

Federal Court



Cour fédérale

**Date: 20121213**

**Docket: IMM-8534-11**

**Citation: 2012 FC 1471**

**Ottawa, Ontario, December 13, 2012**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**FAISAL NAWAZ KHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**Introduction**

[1] Mr. Khan is a permanent resident of Canada and had been issued a permanent resident card [PR Card] as proof of his status. PR Cards are time limited and this application arises out of Mr. Khan's failed attempt to renew his now-expired PR Card. The PR Card does not create or maintain one's status as a permanent resident – it merely serves as proof of that status. Despite

the fact that Mr. Khan no longer has a valid PR Card, he remains a permanent resident of Canada.

## **Background**

[2] Mr. Khan had a PR Card valid for five years ending March 10, 2010. He submitted the required application form to Citizenship and Immigration Canada [CIC] to obtain a replacement PR Card.

[3] The *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], sets out a residency requirement for permanent residents. It provides that a “permanent resident must comply with a residency obligation with respect to every five-year period.” Subsection 28(1) of the Act. “A permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period they are physically present in Canada.” Subparagraph 28(2)(a)(i) of the Act. Under this requirement, a permanent resident can be abroad up to 1095 days in a five-year period. Subparagraph 56(2)(a)(vii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], provides that “an application for a permanent resident card must be made in Canada and include the periods during the previous five years that the applicant was absent from Canada.” Accordingly, applicants are asked on the PR Card application form to list all absences from Canada “in the last five years” and, if the total number of days equals 1095 or more, the applicant must complete other portions of the form focused on the exceptions set out in section 28 of the Act, none of which are relevant to the application before the Court.

[4] Mr. Khan provided an affidavit in this application in which he attests that he “signed” his application for a new PR Card on April 12, 2010; he does not specifically say when he filed it with CIC. CIC records confirm that the renewal application was signed April 12, 2010, but indicate that it was received by CIC on June 8, 2010. It is not known what caused the delay of eight weeks (56 days) between the signing and the receipt of the application. Mr. Khan swears that as at the date he signed his application form, he was absent from Canada for 1044 days, and was present in Canada 781 days. Therefore, in the five year period ending April 12, 2010, Mr. Khan met the residency obligation specified in the Act.

[5] Also required to be included with an application for a PR Card are copies of various documents specified in the Regulations. These include the applicant’s passport, issued travel documents, and various government issued identification cards: Paragraphs 56(2)(c) and (d) of the Regulations.

[6] Like all applications for PR Cards, Mr. Khan’s application was processed by CIC at its Case Processing Centre - Sydney (CPC-S). The Field Operations Support System [FOSS] notes in the record show the following entry on December 15, 2010, from CPC-S:

15DEC2010 – PR CARD REC’D IN SYDNEY. IMM 194; PPT:  
PAK828. CLIENT ABSENT 1044 DAYS AS OF 08JUN2010.  
[emphasis added]

[7] It is clear from this entry that the CIC official in Sydney who processed Mr. Khan's application was satisfied, based on the information provided in and with the application, that Mr. Khan had been absent for 1044 days as of June 8, 2010, which was the date the application was

received by CIC. The entry also indicates that on that date CPC-S received Mr. Khan's new PR Card which was valid to December 24, 2015, and it then forwarded the PR Card to the CIC office at 25 St. Clair Ave. East in Toronto, Ontario [CIC GTA Central]. In a letter dated January 12, 2011, Mr. Khan was informed that he could pick up his new PR Card at CIC GTA Central on February 10, 2011; however, he was in Pakistan on that date and was unable to do so. The letter also advised that "if you are unavailable on this date, please visit our office within 180 days." Mr. Khan attended at CIC GTA Central on June 28, 2011, well within that 180 day period.

[8] The January 12, 2011, form letter provided further information to Mr. Khan as follows:

According to the *Immigration and Refugee Protection Act*, all permanent residents of Canada are **subject to a residency** assessment at the time of distribution of their new PR card. An immigration official will review your documents and may request additional information to determine your eligibility for a PR card.

**REQUIRED DOCUMENTS:**

- This letter;
- All passports and travel documents (**current and expired**);
- Original record of landing, confirmation of permanent residence (IMM 1000 or IMM 5292) or other Canadian residency/landing documents;
- Valid photo ID issued by the province or by a federal agency (e.g. driver's license, health card);
- Minors under age 14 must be accompanied by a parent or legal guardian with a birth certificate and/or legal guardianship papers;
- Expired PR card. A new card will not be issued unless your expired card has been surrendered with your application or is returned and/or accounted for.

[emphasis in the original]

[9] When Mr. Khan attended at CIC GTA Central on June 28, 2011, to pick up his new PR Card, the CIC officer examined his former and current passport and asked him why he had taken

so long to pick up his new PR Card. He told her that he had been in Pakistan for the birth of his daughter. Mr. Khan attests that the officer then asked him to write down the dates of all of his absences in the five years preceding that day (June 28, 2011). He did so. The officer then said that it appeared that he did not meet the residency requirement and she could not issue the card to him. He protested saying that he thought the five year period was from the date of the application, not the date when he picked up the card. The officer told him that it wasn't her decision and that a senior officer would be contacting him. The following entry was made (presumably by the officer at CIC GTA Central) in the FOSS notes on June 29, 2011: "CLIENT ABSENT 1309 DAYS. DID NOT MEET RESIDENCY. SENT TO INVESTIGATION."

[10] Mr. Khan then sought legal advice and his current counsel wrote asking for an explanation and demanding that the PR Card be issued immediately. CIC responded as follows:

With regards to the above person's application for a Permanent Resident Card, the application was referred to our office on 29 JUN 2011 as the client was not meeting the residency obligations.

Currently the minimum assessment time is 1.5 years. Should the client require to travel within the time frame, he may do so with a valid passport. The client would then require to apply for a Travel Document at the nearest Canadian Visa Office to facilitate his return to Canada.

We do not expedite applications once referred to our office.

[11] This application for leave and judicial review was commenced on November 23, 2011. Leave was opposed by the respondent claiming that no decision, within the meaning of section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, had been made. This Court granted leave by Order dated July 31, 2012. It appears that shortly after leave was granted, CIC took a look at the

applicant's file because an officer called Mr. Khan's counsel advising that she wished to continue the processing of Mr. Khan's PR Card application. On August 29, 2012, the officer sent a letter to Mr. Khan via his counsel stating the following:

In order to continue to process your application for a Permanent Resident Card, a determination is required as to whether you have complied with the residency obligation, pursuant to section 28 of the *Immigration and Refugee Protection Act*.

...

**Please provide sufficient documentation to prove that you were physically present in Canada during the period of time under consideration, i.e. 09June 2005 and 08June 2010.**

[emphasis in original]

[12] When contacted, the officer advised that the June 9, 2005 to June 8, 2010 period she sought represented the five year period ending on the date that CIC received the application for the PR Card and that she was "not interested" in the five year period immediately prior to the date he attempted to pick up his card – the period that had been of interest to the officer at CIC GTA Central.

[13] The respondent filed an affidavit in this proceeding sworn September 10, 2012, by a CIC employee, Mr. Gillis, "lead analyst" on the Regulations. The applicant objected to this new evidence. I have considered it only insofar as the affiant attests to the process at CIC for issuing PR Cards. To the extent that he purports to interpret the Act and Regulations, it is improper and inadmissible.

[14] Mr. Gillis, in his affidavit, cautiously attests that the respondent may have used an incorrect five-year period earlier:

... [I]t appears that the application for a permanent resident card may have been directed to the investigation inventory during the local office review that was conducted June 29, 2011. It is unclear from the notes provided what period of residency was used to determine why the application was referred to investigation – a process which in this local office can take 15 months or more. It may have been referred as the reviewing staff used the date that the Applicant appeared at the local office as the part of the five year residency period. As an incorrect residency period may have been used, the application has been removed from the investigation inventory and has been assigned to an officer for review. The officer has been advised on the correct residency period that is under review for the permanent resident card application.  
[emphasis added]

[15] At the hearing held on October 29, 2012, counsel for the respondent admitted that the officer at CIC GTA Central erred in stating that the five-year period for Mr. Khan's residency determination ended on that day; it should have ended on the date the application was received by CIC.

### **Issues and Standard of Review**

[16] Mr. Khan raises the following issues:

1. Did the CIC GTA Central representative act unlawfully in refusing to provide Mr. Khan with his validly issued permanent resident card because the respondent was *functus officio* after granting the card?
2. Did the CIC GTA Central representative otherwise act unlawfully since nothing in the Act mandates the review of the residency requirement when providing the card?

[17] Mr. Khan submits that both issues are reviewable on a standard of correctness because the first is a matter of jurisdiction and the second is a matter of law. The respondent makes no submissions as to the appropriate standard of review.

[18] I am satisfied that both issues raise jurisdictional questions. Both issues ask whether the officer acted without jurisdiction in refusing to provide to or in withholding from Mr. Khan the PR Card and accordingly are true questions of jurisdiction because they concern “whether [the officer’s] statutory grant of power [gave] it the authority to decide [that] particular matter:” *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 59, and see also *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 42.

## **Analysis**

### **1. Functus Officio**

[19] Mr. Khan submits that his PR Card had been issued by CPC-S and that all the officer at CIC GTA Central was to do was to hand it over to him after checking his documents. I do not agree.

[20] This submission turns on when a PR Card is issued and by whom. I agree with the respondent that the PR Card had been processed by CPC-S but that it had not yet been issued to Mr. Khan. The issuing of a PR Card requires the transmitting to or delivery of the card to the applicant. That did not happen at CPC-S; it was to happen at CIC GTA Central when Mr. Khan arrived to take possession of his new card. Accordingly, I reject the submission that the officer



at CIC GTA Central was *functus*. This is not to suggest that there were no limitations on the officer's obligation to hand over the PR Card to Mr. Khan.

## 2. Limitations on Issuing a PR Card

[21] Mr. Khan submits that, pursuant to subsection 59(1) of the Regulations, the officer was legally obliged to issue the PR Card to him. He suggests that there was nothing else the officer could do. The respondent submits that prior to issuing the PR Card, the officer had to ensure that Mr. Khan met the residency obligation. In my view, neither is correct. Mr. Khan's submission is not accepted because the officer must be satisfied that the conditions set out in subsection 59(1) of the Regulations have been met before issuing the PR Card. The respondent's submission is incorrect because it confuses the issuance of a PR Card with proving that the residency obligation in the Act has been met.

### ***Why the applicant's submission is in error***

[22] Subsection 59(1) of the Regulations provides:

59. (1) An officer shall, on application, issue a new permanent resident card if

(a) the applicant has not lost permanent resident status under subsection 46(1) of the Act;

(b) the applicant has not been convicted under section 123 or 126 of the Act for an offence related to the misuse of a permanent resident card,

59. (1) L'agent délivre, sur demande, une nouvelle carte de résident permanent si les conditions suivantes sont réunies :

a) le demandeur n'a pas perdu son statut de résident permanent aux termes du paragraphe 46(1) de la Loi;

b) sauf réhabilitation — à l'exception des cas de révocation ou de nullité — en vertu de la Loi sur le casier judiciaire, le demandeur n'a

unless a pardon has been granted and has not ceased to have effect or been revoked under the Criminal Records Act;

pas été condamné sous le régime des articles 123 ou 126 de la Loi pour une infraction liée à l'utilisation frauduleuse d'une carte de résident permanent;

(c) the applicant complies with the requirements of sections 56 and 57 and subsection 58(4); and

c) le demandeur satisfait aux exigences prévues aux articles 56 et 57 et au paragraphe 58(4);

(d) the applicant returns their last permanent resident card, unless the card has been lost, stolen or destroyed, in which case the applicant must produce all relevant evidence in accordance with subsection 16(1) of the Act.

d) le demandeur rend sa dernière carte de résident permanent, à moins qu'il ne l'ait perdue ou qu'elle n'ait été volée ou détruite, auquel cas il doit donner tous éléments de preuve pertinents conformément au paragraphe 16(1) de la Loi.

[23] This provision stipulates that prior to being entitled to have a PR Card issued, an applicant must meet the requirements set out in paragraph 59(1)(a) (i.e. he has not lost his permanent resident status under subsection 46(1) of the Act), and the requirements of paragraph 59(1)(c) (i.e. he has provided the documents and information required with his application set out in sections 56 and 57 and subsection 58(4) of the Regulations).

Paragraph 59(1)(a) of the Regulations – Lost Permanent Resident Status

[24] The requirement in paragraph 59(1)(a) of the Regulations is met if “the applicant has not lost permanent resident status under subsection 46(1) of the Act.” That subsection provides as follows:

46. (1) A person loses permanent resident status

46. (1) Emportent perte du statut de résident permanent

les faits suivants :

- |  |  |
|--|--|
| (a) when they become a Canadian citizen;   | a) l'obtention de la citoyenneté canadienne;   |
| (b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;  | b) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;                       |
| (c) when a removal order made against them comes into force; or  | c) la prise d'effet de la mesure de renvoi;  |
| (d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination under subsection 114(3) to vacate a decision to allow their application for protection. | d) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou celle d'accorder la demande de protection. |

[25] Mr. Khan did not become a Canadian citizen and he has not made any claim for protection. Therefore, the only questions remaining are whether Mr. Khan “lost permanent resident status” as a result of “a final determination of a decision made outside of Canada that [he has] failed to comply with the residency obligation under section 28 [emphasis added]” or had a removal order made against him. These provisions reflect the two ways that a permanent resident may be stripped of his status: (1) by actions taken when he is outside Canada, and (2) by actions taken when he is in Canada.

[26] *Canada (Minister of Citizenship and Immigration) v Sidhu*, 2011 FC 1056, is an illustration of the first situation, in which a permanent resident outside Canada was determined

by a visa officer in India that he had failed to comply with the residency obligation in section 28 of the Act. That decision was appealed to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board pursuant to subsection 63(4) of the Act. *Shaath v Canada (Minister of Citizenship and Immigration)*, 2009 FC 731, is an illustration of the second situation, in which a permanent resident in Canada was determined to have failed to comply with the residency obligation in section 28 of the Act. A removal order was issued against him pursuant to subsection 44(2) of the Act and that decision was appealed to the IAD pursuant to subsection 63(3) of the Act.

[27] There is no suggestion that Mr. Khan had lost his permanent resident status by virtue of ... a “decision made outside of Canada.” In fact, there is no suggestion that any decision, either outside or inside Canada, has been made that has resulted in him losing his status. Whether or not he has lost status as a result of failing to reside in Canada the required amount of time remains under consideration by the respondent. More will be said of this later.

Paragraph 59(1)(c) of the Regulations - Documents and Information

[28] To meet the requirement of paragraph 59(1)(c), Mr. Khan had to comply “with the requirements of sections 56 and 57 and subsection 58(4) [of the Regulations].” Section 56 of the Regulations prescribes the information and documents that must be included in an application for a PR Card. The list is long. The relevant question is whether Mr. Khan fulfilled his obligation to include all of the necessary information and documents in his application.

[29] Mr. Gillis swears in his affidavit that PR Cards are only sent by CPC-S to an applicant's local CIC office for pick-up after the application has been reviewed for completeness. Since Mr. Khan's PR Card was sent by CPC-S to CIC GTA Central this means that Mr. Khan's application was reviewed and deemed complete by the respondent, if only preliminarily. The respondent does not suggest that Mr. Khan's application was missing documents or information. The officer at CIC GTA Central refused to give Mr. Khan his new PR Card only because she formed the view that he did not meet the residency obligation, not because his application was incomplete.

[30] Section 57 of the Regulations states that an applicant must sign an application on their own behalf. Again, there is no suggestion that Mr. Khan did not sign his own application.

[31] Subsections 58(3) and (4) of the Regulations require that an applicant personally attend to pick-up his PR Card and present the originals of the copied documents submitted with the application, for verification. They provide as follows:

58. (3) A permanent resident who applies for a permanent resident card under section 56 must, in order to be provided with the card, attend at the time and place specified in a notice mailed by the Department. If the permanent resident fails to attend within 180 days after the Department first mails a notice, the card shall be destroyed and the applicant must make a new application in order to be issued a permanent resident card.

58. (3) Le résident permanent qui fait une demande aux termes de l'article 56 doit, afin de se voir remettre la carte de résident permanent, se présenter aux date, heure et lieu mentionnés dans un avis envoyé par courrier par le ministère. Si le résident permanent ne se présente pas dans les cent quatre-vingts jours suivant la première mise à la poste d'un avis, la carte est détruite et il doit, s'il veut qu'une autre carte lui soit délivrée, faire une nouvelle demande.

58. (4) When attending in accordance with subsection (3), a permanent resident must produce the original documents copies of which were included in their application as required by paragraphs 56(2)(c) and (d).

58. (4) Lorsqu'il se présente conformément au paragraphe (3), le résident permanent produit les pièces originales dont les copies accompagnaient sa demande aux termes des alinéas 56(2)c) et d).

[32] Mr. Khan attests that he brought the required documents with him when he went to pick up his PR Card on June 28, 2011. Again, there is no suggestion by the respondent that he did not. The objection of the officer at CIC GTA Central was never with the documents Mr. Khan brought with him, but rather with whether he could pass a fresh residency assessment based on the period she set.

[33] In summary, all of the evidence in the record points to the conclusion that Mr. Khan met all the requirements of paragraph 59(1)(c) of the Regulations. It was only after he had done so that he was entitled to be issued the PR Card; however, once he had, then the officer was required to issue the PR Card to him.

[34] Subsection 59(1) of the Regulations mandates that on application for a PR Card, an officer "shall" issue it if the requirements of paragraphs (a) to (d) are met. Mr. Khan met those requirements and thus the officer at CIC GTA Central was required to issue him the PR Card that had previously been processed and sent there by CPC-S for issuance.

[35] What that officer could do, and ought to have done if she did not, was compare the original documents handed to her by Mr. Khan with the copies he provided with his application.

If she found that they did not match, then she could have withheld the PR Card and had CIC investigate the matter. In my view, that is all that the officer could do once Mr. Khan otherwise met the conditions set out in subsection 59(1) of the Regulations.

***Why the respondent's submission is in error***

[36] The respondent submits that it is incumbent on an applicant to prove that he or she meets the residency requirements as at the date that the PR Card application is received by CIC and not merely when he or she purports to have signed it. I agree with the respondent that the relevant date is the date when the application is filed with CIC, otherwise an applicant could unilaterally select an earlier date to sign the application, a date when he or she meets the residency obligation.

[37] In the majority of cases, the time between the date of signature and the date of receipt will only be a few days and it is not likely to be relevant to determining whether residency has been met. In this case, however, there was an unexplained gap of eight weeks (56 days). That gap could have been relevant as Mr. Khan's application indicated that he had been in Canada, as of the date of signature, 781 days. If he left Canada immediately after signing the application then he would have been in Canada only 725 days – five days short of the minimum requirement.

[38] It is certainly open to CPC-S, when processing an application, to satisfy itself if there is uncertainty as to whether the residency obligation is met as at the date of filing. It can seek further information from the applicant. Indeed, Mr. Gillis attests that CPC-S “conducts a review of the applicant’s residency and other compliance with the IRPA and IRPR to assist in

identifying applicants where there is a higher risk of non-compliance.” In this case, the FOSS notes contain an entry that confirms that CPC-S did the required residency review; it reads: “CLIENT ABSENT 1044 DAYS AS OF 08JUN2010.” One can only conclude from this entry that the officer at CPC-S was satisfied, although the officer may have been mistaken, that Mr. Khan met the residency obligation.

[39] I note that the information that Mr. Khan gave to the officer at CIC GTA Central was that in the five year period preceding that date he had been absent from Canada from August 17, 2007, to February 28, 2010, and again from June 2, 2010 (or possibly June 12, 2010), to June 6, 2011. If accurate, this information supports that Mr. Khan was in Canada almost all of the period between signing the application and it being received by CIC.

[40] The respondent, however, submits that the officer at CIC GTA Central was obliged to withhold the PR Card unless satisfied that Mr. Khan met the residency obligation. That is in error because meeting the residency obligation is not a condition for issuing the PR Card set out in subsection 59(1) of the Regulations. Further, notwithstanding the statement in the form letter sent to those who are to pick up their new PR Card that “According to the *Immigration and Refugee Protection Act*, all permanent residents of Canada are **subject to a residency** assessment at the time of distribution of their new PR card,” there is no such requirement in the Act. It is most certainly within the prerogative of the respondent to confirm at the time of pick up or at any other time that a permanent resident satisfies the residency obligation; however there is no legislated requirement that it be done at the time of the PR Card pick up and such an examination cannot impede the issuance of the PR Card.



[41] The Act requires that every permanent resident meet the residency obligation in every rolling five-year period. Therefore, although not required, it was open to the officer at CIC GTA Central to question whether Mr. Khan met the residency obligation as at that date or as at any other earlier date. What was not open to her was to refuse to issue him the PR Card once he had met the conditions set out in subsection 59(1) of the Regulations.

### **Remedy**

[42] Mr. Khan asks, if his application is allowed, that the respondent be directed to issue a new PR Card to him forthwith without requiring him to provide further information or appear in person to pick up the card. He also seeks his costs.

[43] Included as an exhibit to an affidavit of a consultant employed in the offices of Mr. Khan's counsel is an email from Mr. Khan explaining his current circumstances. He is now in Pakistan with his family. Counsel at the hearing said that it was unknown whether he could now return to Canada without a PR Card. He cites *Bageerathan v Canada (Minister of Citizenship and Immigration)*, 2009 FC 513, where the Court directed the Minister to grant the applicant's husband permanent resident status in Canada due to "the lack of comprehension and cooperation shown by the First Secretary and his obstinacy."

[44] Here, there was a refusal to acknowledge that Mr. Khan was entitled to be issued his new PR Card notwithstanding questions as to whether he had complied with the residency obligation. Those questions could and should have been addressed later and, if it was determined that he had

failed to meet the residency obligation, appropriate steps taken which would provide Mr. Khan with appeal rights to the IAD from any adverse decision.

[45] Mr. Khan, however, is entitled to be placed back in the position he ought to have been on June 28, 2011. He is entitled to the PR Card that ought to have been issued to him that date, provided he produces the relevant original documents. If he is in Pakistan, then he should not be required to travel to Canada to re-attend at a CIC office in Canada to pick it up. Further, it is unclear whether Mr. Khan can obtain a visa to travel to Canada without a valid PR Card to prove that he has permanent resident status in Canada. It is not clear from the record whether the officer at CIC GTA Central ever compared his original documents with those submitted with the application or took possession of his old PR Card. These are statutory requirements. Although an application for a PR Card must be made in Canada there is no requirement in the Act that it must be issued to an applicant in Canada. The Court will order that Mr. Khan inform the respondent as to his current location and if he is in Pakistan, require that the PR Card be sent to Islamabad where, upon satisfying an officer that the copies of the documents submitted with the application reflect the originals, and upon returning his expired PR Card, if he has not previously done so, he will have the PR Card issued to him. Unless Mr. Khan has previously handed over those documents to CIC and thus no longer has possession of them, he must produce them for inspection to be compared with the copies he sent with the application prior to being issued the PR Card.

[46] As stated, the issuance of the PR Card and the residency obligation are two distinct matters. The respondent is entitled to pursue an investigation as to whether Mr. Khan has met

the residency obligation if it continues to have any concerns in that regard. The Court will not therefore order that Mr. Khan is free from responding to inquiries made by the respondent in this respect.

### **Costs**

[47] Costs are exceptional in immigration applications. However, I find that this is one of those exceptional cases. But for the error made by the officer at CIC GTA Central, the applicant would have been issued the PR Card and any question whether he met the residency obligation in the Act would have been investigated separately. The applicant has incurred unnecessary costs to bring this matter forward and accordingly is entitled to his costs, which are fixed at \$5,000 inclusive of fees, disbursements, and taxes.

### **Certified Question**

[48] The respondent has proposed the following question for certification:

Who has the jurisdiction to make the final determination on the merits of an application for a permanent resident card application - CPC-S who may authorize the production of the PR card or the CIC local office whose mandate is to issue the PR card pursuant to s. 59 of the regulations?

[49] Aside from the assumptions that the respondent has written into the question, it is not a certifiable question as it would not be determinative of an appeal of this decision.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. This application is allowed and the decision of the officer on June 28, 2011, refusing to issue to Mr. Khan the permanent resident card that had been prepared and sent to it by CPC-S is set aside;
2. Within thirty (30) days of the date hereof, the applicant is to advise the respondent, in writing, as to whether he is in Pakistan or Canada and he is to provide his current address;
3. Within thirty (30) days after receiving such residence information, the respondent is directed to transmit the permanent resident card that was prepared for the applicant on December 15, 2010, to the Canadian High Commission in Islamabad, Pakistan, if the applicant advises that he is currently residing there, or to the CIC office closest to the applicant's residence if the applicant advises that he is currently residing in Canada;
4. The respondent is directed to advise the applicant no more than 90 days from the date hereof, as to where, in accordance with this Judgment, he may pick up his permanent resident card and the applicant shall be required to attend in person to pick it up;
5. If the applicant has not previously handed over to the respondent the originals of all or any of the documents copied in his application for a permanent resident card, then he must present them for comparison with the copies provided with his application, prior to being issued the permanent resident card, which shall be issued if the copies match the original documents;

6. If the applicant has not previously done so, he is to return his expired permanent resident card, as required by paragraph 59(d) of the Regulations;
7. If the original documents do not match the copies the applicant submitted with his application for the renewal of his permanent resident card, then the respondent shall not be required to issue the card to the applicant without further examination;
8. The applicant is awarded \$5,000 in costs, inclusive of fees, disbursements and taxes; and
9. No question is certified.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-8534-11

**STYLE OF CAUSE:** FAISAL NAWAZ KHAN v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** October 29, 2012

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

**DATED:** December 13, 2012

**APPEARANCES:**

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