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Meeting the Residency Requirement in Applications for Canadian Citizenship

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To be granted Canadian citizenship, the law requires a permanent resident to reside in Canada for at least three of the past four years (1095 days). Most courts have called for a flexible approach to this requirement, allowing for longer physical absences from Canada so long as an applicant can prove that he or she “regularly, normally or customarily lives” or has a “centralized mode of existence” in Canada. While it has permitted sensitivity to the circumstances of individual permanent residents, the flexible approach has led to confusion and inconsistency, making it difficult to predict the outcome of a citizenship application where the residency requirement is not met.

One thing that is clear is that an application based on factors other than physical presence in Canada will be carefully scrutinized. Recently, our firm has seen an increasing number of cases where an applicant was granted citizenship by a judge based on centralized mode of existence, and the judge’s decision was immediately appealed by Citizenship and Immigration Canada (CIC). Now more than ever, applicants must make a clear and convincing case that Canada is truly their home base.

Where physical presence in Canada comes up short, most judges in recent years have applied the “centralized mode of existence” test. The initial threshold question is whether residence in Canada has been established at all. If it is determined that an applicant does meet the threshold, the court will go on to consider the six questions articulated in the leading case of *Koo (Re)*, [1993] 1 FC 286:

- (1) Was the individual physically present in Canada for a long period prior to recent absences which occurred immediately before the application for citizenship?
- (2) Where are the applicant’s immediate family and dependants (and extended family) resident?
- (3) Does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?
- (4) What is the extent of the physical absences?
- (5) Is the physical absence caused by a clearly temporary situation such as employment as a missionary abroad, following a course of study abroad as a student, accepting temporary employment abroad, or accompanying a spouse who has accepted temporary employment abroad?
- (6) What is the quality of the connection with Canada – is it more substantial than that which exists with any other country?

While some judges continue to apply a strict residency requirement, or look to the intention to reside in Canada more generally, the answers to these six questions must be addressed by all applicants who have not been physically present in Canada for the full three years. CIC’s own residency questionnaire asks about home and family ties,



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employment ties, and social ties in Canada, and requires applicants to set out their reasons for all absences. It therefore appears that, in addition to the courts, the government has adopted “centralized mode of existence” as the dominant test. It is likely that the answers to these six questions from *Koo* are fundamental to the CIC’s determination of whether to appeal a citizenship judge’s positive decision.

An application for citizenship that is not based on three years of permanent residence in Canada is never a guarantee. However, applicants can vastly increase their chances of a positive outcome by filing extensive evidence of ties to Canada. This could include evidence of property, assets, bank accounts, payment of taxes, memberships in clubs or associations, family members in Canada, frequent travel back to Canada, weak ties to other countries, or evidence that employment or education abroad is temporary. No one of these things is either essential or determinative, however, the more evidence of concrete ties to Canada and intention to maintain those ties, the stronger the likelihood of success.

Our Immigration Law Group specializes in this sometimes complicated area of law. We can help ensure that submissions on “centralized mode of existence” are as complete and persuasive as possible.

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