

Federal Court



Cour fédérale

**Date: 20160722**

**Docket: T-2145-15**

**Citation: 2016 FC 853**

**Ottawa, Ontario, July 22, 2016**

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

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**JUDE DINESH CEDRIC WEERASEKERA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Respondent, Mr. Jude Dinesh Cedric Weerasekera, was born in Sri Lanka and became a permanent resident of Canada on October 18, 2007. He applied for Canadian citizenship on September 25, 2011 and subsequently appeared for a hearing before a citizenship judge. The judge concluded that Mr. Weerasekera 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.

[1] I am dismissing 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. As explained in more detail below, I find the judge's decision to fall within the range of acceptable outcomes, as the reasons are intelligible and demonstrate how he reasonably reached the conclusion that Mr. Weerasekera had demonstrated the required number of days of physical presence in Canada.

## II. Background

[2] To meet the residence requirement in section 5(1)(c) of the Act, Mr. Weerasekera was required to prove that he resided in Canada for at least 1095 days in the four years prior to his application, i.e. from October 18, 2007 (when he was landed) to September 25, 2011 [the Relevant Period]. In his application for citizenship, Mr. Weerasekera declared 1251 days of presence in Canada and 186 days of absence in the Relevant Period. He was given a Residence Questionnaire [RQ] due to concerns about his credibility and lack of supporting documentation. Following the submission of additional documents on February 12, 2013, a Citizenship and Immigration Canada officer prepared a File Preparation and Analysis Template [FPAT], which identified undeclared absences and credibility concerns which did not allow the officer to confirm Mr. Weerasekera's physical presence in Canada during the Relevant Period. He was

therefore referred to a hearing before a citizenship judge, which took place on November 24, 2015.

### III. Impugned Decision

[3] In his decision allowing the application for citizenship, the judge noted that Mr. Weerasekera had declared 1251 days of presence but that there were undeclared absences on the passports on file that required examination to determine what could be verified. The judge referred in particular to two entry stamps into the United States, on November 3, 2009 and September 24, 2010, that had not been reported. There were also two undeclared re-entry stamps into Canada shown on the Integrated Customs Enforcement System [ICES] Traveler History prepared by the Canada Border Services Agency. The decision refers to these entries being on November 6, 2009 and September 14, 2014, although the latter date appears to be an error. The Minister acknowledged during the hearing of this judicial review that this appears to be a reference to the September 14, 2010 entry that was also identified in the FPAT.

[4] In his analysis, the judge noted that he addressed most of the concerns during the hearing, commenting that Mr. Weerasekera was forthcoming and credible and addressed all the concerns presented to him by providing a credible explanation. The judge explained that Mr. Weerasekera admitted it was his mistake not to report 2 foreign trips, which was a result of using his passport to list the trips and the passport not having been stamped. The judge examined the list presented in the application and compared it with the list from the ICES report, thereby confirming the majority of the dates, with only three trips undeclared. The judge then stated that, crossing the dates from various lists, he could conclude that, in the worst case scenario, there were 2 trips not

reported, one being 18 days long and the other 6 days long. Another trip could be 2 days longer, resulting in a total of 26 more days than the 1251 days declared. This resulted in Mr. Weerasekera still having 1225 days of physical presence in Canada.

[5] The judge then stated that, most importantly, he had no elements to dispute the number of days of physical presence in Canada declared by Mr. Weerasekera, considering that other information provided was credible and verifiable. The judge therefore found that, on a balance of probabilities, Mr. Weerasekera had demonstrated that he resided in Canada for the number of days he claimed to reside in Canada and had therefore met the residence requirement under section 5(1)(c) of the Act.

#### IV. Issues and Standard of Review

[6] The Minister raises as issues whether the judge ignored evidence regarding Mr. Weerasekera's physical presence in Canada during the Relevant Period and whether the reasons for the decision are inadequate. The Minister submits, and I agree, that the standard of reasonableness applies to the Court's review of the judge's decision.

#### V. Analysis

[7] The Minister argues that the *Pourghasemi* test requires careful scrutiny of the evidence as to the number of days of physical presence in Canada and that the judge failed to conduct such an analysis. The Minister explains that Mr. Weerasekera submitted an initial list of absences with his application and then, after receiving the ICES report, he prepared an updated list which took

into account 4 additional entries into Canada shown on the report, reducing his declared days of physical presence by a few days. However, the Minister points out that the ICES report identified further entries into Canada on November 6, 2009 and September 14, 2010, which Mr. Weerasekera's updated list did not take into account.

[8] The Minister also identifies other undeclared absences based on 3 passport stamps, which demonstrate entry into the United States on November 3, 2009, September 24, 2010 and October 4, 2010.

[9] The Minister argues that, while the judge identified the undeclared entries into the United States on November 3, 2009 and September 24, 2010, he missed the undeclared entry on October 4, 2010. Also, the judge stated that there were 3 trips undeclared, but later referred to 2 unreported trips plus another trip that could be longer by 2 days. The Minister's position is that the decision contains factual errors and does not sufficiently engage with the discrepancies in the evidence to represent a reasonable analysis.

[10] I have considered each of the undeclared entries to Canada and the United States to which the Minister refers, as well as the judge's treatment of those absences. While the judge's reasons are not detailed, my finding is that a review of the evidence and the reasons demonstrate an intelligible analysis and a reasonable conclusion.

[11] As noted by the Minister, most of the absences identified in the ICES report, that had not been included when Mr. Weerasekera prepared his initial application, were taken into account in

his updated list. The 2 entries into Canada on November 6, 2009 and September 14, 2010 and 2 entries into the United States on November 3, 2009, September 24, 2010, none of which Mr. Weerasekera took into account, were identified by the judge. These undeclared exits from and entries to Canada appear to demonstrate the following:

- A. Mr. Weerasekera left Canada for the United States on November 3, 2009 and returned to Canada on November 6, 2009, representing a maximum absence of 4 days;
- B. Mr. Weerasekera entered Canada on September 14, 2010. While there is no evidence of precisely when he left Canada, the ICES report demonstrates that he was in Canada on August 28, 2010. This translates into a maximum absence of 18 days represented by the undeclared September 14, 2010 entry;
- C. Mr. Weerasekera entered the United States on September 24, 2010, which is 2 days before his declared trip to Sri Lanka on September 26, 2010. This represents an absence of 2 days more than Mr. Weerasekera had declared.

[12] These three absences appear to correspond to the 3 undeclared trips identified by the judge. Only 2 of these trips were actually undeclared, as the third is a declared trip that was 2 days longer than reported by Mr. Weerasekera. This appears to be the explanation for the judge first referring to 3 undeclared trips and then to 2 trips plus another that could be 2 days longer.

[13] I note that the judge referred to these 2 unreported trips as being 18 days and 6 days. I calculate them to be 18 days and 4 days. While this may represent an error by the judge, it is not a material one, as it favours Mr. Weerasekera by overstating his period of absence by 2 days.

[14] The Minister is correct that the judge does not mention the entry stamp into the United States on October 4, 2010. However, Mr. Weerasekera has declared that he was absent in Sri Lanka from September 26, 2010 to October 4, 2010, and the ICES report confirms that he entered Canada on October 4, 2010. The US entry stamp may relate to an in-transit entry during the travel from Sri Lanka to Canada, in which case it would not add to the declared days of absence. Even if this were to be interpreted as a departure to the United States on October 4, 2010, immediately after arriving in Canada on that same date, the resulting absence could have been no more than 2 days, as Mr. Weerasekera declared a day trip to the US on October 6, 2010 and his entry into Canada that day is confirmed by the ICES report. I cannot conclude the absence of a reference in the decision to the October 4, 2010 stamp to be an error, and certainly not a material one.

[15] The judge found Mr. Weerasekera to be forthright and credible. The judge referred to confirming the majority of dates presented by Mr. Weerasekera through comparison with the ICES report, and the judge identified the remaining discrepancies. He then addressed those discrepancies in an intelligible manner, following which he concluded that Mr. Weerasekera was able to demonstrate days of physical presence in Canada well in excess of the required 1095 days. I find no basis to interfere with this decision.

[16] 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 dismissed. No question is certified for appeal.

“Richard F. Southcott”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2145-15

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v JUDE DINESH CEDRIC  
WEERASEKERA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 5, 2016

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** JULY 22, 2016

**APPEARANCES:**

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