

Date: 20080616

Docket: T-1600-07

Citation: 2008 FC 742

Ottawa, Ontario, June 16, 2008

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

EMAD HARB SALAMA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] At the conclusion of the hearing in this matter I indicated that the appeal would be dismissed with written reasons to follow. These are my reasons for dismissing the appeal.

[2] This is an appeal by the Minister of Citizenship and Immigration pursuant to subsection 14(5) of the *Citizenship Act*, RSC 1985, c.C-29, of the decision rendered by Citizenship Judge Robert M. Morrow on July 3, 2007, approving Mr. Salama's application for citizenship.

[3] The Minister submits that the Citizenship Judge ignored and/or misconstrued the evidence before him and erred in his application of the residency test in *Koo (Re)*, [1993] 1 F.C. 286 (T.D.).

[4] An application for citizenship was submitted by Mr. Salama and his family on July 6, 2004. In this application Mr. Salama declared 61 days of absence from Canada between April 20, 2001 and July 6, 2004.

[5] In May 2005 the Canadian Embassy in Riyadh received what it described as a "poison pen letter", which has subsequently been lost, which stated that Mr. Salama had not been in Canada during the period claimed but had been working for Johnson & Johnson in Saudi Arabia. A Visa Officer made contact with someone at the company and was told that Mr. Salama had been working full-time for the past seven years with no noticeable absences from work.

[6] On August 31, 2005, the Canadian Embassy received a second letter from the same source confirming the information contained in the earlier correspondence and providing more detail concerning Mr. Salama and his family.

[7] On October 27, 2005, Mr. Salama completed a Residence Questionnaire in which he declared 129 days of absence from Canada between December 19, 2003 and October 27, 2005.

[8] The Minister asked Mr. Salama to provide his passport and travel documentation used to enter Canada and any valid or expired passport document given to him since his entry to Canada. Mr. Salama provided a copy of his passport issued August 10, 2005, but stated that the other travel documents and previous passport "is spoiled (not available)".

[9] There was evidence before the Citizenship Judge as to Mr. Salama's travel after the date of application but that evidence does not go to the issue of the number of days he spent in Canada in the period prior to the application date.

[10] The Citizenship Judge in his reasons identified the central issue: "the problem has been that he was accused of being in Saudi Arabia during the time he was claiming to have been in Canada during the four years prior to his date of application". The Citizenship Judge states as his reason for accepting the application:

He has told me that this was not true and that he was the victim of someone trying very hard to bring harm and difficulty to him and other members of his family.

I explained the significance of his telling the truth in signing the attestation to this effect and he has also submitted a statutory declaration (attached) to further support his statement. I believe him and further believe that the person in question was the one who gave the false information to our Embassy in Riyadh.

I believe he has been in Canada more than enough to satisfy our residency requirement. I approve the application.

[11] It cannot be said that the Citizenship Judge ignored the evidence before him or that he was not alive to the issue of whether or not Mr. Salama was physically in Canada when he claimed. The Citizenship Judge preferred the evidence of Mr. Salama as to his whereabouts in the four years prior to his application, supported by his attestation and statutory declaration, over the hearsay evidence submitted by the Minister. In my view, that was a finding open to him.

[12] The question as to the number of days an applicant for citizenship has actually been present in Canada is a question of fact alone. Once the Citizenship Judge accepted the evidence of Mr. Salama, there was no need for him to then consider the *Koo* factors as Mr. Salama had more than the minimum number of days of residency in Canada required under subsection 5(1)(b) of the Act.

[13] For these reasons this appeal is dismissed, with costs which I fix at \$1500.00.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This appeal is dismissed with costs fixed in the amount of \$1500.00.

“Russel W. Zinn”

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1600-07

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND IMMIGRATION
v. EMAD HARB SALAMA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 11, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Zinn, J.

DATED: June 16, 2008

APPEARANCES:

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SOLICITORS OF RECORD:

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