

Federal Court



Cour fédérale

**Date: 20140513**

**Docket: T-1433-13**

**Citation: 2014 FC 455**

**Ottawa, Ontario, May 13, 2014**

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

**BETWEEN:**

**NASRIN PORNEJAD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an appeal of a decision of Citizenship Judge Babcock, dated July 24, 2013, refusing the Applicant's application for Canadian citizenship on the basis that she did not meet the requirements in the Citizenship Act, RSC 1985, c C-29.

[2] The Applicant listed 350 days of absence from Canada on her application. However, the total days of absence on her Residence Questionnaire were 377 days, leaving her 12 days short

of the required 1095 days of physical presence. At her interview with the Citizenship Judge, she declared absences totalling 348 days, but on the Citizenship Judge's own calculation based on the Applicant's stated dates at the hearing, she was absent for 387 days. In her affidavit before this Court, the Applicant corrected "errors" in both her original application and her Residence Questionnaires. Accounting for these errors, she now says that her absence from Canada during the relevant period totals 330 days.

[3] The Citizenship Judge determined that there was insufficient evidence for him to be able to calculate the Applicant's actual physical presence in Canada. He noted the following:

1. There were several entrance and exit stamps in the Applicant's passport following the date of her citizenship application but before the Residence Questionnaire was received and that none of these trips were documented in the Residence Questionnaire;
2. At the interview, the Applicant attested to the fact that all statements on her application and Residence Questionnaire were true and correct;
3. There were trips stated on the application but not stated on the Residence Questionnaire;
4. Entrance stamps into Canada corresponding to certain trips into and out of Iran and Mexico could not be found in the Applicant's passport; and

5. The Applicant provided various indicators of passive residence including various bills, mortgage documents, Notices of Assessment from the CRA, and bank statements, but many of these were not conclusive of physical presence.

Based on the above information, the Citizenship Judge was not satisfied that it was possible to determine with any accuracy, the number of days the Applicant had been present in Canada.

[4] The Applicant submits that the Citizenship Judge breached the duty of fairness owed to her by:

1. Failing to conduct a follow-up interview despite indicating at the end of the first interview that he would like to meet with her again;
2. Considering absences outside of the relevant period, an irrelevant consideration; and
3. Making an implicit negative credibility finding without providing the Applicant an opportunity to address his concerns.

[5] I have concluded that this appeal must be dismissed.

[6] In my view, the rejection of the application on the finding of the Citizenship Judge that it was impossible to determine with any accuracy the number of days the Applicant had been

present in Canada was not only reasonable, it was the only conclusion that reasonably could have been made.

[7] The Applicant submits that if the Citizenship Judge had not breached his duty of fairness in failing to obtain the information from CBSA and conduct a follow-up interview, then he may have been persuaded to apply one of the other tests of residency rather than use the strict count of days test.

[8] However, assuming without deciding that there was a breach of fairness on the part of the Citizenship Judge, the fact remains that the application was dismissed because the Citizenship Judge found, based on the information before him and the personal interview, that he was “unable to calculate the actual physical presence of the applicant” in Canada. There is nothing in the record to suggest that information from CBSA or a follow-up interview would have changed that finding.

[9] Regardless of which residency test is used, one must first determine the number of days that an applicant was actually present in Canada. Some of the tests other than the physical presence test look at other qualitative factors, but in all cases, there must be some baseline in terms of the number of days of actual physical presence. For example, the test articulated in *Koo (Re)*, [1993] 1 FC 286, requires the Court to consider, among other things, “the extent of the physical absences.” The “centralized mode of living test” articulated in *Papadogiorgakis (Re)*, [1978] 2 FC 208, requires the Court to consider whether an applicant is nonetheless “resident in

Canada” during the periods in which they are absent from Canada. Both of these considerations still require the applicant to at least establish when they were actually absent, and for how long.

[10] Moreover, an applicant must establish that he or she has established residence in Canada and that is simply not possible where, as here, it cannot even be determined when the Applicant was present and when she was absent.

[11] For these reasons, even if I had found that there was a breach of natural justice in this case, I would not have sent the application back for re-determination as the outcome would necessarily have been the same. The appeal must be dismissed as it is not possible to determine the Applicant’s days of residence in Canada.

[12] The Applicant sought \$1,000 in costs if successful; the Respondent sought \$500 in costs. In the circumstances and in the exercise of my discretion I award the Respondent the costs it sought.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this appeal is dismissed with costs to the Respondent fixed at \$500.00.

“Russel W. Zinn”

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Judge

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

**DOCKET:** T-1433-13

**STYLE OF CAUSE:** NASRIN PORNEJAD v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 16, 2014

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MAY 13, 2014

**APPEARANCES:**

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