

Federal Court



Cour fédérale

**Date: 20160509**

**Docket: T-1761-15**

**Citation: 2016 FC 497**

**Ottawa, Ontario, May 9, 2016**

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

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**AMRITPAL SINGH PAWAR**

**Respondent**

**AMENDED JUDGMENT AND REASONS**

I. Overview

[1] Irrespective of the test employed by a Citizenship Judge, whether it be the quantitative or the qualitative test, the burden is on a citizenship applicant to establish, with clear and compelling evidence, the number of days of residence in Canada during the reference period (*Atwani v Canada (Citizenship and Immigration)*, 2011 FC 1354 at para 12 [*Atwani*]).

## II. Background

[2] This is an application for judicial review of a decision, dated September 23, 2015, wherein a Citizenship Judge approved the Respondent's citizenship application.

[3] The Respondent, Amritpal Singh Pawar (age 60), is a citizen of India and he obtained his permanent residence in Canada upon arrival in Canada on March 7, 2003. The Respondent was sponsored by his then wife. In 2005, the couple separated.

[4] On March 18, 2008, the Respondent applied for Canadian citizenship; thus, the reference period is from March 18, 2004 to March 18, 2008. During the reference period of 1,460 days, the Respondent declared 1,105 days of physical presence in Canada and 355 days of absences from Canada. The threshold, as it was then, as provided by paragraph 5(1)(c) of the *Citizenship Act*, RSC 1985, c C-29, was 1,095 days of residence in Canada during a four year reference period.

[5] On July 28, 2015, the Respondent appeared before the Citizenship Judge for a hearing; and, in a decision dated September 23, 2015, the Citizenship Judge approved the Respondent's citizenship application.

## III. Impugned Decision

[6] The Citizenship Judge relied on the quantitative test set-out in *Pourghasemi (Re)*, [1993] FCJ No 232, to find that on the balance of probabilities, the Respondent met the residence requirement of 1,095 days during the reference period. In his reasons, the Citizenship Judge

mentioned the concerns of the Citizenship Officer who reviewed the case: i) the total number of absences cannot be calculated as there appear to be undeclared absences; ii) discrepancies regarding the Respondent's salary in the employment letters and his Notice of Assessment; and, iii) the majority of the documents provided by the Respondent are but passive indicators (see paragraph 14 of the Decision, Applicant's Record at page 8).

[7] Subsequently, the Citizenship Judge considered these concerns. Firstly, he was satisfied after reviewing the stamps in the Respondent's passport and the ICES report, itself, that no evidence of undeclared absences had affected the Applicant's meeting the residency requirements. Secondly, the Citizenship Judge was satisfied as per the Respondent's explanations as provided during the hearing that the discrepancies regarding his salary were due to his accountant's advice, who had advised the Applicant that as an independent contractor his expenses were to be deducted from his revenue. Thirdly, the Citizenship Judge was of the opinion that even if the Respondent provided a limited number of documents, certain of these documents were, in and of themselves, active indicators of the Applicant's presence in Canada, such as the employment letters (tax documents and whether self-employed or otherwise). Consequently, the Citizenship Judge held that on the balance of probabilities, the Respondent demonstrated that he met the residency requirements.

#### IV. Issues

[8] The Applicant submits the following issues to be considered by the Court:

- 1) Did the Citizenship Judge err in considering the evidence?
- 2) Do the Citizenship Judge's reasons lack clarity, precision and intelligibility?

V. Standard of Review

[9] The reasonableness standard is applicable to determinations by a Citizenship Judge in respect of questions of mixed fact and law (see *Canada (Citizenship and Immigration) v Rahman*, 2013 FC 1274 at paras 11-14). Consequently, this Court should not intervene unless the decision falls outside the range of possible, acceptable outcomes, or does not accord with the principles of justification, transparency and intelligibility (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

VI. Analysis

[10] The Applicant submits that the Citizenship Judge erred by finding that the Respondent met the residency requirements despite of the lack of sufficient evidence demonstrating the Respondent's physical presence in Canada. Conversely, the Respondent submits that the Citizenship Judge's decision is reasonable as the Citizenship Judge reasonably assessed the evidence. The Citizenship Judge had before him all the evidence provided by the Respondent and had the opportunity of hearing him; as such, the Citizenship Judge reasonably concluded that there is no reason to doubt the Respondent's credibility.

[11] Irrespective of the test employed by a Citizenship Judge, whether it be the quantitative or the qualitative test, the burden is on a citizenship applicant to establish, with clear and compelling evidence, the number of days of residence in Canada during the reference period (*Atwani*, above at para 12).

[12] According to the Respondent's submissions, he was ten days over the threshold of 1,095 days required for his citizenship application to be approved. The record demonstrates that the Respondent failed to declare, what it appears to be, one-day trips to the United States. He further declared being in Canada on days that it would have been logistically impossible for him to be in Canada, such as declaring arriving in India (within calculated time factors, as to time zone differences), the same day as he left Canada. Subsequently, the Citizenship Judge stated that the employment letters were active indicators of the Respondent's presence in Canada; but, as submitted by the Applicant, it appears that the first employment letter is only for the period of June 2006 to October 2006; and, the second employment letter covers a period of time outside the actual reference period. Hence, the letters remain of limited assistance to the Respondent.

[13] Given that the Respondent was only ten days above the threshold, factual determinations regarding discrepancies could be of material consequences to the Respondent's application for citizenship. Cognizant that significant deference is owed to the factual determination of the Citizenship Judge; a Citizenship Judge must nonetheless "turn his mind to the question of whether omissions and contradictions in the evidence undermine the credibility of an individual" (*Canada (Citizenship and Immigration) v Vijayan*, 2015 FC 289 at para 65). It appears from the file that the Citizenship Judge did turn his mind to significant material omissions and apparent contradictions of the Respondent, but was able to resolve them as specified above.

## VII. Conclusion

[14] Consequently, the application for judicial review is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be dismissed.

There is no question of general importance to be certified.

"Michel M.J. Shore"

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Judge

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

**DOCKET:** T-1761-15

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v AMRITPAL SINGH PAWAR

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 19, 2016

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** MAY 4, 2016

**AMENDED:** MAY 9, 2016

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