

Federal Court



Cour fédérale

Date: 20170821

Docket: T-235-17

Citation: 2017 FC 773

Ottawa, Ontario, August 21, 2017

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

IRFAN SADDIQUE

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Minister of Citizenship and Immigration [the Minister] applies for judicial review of a decision by a Citizenship Judge [the Judge], in which the Judge decided under subsection 14(2) of the *Citizenship Act*, RSC 1985, c C-29 [the Act], to approve Irfan Saddique's [Mr. Saddique] application for citizenship after determining that he met the residency requirement set out in paragraph 5(1)(c) of the Act as it read at the time of application. Mr. Saddique is the respondent in this application.

[2] Mr. Saddique is a medical doctor who has been living and working in the United States in an attempt to obtain the necessary credentials to be able to work as a doctor in Canada. As result, when applying for Canadian citizenship, he declared only 177 days of physical presence, which represents a shortfall of 918 days from the required 1095 days. The Judge applied the centralized test for residence set out in *Re Papadogiorgakis*, [1978] 2 FC 208, 88 DLR (3d) 243 [FCTD] [*Papadogiorgakis*]. She found that, despite living in the United States, Mr. Saddique had maintained his centralized mode of living in Canada; his application for citizenship was thus approved.

[3] The Minister disagrees with the decision by the Judge. The Minister argues that the decision is unreasonable because the evidence before the Judge was not reasonably capable of objectively establishing residency in Canada and the Judge failed to adequately address the lack of evidence in an intelligible or transparent manner.

[4] Mr. Saddique states that he appeared before the Judge for his hearing on January 5, 2017, at which time he answered questions put to him by the Judge. The questions included the concerns raised by the citizenship officer who prepared the File Preparation and Analysis Template [FPAT]. At the end of the hearing, the Judge asked for specific documents and Mr. Saddique signed an acknowledgment that he would provide them. This included an affidavit from his father-in-law about living arrangements, a bank letter attesting to the relationship, and certain bank and credit cards statements.

[5] On January 9, 2017, Mr. Saddique provided the documents requested by the judge as well as additional evidence about his ties to Canada, including proof that he had paid his wife's student loans. He says the Judge reasonably satisfied herself as to his residency only after

conducting the interview and reviewing all the available documentation. The Minister is asking the Court to weigh the evidence differently than the Judge did, which is not the role of the Court.

II. ANALYSIS

[6] The Minister says the Judge failed to analyze whether Mr. Saddique had already established residence in Canada before he left to pursue his medical credential in the United States. The Minister also takes issue with the quantity and quality of the evidence provided by Mr. Saddique and says there was a complete lack of basic evidence of a centralized mode of living in Canada. It is alleged that the Judge accepted bald testimony from Mr. Saddique about his desire to live in Canada rather than assessing whether the evidence actually indicated a centralized mode of living.

[7] Mr. Saddique says he was forced to temporarily move to the United States for his medical residency. He says the Judge considered these circumstances and correctly applied the *Papadogiorgakis* test. Indeed, Mr. Saddique would have preferred to have a medical residency in Canada, but after pursuing all available avenues, he could not obtain one and had no choice but to go to the United States to seek a license that would later enable him to practice in Canada. Furthermore, in Canada, and in particular in Ontario, Mr. Saddique has an extended family of 40 to 50 people, including his mother, brother, sister, uncle, and aunt, as well as his wife's parents and various extended relatives. To Mr. Saddique, the Judge appropriately took these facts into consideration.

A. *The Decision*

[8] The Judge began her analysis by noting the personal background of Mr. Saddique and that, while in Canada, he and his family had been living with his in-laws, where they had their

own quarters in a 3,000-square-foot home, as well as the finished part of the basement. She noted that he had only declared 177 days of physical presence, but found the absences were due to his pursuit of his medical designations in the United States.

[9] As part of her analysis under the *Papadogiorgakis* test, the Judge noted that Mr. Saddique bears the burden of proving he met the residency requirements. She noted that, in addition to his absence to pursue his credentials in the United States, Mr. Saddique was absent for a total of 111 days in Pakistan to look after his terminally ill father, where he later returned for his father's funeral.

[10] The Judge reviewed and addressed the three concerns noted by the Citizenship Officer, in the FPAT being the significant shortfall in days, some undeclared re-entries, and the fact that he did not display affiliations to Canada.

[11] With respect to the shortfall in days, the Judge found that Mr. Saddique's absence from Canada was temporary, given that he was pursuing a professional designation. She stated that it was obvious that he and his family had established a home in Canada. In so doing, the Judge relied on the fact that Mr. Saddique returned to the home in which he had previously lived with his wife's family; that his furniture and office equipment remained there; and that he also spent time with his widowed mother when he came home.

[12] With respect to several undeclared re-entries to Canada, the Judge noted Mr. Saddique's explanation that he had relied on stamps in his passport to determine the dates of physical presence and absence for his application. As he often returned to Canada by car, several re-entries were not noted. The Judge observed that he had such extensive absences that the extra

days would not make “much of a dent” in his absences. In any event, the Minister does not rely upon these undeclared re-entries.

[13] The Judge found that Mr. Saddique’s application form and residency questionnaire did not mention his extended family and that he lived in his father-in-law’s home while he was concentrating on his medical designations. However, he testified about his many family connections.

[14] In applying *Papadogiorgakis*, the Judge referred to two passages. The first opens with the comment that the person with an established home in which he lives does not cease to be resident there when he leaves it for a temporary purpose, such as to pursue a course of study. The second passage refers to it being “chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his very mode of living with its accessories in social relations, interests and conveniences at or in the place in question”. The Judge then discussed Mr. Saddique’s physical establishment in Canada at his father-in-law’s home and his statement that he would not want to rear his children in the United States. The Judge noted that he has a healthy bank balance which he has had since 2009 and that his credit card statements show activities in Canada from 2010 to 2016. Specifically, she found that the “everyday consumption items” corroborated with Mr. Saddique’s declared absences and also verified his payments to the Medical Council of Canada and expenses for other related testing. She concluded the post-hearing documentation he supplied at her request supported his application.

B. *Commentary*

[15] The Minister complains that the Judge failed to explain how the facts in her decision meet the *Papadogiorgakis* test. As I understand the Minister’s position, it is akin to an adequacy of

reasons argument and, despite protestations to the contrary, there are elements of asking the Court to reweigh the evidence. In this respect, I am mindful that Mr. Justice de Montigny, when he was a member of this Court, found that by reason of their special knowledge and expertise citizenship judges are owed a degree of deference in the application of the test they choose and the assessment of the evidence placed before them: *Canada (Citizenship and Immigration) v Patmore*, 2015 FC 699 at para 14, 482 FTR 90 [*Patmore*].

[16] The reasons provided by the Judge are succinct but clear. She found Mr. Saddique had been living with his family in Brampton in the home of his wife's parents before leaving to study in the United States. His absences were to write his exams, to conduct clinical observership, and to complete his internal medicine residency, as well as to look after his terminally ill father and, later, to attend his funeral. The Judge noted Mr. Saddique has 40 to 50 extended family members in Canada whom he would visit. She found his testimony to be credible and his delivery to be straightforward.

[17] On reviewing the record, I note that handwritten interview notes taken by the Judge supplement the reasons to help understand why the Judge concluded as she did. The notes show that the Judge asked Mr. Saddique directly why she should approve his application. It appears that he explained that he had been a physician in Pakistan and moved to Ontario in 2009, where he worked very hard to pass the medical entrance exam but was unable to secure a residency. He also had an observership at a health centre in Toronto and he went to Alberta to interview for a position as a physician assistant, but he was not hired. When he felt he had exhausted all options in Canada, he went to the United States to continue his profession.

[18] The notes go on to say that Mr. Saddique wants to come back to practice medicine in Canada where his family is located. He has only had one or two days off from his residency, so when he did return to Canada, it had to be brief. In terms of other indicators of his centralization of residence in Canada, the notes show that he went to the mosque regularly with his in-laws and that both he and his wife joined the Canadian Mental Health Association. When he was living with his in-laws in Canada, he often paid or contributed to various bills such as the mortgage by giving them cash.

[19] The Judge's notes conclude with Mr. Saddique indicating that he will finish his job in the United States in 2018 and will come back to Canada at that time. He indicated he was already looking for a job in Canada. He remained in the United States to make his application stronger by having more experience, because in the United States internal medicine could be obtained after three years but in Canada four years is required.

[20] The record also shows that Mr. Saddique's wife is a Canadian citizen and that he wished to raise his children in Canada, not in the United States. While counsel for the Minister dismisses the significance of the citizenship of Mr. Saddique's wife, I view it as another important piece of the puzzle that was before the Judge. She specifically mentioned the passage from *Papadogiorgakis*, stating that "it is chiefly a matter of 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". The social relations which were front and centre in this citizenship application were clearly an extended family in Canada. The Judge referred to the 40 to 50 family members in Canada as Mr. Saddique's "clan". Not only was the family numerous, the father-in-law provided Mr. Saddique with housing and religious

grounding. That his wife was Canadian serves to anchor Mr. Saddique's connection to Canada all the more.

[21] The Minister is concerned there were insufficient indicators — said to be a house and a bank account — to justify the Judge's decision. However, there were several indicators. The Judge took into account a number of factors, including that Mr. Saddique attempted to secure a residency in Canada; maintained strong family ties here; had a permanent residence for his family complete with furniture, office equipment, and children's toys separate from the other household; frequently returned to Canada (given his demanding work schedule); had financial ties to Canada, despite little physical presence to justify it, absent continued residency; and stated his intentions to return to Canada as soon as the licensing process was complete.

[22] This Court owes deference to the Judge, who saw and heard Mr. Saddique. She applied the facts to the law, her home statute, using the expertise gained in her capacity as a citizenship judge. I am satisfied that the decision is intelligible and transparent. The outcome is supported by the evidence in the record. In my view, the Judge could reasonably come to the conclusion she did on the record before her. While there may have been another acceptable outcome, as urged by the Minister, the outcome arrived at by the Judge is reasonable; it is defensible on the facts and law.

[23] The application is dismissed, without costs. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is dismissed, without costs.
2. There is no serious question of general importance for certification.

“E. Susan Elliott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-235-17

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