Federal Court  Cour fédérale

Date: 20101117

Docket: T-695-10

Citation: 2010 FC 1117

Ottawa, Ontario, this 17th day of November 2010

Present: The Honourable Mr. Justice Pinard

BETWEEN:

LAILY SARVARIAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal of a decision of a Citizenship Judge, pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the "Act") and section 21 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, by Laily Sarvarian (the "applicant"). The Citizenship Judge denied Ms. Sarvarian's application for citizenship under paragraph 5(1)(*c*) of the Act, the relevant portion of which reads:

5. (1) The Minister shall grant citizenship to any person who	5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :
[. . .]	[. . .]
(*c*) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:	*c*) est un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :
(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,
(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;	(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

[2] The applicant is an Iranian citizen and has been a permanent resident of Canada since May 22, 2005. Her husband, Ali Afsari-Nejad, has been in Canada since 2003, and is now a Canadian citizen.

[3] The applicant arrived in Canada on May 22, 2005 and filed for citizenship on November 25, 2008. As of that date, she had been physically present in Canada for 923 days, and absent for 359 days. Her absences included 33 days on which she was in Iran visiting family; the remainder was

spent accompanying her husband to the United States and Japan while he completed the mandatory internship portions of his Computer Engineering degree at the University of Waterloo.

[4] The applicant, during these absences, was completing distance education courses through Seneca College, in Toronto, in accounting and finance. She also took courses in interior decorating at Conestoga College in Waterloo.

[5] The Citizenship Judge applied the test set out by Justice Francis Muldoon in *Re Pourghasemi* (1993), 19 Imm.L.R. (2d) 259, under which an applicant must have been physically present in Canada for a minimum of 1,095 days during the four-year period preceding the application. The Citizenship Judge found that the applicant had only been present in Canada for 923 days, and that therefore she was 172 days short of the minimum requirement.

[6] Both parties agree that the question of whether an applicant meets the residency requirements under the Act is a mixed question of fact and law, and is therefore subject to the reasonableness standard of review: *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, paragraphs 44, 47-48, 53; *Minister of Citizenship and Immigration v. Arastu*, 2008 FC 1222, paragraph 16; *Minister of Citizenship and Immigration v. Mueller*, 2005 FC 227, paragraph 4.

[7] Mr. Justice Muldoon, in *Re Pourghasemi, supra*, at page 260, sets out the underlying objectives of paragraph 5(1)(*c*) of the Act:

> . . . to insure that everyone who is granted precious Canadian citizenship has become, or at least has been compulsorily presented with the everyday opportunity to become, “Canadianized”. This

> happens by “rubbing elbows” with Canadians in shopping malls, corner stores, libraries, concert halls, auto repair shops, pubs, cabarets, elevators, churches, synagogues, mosques and temples - in a word wherever one can meet and converse with Canadians - during the prescribed three years. One can observe Canadian society for all its virtues, decadence, values, dangers and freedoms, just as it is. That is little enough time in which to become Canadianized. If a citizenship candidate misses that qualifying experience, then Canadian citizenship can be conferred, in effect, on a person who is still a foreigner in experience, social adaptation, and often in thought and outlook. If the criterion be applied to some citizenship candidates, it ought to apply to all. So, indeed, it was applied by Madam Justice Reed in *Re Koo*, T-20-92, on December 3, 1992 [reported (1992), 59 F.T.R. 27, 19 Imm.L.R. (2d) 1], in different factual circumstances, of course.

[8] This Court has later held that a proper interpretation of paragraph 5(1)(*c*) of the Act does not require physical presence in Canada for the entire 1,095 days of residence prescribed therein when there are special and exceptional circumstances. I consider, however, that actual presence in Canada remains the most relevant and crucial factor to be taken into account for establishing whether or not a person was “resident” in Canada within the meaning of the provision. As I have stated on many occasions, too long of an absence from Canada, albeit a temporary one, during that minimum period of time is contrary to the spirit of the Act, which already allows a person who has been lawfully admitted to Canada for permanent residence not to reside in Canada during one of the four years immediately preceding the date of that person’s application for citizenship.

[9] As a result, given the substantial absences of the applicant from Canada in the present case (she was present in Canada for 923 days, leaving her short of the required 1,095 by 172 days), I find that the Citizenship Judge’s conclusion that the former did not meet the residency requirements of the Act is reasonable and in accordance with paragraph 5(1)(*c*) of the Act.

[10] For the above-mentioned reasons, the appeal is dismissed. No costs are awarded.

JUDGMENT

The appeal from the decision of a Citizenship Judge, dated March 5, 2010, denying the applicant's application for citizenship under paragraph 5(1)(*c*) of the *Citizenship Act*, R.S.C. 1985, c. C-29, is dismissed. No costs are awarded.

"Yvon Pinard"

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-695-10
STYLE OF CAUSE:	LAILY SARVARIAN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
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REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	November 17, 2010

APPEARANCES:

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