

Date: 20080110

Docket: T-1403-07

Citation: 2008 FC 36

Ottawa, Ontario, January 10, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

CHARLES IKECHUKWU ANAERE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] While Mr. Anaere asks for “simple justice”, his own actions in leaving the country for two years while his citizenship application was pending were the cause of his difficulties. He failed to take even the most fundamental step to protect his rights; he did not seek professional advice.

However, for reasons contained herein, the Citizenship Judge's decision is so flawed that it must be quashed.

II. FACTUAL BACKGROUND

[2] The Applicant entered Canada as a landed immigrant on July 12, 1999. In 2002 he filed for Canadian citizenship. He then left Canada to volunteer on a World University Services Canada (WUSC) project financed by the Canadian International Development Agency to teach in Vietnam for two years.

[3] He failed to write the knowledge test, made no arrangements to write it out of the country or to obtain a formal deferral. Despite his own carelessness, the Citizenship authorities scheduled the test three times after which the file was closed.

[4] In March 2005, the Appellant returned to Canada, and in May 2005 he again applied for Canadian citizenship. This time he failed the knowledge test and the Citizenship Judge denied his application. This decision was appealed under Federal Court file T-611-06 which was subsequently withdrawn.

[5] Upon the advice of Citizenship officials and before his first judicial review was heard, the Appellant applied a third time for citizenship on May 10, 2006. The period of time relevant to proof of residence was May 10, 2002 to May 10, 2006.

[6] This third citizenship application was before the same Citizenship Judge who had dealt with the second failed application. This time the Citizenship Judge held that the Appellant had neither the required 1,095 days of physical presence nor did he satisfy the overarching question in *Koo (Re)* (*F.C.T.D.*) (1992), 59 F.T.R. 27 of whether the Appellant regularly, normally or customarily lived in Canada.

III. ANALYSIS

[7] As to the standard of review, I accept the general jurisprudence of this Court that the conclusion of Canadian residence is reviewed on a standard of reasonableness.

[8] I reject any suggestion that there was something untoward in the Citizenship Judge hearing this citizenship application after having heard the previous one.

[9] However, there are a number of conclusions which, on the evidence, are unreasonable both as to the specific questions under the *Koo* test and as to the overall determination of residence. A few are sufficient to establish the point.

[10] The first is with respect to the question in *Koo*:

Does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?

[11] The conclusion that the Appellant normally and customarily lived in Vietnam ignores the evidence that the Appellant maintained his personal effects and bank accounts in Canada and that three-quarters of his living expenses were deposited into his Canadian account. Moreover, the conclusion ignores the nature of his presence in Vietnam which was temporary and for a defined purpose.

[12] The second error, also related to the first, is with respect to the question:

Is the physical absence caused by a clearly temporary situation such as employment as a missionary abroad, studying abroad as a student, accepting temporary employment abroad, or accompanying a spouse who has accepted temporary employment abroad?

The Citizenship Judge concluded that the physical absence was not caused by a temporary situation and that the Appellant normally and customarily lived in Vietnam during the relevant four-year period.

[13] This conclusion also ignores the fact that the Appellant volunteered to work temporarily in Vietnam for a defined period on a defined project. If missionary work in a foreign country does not necessarily reduce one's connection to Canada, it is difficult to see the qualitative difference between the Appellant's volunteer work for a Canadian NGO and that of missionary work (except that one is working for a Higher Authority). Likewise, under *Koo*, accepting temporary employment abroad does not necessarily count against an applicant – which is the very situation in which the Appellant finds himself.

[14] The third error is in respect of the issue:

What is the extent of the physical absences?

The Citizenship Judge concluded that the Appellant had a strong employment, economic and social connection in Vietnam. The Citizenship Judge also held that the Appellant did not provide any documents to prove his connection to Canada.

[15] This conclusion ignores the documentary evidence filed which included copies of his driver's licence, OHIP card, passport, proof of Canadian taxation and Canadian bank information, as just a few examples of the documents filed.

[16] The conclusion also ignores the fact that the Appellant volunteered with a Canadian NGO on a project financially backed by an agency of the Canadian government. It was unreasonable to conclude that the Appellant did not have a significant connection with Canada.

IV. CONCLUSION

[17] For these reasons, this appeal is granted. The decision of the Citizenship Judge is overturned and the matter is returned to a different Citizenship Judge for redetermination.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this appeal is granted, the decision of the Citizenship Judge is overturned and the matter is to be returned to a different Citizenship Judge for redetermination.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1403-07

STYLE OF CAUSE: CHARLES IKECKUKWU ANAERE

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario (by way of video-conference)

DATE OF HEARING: January 8, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: January 10, 2008

APPEARANCES:

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|------------------------------|--------------------|
| Mr. Charles Ikechukwu Anaere | FOR THE APPLICANT |
| Mr. Negar Hashemi | FOR THE RESPONDENT |

SOLICITORS OF RECORD:

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|---|--------------------|
| SELF-REPRESENTED | FOR THE APPLICANT |
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