The judge's reasons were inadequate.

[11] The Minister submits, and I agree, that these issues are to be reviewed on a standard of reasonableness.

V. Analysis

[12] My conclusion is that the judge's decision is not reasonable, because it fails to disclose an intelligible analysis. The decision acknowledges the inconsistencies and other shortcomings in Ms. Bajwa's evidence, as had been identified by the officer, but does not demonstrate how those deficiencies were resolved to the satisfaction of the judge. The only analysis consists of the judge's statements that: (1) Ms. Bajwa had many interactions with Canadian institutions typical of a person who has established her residence in Canada; and (2) that the judge did not have solid elements to dispute the declared days of physical presence in Canada during the Relevant Period.

[13] It is difficult to understand what the judge considers to be the declared days of physical presence, given the inconsistencies between Ms. Bajwa's application and RQ. The decision contains no analysis of these inconsistencies. Even if this conclusion were to be interpreted as a reference to the officer's calculation of 1124 days of presence in Canada, which the judge

misstates as 1127 days, the decision does not disclose how the judge considers Ms. Bajwa to have overcome the acknowledged concerns about lack of documentary support for her physical presence in Canada. The only analysis which could relate to this concern is the judge's statement that Ms. Bajwa had many interactions with Canadian institutions typical of a person who has established her residence. However, this statement does not explain how Ms. Bajwa's interactions with Canadian institutions assist her to demonstrate the required days of physical presence in Canada.

[14] It is well established that there are three tests from which a citizenship judge may choose in assessing whether an applicant has met the residency requirements prescribed by section 5(1)(c) of the Act. Two of those tests are often referred to as qualitative tests, as broadly speaking they consider the extent of an applicant's integration into Canadian life. *Re Papadogiorgakis*, [1978] 2 FC 208 (T.D.) prescribed a test which considers an applicant's "centralized mode of existence", and *Koo (Re)*, [1993] 1 FC 286 (T.D.) established a test determining in which location the applicant "regularly, normally or customarily lives."

[15] The extent of Ms. Bajwa's interactions with Canadian institutions could be relevant to the application of the qualitative tests for citizenship. However, the judge in the present case chose to apply the test from *Pourghasemi*, which involves a strict calculation of days of physical presence in Canada. It is difficult to see how Ms. Bajwa's interactions with Canadian institutions can assist her in meeting the *Pourghasemi* test, unless those interactions demonstrated physical presence in Canada on particular days. The judge's decision does not allow the Court to conclude that he analyzed Ms. Bajwa's activities to assess the days she was physically present in Canada,

both because of the absence of any such detail in the analysis and because the judge refers to verifying her institutional interactions as being typical of a person who has established her residence in Canada. The reference to these interactions being “typical” would support a conclusion on the extent of Ms. Bajwa’s integration into Canadian life, but it does not support a conclusion that those interactions demonstrate particular days of physical presence.

[16] In argument at the hearing of this application for judicial review, Ms. Bajwa referred to information that she provided to the judge at the citizenship hearing. She referred to changes in her residential arrangements, including a landlord-tenant dispute, a car accident and resulting medical treatment, treatment for depression, her employment of an immigration consultant to assist with her citizenship application, her involvement with a professional association, and her involvement with social services including attending related workshops. Ms. Bajwa explained that she has family living in the United States and that her travel there was usually done by road, which did not generate passport stamps. She also referred to a visa issued by the United Kingdom, but explained that she did not use this visa to leave Canada.

[17] Ms. Bajwa’s arguments identify activities consistent with those referred to by the judge in his decision. However, it remains impossible to derive from the judge’s reasons whether or how he considered the evidence of Ms. Bajwa’s activities to assist her in demonstrating the required days of physical presence. The decision is not sufficiently transparent and intelligible to be considered within the range of acceptable outcomes and must be set aside as unreasonable. Accordingly, the Minister’s application for judicial review is allowed, and Ms. Bajwa’s citizenship application is to be redetermined by another decision-maker.

[18] Neither party proposed a question of general importance for certification for appeal, and none is stated.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is for judicial review is allowed and the matter is referred to a different decision-maker for redetermination. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2136-15

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v ASMA JALEES BAJWA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 5, 2016

JUDGMENT AND REASONS: SOUTHCOTT J.

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APPEARANCES:

Aleksandra Lipska

FOR THE APPLICANT

Asma Bajwa

FOR THE RESPONDENT
(Self-represented)

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of
Canada
Toronto, Ontario

FOR THE APPLICANT