

Federal Court



Cour fédérale

**Date: 20160606**

**Docket: T-1656-15**

**Citation: 2016 FC 625**

**OTTAWA, ONTARIO, June 6, 2016**

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

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**YULIYA AKIMOVA**

**Respondent**

**JUDGMENT AND REASONS**

[1] Ms. Akimova applied for Canadian citizenship on December 27, 2011. One of the requirements of the *Citizenship Act* at that time was that she be resident in Canada for at least three of the four years (1,095 days) immediately prior to her application. The Citizenship Judge decided to follow the strict physical presence test for residency as set out by Mr. Justice Muldoon in (*Re Pourghasemi* (1993) 62 FTR 122. This created no issue as Ms Akimova declared she was physically present here for 1,309 days.

[2] Although Ms. Akimova forgot to declare one overseas trip of 23 days, she was found to be credible and believed. Her undeclared absence still left her with 1,286 days of physical presence, well above the required 1,095, i.e. an excess of 191 days. The Citizenship Judge recommended that citizenship be granted.

[3] The Minister obtained leave to have that decision reviewed by this Court. It was submitted that there was no proper analysis of the evidence and simply too many inconsistencies in the record to allow this Court to determine that the decision was reasonable. I agree.

[4] There were a number of red flags that should have been analyzed by the Citizenship Judge. I need not list them all.

[5] She married in New York in 2009. Her husband was not an American citizen at the time, but obtained a US green card (permanent resident status card) in August 2010, which allowed her to do the same in November 2010. No analysis whatsoever was made of the couple's living arrangements.

[6] Her application form indicates that she had never left Canada between 19 September 2010 and 27 December 2011 when she applied for citizenship. The Citizenship Judge has two contradictory statements in her reasons. She said that after putting in her citizenship application Ms. Akimova went to New York to study. However, she then says she began studies at a community college in 2011. For those two statements to read together Ms. Akimova would have had to have started her studies no earlier than 27 December 2011.

[7] This also specifically contradicts the Citizenship Judge's handwritten notes, where she said that Ms. Akimova began studying in the US in the spring of 2011. Yet, according to the application, she was in Canada at that time, not in New York.

[8] Furthermore, her statements with respect to intermittent employment in Canada as set out in her residence questionnaire and in her application for citizenship are completely contradictory.

[9] She also said she had no social ties in Canada. Although she could have sat in a room for 1,095 days, the burden was upon her to establish on the balance of probabilities that she was in Canada for at least 1,095 days. She provided no corroboration. As Mr. Justice Muldoon said in *(Re) Pourghasemi* at paragraph 6:

So those who would throw in their lot with Canadians by becoming citizens must first throw in their lot with Canadians by residing among Canadians, in Canada, during three of the preceding four years, in order to Canadianize themselves.

[10] It is difficult to agree with the Citizenship Judge that Ms. Akimova was credible in the circumstances. She apparently began studying in New York in the spring of 2011, although she says she was in Canada. She could have lost her excess 191 days right there.

**JUDGMENT**

**FOR REASONS GIVEN;**

**THE COURT ORDERS THAT:**

1. This application for judicial review is granted;
2. This matter is referred back to another Citizenship Judge for redetermination.
3. There is no serious question of general importance to certify.

"Sean Harrington"

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Judge

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

**DOCKET:** T-1656-15

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v YULIYA AKIMOVA

**PLACE OF HEARING:** MONTREAL, QUEBEC

**DATE OF HEARING:** MAY 25, 2016

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

**DATED:** JUNE 6, 2016

**APPEARANCES:**

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M<sup>e</sup> Alexandre Novikov FOR THE RESPONDENT

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