

Federal Court



Cour fédérale

**Date: 20150903**

**Docket: IMM-6984-14**

**Citation: 2015 FC 1046**

**Ottawa, Ontario, September 3, 2015**

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

**BETWEEN:**

**MARK ROBERT JEWELL**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2014, a delegate of the Minister found that Mr Mark Robert Jewell, a citizen of the United States, had made Canada his home without first obtaining Canadian permanent resident status contrary to the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], s 20(1)(a) – see Annex for enactments cited. The Delegate then issued an exclusion order against Mr Jewell

under the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], s 228(1)(c)(iii).

[2] Mr Jewell maintains that the decision was unreasonable because it was based on a misunderstanding of the relevant statutory provisions and a failure to consider the dual intention provisions of the IRPA. He also submits that the delegate treated him unfairly by not giving him a chance to respond to issues of credibility, or to withdraw or adjourn his application. Mr Jewell asks me to overturn the delegate's decision and order another official to reconsider his circumstances.

[3] I agree with Mr Jewell that the decision was unreasonable because it failed to consider his dual intention to be a temporary resident of Canada at the time of the assessment, with a view to becoming a permanent resident at a later date. It is therefore unnecessary to consider Mr Jewell's submissions on the issue of fairness.

[4] The sole issue is whether the delegate's decision was unreasonable.

## II. The Delegate's Decision

[5] Mr Jewell works in the state of Washington and owns property there. Since 2013, he has been dating a Canadian citizen living in Surrey, British Columbia. The couple has spent time together both in Washington and BC, making many trips back and forth.

[6] In 2014, Mr Jewell's girlfriend rented a house in Surrey. He helped out with the rent and paid for some furnishings. In September 2014, a friend of Mr Jewell attempted to drive Mr Jewell's car across the border from the US into Canada. A border security officer stopped the car and reviewed the text messages on the driver's cell phone. Those messages caused the officer to believe that Mr Jewell had moved in with his girlfriend in Surrey.

[7] The next day, Mr Jewell was stopped at the border and his cell phone records were reviewed. Based on this evidence, an officer prepared a report indicating that Mr Jewell was inadmissible to Canada. The file was then referred to a delegate of the Minister for a decision.

[8] The stored messages appeared to confirm that Mr Jewell was living in Canada and suggested how Mr Jewell should answer questions at the border. The delegate asked Mr Jewell about his employment and residence in Canada. The delegate also noted that Mr Jewell's travel patterns were consistent with someone who was commuting from Canada to the US.

[9] The delegate concluded that Mr Jewell had made Canada his home without first obtaining permanent resident status. The delegate relied on the messages retrieved from Mr Jewell's friend's phone, and Mr Jewell's phone. In addition, the delegate noted that Mr Jewell had little evidence to show that he worked in Washington, although the delegate accepted that Mr Jewell had been commuting from Canada to the US. The delegate reviewed evidence regarding Mr Jewell's residence in Washington and found that he owned a recreational property that had been up for sale.

[10] Based on this evidence, the delegate issued an exclusion order pursuant to the IRPR.

III. Was the delegate's decision unreasonable?

[11] The Minister submits that the exclusion order was reasonable because Mr Jewell admitted his intention to reside in Canada permanently. Further, Mr Jewell was behaving as a permanent resident of Canada by commuting from BC to Washington.

[12] I disagree with the Minister's position. In my view, the delegate failed to assess Mr Jewell's dual intention to be a temporary resident at present, and to become a permanent resident later.

[13] IRPA provides that foreign nationals may hold the intention to become permanent residents without being precluded from becoming temporary residents if they show they will leave Canada at the end of their authorized period of residence (s 22(2)). If they cannot do so, an exclusion order will be considered reasonable (*Barua v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 172 at para 22; *Sibomana v Canada (Minister of Citizenship and Immigration)*, 2012 FC 853 at paras 27-28).

[14] The evidence before the delegate did not show that Mr Jewell intended to become a permanent resident of Canada without abiding by the applicable rules. At best, the evidence was ambiguous. Further, there is no evidence that Mr Jewell would refuse to leave Canada, or that he would fail to observe any other legal requirements.

[15] Therefore, in my view, the delegate's decision did not represent a defensible outcome based on the facts and the law. It was unreasonable.

IV. Conclusion and Disposition

[16] The delegate's decision was unreasonable for failing to consider Mr Jewell's desire to be a temporary resident of Canada for now while hoping to become a permanent resident later. Accordingly, I must allow this application for judicial review and order another delegate to reconsider Mr Jewell's circumstances. Neither party proposed a question of general importance for me to certify, and none is stated.

## JUDGMENT

### **THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed and the matter is returned to another delegate for reconsideration.
2. No question of general importance is stated.

"James W. O'Reilly"

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Judge

## Annex

*Immigration and Refugee Protection Act,*  
SC 2001, c 27

*Loi sur l'immigration et la protection des*  
*réfugiés, LC 2001, ch 27*

## Obligation on entry

## Obligation à l'entrée au Canada

**20.** (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

**20.** (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence;

a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;

## Dual intent

## Double intention

**22.** (2) An intention by a foreign national to become a permanent resident does not preclude them from becoming a temporary resident if the officer is satisfied that they will leave Canada by the end of the period authorized for their stay.

**22.** (2) L'intention qu'il a de s'établir au Canada n'empêche pas l'étranger de devenir résident temporaire sur preuve qu'il aura quitté le Canada à la fin de la période de séjour autorisée.

*Immigration and Refugee Protection*  
*Regulations, SOR/2002-227*

*Règlement sur l'immigration et la protection*  
*des réfugiés, DORS/2002-227*

Subsection 44(2) of the Act — foreign nationals

Application du paragraphe 44(2) de la Loi :  
étrangers

**228.** (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be

**228.** (1) Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le cas où elle ne comporte pas de motif d'interdiction de territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déferée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :

...

[...]

(c) if the foreign national is

c) en cas d'interdiction de territoire de

inadmissible under section 41 of the  
Act on grounds of

l'étranger au titre de l'article 41 de la  
Loi pour manquement à :

...

[...]

(iii) failing to establish that they hold  
the visa or other document as  
required under section 20 of the Act,  
an exclusion order,

iii) l'obligation prévue à l'article 20 de  
la Loi de prouver qu'il détient les visa  
et autres documents réglementaires,  
l'exclusion,

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

**DOCKET:** IMM-6984-14

**STYLE OF CAUSE:** MARK ROBERT JEWELL v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

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

**DATED:** SEPTEMBER 3, 2015

**APPEARANCES:**

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