

Federal Court



Cour fédérale

**Date: 20170614**

**Docket: T-2164-16**

**Citation: 2017 FC 591**

**Toronto, Ontario, June 14, 2017**

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

**BETWEEN:**

**MOHSEN ALI ABBAS ZADEGAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision of a Citizenship Judge [the Judge] dated November 1, 2016, which held that the Applicant did not meet the residency requirements for Canadian citizenship as set out in the *Citizenship Act*, RSC 1985, c-29 [the Act].

[2] As explained in more detail below, this application is dismissed, because the Applicant has not demonstrated that the Judge's decision falls outside the range of possible, acceptable outcomes, defensible in respect of the facts and the law, such as would warrant a conclusion that the decision is unreasonable.

## II. Background

[3] The Applicant, Mr. Mohsen Ali Abbas Zadegan, is a citizen of Iran. He was a successful businessman in Iran and, on September 20, 1996, he landed in Canada in the investor category, and he and his family became permanent residents. Within a few months of landing, Mr. Zadegan and his family returned to Iran in order to begin disposing of their business and property interests there, resulting in the sale of his jewelry business and some of his properties in Iran. Mr. Zadegan initially failed to comply with the requirement to invest in Canada but subsequently complied by purchasing a share of a shopping plaza in the Greater Toronto Area. In 2002, he also purchased an apartment for himself and his family, and his family returned with him to Canada.

[4] Mr. Zadegan and his family again returned to Iran in 2003, due to difficulties with the sale of a property in Mashhad. The title to this land was in his children's name, and he needed them in Iran to finalize the sale. While his original intention had been to stay in Iran for two or three months, this was prolonged due to complications with the sale. Following completion of the sale, Mr. Zadegan and his family tried to leave Iran to return to Canada in 2004, but they were stopped at the airport, as they had their Canadian landing papers with them but had not acquired permanent resident cards.

[5] Mr. Zadegan's eldest daughter was able to obtain a travel document from the Canadian embassy in Iran and return to Canada in 2004. The rest of the family were denied travel documents, and they were able to return to Canada only in 2005 after filing notices of appeal to the Immigration Appeal Division [IAD]. On December 29, 2009, the decision by the Canadian embassy in Iran, denying the family their travel documents, was overturned by the IAD based on humanitarian and compassionate considerations. Mr. Zadegan and his family have therefore retained their permanent resident status.

[6] By 2005, Mr. Zadegan had divested his business and property holdings, with the exception of an interest in a hotel in Mashhad valued at approximately \$15,000,000, as the imposition of international sanctions in Iran made the sale of this interest difficult. Mr. Zadegan states that he and his business partner in Iran have a team to manage the hotel on a day to day basis and that the hotel business is not dependent on his presence.

[7] Mr. Zadegan applied for citizenship on February 5, 2010, making the relevant period for his application February 5, 2006 to February 5, 2010. He declared 988 days of physical presence and 472 days of absence during this period, the absences being 10 trips to Iran. Mr. Zadegan was referred for a hearing before the Judge due to a self-declared shortfall of 107 days from the 1095 days of residence during the relevant period required under s.5(1)(c) of the Act.

### III. Impugned Decision

[8] In determining whether Mr. Zadegan satisfied the residence requirement under the Act, the Judge chose to adopt the analytical approach outlined in *Re Koo*, [1993] 1 FCR 286 [*Koo*],

which establishes that, in lieu of physical presence for the required 1095 days, a citizenship judge can apply the test whether Canada is the place where the applicant regularly, normally, or customarily lives, or whether it is the country in which the applicant has centralized his or her mode of existence. *Koo* prescribes six questions to assist in this determination.

[9] The Judge considered these questions, concluded that the answers to only two of the six questions favoured Mr. Zadegan, and held that Canada was not the place where Mr. Zadegan normally, customarily or regularly lived during the relevant period. The Judge therefore refused his application for citizenship in the decision which is the subject of this application for judicial review.

#### IV. Issues and Standard of Review

[10] The issue raised by the Applicant in this application for judicial review is whether the Judge's conclusion, that Canada is not the place where the Applicant normally, customarily or regularly lived during the relevant period, is unreasonable. As reflected in this articulation of the issue, the assessment of the *Koo* factors involves a fact-driven inquiry and assessment of evidence which attracts a reasonableness standard of review (see *Canada (Minister of Citizenship and Immigration) v Willoughby*, 2012 FC 489, at para 6).

#### V. Analysis

[11] Mr. Zadegan notes that the Judge found that two of the *Koo* questions favoured him. These questions are: (a) where an applicant's immediate family and dependents (and extended

family) are resident; and (b) the extent of the physical absences, i.e. that if an applicant is only a few days short of the 1095 day total, it is easier to find deemed residence than if those absences are extensive. The Judge found that the majority of Mr. Zadegan's immediate family was in Canada through the relevant period, with only his eldest son residing in Iran throughout, and that this finding was in his favour. The Judge also concluded that the extent of Mr. Zadegan's physical absence was not extensive and that the answer to this question was therefore in his favour as well.

[12] However, the Judge found that the other four *Koo* questions were not in Mr. Zadegan's favour. Those questions, and the Judge's findings on them, are as follows:

- A. Was the individual physically present in Canada for a long period prior to recent absences which occurred immediately before the application for citizenship?

The Judge identified that Mr. Zadegan was absent 41% of each of the first three years of the relevant period and that the longest period of time he was in Canada was in 2009, the last year of the relevant period, in which he was in Canada for 215 days. The Judge concluded that Mr. Zadegan had longer stays in Canada towards the end of the relevant period and that he was away in Iran on a more frequent basis earlier in the period. The Judge therefore found that Mr. Zadegan was not physically present in Canada for a long period prior to recent absences which occurred immediately before his application for citizenship.

- B. Does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?

The Judge considered the nature and pattern of Mr. Zadegan's absences, noting his position that the majority of the absences were due to the need to dispose of properties and businesses. He considered Mr. Zadegan's late compliance with the requirement to make the necessary investment in Canada and considered his involvement with the shopping plaza. The Judge identified that Mr. Zadegan was in Iran when the shares for his company were issued, when the deed was transferred to his company, and when he became a director of the company. He therefore concluded that this company started without Mr. Zadegan's presence in Canada, that it had started operating while he was still in Iran, and that Mr. Zadegan is therefore not required for the day-to-day operation of this enterprise.

The Judge placed significant weight on the finding by the IAD that Mr. Zadegan had returned to Canada from time to time from 1996 to 2002 in order to fulfill his residency requirements. In examining the pattern of absences during the relevant period, the Judge came to the same conclusion, that the pattern of absences changed in the last year of the relevant period as Mr. Zadegan tried to meet his residence requirements.

The Judge concluded that, aside from the final year of the relevant period in 2009, Mr. Zadegan showed a consistent pattern of travel to Iran and was absent for at least 40% of each year. Based on the consistency of this pattern, the Judge determined that Mr. Zadegan was visiting Canada rather than returning home.

- C. Is the physical absence caused by a clearly temporary situation such as employment as a missionary abroad, following a course of study abroad as a student, accepting temporary employment abroad, accompanying a spouse who has accepted temporary employment abroad?

The Judge found Mr. Zadegan's absences to be structural in nature, demonstrating a consistent pattern of absences during the first three years of the relevant period, that pattern changing only in the last year of the relevant period to allow Mr. Zadegan to meet his residency obligations. He also noted that Mr. Zadegan left Canada 6 days after submitting his application for citizenship, returning 18 days later, and then leaving for Iran again 136 days later. The Judge found this to be an indication that the pattern of frequent travel to Iran continued after the relevant period. Mr. Zadegan also returned to Iran 11 times while waiting for his appeal to the IAD to be heard. The Judge found that the Applicant must have compelling reasons to return to Iran and that this factor did not favour him.

- D. What is the quality of the connection with Canada: is it more substantial than that which exists with any other country?

The Judge noted that, despite having the majority of his family in Canada during the relevant period and divesting almost all of his business holdings and properties in Iran by the start of the relevant period, Mr. Zadegan still had to travel to Iran on a frequent and consistent basis, and the investment he still retains in Iran is sizeable. Referring to Mr. Zadegan's emphasis that the hotel that is his remaining business in Iran is no longer profitable, the Judge noted that it is

nevertheless a sizable investment, approximately five times the value of the property that the family returned to Iran to sell in 2003. The Judge found that Mr. Zadegan's connection to Iran was more substantial than his connection to Canada.

[13] In challenging the reasonableness of the Judge's decision, Mr. Zadegan alleges certain errors in relation to each of the above questions that the Judge found did not favour him.

[14] In relation to the first question, Mr. Zadegan argues that the Judge did not appropriately acknowledge that the absences for the period prior to his application for citizenship were dealt with by the IAD and that his absences from Canada were largely for reasons outside his control. However, notwithstanding the decision by the IAD, the Judge was obliged to consider Mr. Zadegan's pattern of absences in answering the first of the *Koo* questions. In conducting his analysis, the Judge noted that some of the absence during the relevant period was caused by the wait for a travel document from the Canadian Embassy in Iran, and elsewhere in the decision the Judge noted Mr. Zadegan's contention that his shortfall was caused by the need to sell his properties in Iran and the delay in receiving this travel document. I find no basis to conclude that any evidence relevant to this question was overlooked or that the reasons for Mr. Zadegan's absences render the Judge's analysis of the first question in anyway unreasonable.

[15] In relation to the question whether the pattern of physical presence in Canada indicates a returning home or merely visiting the country, Mr. Zadegan argues that the Judge's analysis is not borne out by the evidence but is based on speculation. Noting the Judge's conclusion that he is not required for the day-to-day operation of his Canadian business, Mr. Zadegan argues that



the evidence before the Judge was that he was involved in day-to-day operations for the plaza and that he was found credible by the Judge. However, at the hearing of this application for judicial review, Mr. Zadegan's counsel was unable to refer to the Court to evidence in support of this contention. There is no transcript of the hearing before the Judge, and the affidavit from Mr. Zadegan in the record does not attest to involvement in the day-to-day operations of the Canadian business. His counsel's submissions to the Judge refer to his work with this business as supporting a conclusion that his connection to Canada is clearly more substantial than any other country, and these submissions state that he is active daily in his business. However, these are submissions, not evidence. The Judge's analysis under this question is supported by evidence to which the Judge refers, and there is no basis to find this analysis unreasonable.

[16] On the question whether the physical absence was caused by a clearly temporary situation, Mr. Zadegan argues that the finding that his returns to Iran were not temporary in nature was not borne out by the totality of the evidence. He submits that the evidence unequivocally shows that his returns to Iran are to check on the hotel and that the visits are therefore clearly temporary in nature. Similarly, in relation to the final question of the quality of the connection with Canada and whether it is more substantial than that which exists with any other country, Mr. Zadegan emphasizes that his family is in Canada, he makes his living from his Canadian investment, and he retains an unprofitable hotel only because he cannot divest it. He argues that these facts cannot support a conclusion that he has a more substantial connection to Iran than to Canada.

[17] While I understand Mr. Zadegan's arguments, they do not represent a basis to interfere with a decision the review of which is governed by the standard of reasonableness. It is trite law that the reasonableness standard represents a deference to be shown to administrative decision makers, involving an examination by the Court as to whether a decision is within the range of possible, acceptable outcomes, defensible in respect of the facts and the law (see *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 57). Mr. Zadegan's arguments, and indeed his overall position in this application for judicial review, amount to a submission that the totality of the evidence demonstrates he normally, customarily or regularly lives in Canada and that this is the only reasonable conclusion in view of the evidence. However, I cannot find that such a conclusion is the only possible, acceptable outcome based on the evidence before the Judge. The Judge considered each of the *Koo* questions and reached a conclusion which I read as significantly influenced by the Judge's analysis that Mr. Zadegan's absences to Iran occurred over a lengthy period of time, abating somewhat only in the last year of the relevant period as he sought to meet his residency requirement, but still continuing. While the Court may not have reached the same decision as the Judge if analysing the matter at first instance, it is not my role to substitute my analysis for that of the Judge.

[18] As there is no basis to find the Judge's decision unreasonable, this application for judicial review must be dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

“Richard F. Southcott”

---

Judge

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

**DOCKET:** T-2164-16

**STYLE OF CAUSE:** MOHSEN ALI ABBAS ZADEGAN v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 6, 2017

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** JUNE 14, 2017

**APPEARANCES:**

Winnie Lee FOR THE APPLICANT

Laoura Christodoulides FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lee & Company FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

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