

**Date: 20080414**

**Docket: T-1223-07**

**Citation: 2008 FC 477**

**Vancouver, British Columbia, April 14, 2008**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**MUHAMMAD ISHFAQ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Huhammad Ishfaq applied for Canadian citizenship in 2007. He appeared before a citizenship judge who concluded that he had failed to meet the residency requirement set out in the *Citizenship Act*, R.S.C. 1985, c. C-29, s. 5(1)(c) (see Annex "A" attached). The judge dismissed his application.

[2] Mr. Ishfaq argues that the judge's decision was unreasonable in light of the evidence. He asks me to quash the decision and order his application to be re-assessed. However, I cannot find a basis for overturning the judge's decision and must, therefore, dismiss this appeal.

I. Issue

[3] Was the judge's conclusion that Mr. Ishfaq failed to meet the residency requirement of the *Citizenship Act* reasonable?

II. Analysis

[4] I can overturn the judge's decision only if I find it was unreasonable, in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47.

(a) The Residency Requirement

[5] Applicants for Canadian citizenship must show that they were resident in Canada for three out of the four years preceding their applications (*Citizenship Act*, s. 5(1)(c)). They can meet this requirement by proving physical presence in Canada for at least three years or by showing that they have established and maintained such strong ties to Canada that their absences can still be counted in their favour, even though they have not been physically present in Canada for the required three years: *Canada (Minister of Citizenship and Immigration) v. Nandre*, 2003 FCT 650.

(b) Factual Background

[6] Mr. Ishfaq left his native Pakistan in 1996. He traveled to Switzerland where he lived until coming to Canada in April 2001. His family remains in Pakistan. In 2003, he accepted a job with the International Committee of the Red Cross (ICRC). This position requires him to travel extensively.

[7] Mr. Ishfaq applied for Canadian citizenship on August 27, 2004. Therefore, to meet the residency requirement, Mr. Ishfaq had to establish that he was physically present in Canada for three years between the time of his arrival in 2001 and the date of his application in 2004, or that he should be credited for his absences because he had established and maintained a strong connection with Canada. In fact, Mr. Ishfaq was present in Canada for a total of 811 days during that time period, leaving him 284 days short of the required three years (being 1095 days).

[8] To show that he was an established resident of Canada, and to support his position that he should be credited for time spent outside of Canada, Mr. Ishfaq presented numerous documents, including his contract with the ICRC, identity cards, and his current and previous passports.

(c) The Decision under Appeal

[9] In a detailed, seven-page decision, the citizenship judge reviewed the documentation Mr. Ishfaq had supplied, as well as his statements during the interview, and noted that:

- Mr. Ishfaq had failed to provide details about his living arrangements in Canada between the time of his arrival in April 2001 and his departure in February 2003;
- he had purchased land in Pakistan;
- he had no proof of any banking transactions or investments in Canada;
- he had no evidence of any employment in Canada or income tax assessments; and
- there were many unexplained discrepancies between his declared absences from Canada and date stamps in his passports.

[10] The judge went on to consider the factors set out in the case of *Re Koo*, [1992] F.C.J. No. 1107 (QL) to determine whether Mr. Ishfaq had centralized his mode of existence in Canada and found that:

- Mr. Ishfaq had spent one year and 303 days in Canada after his arrival in April 2001. Since then, he had been absent from Canada on many occasions, for as long as 309 days at a time;
- his family lives in Pakistan;
- his documentary evidence did not establish that Canada was his principal place of residence;
- he had “visited” Canada a number of times while on leave;
- he was considerably short (284 days) of the three-year residency requirement;
- his absences did not appear to be temporary, given that his employment with the ICRC was ongoing, at least until 2008; and

- he had not established a substantial connection with Canada; he has a more substantial connection with Pakistan.

[11] Based on these considerations, the judge concluded that Mr. Ishfaq had failed to meet the residency requirement.

(d) Discussion and Conclusion

[12] Mr. Ishfaq argues that the citizenship judge failed to appreciate the evidence supporting his application. First, the judge failed to consider whether Mr. Ishfaq had established his residence in Canada during the one-year and 309-day period after his arrival in Canada in 2001. Second, the judge made factual errors in the analysis of the factors set out in *Re Koo*, above.

[13] Regarding the first alleged error, the judge clearly took account of the period of time that Mr. Ishfaq had spent in Canada before he left to work for the ICRC. However, there was little evidence before him showing that Mr. Ishfaq had established himself in any significant way during that period. In particular, he provided little information about his living arrangements, financial history, income, or community involvement, if any, and there remained the unexplained absences recorded in his passports.

[14] Regarding the other relevant factors, the judge was entitled to consider that Mr. Ishfaq's family remained in Pakistan, that he made short visits to Canada while on leave from his job, that

his position with the ICRC was ongoing, and that, overall, his connection with Pakistan was stronger than his connection with Canada. On the latter point, Mr. Ishfaq contested the judge's finding that he possessed a passport issued in Pakistan when, in fact, it had been issued in Myanmar. The judge did state that Mr. Ishfaq possessed a passport issued in Pakistan when, in fact, it had been issued by the Pakistani embassy in Myanmar. However, nothing appears to have turned on this minor factual error. The judge did not find, as Mr. Ishfaq alleges, that he had lived in Pakistan at any time after 1996. His finding that Mr. Ishfaq's connection to Pakistan was greater than his attachment to Canada was based on his having property and family there. While this connection was not particularly strong, I cannot find the judge's conclusion that it exceeded his ties to Canada was unfounded.

[15] In short, Mr. Ishfaq argues that the judge failed unreasonably to recognize that he had no real connection with any other country. Therefore, the judge should have found that he had such a substantial connection with Canada that he should have been considered a resident even while he worked abroad. However, I cannot find any basis for overturning the judge's decision. The absence of any significant connection with other countries does not, in my view, constitute proof of a substantial attachment to Canada. I cannot find, therefore, that the judge's conclusion was unreasonable.

[16] Accordingly, this appeal must be dismissed.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that**

1. The appeal is dismissed.

“James W. O’Reilly”  
\_\_\_\_\_  
Judge

## Annex "A"

*Citizenship Act*, R.S.C. 1985, c. C-29

*Loi sur la citoyenneté*, L.R., 1985, ch. C-29

Grant of citizenship

Attribution de la citoyenneté

5. (1) The Minister shall grant citizenship to any person who

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

(a) makes application for citizenship;

a) en fait la demande;

(b) is eighteen years of age or over;

b) est âgée d'au moins dix-huit ans;

(c) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:

c) est un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :

(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and

(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;



**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-1223-07

**STYLE OF CAUSE:** ISHFAQ v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 2, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** April 14, 2008

**APPEARANCES:**

Lorne Waldman

FOR THE APPLICANT

Asha Gafar

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

WALDMAN & ASSOCIATES  
Toronto, ON

FOR THE APPLICANT

JOHN SIMS, Q.C.  
DEPUTY ATTORNEY GENERAL  
Toronto, ON

FOR THE RESPONDENT