Date: 20041103

Docket: T-330-04

Citation: 2004 FC 1486

BETWEEN:

RAFIK ABDERRAHIM

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

PINARD J.:

[1] This is an appeal pursuant to subsection 14(5) of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the Act) from a decision of Hon. Gilbert Decoste, citizenship judge, dated December 18, 2003, rejecting the applicant's citizenship application on the ground that the residence conditions contained in paragraph 5(1)(*c*) of the Act had not been met.

[2] Paragraph 5(1)(*c*) of the Act reads as follows:

5. (1) The Minister shall grant citizenship to any person who,

. . . . .

(*c*) has been lawfully admitted to Canada for permanent residence, has not ceased since such admission to be a permanent resident pursuant to section 24 of the *Immigration Act*, and has, within the four years immediately preceding the date of his application, accumulated at least three years of residence in Canada calculated in the following manner:

(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

(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;

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

. . . . .

c) a été légalement admise au Canada à titre de résident permanent, n'a pas depuis perdu ce titre en application de l'article 24 de la *Loi sur l'immigration*, 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) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent;

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

[3] Rafik Abderrahim (the applicant) was born in Algeria in 1950. He arrived in Canada and was admitted as a permanent resident on March 26, 1998. He submitted his application for Canadian citizenship on June 12, 2002.

[4] On a preliminary basis, the respondent submitted that Exhibits A-4 and A-5 attached to the applicant's affidavit, and all the allegations relating to them, should be struck out as they were not submitted to the citizenship judge nor considered by him in his decision. Under paragraph 300(*c*) of the

Federal Court Rules (1998), SOR/98-106, an appeal brought under subsection 14(5) of the Act must be governed by the rules applicable to judicial review. An application for judicial review does not allow the parties to submit new evidence (*Gitxsan v. Hospital Employees' Union*, [2000] 1 F.C. 135 (F.C.A.)). In *Canada (Minister of Citizenship and Immigration) v. Hung* (1998), 47 Imm. L.R. (2d) 182, Rouleau J. of this Court noted in particular that new evidence could not be submitted in an appeal from a decision of a citizenship judge. I therefore consider the respondent's objection to be valid and find that Exhibits A-4 and A-5 are inadmissible in evidence.

[5] The applicant argued essentially that the citizenship judge misunderstood the evidence regarding his residence and his substantial connection with Canada. The applicant noted, in particular, that the judge erred in calculating absences during the four-year qualifying period preceding the date of his Canadian citizenship application.

[6] In general, I consider on reviewing the record that the impugned decision is based on significant evidence, which prevents me from taking the place of the citizenship judge in weighing that evidence.

[7] Specifically, I consider that even if the citizenship judge erred in calculating the number of days the applicant was absent (he mentioned 942 days), that error is not significant as the applicant himself indicated in his citizenship application that he was absent for 864 days because of his work abroad. As the applicant was not in Canada for 596 days during the reference period, he was far from meeting the

minimum residence requirement of 1,095 days, which sufficed for the citizenship judge to reasonably deny his application.

[8] In *Re Pourghasemi* (1993), 19 Imm. L.R. (2d) 259, at 260, Muldoon J. set out the purposes underlying paragraph 5(1)(*c*) of the Act:

> . . . the purpose . . . is 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 in (1992), 59 F.T.R. 27, 19 Imm. L.R. (2d) 1], in different factual circumstances, of course.

(See also this Court's judgments in *Re Afandi* (November 6, 1998), T-2476-97, *M.C.I. v. Kam Biu Ho* (November 24, 1998), T-19-98, *M.C.I. v. Chen Dai* (January 6, 1999), T-996-98, *M.C.I. v. Chung Shun Paul Ho* (March 1, 1999), T-1683-95, *M.C.I. v. Fai Sophia Lam* (April 28, 1999), T-1524-98, *M.C.I. v. Su-Chen Chiu* (June 9, 1999), T-1892-98, *M.C.I. v. Chi Cheng Andy Sun* (June 6, 2000), T-2329-98, *Oi Hung Vera Hui v. M.C.I.* (June 6, 2000), T-1338-99 and *Martin Long Ying Lo v. M.C.I.* (June 6, 2000), T-959-99.)

[9] This Court has held that a correct interpretation of paragraph 5(1)(*c*) of the Act does not require a person to be physically present in Canada throughout the 1,095-day prescribed period when there are special and exceptional circumstances. However, I feel that actual presence in Canada is still the most relevant and important factor in determining whether a person has his or her "residence" in Canada within the meaning of this provision. As I have said several times, a too lengthy absence during this minimum period, even if temporary, 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 there for one of the four years preceding the date on which he or she applies for citizenship.

[10] For all these reasons, the applicant's appeal is dismissed.

YVON PINARD
JUDGE

OTTAWA, ONTARIO
November 3, 2004

Certified true translation

Jacques Deschênes, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-330-04
STYLE OF CAUSE:	RAFIK ABDERRAHIM v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	September 23, 2004
REASONS FOR ORDER BY:	Pinard J.
DATED:	November 3, 2004

APPEARANCES:

Khadidja Haddad	FOR THE APPLICANT
Ian Demers	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Khadidja Haddad Montréal, Quebec	FOR THE APPLICANT
Morris Rosenberg Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT