Docket: 2013-1354(IT)I

BETWEEN:

YISROEL Y. KAPLAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 19, 2014, at Toronto, Ontario

Before: The Honourable Justice K. Lyons

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Stephen Oakey

JUDGMENT

The appeal from the redeterminations made under the *Income Tax Act* for the 2007 to 2010 base taxation years with respect to the Canada Child Tax Benefit and the National Child Care Benefit is dismissed in accordance with the Reasons for Judgment attached hereto.

Signed at Ottawa, Canada, this 4th day of July 2014.

"K. Lyons"

Lyons J.

Citation: 2014 TCC 215
Date: 20140704
Docket: 2013-1354(IT)I

BETWEEN:

YISROEL Y. KAPLAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lyons J.

[1] The appellant, Yisroel Kaplan, filed Canadian Income Tax and Benefit Returns to make applications for the Canada Child Tax Benefit (Benefit) under the *Income Tax Act* (*Act*). Mr. Kaplan received the Benefit from the Government of Canada, in respect of five of his children, for the 2007 to 2010 base taxation years (relevant period).[1] In 2011, the Minister of National Revenue re-determined his status and determined that Mr. Kaplan was not entitled to the Benefit on the basis that he was not resident in Canada while pursuing full-time, long-term studies in the United States (U.S.) since 2002.

[2] The only issue to be determined is whether Mr. Kaplan was resident in Canada during the relevant period.[2]

I. Facts

[3] Mr. Kaplan was the only witness to testify.

[4] He was born, raised and educated in Toronto. He is a Canadian citizen and a naturalized U.S. citizen because his late father was a U.S. citizen. Mr. Kaplan described himself as a factual resident of Canada until age 24 when he went to the U.S., in 2002, to embark on full-time, long-term advanced Talmudic studies at the Kollel Knesses Yisroel seminary in Staten Island, New York, commencing May

2003. The studies are not available in Canada. The deadline to complete his studies has been extended several times, but he will complete his studies in January 2015.

[5] His Canadian passport expired on October 17, 2002. He then obtained a U.S. passport, effective from July 21, 2003 to July 20, 2013,[3] and he subsequently obtained a Canadian passport effective November 3, 2012.

[6] In December 2001, he married his spouse, a U.S. citizen, in New York.[4] Mrs. Kaplan has been a full-time special education teacher in New York since 1999. She has approximately 25 family members residing in New York and New Jersey. The youngest of six children, she grew up in New York and her parents and two brothers and families reside in New York. Her two sisters and their families reside in New Jersey and her other brother with his nine children reside in Seattle. Mr. Kaplan acknowledged his wife is not a Canadian citizen nor a resident.

[7] In early 2002, the Kaplans had rented a friend's place in New Jersey and by mid-July 2002, they had rented an apartment while waiting for campus housing. Since 2003, the Kaplan family have lived rent-free in campus housing. Initially they resided in an apartment, however, in 2007, because of their growing family, they moved to a house where they currently live. Their possessions in the U.S. include clothing, furnishings, appliances and gadgets. The seminary required students and their families to live on campus to create a close-knit community.

[8] Shortly after they were married, the Kaplans purchased and registered their first car in the U.S. and, for the past six years, they have had two cars at any given time under his wife's name. He never purchased a car in Canada. He held an Ontario driver's licence during the relevant period. The evidence was unclear if he had a U.S. driver's licence prior to obtaining one from New York State in 2010.

[9] Since their first child was born in September 2002, they have had seven additional children. Six were born in New York, two were born in New Jersey. All of the children are U.S. and Canadian citizens. The children of school age attended school(s) in Brooklyn or a playgroup in Staten Island.

[10] The primary family doctor is situated in New York and he attends to the children for sick visits/check ups, and the children are vaccinated in the U.S. Mr. Kaplan maintained medical coverage with the Ontario Health Insurance Plan (OHIP). He had a Canadian and U.S. doctor. His children were registered with the OHIP, but not as soon as they were born, as they needed to be with him in Toronto

when registered. According to the evidence, one child (B) was registered four years after the child was born.

[11] The Kaplan family took trips to Canada for the summer break. Three semester breaks coincide with the religious holidays, summer breaks do not. He usually spends the religious holidays in the seminary, and worships at the seminary three times a day. He claims he went to Canada, sometimes at the end of term and sometimes in between, estimating about ten trips per year. Some trips were made with only some of his children and without Mrs. Kaplan because of medical issues or issues related to her pregnancies.

[12] During trips to Canada, the Kaplan family stayed at his mother's Toronto home, rent free, in the garage attached to her house, which he had sealed up at the front to create two rooms where they stored clothing, toys, books and a freezer.

[13] His late father has six siblings residing in New York, with their families residing in New York or New Jersey. Other than three cousins, he claims that he is seldom in contact with his extended family. He has one estranged aunt, from his mother's side, residing in New York.

[14] Mr. Kaplan always intended to teach at the Yeshivas Nachalas Zvi private high school (school), in Toronto, that his late father had established in 1987. Before his passing, he had told Mr. Kaplan that he intended to hire him as a full-time teacher. Mr. Kaplan's older brother, Yitzchok Kaplan, assumed his late father's position as Dean shortly after his father had passed in March 2009.

[15] Encountering turmoil, budgetary problems and staff challenges, his brother was pushing Mr. Kaplan to accept a teaching position. He declined in April 2009 because, according to him, his brother expected more of him beyond a teaching role; he wanted to wait for the dust to settle; and he lacked confidence in his ability to educate children. In the spring of 2009, he returned to Toronto five times to provide moral support to his brother and to help stabilize the school. In 2011, he gave a speech at the school but could not recall the topic.

[16] Before marrying his wife, he told her and her parents that upon completion of his studies his intention was to return to Canada. He explained that she was the youngest of six children, who resided with, and had a very strong attachment to, her parents and they might have objected to the marriage.

[17] Mr. Kaplan stepped in a lot to help the rabbi at the synagogue. He claims to have refused a position offered to him by a prominent synagogue in 2007 because of his intention to return to teach at the school upon completion of his studies.

[18] The following sources of funds were referred to during the hearing:

a) Employment income of $50,000 (net) from Mrs. Kaplan's teaching position (less in the earlier years) and $800 per year to oversee a child.

b) Exemptions and deductions for their children from filing with the U.S. IRS a joint tax return with his wife.

d) IRA's for each of the Kaplans.

e) Stipend of $5,500 earned by Mr. Kaplan reported in the U.S. tax return.

f) Self-employment commissions of $12,500 in each of 2011 and 2012 earned by Mr. Kaplan (to help his brother establish an alumni association relating to the school; he produced the T4A to show it was consistent with his intent in 2007).

g) Free campus housing and accommodation in his mother's garage.

h) Purchases for their children by each of the Kaplans' parents.

[19] They had U.S. bank accounts, including a chequing account for bill payments, and two U.S. credit cards for daily purchases. Mr. Kaplan opened a new Canadian account in 2009 and a credit card in September 2008.

[20] He did not join organizations in the U.S. as his stay was strictly study-related. He acknowledged in cross-examination that he was responsible for tending to his growing family while his spouse worked and said that this left little time available.

[21] Mr. Kaplan stated that, in 2007, he became involved in unpaid fund-raising activities for the school. In cross-examination, he admitted that some of those activities were conducted from the U.S.

[22] As U.S. citizens, the Kaplans filed a joint U.S. tax return each year with the IRS. In response to questions put by counsel for the respondent, Mr. Kaplan agreed

that his U.S. accountant had stated that all of the income on the 2011 U.S. tax return was earned by Mrs. Kaplan because Mr. Kaplan has not and does not earn income.[5] However, he earned income in 2011 and 2012 from Canada and a $5,500 stipend from the U.S. He claimed his accountant told him that, since he was a student, any Canadian income was to be reported in his Canadian returns. Only the first page of his Canadian Income Tax and Benefit Returns, relating to 2011 and 2012, were produced showing his wife's earnings. The evidence was unclear as to what, if anything, was reported in either the Canadian or U.S. returns.

[23] In 2006, the Minister determined Mr. Kaplan's residency status and notified him that he was a factual resident of Canada while living outside of Canada and was entitled to the Benefit, but the determination was subject to a possible future review. The sixth child was born and he sent the documentation to the Canada Revenue Agency (CRA) to add the child to the Canada Child Tax Benefit account. In 2011, the Minister advised Mr. Kaplan that he was no longer considered a resident.

II. Law

[24] To qualify for the Benefit, a taxpayer must be resident in Canada during the applicable base taxation year in order to be an "eligible individual" as defined in paragraph 122.6(c) of the *Act*.[6]

[25] The term "resident", which includes those who are "ordinarily resident", and the concept "ordinarily resident", are not defined in the *Act*.

[26] In explaining the difference between residence and sojourning, Rand J. in *Thomson v Minister of National Revenue*, [1946] SCR 209, at page 223, said that the term "residence" embodies the degree to which a person in mind and fact settles in or maintains or centralizes his ordinary mode of living.[7]

[27] In determining whether a person is resident in Canada for the purpose of the Benefit, the legal test was recently reiterated by the Federal Court of Appeal in *Goldstein v The Queen*, 2014 FCA 27, 2014 DTC 5027, which described the correct test as:

> [2] […] a person is resident in the country where he or she, in the settled routine of life, regularly, normally or customarily lives, as opposed to the place where the person unusually, casually or intermittently stays. *(The Queen v Laurin*, 2008 FCA 58, 2008 DTC 6175 (FCA), at paragraph 2)[8]

[28] Justice Sharlow also stated in *Laurin* that "[t]he legal test of residence has a substantial factual component." While facts from cases can be identified as more or less important or distinguished from the case under appeal, the jurisprudence recognizes that determining the place of residence turns on the facts of the particular taxpayers under appeal: Cartwright J. in *Beament v Minister of National Revenue*, [1952] 2 S.C.R. 486, and quoted by Bowman C.J. in *Laurin v The Queen*, 2006 TCC 634, 2007 DTC 236 (affirmed by the Federal Court of Appeal).

III. Analysis

[29] Since the Minister relied on residence at the re-determination stage, Mr. Kaplan bears the usual burden of proof to establish a *prima facie* case to show that the Minister's re-determination is incorrect. In my view, he has failed to discharge his onus and has not convinced me that he was resident in Canada during the relevant period.

[30] Mr. Kaplan made extensive submissions and compared the facts of many cases. His primary argument is that his residency status in Canada remains unchanged because he never severed his Canadian ties when, and since, departing for the U.S. in 2002 to pursue full-time studies, and he intends to return to Canada to teach at the school on completion of his studies.[9]

[31] The difficulty with his submission is his lengthy presence in the U.S. combined with the exceptionally strong ties that he has developed in the U.S. These factors have culminated in Mr. Kaplan, his wife and their eight children - all U.S. citizens – having settled into a daily routine of their lives in New York since July 2002 while he pursued and continues to pursue long-term, full-time studies.

[32] Recognizing that the jurisprudence establishes that no specific amount of time can be used to determine residency, and a lengthy absence can not be *the* determinative factor, the length of time is, nevertheless, a factor to be considered with other relevant factors.

[33] By the time of the hearing, Mr. Kaplan had spent 13 years pursuing his study program in advanced Talmudic studies. The lengthy presence in the U.S. and corresponding absence from Canada poses some difficulty for Mr. Kaplan.

[34] In addition to acceptance at the seminary, other significant factors in July 2002 include: his wife continuing to maintain her employment; his wife's first pregnancy; they had rented their second accommodation while waiting for campus

housing; and they purchased and registered their first car in the U.S. These are material changes. I am not convinced that his presence in the U.S. had the sense of transitoriness, as described in *Thomson*, or was casual or intermittent, as described in *Goldstein v The Queen*, 2013 TCC 165, [2013] TCJ No. 131. The settled routine of his life, and that of his family, since July 2002 has been in the U.S., not in Canada.

[35] Since September 2002, when their first child was born, the Kaplans have had eight children who were all born, raised, educated (those of school age), and vaccinated in New York. They received day-to-day medical treatment, as did Mrs. Kaplan, from their family doctor in New York. Mrs. Kaplan grew up in Brooklyn and the Kaplans each have a significant family network in and around New York including Mrs. Kaplan's very strong attachment to her parents. As well, they were part of the close-knit community at the seminary with Mr. Kaplan worshipping at the seminary. Clearly, these are exceptionally strong ties for Mr. Kaplan and his family demonstrating they have settled into an ordinary mode of living developed over a lengthy period of time while he was in pursuit of full-time, long-term studies.

[36] Of some import as to the strength of his ties connecting him to the U.S. is the fact that when his Canadian passport expired on October 17, 2002, Mr. Kaplan chose to obtain a U.S. passport, effective July 21, 2003, utilizing it on his trips to and from Canada spanning a ten year period until it expired in 2013.

[37] Other connecting ties to the U.S. are also evidenced by the purchase and registration of their first vehicle, and all subsequent vehicles, in the U.S; filing U.S. tax returns as U.S. citizens; obtaining IRA's; and their usage of their U.S. bank accounts and credit cards on a daily basis. The U.S. passport and the other factors are strongly indicative of having settled into a daily routine of their lives in New York over a long period of time.

[38] I do not accept Mr. Kaplan's evidence of his stated intention to return to Canada upon completion of his studies to pursue his dream of teaching at the school. His rejection in 2007 of the offer by the synagogue is consistent with his stated intention, but two years later his rejection of the offer to teach at the school is contrary to his stated intention.[10] Five years after the offer in 2009, he continues to study at the seminary. In cross-examination, Mr. Kaplan acknowledged that there had been extensions to his study program at the seminary, but his evidence failed to reveal why the extensions were obtained. In the absence of evidence relating to the extensions, I infer from this and some of the following points

immediately below that he did not lack the qualification or ability as he intimated, but made a personal choice to extend his time at the seminary.

[39] In completing the 2012 form for the residency determination from the CRA, Mr. Kaplan stated that he expected to return to "Canada full-time anywhere between eight months and two-and-a-half years from now, depending on the research opportunities that become available. However, nothing is "etched in stone" as of yet."[11] Yet he later testified that he does not have any immediate plans to return to Canada, even though he admitted in cross-examination that in January 2015 his study program will end. His evidence is inconsistent, and his stated intent is not borne out by the evidence which leads me to conclude that he had no such intention.

[40] Even if I were to accept such intention, that would not suffice to make him a resident in Canada in light of his lengthy presence in the U.S. It was argued in *Goldstein* that she and her family intended to return to Canada in 2014 and therefore was resident in Canada. Woods J. rejected that and found that her stated intent was not a significant factor in light of the 14 years that she spent in the U.S. *Goldstein* is strikingly similar to Mr. Kaplan's situation on this aspect as well as many of the other facts. Based on the evidence, I am not satisfied he is resident in Canada.

[41] While Mr. Kaplan has a number of ties to Canada that were maintained over the years, those ties do not amount to a settled routine in Canada and are not substantial enough to establish residence.

[42] Some ties that Mr. Kaplan referred to in his testimony include:

a) His family initially included his father, his mother, many siblings, and nephews and nieces that were within a three block radius in Toronto. Of the five unmarried siblings, one sister lived with his mother full-time and the remaining siblings only part-time as most of them studied overseas for six to eight months of the year. Of the seven married siblings, he only referred to his older brother in relation to issues with the school and otherwise the evidence was vague with respect to this group of siblings.

b) The garage owned by his mother where he stays with his family when in Toronto and stores books, clothing and toys.

c) Canadian citizenship held by him and his children and his Canadian passport.

d) Religious affiliations in Toronto.

e) Job offer in March 2009 and work for the school in 2011 and 2012 to help his brother establish an alumni association and provide a speech at the school.

f) OHIP coverage for himself and his children.

g) Two Canadian joint bank accounts held by the Kaplans, one opened in 2001 and the other in 2009. He obtained a Canadian credit card in 2008.

h) Ontario driver's licence.

[43] This evidence does not establish that Mr. Kaplan had a customary mode of living in Canada during the relevant period. In my view, he severed significant ties to Canada in July 2002 when a number of material changes occurred. All of which signify his altered status in Canada by his family's settled routine and customary mode of living in New York.

[44] I accept Mr. Kaplan's testimony that he assisted his brother about five times in 2009 when there was turmoil at the school and then gave a speech at the school in 2011. His family, religious and citizenship ties establish that Mr. Kaplan has strong connections in Canada, but these do not translate to a daily settled routine of life and customary mode of living in Canada.

[45] Given his family ties in Canada, I accept that Mr. Kaplan and his family came to Canada during his summer breaks. Some trips were only with some of his children and without his spouse because of medical issues or issues related to the pregnancies. I do not accept his visits were as regular as he claims. Since three of the religious holidays coincide with three of the semester breaks, and he stated that he usually spends his time at the seminary, I find he did not return to Canada on those occasions. With the exception of 2009 when his father passed and he assisted his brother, I do not accept that his visits to Canada averaged ten times a year as he had testified. This is inconsistent with the information on the Answers to questionnaire that he had provided to the CRA.[12] Other than the reference to the trips to provide moral support to his brother in 2009, in my view the trips are in the

nature of holidays, and have the quality of casual or intermittent stays rather than a settled routine of life where they customarily live.

[46] The difficulty I have had throughout is that some of his testimony and some of the information that he had provided to the CRA was not reliable nor credible. Testimony should be clear, straightforward, and detailed for it to be reliable. Some examples will be identified below in which he was asked in cross-examination about his prior testimony or about the information previously provided:

a) He testified that his intention to return to Canada "is actually in a prenuptial agreement with my wife." When asked in cross-examination if he had brought the prenuptial agreement with him to the hearing, he denied the existence of any written prenuptial agreement.[13]

b) When he was asked whether he had acquired the title Rabbi,[14] Mr. Kaplan indicated it is just a title of honour they give and he does not know of a legal way to acquire the title.

c) On the 2006 NR73 form, he answered that he expected to live outside Canada for "Three months". At the hearing he said, "Generally we leave for six to twelve weeks. …", which is equal to three months.[15] This is at a point where Mr. Kaplan had lived outside Canada since 2002. When asked about the date of departure, Mr. Kaplan left it blank. When asked the same questions on the 2012 NR73 form, dated July 27, 2012, he indicated "Since I am constantly traveling, there is no one specific date of departure." He then provided the specific dates that he had taken his trips.[16]

[47] Another example where his testimony was not reliable is the information that he had initially provided to the CRA in 2006 in which he had given the impression that he owned and maintained a home in Toronto. He also said that it was not sublet nor shared. He acknowledged in cross-examination that he was referring to his mother's garage, available to him and the Kaplan family, free of charge. It was also available to his siblings during his absence.[17] His evidence on this was not credible and misleading. The evidence did not reveal much in terms of personal property stored in Canada. Using his mother's property during their summer breaks and other occasional visits and storing some possessions, are not significant factors in determining Canadian residence.

[48] Although he and his children were Canadian citizens, they were also U.S. citizens and he travelled on a U.S. passport which expired in July 2013. As to the Canadian passport, it was not obtained until November 2012, therefore beyond the relevant period, and was likely obtained by Mr. Kaplan in anticipation of the review of residency status by the CRA, as he was fully aware of the importance of establishing connections to Canada for the Benefit.

[49] As for religious affiliations in Canada, while the evidence was vague, I am satisfied that he had at least one religious affiliation as he had indicated on the 2006 NR73 form. He had established strong ties of this nature in the U.S. in worshipping at the seminary and helping out at the synagogue. This is not a factor that is strong enough to establish residence in Canada.[18] The 2012 NR73 form, however, expands the number of affiliations but I note that was completed beyond the relevant period.

[50] In addition to my previous comments relating to the offer to teach in 2009, he further admitted that there is no written offer of employment provided by his brother. As such, this factor is disregarded as a tie.[19]

[51] In terms of the Canadian bank accounts, there was insufficient evidence provided as to how active these were. One of the bank accounts and one of the credit cards were opened while he was receiving the Benefit. The evidence, relating to the U.S. banking activities, shows that these were used for their daily living. The Canadian banking information is a not strong enough tie to establish residence.

[52] Regarding the retention of the Ontario driver's licence and OHIP coverage, these factors are more of a benefit rather than demonstrating a customary mode of living in Canada. Overall, an analysis of personal and economic ties shows more connections to the U.S.

[53] Mr. Kaplan places some reliance on the decision in *Perlman v The Queen*, 2010 TCC 658, 2011 DTC 1045, in which Boyle J. decided that Mr. Perlman continued to be a resident of Canada for the purposes of the Benefit in circumstances where Mr. Perlman was absent for a significant period of time while undertaking long-term religious studies overseas with a continuing intention to return to Canada with prospects of a job offer. Boyle J. could find no point in time in which there was a change of circumstances material enough to constitute a change in residence. Mr. Kaplan aligns his situation with that of Mr. Perlman and

submits that the reasoning in *Perlman* applies because there is no point in time at which he and his spouse severed Canadian ties.

[54] As I previously found, I am satisfied that Mr. Kaplan's residential ties to Canada had been sufficiently severed in July 2002 when a series of material changes resulted in Mr. Kaplan and his family having settled into a daily routine of life in New York.

[55] In terms of other distinguishing factors, as between Mr. Perlman's situation and that of Mr. Kaplan, it is significant that in *Perlman* the burden of proof was on the Minister because of the late introduction by the Minister of that position at trial.[20] In this case, it is Mr. Kaplan who has that onus.

[56] Other distinguishing factors in *Perlman* are identified as follows. Mr. Perlman only held Canadian citizenship; he travelled on a Canadian passport; he and his spouse were considered foreigners by Israel; their children were not Israeli citizens; they did not have an extensive family network in Israel; they had never filed Israeli tax returns; he had studied three different programs (Talmudic studies, rabbinical studies and Jewish Family Law); and he was to receive his rabbinical ordination in 2011. Except for one Israeli bank account for their day-to-day living, his banking was conducted through the Canadian banking system. That included a bank account, a significant investment account managed by a Canadian brokerage firm, registered education savings plans and Canadian credit cards. Boyle J. was also troubled that if he found that Mr. Perlman was not a resident in Canada, he would be implicitly finding that he became an Israeli resident. The decision in *Perlman* is distinguishable and does not assist Mr. Kaplan.

[57] Mr. Kaplan opposes the Minister's 2011 re-determination and says the factors that existed when the Minister made his earlier determination, in deciding he was a factual resident, remain the same, thus his residency status should not change and he should continue to receive the Benefit. However, the Minister is not bound by his prior determination for prior years and can come to a different conclusion.[21]

[58] Based on the evidence, I am satisfied that his ties to Canada are not sufficient to show he was a resident in Canada. Instead, his settled routine of life and customary mode of living was in the U.S. since July 2002 and his visits to Canada had a sense of transitoriness. I conclude that Mr. Kaplan was not resident, and therefore not ordinarily resident, in Canada during the relevant period and thus

not an eligible individual, as defined in section 122.6 of the *Act*, for the purposes of the Benefit.

[59] The appeal is dismissed.

Signed at Ottawa, Canada, this 4th day of July 2014.

"K. Lyons"

Lyons J.

---

[1] These base taxation years relate to the period from July 2008 to July 2011.

[2] At the outset of the hearing, counsel for the respondent indicated that the only issue Mr. Kaplan raised in his Notice of Appeal is the Benefit. Counsel clarified that the National Child Care Benefit supplement for the 2009 and 2010 base taxation years does not have to be considered separately because it forms part of the Benefit. In the Reply, the respondent raised the Ontario Child Benefit and the Universal Child Care Benefit. At the hearing, the parties acknowledged that the two benefits were not properly before the Court. The references to those benefits are not in issue.

[3] The legal marriage took place in New Jersey.

[4] Exhibit A-2, pages 13 and 14.

[5] Exhibit A-2, page 11.

[6] "Eligible individual" must be resident in Canada unless other conditions such as the primary caregiver or sojourning residency rule applies. These conditions are not in issue in the appeal. Reference to ordinarily resident in subsection 250(3) of the *Act*.

[7] At page 223, Rand J. said that the concept "ordinarily resident" means the general, customary or ordinary mode of life of the person, contrasted with special, occasional, casual or deviatory residence accompanied by a sense of transitoriness.

[8] See also *The Queen v Reeder*, 75 DTC 5160, that details criteria to determine residence.

[9] The respondent asserts that Mr. Kaplan ceased to be a resident of Canada since July 2002 when he and his wife, who was pregnant with their first child, moved into rental accommodation to embark on their new life, and has been living regularly, normally and customarily in the U.S. since then. Alternatively, he ceased to be a resident of Canada in 2007, when he was offered a job at the synagogue in the U.S. or in 2009, when his brother asked him to teach at the school as his regular period of study had ended.

[10] The offer by his brother and the synagogue in 2007 consider him qualified notwithstanding the reservations he expressed.

[11] Exhibits R-2, NR73 form dated July 27, 2012 and R-1, Answers to questionnaire, paragraph 2.

[12] Exhibit R-1 – He indicates that the dates he travelled between June 2008 and August 2011 are as follows. In 2008 – June 4 and 15 and possibly two other dates but he was unsure. In 2009 – February 1, March 10, 18 and 27, April 14, May 25 and 31, July 12, August 16, October 12 and November 29. In 2010 – March 7, May 23 and November 7. In 2011 – February 27, June 12 and July 10.

[13] Transcript, pages 21, lines 2 and 3, 73, lines 25 to 28 and 74, lines 1 to 7.

[14] The synagogue had sent a letter and referred to Mr. Kaplan nine times as Rabbi Kaplan.

[15] Transcript, page 71, lines 3 to 8.

[16] Exhibits R-1 and R-2, 2012 NR73 form and Answers to questionnaire.

[17] Exhibit A-2, 2006 NR73 form.

[18] Mr. Kaplan produced letters from various individuals, but since he did not call any of those individuals to testify, no weight will be given to those letters.

[19] Transcript, page 76, lines 3 to 5.

[20] This was noted in *Snow v Canada*, 2012 TCC 78, 2012 DTC 1116, by Woods J. in which she found that the decision in *Perlman* is of limited assistance because it was the Crown that had the burden of proof which it failed to discharge.

[21] *Manotas v The Queen*, [2011] TCJ No. 313 and *Nedelcu v Canada*, 2010 FCA 156, 2010 DTC 5102 (FCA).

CITATION:	2014 TCC 215
COURT FILE NO.:	2013-1354(IT)I
STYLE OF CAUSE:	YISROEL Y. KAPLAN and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	February 19, 2014
REASONS FOR JUDGMENT BY:	The Honourable Justice K. Lyons
DATE OF JUDGMENT:	July 4, 2014

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Stephen Oakey

COUNSEL OF RECORD:

For the Appellant:

Name:	n/a
Firm:	

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada