

Federal Court



Cour fédérale

**Date: 20090527**

**Docket: T-1474-08**

**Citation: 2009 FC 549**

**Ottawa, Ontario, May 27, 2009**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**FERAS SADEK and LAMIS BARAKHE**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Minister of Citizenship and Immigration appeals the decision of a Citizenship Judge granting citizenship to Feras Sadek and Lamis Barakhe. According to the Minister, the Judge erred in finding that the couple met the residency requirements of paragraph 5(1)(c) of the of the *Citizenship Act*, R.S.C. 1985, c. C-29.

[2] For the reasons that follow, I am satisfied that the Citizenship Judge did not err as alleged. As a consequence, the appeal will be dismissed.

## **Background**

[3] The respondents are citizens of Syria. They came to Canada with their two children on April 12, 2003, and became permanent residents. They went back to Syria two weeks later in order to settle their affairs in that country, and returned to Canada on September 11, 2003. The family then purchased a home in Calgary.

[4] Unable to obtain employment in Canada, Mr. Sadek moved to Yemen on July 5, 2004, to work for a Canadian company under a one year term contract. While in Yemen, Mr. Sadek lived in staff accommodation, was paid in Canadian dollars, and had his Canadian income tax deducted from his pay. Ms. Barakhe and the children remained in Canada.

[5] Mr. Sadek returned to Calgary four times during his year in Yemen to visit his family.

[6] On July 31, 2005, Mr. Sadek took up new employment, this time in Syria. Once again, he was working for a Canadian company on a one-year, fixed-term contract, which was governed by the law of British Columbia. This time, Mr. Sadek's family accompanied him. Mr. Sadek's compensation package with this company included a round-trip for Mr. Sadek and his family members to Calgary.

[7] While the family was in Syria, they rented out their home in Calgary. Accommodation for the family in Syria was provided by Mr. Sadek's Canadian employer, and the family did not acquire any property in Syria.

[8] Ms. Barakhe and the children returned to Canada on July 31, 2006, and Mr. Sadek returned on August 14, 2006. Since that time, Mr. Sadek has been working in Calgary, Ms. Barakhe has been taking college courses, and the children have been attending school. The couple has also acquired additional real estate in Calgary, and have accumulated RRSPs and RESPs.

[9] Ms. Barakhe and Mr. Sadek signed their applications for citizenship on October 12, 2006. They admit that they were not in Canada for the required 1095 days. The Citizenship Judge found that Mr. Sadek had been absent from Canada for 844 days in the four years prior to his application, whereas Ms. Barakhe had been absent from Canada for 674 days.

### **Analysis**

[10] The determination by a Citizenship Judge that an individual meets the residency requirements of the *Citizenship Act* is a question of mixed fact and law and is reviewable on the standard of reasonableness: see *Canada (Minister of Citizenship and Immigration) v. Farag*, 2009 FC 299, at para. 18.

[11] Different judges in this Court have taken different approaches to how the residency requirement in the *Citizenship Act* should be interpreted. A Citizenship Judge is entitled to adopt any of these various approaches in determining whether a particular applicant has satisfied the residency requirements of the Act.

[12] In this case, the Citizenship Judge followed the approach advocated in *Re Koo*, [1993] 1 F.C. 286. In *Re Koo*, Justice Reed held that physical presence in Canada is not required in order to be able to satisfy the residency test set out in the *Citizenship Act*. Rather, the test should be formulated as whether the applicant “regularly, normally or customarily lives” in Canada. Put another way, the question is whether the applicant has centralized his or her mode of existence in Canada.

[13] The Minister argues that the Citizenship Judge erred by failing to make an initial determination as to whether the respondents had established residency in Canada, prior to evaluating the nature of their absences from this country. In this regard, the Minister relies on the decision in *Farag*, previously cited, which adopts the reasoning of Justice Layden-Stevenson in *Goudimenko v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 447, where she stated that:

The difficulty with the appellant's reasoning is that it fails to address the threshold issue, his establishment of residence in Canada. Unless the threshold test is met, absences from Canada are irrelevant. *Canada (Secretary of State) v. Yu* (1995), 31 Imm. L.R. (2d) 248 (F.C.T.D.); *Re Papadorgiorgakis*, supra; *Re Koo*, supra; *Re Choi*, [1997] F.C.J. No. 740 (T.D.). In other words, a two-stage inquiry exists with respect to the residency requirements of paragraph 5(1)(c) of the Act. At the first stage, the threshold determination is made as to whether or not, and when, residence in Canada has been established. If residence has not been established, the matter ends there. If the threshold has been met, the second stage of the inquiry requires a determination of whether or not the particular applicant's residency satisfies the required total days of residence. It is with respect to the second stage of the inquiry, and particularly with regard to

whether absences can be deemed residence, that the divergence of opinion in the Federal Court exists. [at para. 13]

[14] In his brief reasons, the Citizenship Judge found that Mr. Sadek had established “roots” in Canada. The Judge went on to note that although Mr. Sadek’s employment had initially required him to work outside of Canada, his absences from Canada were temporary in nature, and that he had maintained his “roots” in Canada during his absences.

[15] While it would have been preferable if the Citizenship Judge had used more precise language, I am satisfied that a threshold finding was made that Mr. Sadek had established residency in Canada prior to leaving the country to work offshore, and that this finding was reasonable.

[16] The Citizenship Judge was also clearly aware of Mr. Sadek’s significant periods of absence from Canada. The finding that Mr. Sadek’s absences from Canada were temporary in nature is also reasonable, in light of the evidence relating to the temporal limitations on his overseas work arrangements, the maintaining of the family home in Calgary during his absences, and his conduct in returning to Canada on a regular basis.

[17] The Citizenship Judge’s reasons with respect to Ms. Barakhe are even sparser than they were for Mr. Sadek. Nevertheless, it is clear from the reasons that the Citizenship Judge was well aware of Ms. Barakhe’s prolonged absences from Canada, including the fact that she had spent approximately one year with her husband in Syria.

[18] While the Citizenship Judge's language with respect to Ms. Barakhe's establishment of residency in Canada is not as clear as one would have liked, I find that a fair reading of the reasons as a whole leads to the conclusion that the Citizenship Judge was satisfied that Ms. Barakhe and her children had established residence in Canada prior to travelling overseas. It is quite clear from the reasons that the Citizenship Judge was satisfied that Ms. Barakhe's absences were temporary in nature.

[19] Thus, the Citizenship Judge's conclusion that Ms. Barakhe met the residency requirements of the *Citizenship Act* was one that was reasonably open to him on the record before him.

### **Conclusion**

[20] For these reasons, the decision to grant citizenship to the respondents was one that falls within the range of possible acceptable outcomes that are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9, at paragraph 47. As a consequence, the Minister's appeal is dismissed.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the appeal is dismissed.

“Anne Mactavish”

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Judge

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

**DOCKET:** T-1474-08

**STYLE OF CAUSE:** MCI v. FERAS SADEK and LAMIS BARAKHE

**PLACE OF HEARING:** Edmonton, Alberta

**DATE OF HEARING:** May 21, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Mactavish, J.

**DATED:** May 27, 2009

**APPEARANCES:**

Camille N. Audain

FOR THE APPLICANT

Rekha P. McNutt

FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada

FOR THE APPLICANT

CARON & PARTNERS, LLP  
Barristers and Solicitors  
Calgary, Alberta

FOR THE RESPONDENTS