

Federal Court



Cour fédérale

Date: 20160627

Docket: T-1265-15

Citation: 2016 FC 717

Ottawa, Ontario, June 27, 2016

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

RIPUDAMANJIT SINGH GORAYA

Respondent

JUDGMENT AND REASON

I. Overview

[1] Mr Ripudamanjit Singh Goraya, originally a citizen of India, became a landed immigrant in Canada in 2005. Since then, he has spent time both in Canada and the United States while working as a consultant in the information technology sector. In 2010, he applied for Canadian citizenship. To succeed, he had to show that he had spent three out of the previous four years in

Canada (or 1095 days). He maintained that his time in Canada added up to just over three years (1126 days) and provided a variety of documents to support his application.

[2] A citizenship officer who reviewed his application pointed out a number of concerns about the amount of time Mr Goraya had actually spent in Canada, noting that there were a number of undeclared absences from Canada during the relevant time period, that there was a lack of banking and medical records, and that Mr Goraya allegedly told a border official that he had set up a shell company in Canada to create a false impression of the amount of time he had spent here.

[3] Mr Goraya's application was then considered by a citizenship judge who concluded that Mr Goraya had, in fact, satisfied the physical presence requirement. In particular, the judge found that the undeclared absences would be unlikely to subtract significantly from the amount of time Mr Goraya spent in Canada. Further, the judge discounted the significance of a lack of medical and financial records. Finally, the judge noted that Mr Goraya's Canadian company was not active until 2014, so its existence could not detract substantially from the other evidence of Mr Goraya's presence in Canada during the relevant period. Therefore, the judge granted Mr Goraya Canadian citizenship.

[4] The Minister of Citizenship and Immigration asks me to quash the judge's decision on the basis that it was unreasonable on the evidence, and to order another judge to reconsider Mr Goraya's application. I can find no basis for overturning the judge's decision; in my view, the

judge's conclusions were reasonably supported by the evidence. I must, therefore, dismiss this application for judicial review.

[5] The sole issue is whether the judge's decision was unreasonable.

II. The Citizenship Judge's Decision

[6] The judge noted that Mr Goraya stayed in Canada only for a couple of months after his initial arrival in 2005. He worked in the US until 2007, but visited his family in Canada from time to time in the interim. He did not really settle in Canada until November 2007. In March 2008, Mr Goraya began working for a Canadian consultancy firm, and remained there until 2014.

[7] With respect to Mr Goraya's Canadian company, the judge accepted that it was registered in 2006, but found that it was not active until 2014. Notwithstanding some inconsistencies, the judge believed Mr Goraya's testimony that he did not tell a border official that he was attempting to create a false impression that he lived in Canada.

[8] The judge also found that the undeclared absences from Canada did not lead to a conclusion that Mr Goraya had failed the physical presence test. He noted that re-entries to Canada after trips to the US are frequently unrecorded. Further, other evidence showed that Mr Goraya was employed in Canada at the relevant time and had Canadian clients. In addition, he had insufficient vacation credits to allow him to spend enough time outside of Canada to reduce his presence below the required 1095 days.

[9] With regard to financial records, the judge found it reasonable that there no bank statements for the period during which Mr Goraya admitted he was living in the US. He also found it reasonable that Mr Goraya, a healthy young man, would have few medical records.

[10] Based on the evidence, the judge found that Mr Goraya had met the residency requirements, and granted his citizenship application.

III. Was the Citizenship Judge's decision unreasonable?

[11] The Minister argues that the judge speculated about Mr Goraya's presence in Canada rather than relying on the evidence before him. There were contradictions and omissions in the evidence that, according to the Minister, the judge failed to address. In particular:

- Mr Goraya said in his application that he was working in the US from November 2007 until December 2008, but in another form he said he was visiting family in the US during that time frame.
- Mr Goraya could not provide corroborating evidence for his testimony in which he said he visited Canada in 2006 and 2007.
- The judge found that Mr Goraya's business was not active until 2014, but overlooked evidence that the business was active in 2013.
- The judge failed to mention that Mr Goraya had a valid US driver's license until 2008.

- The exit and entry reports on which the judge relied were incomplete and did not establish Mr Goraya's presence in Canada.
- Financial records showed that Mr Goraya's absence from Canada in 2006 and 2007 was longer than the judge calculated.

[12] In light of these alleged shortcomings, the Minister maintains that the judge's decision was unreasonable.

[13] I disagree.

[14] The judge was entitled to accept or reject some or all of Mr Goraya's explanations for his actions in 2006 and 2007. Given the incompleteness of the documentary evidence, it was open to the judge to rely on the oral testimony he received. Further, the evidence relating to undeclared absences from Canada did not identify the duration of Mr Goraya's trips to the US. In my view, the judge reasonably inferred from the evidence that Mr Goraya was working in Canada for Canadian clients at the time, and was likely absent only for short trips during his vacation time.

[15] The other evidence on which the Minister relies – relating to Mr Goraya's business, his driver's licence, and his financial and medical records – does not actually contradict the judge's findings, so he had no obligation to refer to it. The Minister simply points to evidence that the judge could have cited in support of a different conclusion about the duration of Mr Goraya's presence in Canada. However, that is not enough to establish that the judge's conclusion was unreasonable.

IV. Conclusion and Disposition

[16] The citizenship judge reasonably concluded on the evidence that Mr Goraya had established his presence in Canada for the required period of time. I must, therefore, dismiss this application for judicial review.

JUDGMENT

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

“James W. O'Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1265-15

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IMMIGRATION v RIPUDAMANJIT SINGH GORAYA

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