

BETWEEN:

**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

SEE HOK SAMUEL LAI,

Appellant.

REASONS FOR JUDGMENT

DUBÉ J:

This appellant met all the requirements for citizenship set out in the *Citizenship Act*¹ ("the Act") except for the requirement of residence. Under subsection 5(1)c) of the Act, an applicant is required to have accumulated at least three years of residence in Canada within the four years immediately preceding his or her application.

In the instant case, the appellant came to Canada as a foreign student in August 1983. He graduated from high school and obtained a bachelor of engineering from McMaster University and a master of business administration from the University of Toronto. As a student, the appellant lived with his two sisters who are now Canadian citizens. After graduation, he moved back to Hong Kong in 1991 leaving his clothing, books and all personal belongings in Canada. He returned to Canada with his mother and sisters in May 1992 as a dependent. His mother had purchased a house in Mississauga, Ontario, in 1990. The family transferred all their settlers effects from Hong

¹R.S.C. 1985, c. C-29.

Kong to Mississauga, obtained social insurance numbers, health cards, library cards, Ontario's driver licences, opened bank accounts, and generally establishing themselves in a permanent fashion in this country.

The appellant was required to travel to Hong Kong on several occasions on behalf of his Canadian employer, Kei Lai (Canada) Ltd., an Ontario corporation specializing in the trading of ladies' and men's fashion. As marketing manager, the appellant was responsible for product sourcing and developing contacts with manufacturers and suppliers in Hang Kong.

The appellant applied for jobs in Canada but was not successful at the time. He has now been hired by a Toronto accounting firm from which he prepares income tax returns.

He married in July 1995 a Canadian citizen who was working for the Toronto Dominion Bank. He knew her as a student at McMaster University. The young couple had purchased a house in Markham, Ontario, in April 1997. Before that date, they were living with the appellant's mother. The latter along with the two aforementioned sisters and a third one are now all Canadian citizens.

Full-time physical presence in Canada is not an essential residential requirement. That principle was clearly established by the Associate Chief Justice of this Court, Thurlow A.C.J., as he then was, in the well-known *Papadogiorgakis* case² wherein he said as follows, at p. 214:

A person with an established home of his own in which he lives does not cease to be resident there when he leaves it for a temporary purpose whether on business or vacation or even to pursue a course of study. The fact of his family remaining there while he is away may lend support for the conclusion that he has not ceased to reside there. The conclusion may be reached, as well, even though the absence may be more or less lengthy. It is also enhanced if the returns there frequently when the opportunity to do so arises. It is, as Rand J. appears to me to be saying in the passage I have read, "chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests, and conveniences at or in the place in question.

²[1978] 2 F.C. 208.

That landmark decision has lasted 18 years and Parliament has not seen fit to amend the Act so as to circumscribe its impact. Thus, a liberal interpretation of the Act truly reflects the generous family values of our citizens.

As mentioned by Thurlow A.C.J. in the above *Papadogiorgakis* case, a person with an established home of his own in Canada does not cease to be a resident here when he leaves for temporary purposes, whether on business, or vacation, or to pursue a course of study. In the above mentioned case, the student applicant for Canadian citizenship was away to university in the United States, whereas in the instant case the appellant is often away on business.

As I had the occasion to state in the *Siu Chung Hung* citizenship case³, which is quite similar to this one, "the place of residence of a person is not where that person works but where he or she returns to after work". Where an applicant for citizenship has clearly and definitively established a home in Canada with the transparent intention of maintaining permanent roots in this country, he ought not to be deprived of citizenship merely because he has to earn his livelihood and that of his family by doing business offshore. Some Canadian residents may work from their own home, others return home after work every day, others every week, and others after longer periods abroad. The most eloquent *indicia* of residency is the establishment of a person and his family in the country, coupled with a manifest intention of making the establishment their permanent home.

Consequently, this appeal is allowed.

O T T A W A

October 10, 1997

Judge

³T-384-95, January 26, 1996, not reported.