

Federal Court



Cour fédérale

**Date: 20110708**

**Docket: T-1331-10**

**Citation: 2011 FC 837**

**Ottawa, Ontario, July 8, 2011**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Applicant**

**and**

**BEHZAD MEMAR-ZADEH**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**PROCEEDING**

[1] The Minister of Citizenship and Immigration [the Minister] appeals, pursuant to subsection 14(5) of the *Citizenship Act*, RSC 1985, c C-29 [the Act], from a decision of a Citizenship Judge dated June 24, 2010 in which he determined that the Respondent met the requirements for a grant of citizenship pursuant to subsection 5(1) of the Act [the Decision].

[2] The Minister asks that the Decision be quashed and that the Respondent's application for citizenship be denied.

[3] For the following reasons, the Minister's appeal will be allowed.

## **THE FACTS**

[4] The Respondent is a citizen of Iran who was born on July 24, 1965. The Respondent became a permanent resident on December 17, 2000, when he arrived in Canada as a member of the entrepreneur class.

[5] Since his arrival, he has worked as a sales agent for three grain silo manufacturers in Manitoba and has generated tens of millions of dollars in sales. However, his first application for citizenship was refused on June 16, 2008 because he failed to meet the residency requirement.

[6] The Respondent's second application for citizenship was made on September 9, 2008. In the four-year period preceding his application, he had accumulated 572 days of residence in Canada and had been absent for 888 days.

[7] On July 2, 2009, the Respondent submitted a residency questionnaire [the Questionnaire] and wrote his citizenship test. He achieved a perfect score on the test.

[8] The Respondent was interviewed by the Citizenship Judge on May 28, 2010.

## **THE DECISION**

[9] On June 24, 2010, the Citizenship Judge granted the Respondent Canadian citizenship. The Citizenship Judge applied *Re Koo*, [1993] 1 FC 286, 59 FTR 27, in which Madam Justice Barbara Reed found that “residence” means that Canada must be the country in which an applicant for citizenship has centralized his or her mode of existence. She then set out the factors to be considered [the Koo Test].

[10] The Decision was handwritten on a printed form entitled Residence Hearing – Approval Synopsis. The form lists the factors in the Koo Test as questions to be considered and the Citizenship Judge entered his findings concerning each factor.

[11] The third question reads “Does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?” The Citizenship Judge answered the question as follows:

Client travels for business purposes. Owns 2 properties in Canada. Does not own any property in any other country. Also owns a business and travels because of it. He is also providing a very valuable service to Canadian businesses in Manitoba by opening a significant market which will usually not be available to them. At every opportunity returns to Canada.

[12] The fifth question reads “Is the physical absence caused by a clearly temporary situation?” The answer provided by the Citizenship Judge reads:

No. Because of the nature of his business the travels abroad are likely to continue. His interaction with Canadians in Canada and abroad is strong through his business dealings [testimonials on file from Canadian businesses and Canadian Embassy in Iran].

[13] Question six reads “What is the quality of the connection with Canada?” The Citizenship Judge’s answer reads:

Quality of connection with Canada is excellent. He interacts with Canadian companies, is well versed in Canadian business practices, rubs elbows with Canadian [s] here & while abroad and provides significant economic [sic] to the Canadian companies by opening up new markets for them. He also owns a business in Canada and two properties. He does not own any property anywhere else in the world. His connection with Canada is stronger than anywhere else.

[14] The Citizenship Judge concluded by saying, in part, that the Respondent “meets the residency requirements of the Act. He lives and works in Canada and travels for business purposes.”

He added:

He is contributing greatly for the success of Canadian businesses by opening up markets which will traditionally not be available to them. His connection with Canada is stronger than anywhere else in the world. His pattern of travel is likely to continue. Based on Re: Koo analysis I am satisfied that he meets the residency requirements of the Act. He also received 100% on his written “Knowledge” of Canada test which also demonstrates his Canadian involvement and through knowledge about Canada.

## **THE STANDARD OF REVIEW**

[15] The Minister submits that the question of whether the Respondent meets the residency requirement is one of mixed fact and law, and is therefore reviewable on the reasonableness standard. The most recent case cited is *Paez v Canada [Minister of Citizenship and Immigration]*, 2008 FC 204, 165 ACWS (3d) 228.

[16] The Respondent agrees that the applicable standard of review is reasonableness and cites *Dunsmuir v Canada (New Brunswick)*, 2008 SCC 9, [2008] 1 SCR 190 and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339.

[17] I am in agreement and will review the Decision using the reasonableness standard.

### **THE ISSUE**

[18] The Minister argues that the Decision shows that the Citizenship Judge focussed unduly on the Respondent's business ties and did not adequately consider whether he had centralized his mode of living in Canada.

### **DISCUSSION**

[19] In addressing this issue, I have considered the parties' written representations, their submissions in court on March 14, 2011 and a post-hearing letter dated March 15, 2011 from counsel for the Respondent following up on questions which arose during the hearing.

[20] The Respondent's immediate family includes his wife and his two children. His eldest is a son born in 1994 and his younger child is a daughter who was born in 1999. At the time of the Interview, they were all living in Iran and the children were enrolled in school in that country. It is home to the Respondent's mother and other family members.

[21] The record also discloses that, when the Respondent travelled to Iran for business purposes, he was always accompanied by his wife and children. When in Canada, the children attended school here and when they were in Iran they studied there. This means that the Respondent and his family lived in Iran for more than half of the relevant four year period.

[22] Finally, although the Respondent owns condominium properties in Vancouver, he does not reside there. The Questionnaire shows that, when in Canada, his family stays in the basement at the home of his business partner in Toronto.

## **CONCLUSION**

[23] The Decision is unreasonable because it failed to mention and weigh evidence that [i] the Respondent does not maintain a home in Canada and [ii] he does not leave his family in Canada when he travels.

[24] In view of this evidence, the Respondent has not established that he has centralized his mode of living in Canada.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the appeal is allowed.

The Decision granting the Respondent citizenship is hereby set aside.

“Sandra J. Simpson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1331-10

**STYLE OF CAUSE:** MCI v Behzad Memar-Zadeh

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 14, 2011

**REASONS FOR JUDGMENT:** SIMPSON J.

**DATED:** July 8, 2011

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