Date: 19980626

Docket: T-1583-97

IN THE MATTER OF THE *CITIZENSHIP ACT*
R.S.C., 1985, c. C-29

AND IN THE MATTER OF an appeal from the decision of a Citizenship Judge

AND IN THE MATTER OF

The Minister of Citizenship and Immigration

Appellant

- and -

CHI BUN KENNETH CHEUNG

Respondent

REASONS FOR JUDGMENT

MacKAY J.:

[1] This is an appeal by the Minister of Citizenship and Immigration from the decision of a Citizenship Judge, dated May 30, 1997, wherein the application of the respondent, Chi Bun Kenneth Cheung, for a grant of Canadian citizenship was approved.

[2] The issue raised by the appeal is whether the Citizenship Judge erred in finding that the respondent had met the residence qualification established by paragraph 5(1)(c) of the *Citizenship Act*, R.S.C. 1985, c. C-29. That provision requires that a permanent resident, upon applying for citizenship, shall have accumulated at least three years of residence in Canada within the four years immediately preceding the date of application for citizenship.

[3] The respondent was admitted to Canada on July 16, 1993, as a permanent resident, in company with his mother and his brother. He remained in Canada then for 25 days until August 10, 1993. He and his mother and brother lived at his aunt's home and while he was here, on August 1, 1993, his mother took possession of a new family home which they had begun to fit out for living before the respondent left Canada. His mother and brother continued thereafter to live in the family house acquired in 1993, and both of them have been granted citizenship in Canada.

[4] The respondent, upon leaving Canada in August 1993, returned to Hawaii where he had earlier commenced university studies in computer science. While in Canada in July and August 1993, he discussed possibilities of transferring his studies and continuing at the University of Toronto but he was advised the courses he had done would not be readily transferred for credit in a degree program at Toronto. He decided to complete his studies at Hawaii, where he remained until after he received his degree in December 1995. While there he spent some university holiday periods in Hong Kong where his father had continued to reside. His father and mother were divorced and for family reasons he spent his holidays with his father, anticipating little opportunity for this after he returned to Canada, following his studies in Hawaii, as he planned to do.

[5] That he did, returning to Canada on May 13, 1996 as a returning resident, having spent the early part of that year, following completion of his university studies in December 1995, in completing a program of studies and training in karate. Thus, after having spent 25 days in Canada in July-August 1993, he returned in May 1996, and here he remained until he made application for citizenship on September 18, 1996, some three years and two months after his admission in July 1993.

[6] In his application for citizenship the applicant indicated that from August 10, 1993 to May 13, 1996 he was away from Canada in Hawaii, a total of 950 days. In the result, his time in Canada prior to his application for citizenship was significantly less than the equivalent of three full years. By calculation of the Citizenship Judge the "residence shortage" was 945 days.

[7] By his decision on May 30, 1997, the Citizenship Judge found that the respondent, whom he accepted was in full-time education, had satisfied and complied with paragraph 5(1)(c) of the *Act* "within the Thurlow framework (945 days)". Further the Judge wrote:

> Despite a residence shortage of 945 days, the applicant through credible declaration of intent and the provision of irrefutable indicia, has, within the "THURLOW FRAMEWORK" given proof of both the establishment and maintenance of a Canadian centrality of mode of living totally consistent with the pattern of full-time educational pursuits. I have, therefore, all other requirements having been met, approved this application for citizenship.

[8] The reference to the "Thurlow Framework", I assume, is to the decision of then Associate Chief Justice Thurlow in *Re Papadogiorgakis*, [1978] 2 F.C. 208 (T.D.) where he found that a permanent resident may centralize his mode of living in Canada and thus be considered resident under the *Act*, even though he may temporarily leave Canada, in that case to complete university studies. In that case, the person concerned had lived in Canada for some 3½ years as a student before becoming a permanent resident. After becoming a permanent resident he established his mode of living in Canada,

he returned to that place as his home thereafter, and he did not, though out of the country from time to time, cut his ties with his home in Canada.

[9] When this appeal came on for hearing the respondent, representing himself, was directed to provide, by testimony, evidence he wished to submit, and he responded to questions posed by the *Amicus Curiae*, by counsel for the Minister, and by the Court.

[10] The only evidence I find in the record of the respondent's having centralized his mode of living in Canada is his statement in his Residence Questionnaire completed on April 24, 1997, after his application for citizenship, where he notes in response to a question whether he maintained some form of residential base or pied-à-terre in Canada, that "I lived with my mother who owned a house located at ... Richmond Hill, Ontario." In testimony he stated that his mother's house was acquired on August 1, 1993 while he was in Canada and he had helped his mother and his brother prepare it for living. He had not lived at that house before leaving Canada in August 1993 and did not do so until his return to Canada in May 1996.

[11] The only other evidence of establishing ties in Canada when he was here in 1993, was that he applied for and subsequently acquired a Social Insurance Number and an Ontario health number on card, and that he had attended a church on one occasion, a church which he had regularly attended since his return to Canada in 1996.

[12] I have no doubt of his intent to return to Canada while he was continuing his studies in Hawaii, or about his intent to remain and become established in Canada. He clearly seems to appreciate the values of life in Canada, particularly the measure of freedom that Canadians enjoy. Yet none of these factors, important as they are, support a conclusion that he did at anytime before his return to Canada in

May 1996 establish the centre of his mode of living in this country. In the circumstances his application for citizenship was premature since he did not meet the requirements for residence in Canada at the time of his application.

[13] In my opinion the Citizenship Judge erred in finding that residence qualifications were met in this case. There was not sufficient evidence in the record before him, and further, sufficient evidence was not provided by evidence of the respondent when this appeal was heard, that he had established his residence in Canada, for purposes of the *Act*, before his return to Canada in May 1996.

[14] For these reasons the appeal of the Minister is allowed. That is, of course without prejudice to the respondent, who continues as a permanent resident, to make a future application for citizenship.

[15] An order issues allowing the appeal and setting aside the decision of the Citizenship Judge rendered on May 30, 1997.

W. Andrew MacKay

Judge

Ottawa, Ontario
June 26, 1998,