Federal Court  Cour fédérale

Date: 20260126

Docket: T-540-24

Citation: 2026 FC 112

Ottawa, Ontario, January 26, 2026

PRESENT: Mr. Justice McHaffie

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

ROMEO YAGHI

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Minister of Citizenship and Immigration seeks judicial review of a decision of a Citizenship Judge, granting Romeo Yaghi's application for Canadian citizenship. The Minister contends that the Citizenship Judge did not reasonably perform her duty to assess whether Mr. Yaghi met the Canadian physical presence requirement of the *Citizenship Act*, RSC 1985, c C-29. In particular, the Minister asserts that certain inconsistencies and lacunae in the evidence Mr. Yaghi presented should have been the subject of more extensive questioning or should have

raised greater concern on the part of the Citizenship Judge, especially since she ultimately concluded that Mr. Yaghi exceeded the minimum physical presence requirement by only 15 days.

[2] The issues the Minister raises certainly show some shortcomings in the evidence. However, recognizing the deference that is owed to the Citizenship Judge on findings of fact, including assessments of credibility, I conclude that the Minister has not established that the Citizenship Judge's decision is unreasonable.

[3] The Citizenship Judge clearly analyzed the evidence, expressed concerns, and questioned Mr. Yaghi on those concerns and the evidentiary shortcomings. Based on her assessment of his responses, the manner in which they were presented, and the documents before her, the Citizenship Judge was satisfied that Mr. Yaghi was credible and had met his burden. While the Court, or another citizenship judge, might have reached a different conclusion, or might have asked further questions in the circumstances, this is not the relevant question in applying the reasonableness standard of review. The Citizenship Judge fulfilled her obligation to consider and reasonably analyze the evidence before her. Her responsibility to ensure Mr. Yaghi had credibly established his physical presence in Canada for the requisite period did not require her to identify and question him on every possible inconsistency that might in hindsight be identified by the Minister or the Court. The concerns identified by the Minister do not show that the Citizenship Judge fundamentally misapprehended the evidence or abdicated her duty to ensure that only eligible applicants are granted citizenship.

[4] The application for judicial review will therefore be dismissed.

II. Issue and Standard of Review

[5] As the parties agree, the Citizenship Judge's decision is reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Canada (Citizenship and Immigration) v Liu*, 2024 FC 668 at paras 19–20. The only issue on this application is therefore whether the Citizenship Judge's decision was reasonable.

[6] In assessing the reasonableness of a decision, the Court's role is not to reassess and reweigh evidence, and effectively redecide the case. Rather, the Court is to review the decision, beginning with the reasons given for it, to determine whether the decision as a whole is responsive to the issues, transparent, intelligible, and justified in light of the factual and legal constraints: *Vavilov* at paras 15, 81–86, 99–101, 125–128. As the primary issue raised by the Minister is the Citizenship Judge's assessment and treatment of the evidence, it is worth underscoring that the Court on judicial review will only interfere with factual findings in exceptional circumstances, notably where there has been a fundamental misapprehension or a failure to account for the evidence: *Vavilov* at paras 125–126.

III. Analysis

A. *Statutory context*

[7] Canadian citizenship, with all of the benefits and responsibilities that it entails, is not granted lightly: *Canada (Citizenship and Immigration) v Pereira*, 2014 FC 574 at para 21. An

adult permanent resident of Canada who applies for citizenship must show they meet the eligibility requirements set out in subsection 5(1) of the *Citizenship Act*. At issue in this case is the requirement in subparagraph 5(1)(c)(i) of the *Citizenship Act* that an applicant have been physically present in Canada for at least 1,095 days during the five years immediately before the date of their application.

[8] The *Citizenship Act* gives the Minister the initial responsibility for processing and assessing applications for citizenship. However, section 14 of the *Citizenship Act* provides that an application may be referred to a citizenship judge where the Minister is not satisfied that the applicant meets the minimum physical presence requirement: *Citizenship Act*, s 14(1)(a); *Order Extending the Application of Section 14 of the Citizenship Act*, SI/2023-24. Procedurally, this referral takes place after a citizenship officer completes a "File Preparation and Analysis Template" (FPAT) document, which is then provided to the citizenship judge. When this occurs, the citizenship judge "shall determine whether the applicant meets those requirements within 60 days" of the referral: *Citizenship Act*, s 14(1). Before doing so, the citizenship judge may hold a hearing.

[9] The Minister does not participate in hearings before a citizenship judge. However, the *Citizenship Act* provides that the Minister may seek judicial review of a citizenship judge's decision, on leave of this Court: *Citizenship Act*, ss 22.1(1), (3). This raises some issues regarding the application of the reasonableness standard on a judicial review by the Minister that are worth addressing.

[10] The Supreme Court of Canada underscored in *Vavilov* that responsiveness, or responsive justification, is an important aspect of reasonableness: *Vavilov* at paras 127–128, 133. A decision may be found unreasonable on judicial review if it fails to address central issues raised by the parties: *Vavilov* at para 128; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 10, 64, 66, 74, 76, 81, 86, 94–103. Conversely, a party will generally be precluded from raising new issues on judicial review that were not presented before the original decision maker, given the legislator's intent to have matters decided by that person or tribunal: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–26; *Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 177 at para 67.

[11] In the context of a hearing under section 14 of the *Citizenship Act*, the central issue before the citizenship judge is whether an applicant meets the physical presence requirement for citizenship. Sub-issues will typically include the concerns raised by the Minister in referring the matter to the citizenship judge (*i.e.*, by a citizenship officer in an FPAT). However, the citizenship judge is not limited to considering the questions raised in the FPAT, and the responsibility imposed upon them to assess an applicant's eligibility requires them to review and consider the evidence presented by the applicant: *Canada (Citizenship and Immigration) v Vijayan*, 2015 FC 289 at para 80; *Canada (Citizenship and Immigration) v Abidi*, 2017 FC 821 at para 42; *El Falah v Canada (Citizenship and Immigration)*, 2009 FC 736 at para 21; *Pereira* at paras 21–25. The "issues" before the citizenship judge may therefore include not only those raised in the FPAT and by the applicant, but also those raised by the evidence itself. As discussed further below, this Court has in some cases found decisions of citizenship judges

unreasonable where they have failed to address credibility concerns that are clearly raised by the evidence.

[12] Parliament has expressly granted the Minister the opportunity to seek judicial review of a decision by a citizenship judge, even though the Minister does not participate in the hearing before the citizenship judge. As the Minister submitted, this implies that she may raise issues she did not raise at the hearing, despite the general rule against raising new issues on judicial review. This may include issues related to the evidence before the citizenship judge and the reasoning in their decision, even if those issues were not raised in the FPAT. At the same time, however, this does not mean that reasonableness review of the citizenship judge's decision can turn into a forum for the Minister, or the Court, to act as "Monday morning quarterback," engaging in a microscopic post-mortem assessment of questions the citizenship judge could have asked or potential inconsistencies that might have been explored with the applicant.

[13] Rather, the central principles of reasonableness review remain the same. The citizenship judge must render a decision that is justified in light of the relevant factual and legal constraints: *Vavilov* at paras 85, 90, 99. This includes showing they took the evidentiary record and factual matrix into account without fundamentally misapprehending the evidence, and that they meaningfully accounted for the central issues without needing to respond to every line of possible analysis or make an explicit finding on each constituent element: *Vavilov* at paras 125–128.

[14] I have alluded above to one of the relevant legal constraints on a citizenship judge, namely the jurisprudence regarding the role of the citizenship judge in assessing the evidence tendered by an applicant to establish their physical presence in Canada. I will address that legal constraint now, before turning to the circumstances and decision in the present case.

B. *Jurisprudence on the evidence needed and the role of the citizenship judge*

[15] The caselaw of this Court addressing the physical presence requirement in the *Citizenship Act* (or the "residence requirement" in prior versions of the *Citizenship Act*) sets out several interrelated principles regarding the evidence an applicant must present and a citizenship judge's task in reviewing that evidence. Each party relied on these principles, putting emphasis on different elements of the jurisprudence.

[16] This Court has frequently noted that a citizenship applicant must show they meet the physical presence requirement with "clear and convincing evidence": *Liu* at para 23, *Canada (Citizenship and Immigration) v El Hady*, 2018 FC 833 at para 16; *Canada (Citizenship and Immigration) v Baccouche*, 2016 FC 97 at para 6. This requirement appears to stem from Justice Snider's observation in *Atwani* that the applicant has the burden to establish their number of days of residence "with clear and compelling evidence": *Atwani v Canada (Citizenship and Immigration)*, 2011 FC 1354 at para 12.

[17] The term "clear and convincing evidence" is used in Canadian law in two different ways. In some contexts, it defines a standard of proof that is greater than the balance of probabilities: *Penner v Niagara (Regional Police Services Board)*, 2013 SCC 19 at para 60; *Jacobs v Ottawa*

(Police Service), 2016 ONCA 345 at paras 4–12. In other contexts, it simply describes the quality of evidence needed to meet the balance of probabilities: *FH v McDougall*, 2008 SCC 53 at paras 31, 39, 46; *British Columbia (Attorney General) v Malik*, 2011 SCC 18 at paras 5, 32; *Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at paras 11, 16, 20–21, 28–30, 38, applying and clarifying *Canada (Attorney General) v Ward*, 1993 CanLII 105, [1993] 2 SCR 689. The nature of evidence needed to meet this standard may vary in particular contexts: see *Canada (Attorney General) v Fairmont Hotels Inc*, 2016 SCC 56 at para 36; *Nelson (City) v Mowatt*, 2017 SCC 8 at para 40.

[18] The standard of proof in respect of the physical presence requirement in the *Citizenship Act* is the usual balance of probabilities: *Liu* at para 27; *Pereira* at para 21; *Canada (Citizenship and Immigration) v Purvis*, 2015 FC 368 at para 42; *Baig v Canada (Citizenship and Immigration)*, 2012 FC 858 at para 14; *Canada (Citizenship and Immigration) v El Bousserghini*, 2012 FC 88 at para 19. The term "clear and convincing evidence" in this context must therefore simply describe the quality of evidence needed to meet that standard of proof. That said, the Supreme Court of Canada has held that "evidence must <u>always</u> be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" [emphasis added]: *FH v McDougall* at para 46. It is therefore at least arguably redundant to insist that the evidence required to prove physical presence on a balance of probabilities must be "clear and convincing." In any case, the issue is ultimately whether the citizenship judge is satisfied, on a balance of probabilities, that the evidence before them shows that the applicant was physically present in Canada for at least the minimum required number of days.

[19] As the Minister points out, this Court has held that in assessing compliance with the physical presence requirement, a citizenship judge "cannot rely on the applicant's claims alone," but must verify the applicant's actual presence in Canada: *El Falah* at para 21; *Baccouche* at para 12; *El Hady* at para 12. In making this assessment, a citizenship judge may have both an adjudicative and an inquisitorial role, which can include not just assessing evidence presented by an applicant, but questioning the applicant to elicit evidence and requesting the submission of additional evidence.

[20] It is worth noting that in *El Falah*, the reference to relying on "the applicant's claims alone" was to statements in the applicant's residence questionnaire, rather than their testimony before the citizenship judge. Justice de Montigny, as he then was, rejected an applicant's argument that a citizenship judge erred by failing to accept the statements in his residence questionnaire, since a citizenship judge is not required to "blindly accept" such submissions: *El Falah* at para 21.

[21] However, the statement in *El Falah* does not mean that a citizenship judge must invariably insist on corroboration of an applicant's credible testimony: *Canada (Citizenship and Immigration) v Gouza*, 2015 FC 1322 at paras 14–18; *Canada (Citizenship and Immigration) v Abdulghafoor*, 2015 FC 1020 at para 24. This Court has recognized that it would be extremely unusual (and even "reckless") for a citizenship judge to rely *solely* on the testimony of an applicant to establish residency, with no supporting documentation at all: *El Boussergh*ini at para 19; *Pereira* at para 31. Indeed, a citizenship judge may in a given case find that an applicant's testimony is credible but still insufficient to establish residence*: Kulemin v Canada*

(Citizenship and Immigration), 2018 FC 955 at paras 40–41. However, it is open to a citizenship judge to rely on credible testimony to fill in "gaps" in the documentary record, and such testimony can be weighed equally with documentary evidence: *Abidi* at paras 40–41; *Canada (Citizenship and Immigration) v Sukkar*, 2017 FC 693 at para 20; *Gouza* at para 14. It is the responsibility of the citizenship judge, taking the context into consideration, to determine the extent and nature of the evidence required to be satisfied that an applicant meets the physical presence requirement: *El Boussergh*ini at para 19; *Pereira* at para 22; *Abdulghafoor* at para 24.

[22] In undertaking this responsibility, the jurisprudence establishes that a citizenship judge has an obligation to consider and reasonably analyze the evidence before them, including by making relevant inquiries. A citizenship judge may fail in this responsibility, and thereby render an unreasonable decision, if they, for example, accept a "rather weak and unconceivable explanation" for a missing passport without inquiring further, or if they "blindly rely on the submissions" of the citizenship applicant in the absence of corroborative evidence: *Pereira* at paras 23–24; *Baccouche* at paras 14–15. Similarly, unexplained assumptions about stays or absences that have no evidentiary basis, or a failure to consider whether omissions and contradictions in the evidence undermine the applicant's credibility, may render a decision unreasonable: *Vijayan* at paras 57–58, 65; *Canada (Citizenship and Immigration) v Baron*, 2011 FC 480 at para 17; *Liu* at paras 25–31.

[23] Many of the foregoing decisions were rendered prior to the Supreme Court of Canada's decision in *Vavilov*. However, they can each be considered reflective of and aligned with the *Vavilovian* principles summarized above, namely that a decision maker must account for the

evidence and issues before them and their decision must be reasonable in light of them: *Vavilov* at paras 125–128; *Universal Ostrich Farms Inc v Canada (Food Inspection Agency)*, 2025 FCA 147 at para 51. If a citizenship judge does so, a reviewing court will not interfere with their findings, which will typically be predominantly factual in nature: *Vavilov* at para 125; *Abidi* at para 40.

[24] Reasonableness review also requires the legislative context to be taken into account: *Vavilov* at paras 88–90, 103, 108. As noted above, citizenship judges have both a decision-making role and an inquisitorial one, probing and eliciting evidence on a central question in determining eligibility for the privilege and responsibility of citizenship. This imposes on citizenship judges an obligation to review evidence carefully, not with skepticism but with an objective eye to ensuring that a citizenship applicant has met their onus to credibly establish that they were actually in Canada for at least the requisite number of days in the relevant period: *El Falah* at paras 18, 21–22; *Vijayan* at paras 71–73, citing *Canada (Citizenship and Immigration) v Elzubair*, 2010 FC 298 at para 21 and *MCI v Singh Dhaliwal*, 2008 FC 797 at para 26.

C. *Mr. Yaghi's application and amendments*

[25] Mr. Yaghi is a citizen of Lebanon. For over forty years, he has also been a permanent resident of the Democratic Republic of Congo [DRC], where he spent much of his life and where he was active and successful as a businessman. He became a permanent resident of Canada upon his arrival on May 21, 2014, as a member of the investor class.

[26] Mr. Yaghi applied for citizenship on February 23, 2019. To be eligible for citizenship pursuant to subparagraph 5(1)(c)(i) of the *Citizenship Act*, Mr. Yaghi had to have been physically present in Canada for at least 1,095 days between February 23, 2014, and February 23, 2019, although the effective starting date was May 21, 2014, the day he first landed in Canada.

[27] With his application for citizenship, Mr. Yaghi submitted a calculation of his physical presence in Canada showing various trips outside Canada, mostly to Lebanon and the DRC, totalling 550 days of absence and 1,187 days of physical presence between May 21, 2014, and February 23, 2019. On his application form, he listed two Lebanese passports, whose full numbers I will not reproduce. The first, referred to as "Passport 908," was initially valid from January 5, 2011, to January 5, 2016, and had a renewal valid from December 5, 2014, to December 4, 2019. The second, referred to as "Passport 966," was valid from August 17, 2016, to August 17, 2021.

[28] Shortly before his citizenship application, Mr. Yaghi had applied for renewal of his permanent resident card. On March 19, 2019, an officer with Immigration, Refugees and Citizenship Canada [IRCC] requested more information to confirm whether Mr. Yaghi met the residency obligation for permanent residents under subsection 28(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The request included photocopies of all passports he held during the (almost identical) relevant five-year period, and a register of entries and exits from his country of citizenship and any other country where he travelled or resided, other than Canada.

[29] In obtaining and preparing this information, Mr. Yaghi noted that he had made three errors in his initial physical presence calculations for both his permanent resident card application and his citizenship application. On July 2, 2019, he responded to IRCC's request in respect of the permanent resident card renewal, providing a corrected physical presence calculation together with entry and exit reports (also termed "records of movement" or ROMs) from the DRC, the United States, and Lebanon. He also provided complete photocopies of his Passport 966, together with a copy of the biometric pages of his Passport 908. He explained that he could not provide all pages of the Passport 908 because it "was surrendered to the Lebanese authorities when the newer biometric passport was issued to him."

[30] Since the identified errors also affected his citizenship application, Mr. Yaghi also made a submission on that file on August 24, 2019. He submitted a corrected physical presence calculation, showing 615 days of absence and 1,124 of physical presence in Canada in the relevant period, together with the reports from the DRC, the US, and Lebanon.

[31] On December 20, 2019, IRCC sent Mr. Yaghi a Physical Presence Questionnaire in respect of his citizenship application, asking him to provide information regarding his travels outside Canada; to list and provide copies of all of his passports; and to provide entry and exit reports from other countries.

[32] In a response dated January 18, 2020, Mr. Yaghi re-sent a copy of his August 24, 2019, submission; a copy of his July 2, 2019, submission on his permanent resident card file; a further revised physical presence calculation showing 640 days of absence (and thus 1,099 days of

physical presence); and a number of other documents including income verification statements, some pharmacy and medical records, rental and residence purchase documents, and his children's school transcripts. With respect to the passports, he explained that he renewed Passport 908 at the end of 2014, a year before it expired, but exchanged it for the new Passport 966 when Lebanon introduced biometric passports in 2016. When he exchanged his passport, the Lebanese authorities kept his expired Passport 908. He was only able to find in his records the personal information and renewal pages of the expired passport.

[33] In August 2020, Mr. Yaghi received an entry and exit report from the Canada Border Services Agency [CBSA]. On review of that report, he realized that he had omitted an entry to Canada on June 16, 2018, and had therefore overstated his days of absence. As a result, in November 2020, he submitted a further corrected physical presence calculation showing 589 days of absence and 1,126 days of physical presence.

[34] On March 11, 2021, IRCC sent a supplementary request for information regarding the June 16, 2018, entry into Canada, noting that the 2019 report from the DRC said that he had entered the DRC on June 6, 2018, and left on August 5, 2018. After some exchanges with IRCC, Mr. Yaghi responded on April 29, 2021, attaching a letter from the Embassy of the DRC in Canada. That letter stated that the Embassy confirmed all of the entry and exit information in the 2019 report from the DRC [TRANSLATION] "from the two Lebanese passports held by Mr. ROMEO YAGHI between 2014 and 2018. These are [Passport 908] and [Passport 966]." The Embassy confirmed that the information from Passport 966 showed that Mr. Yaghi had in

fact entered the DRC on June 5, 2018, and left on June 15, 2018. Mr. Yaghi provided a further physical presence calculation showing 581 days of absence, and 1,158 days of physical presence.

D. *The File Preparation and Analysis Template*

[35] A citizenship officer assessed Mr. Yaghi's citizenship application and completed an FPAT document form on June 21, 2021. His overall analysis was that almost half the reference period was not covered by an available passport, and that it was not possible to determine the extent of his physical presence in Canada. The officer noted that the submitted biometric pages of Passport 908 showed holes and an "ANNULÉ" (cancelled) stamp, which are common practices when a passport is returned to a client. The officer also noted that the Passport 966 showed a US entry stamp from 2017 with the marking "VIOPP," which means "visa in other passport." It therefore seemed to the officer that Mr. Yaghi had either his expired passport or another passport with a US visa.

[36] The citizenship officer also noted the various different physical presence calculations that had been submitted and the inconsistencies in respect of the DRC reports. While the officer tried to prepare his own calculation of dates using available information, he concluded it was not possible to validate the information due to the missing passport and the fact that the ROMs did not identify the countries that Mr. Yaghi left to and from. The officer's online searches also revealed two matters that raised questions, namely Mr. Yaghi's position as 1st Vice President of the DRC Lebanese Community ("*Communauté Libanaise en RDC*"), and a 2016 report of the election of a Romeo Yaghi as mayor of the community of Majd el Meouch in Lebanon.

[37] In concluding comments, the citizenship officer stated that he was not satisfied that Mr. Yaghi met the physical presence requirement of the *Citizenship Act*, noting five principal concerns: (1) the various changes in the physical presence calculation; (2) the missing passport and the two indications that Mr. Yaghi had in fact held that passport (the "cancelled" stamp on the submitted pages of Passport 908 and the VIOPP stamp in Passport 966); (3) Mr. Yaghi's lack of employment in Canada and his apparent ongoing business and political interests in Lebanon and the DRC; (4) certain contradictions in the documents, notably the ROMs from the DRC; and (5) concerns with the passport, such as missing stamps. The matter was therefore referred to a citizenship judge for assessment.

E. *The hearing and the Citizenship Judge's decision*

[38] After some delay, Mr. Yaghi was convened for a hearing on September 21, 2022. While this hearing was held, it ultimately resulted in the hearing judge voluntary recusing herself from the matter after complaints from Mr. Yaghi and his counsel.

[39] A new hearing was scheduled and conducted before the Citizenship Judge by videoconference on June 12 and October 6, 2023. The Citizenship Judge's notes of the hearings appear in the certified tribunal record. In addition, Mr. Yaghi's immigration consultant filed an affidavit on this application describing the hearing based on his notes and recollections.

[40] I open a parenthesis to note that, as the Minister accepts, the affidavit from Mr. Yaghi's consultant, who was present at the hearing, is generally admissible to establish (a) what occurred at the hearing, particularly since a transcript or recording of the hearing is not available; and

(b) what steps were taken to obtain further documents. There are some aspects of the affidavit in which the consultant goes beyond simply recording what occurred (such as describing Mr. Yaghi as “confused” about how the VIOPP notation arose). I will ignore these aspects, which are minor and do not affect the admissibility of the affidavit as a whole.

[41] A variety of issues were addressed at the first hearing, including the missing Passport 908, the VIOPP notation in Passport 966, and the extent of Mr. Yaghi’s duties as mayor of Majd el Meouch. On Passport 908, Mr. Yaghi said he could not produce the complete passport because he had lost it. The Citizenship Judge pointed to Mr. Yaghi’s earlier statement that he had provided Passport 908 to the Lebanese authorities, and it was not returned to him. Mr. Yaghi responded that he must have mixed up his passports, as it was Passport 966 that he gave to the Lebanese authorities in late 2019, when he obtained another passport (Passport 450, issued in October 2019). He added that he did get Passport 908 back but subsequently lost it on a flight some time in late 2016. He referred to declarations he filed for the lost passport, and he and his consultant asked to retract the earlier statement about Passport 908 in favour of the testimony at the hearing.

[42] Mr. Yaghi was unable to explain the December 2017 VIOPP notification in Passport 966 and asked how he might clarify this issue. He added that by 2017, he had lost Passport 908 and that, in any case, there was no US visa in it since he could not have known that he would be travelling to the US by then (the trip in question being a cruise leaving from the United States for a Christmas/New Year holiday). With respect to his role as mayor of Majd el Meouch,

Mr. Yaghi described it as an honorific title which did not require him to reside in the village and explained that the vice-president does all of the work of the municipal council.

[43] Between the two hearings, Mr. Yaghi submitted additional documents to respond to issues that had been raised at the first hearing, including Mr. Yaghi's sales of shares of his company in the DRC to his brother; the delegation of Mr. Yaghi's mayoral duties to the vice-president; and the sale of properties in the DRC. Mr. Yaghi's consultant also submitted his own declaration regarding an exchange he had with US Customs and Border Protection, and his efforts on the ground in Lebanon to obtain a police report filed by Mr. Yaghi in 2016 regarding his missing passport.

[44] The Citizenship Judge issued her decision granting Mr. Yaghi's application for citizenship on January 30, 2024. The Citizenship Judge found, on a balance of probabilities, that Mr. Yaghi met the physical presence requirement under subparagraph 5(1)(c)(i) of the *Citizenship Act*. She noted that the citizenship officer who reviewed the file had referred it to a citizenship judge due to concerns about Mr. Yaghi's credibility, but that at the hearings, Mr. Yaghi resolved these concerns by providing credible oral testimony, and compelling and reliable documentary evidence pertaining to his absences and physical presence in Canada.

[45] During the course of her reasons, the Citizenship Judge summarized the concerns raised in the FPAT document in four areas: (a) the missing passport and related issues; (b) the various changes in the physical presence calculations; (c) Mr. Yaghi's business, community, and political ties in Lebanon and the DRC; and (d) the lack of assets or employment in Canada. The

Citizenship Judge addressed each concern in order, referring to her questioning, Mr. Yaghi's responses, and the documents on each issue. In each case, the Citizenship Judge considered the inconsistencies and lacunae in the evidence, in some instances recognizing concerns or uncertainties, but declared herself satisfied as to the credibility of Mr. Yaghi's testimony.

[46] In concluding remarks on the credibility issues, the Citizenship Judge recognized that it was reasonable for the citizenship officer who prepared the FPAT to have had concerns. However, having heard Mr. Yaghi's testimony and explanations, she found his responses to the officer's concerns plausible and credible, and considered that he had provided sufficient corroborative post-hearing documentation. While flagging some ongoing questions regarding the VIOPP notification in particular, she concluded they were not enough to overlook the other testimony and documentary evidence supporting Mr. Yaghi's physical presence in Canada.

[47] Having addressed the credibility issues, the Citizenship Judge turned to the physical presence calculation itself, addressing each of the 18 absences identified in Mr. Yaghi's most recent calculation. With reference to the available evidence, she performed a precise calculation, making adjustments to the declared days of absence where appropriate. In most cases, this involved a minor correction of one additional day of absence for each identified absence, based on an apparent confusion about entering return dates into the online physical presence calculator. On the basis of her calculations, the Citizenship Judge found, on a balance of probabilities, that Mr. Yaghi's absences from Canada in the relevant period totalled 629 days, and he thus had 1,110 days of physical presence in Canada as a permanent resident. As this exceeded the

physical presence requirement set out in the *Citizenship Act* and the other requirements for citizenship were met, the Citizenship Judge granted Mr. Yaghi's application for citizenship.

F. *The Citizenship Judge's decision was reasonable*

[48] The Minister argues that the Citizenship Judge made several errors in her decision, which render the decision unreasonable. At a high level, the Minister contends that the Citizenship Judge failed in her obligation to review and assess the evidence and the credibility concerns, and unreasonably accepted Mr. Yaghi's testimony in circumstances where inconsistencies and lacunae in the evidence ought to have led her to at least ask further questions. The Minister places these arguments in four categories, addressing (1) possession of Passport 908 and Passport 966; (2) the 2017 VIOPP notation; (3) lack of evidence of "active presence" in Canada; and (4) the evidence regarding Mr. Yaghi's mayorship in Lebanon.

[49] The issues raised by the Minister may have led another citizenship judge to a different conclusion or to undertake further questioning. However, for the following reasons, I conclude that the Citizenship Judge adequately and reasonably fulfilled her role in assessing and testing the evidence before her and reasonably found that Mr. Yaghi credibly responded to the concerns and demonstrated his presence in Canada.

(1) Passports

[50] The Minister argues that Mr. Yaghi's revised explanation regarding the unavailability of Passport 908, which covered over two years of the reference period, should have led the

Citizenship Judge to make further inquires. She contends that Mr. Yaghi's new explanation—that he lost Passport 908 in around 2016 and that it was Passport 966 that was submitted to the Lebanese authorities—was inconsistent with other evidence, namely the copy of the cancelled Passport 966 that he presented, and the reference to specific pages of both passports in the 2021 letter from the Embassy of the DRC correcting the 2019 ROM. She therefore argues that it was incumbent on the Citizenship Judge to inquire further into these inconsistencies and unreasonable to simply accept Mr. Yaghi's revised explanation in light of them.

[51] However, as Mr. Yaghi points out, the full explanation that he ultimately presented in respect of Passport 908, as reflected in the Citizenship Judge's notes of the second hearing, was simply that Passport 908 had been submitted at the time of renewal, returned by the authorities, and subsequently lost. The Citizenship Judge expressly accepted that explanation in the decision, noting that "[a]t no time during the initial or follow-up hearings did the Applicant appear to be lying or trying to mislead me on this topic; rather, it appeared he had just made an honest error in mixing up which passport was remitted to the Lebanese authorities and which one was returned to him."

[52] In doing so, the Citizenship Judge referred to the asserted "mix up" in the passports. However, her reasons do not indicate that she understood Mr. Yaghi to have asserted that he provided Passport 966 to authorities in 2019 and never got it back. As a result, it is unclear that there is an inconsistency between accepting Mr. Yaghi's explanation and the other evidence in the form of the cancelled version of Passport 966 or the 2021 letter from the Embassy.

[53] In any event, even if there were a potential inconsistency, or an area of potential questioning that might have been further explored regarding the nature of the "mix up," this does not render the decision unreasonable. A distinction must be made between possible avenues of inquiry that might be pursued by a citizenship judge (or a keen cross-examining counsel) and an "abdication" of the citizenship judge's responsibilities: *Pereira* at paras 24, 28. The Minister's criticisms fall into the former category. The law does not impose on a citizenship judge an obligation to catch and examine on every possible inconsistency, no matter how subtle, that might flow from an applicant's testimony, explanation, or evidence. That would impose far too high a standard, with a predictable "paralyzing effect" on citizenship hearings that would "needlessly compromise important values such as efficiency and access to justice": *Vavilov* at para 128. This is particularly so in a legislative context that requires a decision within 60 days: *Citizenship Act*, s 14(1).

[54] There is no indication that the Citizenship Judge gave "carte blanche" to Mr. Yaghi or failed to turn her mind to the question of whether omissions or contradictions undermined his credibility: *Pereira* at para 28; *Vijayan* at para 65. To the contrary, the Citizenship Judge directly questioned Mr. Yaghi on the inconsistency in his evidence about the missing Passport 908, following up at the second hearing seeking a clear explanation. Over the course of 12 paragraphs and 3 pages of her decision, the Citizenship Judge discussed the evidence and explained why she accepted Mr. Yaghi's testimony. Her reasons show no fundamental misapprehension or failure to account for the evidence or the issues: *Vavilov* at paras 126, 128.

[55] The same is true of the 2019 ROM from the DRC and the 2021 letter from the Embassy of the DRC in Canada. The 2019 ROM refers to Passport 908, but it does not state that it was prepared on the basis of that passport. The Minister refers to an answer Mr. Yaghi gave in respect of the 2021 letter, describing it effectively as an admission that the DRC (and thus Mr. Yaghi) had access to Passport 908 when it issued the 2019 ROM. However, this submission effectively amounts to a request that the Court conduct its own assessment of evidence that might be interpreted in a number of ways, to draw its own inferences from that evidence that could then be seen as creating an inconsistency, and then to hold that inconsistency against Mr. Yaghi and/or the Citizenship Judge. This goes well beyond the role of the Court on judicial review.

[56] Similarly, as the Minister contends, the 2021 letter could be read as indicating that the Embassy of the DRC (and thus Mr. Yaghi) had both Passport 908 and Passport 966 in its possession at the time of writing the letter. But it could also be read as being directed at correcting an error in the ROM with respect to the dates of a visit to the DRC in June 2018, based on entries in Passport 966. The Citizenship Judge appears to have adopted the latter approach, describing the letter as one "correcting an error in the DRC ROM." The Citizenship Judge also directly addressed the error in the ROM and its impact on the reliability of the document. The Citizenship Judge cannot be said to have ignored the weaknesses in the documents from the DRC or the concerns about Mr. Yaghi's explanations.

[57] I repeat that the obligation on a citizenship judge is not to ask every question that, with the benefit of hindsight, might appear to the Minister's counsel (or even the Court) to be a

potentially fruitful line of cross-examination. It is to reasonably and objectively assess all of the evidence presented, including the evidence put forward by the applicant and the evidence the citizenship judge has elicited. The Citizenship Judge fulfilled her obligations in this regard, and it cannot be said in the circumstances that her acceptance of Mr. Yaghi's evidence regarding the lost Passport 908 was unreasonable based on the documents from the DRC.

[58] It is worth noting on this issue that the FPAT prepared by the citizenship officer on the Minister's behalf did not identify any purported inconsistency between the DRC documents and Mr. Yaghi's assertion that he did not have his Passport 908 (an assertion made before the FPAT was prepared). As set out above, the Citizenship Judge is not limited to issues raised in the FPAT, and the Minister is not limited on judicial review to issues in the FPAT. However, the fact that the asserted credibility issue that the Minister now raises was not previously identified is relevant to assessing whether the Citizenship Judge reasonably responded to the issues raised by either the parties or the evidence, whether she fulfilled her obligation to review, test, and assess the evidence, and whether she fundamentally misapprehended the evidence: *Vavilov* at paras 125–128. If there were truly such a material inconsistency on this point that it cried out for explanation or further questioning, as the Minister contends, one might have expected it to have been raised by the citizenship officer in their review of the file and expressed in the FPAT.

(2) The "VIOPP" notation

[59] The Minister also faults the Citizenship Judge for her analysis of the VIOPP notation on the US entry stamp from December 2017 in Passport 966. In her decision, the Citizenship Judge set out the concern raised by this notation, Mr. Yaghi's inability to explain it, and his evidence

that there would have been no US visa in Passport 908 (which was replaced in 2016 by Passport 966) since he would not have known in 2016 that he would be travelling to the US at the end of 2017. The Citizenship Judge noted that Mr. Yaghi "appeared genuinely flummoxed by the notation," and that now that he had been told what it meant, he understood why the Citizenship Judge was concerned by it.

[60] The Citizenship Judge expressed her conclusion on the VIOPP notation in the following language:

> This "VIOPP" notation is the aspect of the case that troubles me the most. Is it possible that the Applicant did have a US visa in his expired passport and that he lost this passport after this trip to the US? Or was the Applicant travelling with another, possibly fraudulent, passport that he did not disclose to IRCC? Could the notation have been an inadvertent error on the part of the border official? Is it possible the border official used their discretion to allow the Applicant to enter the US but then wrote the notation to cover their tracks? I do not have the answer, except to say that having seen and spoken to the Applicant, I believe the Applicant when he says that he did not have another passport other than those he disclosed to IRCC.
>
> [Emphasis added.]

[61] The Minister asserts that it was not open to the Citizenship Judge to ignore the problems and inconsistencies arising from the VIOPP notation in this manner. The Minister takes issue with the various hypotheticals raised by the Citizenship Judge, noting that the first was contradicted by Mr. Yaghi's own evidence, and raising various reasons why the other hypotheticals are inconsistent or should be rejected. In my view, the Minister has not established that the Citizenship Judge's reasons on this issue are unreasonable.

[62] I do not read the foregoing paragraph as the Citizenship Judge putting forward a series of possible scenarios, each of which is necessarily consistent with all of the evidence. Rather, the Citizenship Judge was noting that a number of possible things might have happened that would account for the VIOPP notation, one of which was Mr. Yaghi effectively lying, and others being more benign. Even the Citizenship Judge's phraseology, using rhetorical questions rather than assertions that each scenario was in fact possible on the evidence, suggests she was considering explanations rather than conducting an analysis of the evidence.

[63] The Citizenship Judge recognized that she did not have a single answer to explain the VIOPP notation. However, on the basis of the evidence and having heard Mr. Yaghi, she rejected the most adverse explanations, namely that he was lying about having lost Passport 908 or that he had another passport. In my view, it was open to the Citizenship Judge to accept that Mr. Yaghi was credible notwithstanding the VIOPP notation, without specifically identifying the scenario to which she attributed this conclusion. As Mr. Yaghi submits, the implicit finding of the Citizenship Judge was that there was a plausible explanation to the VIOPP notation, even if the evidence did not allow her to draw a conclusive finding as to what that explanation is.

[64] While it is unnecessary to conduct a full analysis of each of the rhetorical questions, I note that I cannot accept the Minister's submission that the "inadvertent error" scenario identified by the Citizenship Judge is itself contrary to the evidence. The Minister contends that if the notation was an error, this would mean that another US visa would have to be found in Passport 966, and there is not one. However, it is less than clear from the record that such an additional document would be required. The December 27, 2017, notation in Mr. Yaghi's

passport indicates a “B2” (tourist) visa with an expiry date of June 26, 2018, six months later. In addition to being consistent with the ROM from US Customs and Border Protection, this is consistent with the passports of his other family members, each of which also show an “Admitted” stamp on December 27, 2017, with a handwritten “B2” and an expiry date of June 26, 2018 (the other passports do not have the VIOPP notation).

[65] Based on the record, though, Mr. Yaghi’s wife and two sons also did not have a separate visa document in their passports, such that the stamp and “B2” notation apparently could be placed in a passport without a separate visa document. Only Mr. Yaghi’s daughter had a separate US visa paper, namely a B1/B2 visa issued in 2014 that appears (it is perhaps interesting to note) in an expired passport different than one with the 2017 entry stamp. Leaving speculation aside, the evidence appears to indicate that Mr. Yaghi would not necessarily have needed a separate US visa in Passport 966 (or any other passport) in order to enter the US for the cruise, as most of his other family members, also travelling on Lebanese passports, also entered the US without another US visa. This appears consistent with the evidence given by Mr. Yaghi’s consultant after speaking with US Customs and Border Protection, which the Citizenship Judge accepted, that US border officers have a discretion to admit someone into the US.

[66] In any case, it is clear that the Citizenship Judge thoroughly considered the VIOPP notation, asked questions, received testimony and further evidence on the issue, and reached a conclusion that the notation did not lead her to disbelieve Mr. Yaghi’s assertion that he could not provide a complete copy of Passport 908 because he lost it. While different conclusions might have been open to the Citizenship Judge, the Minister has not satisfied me that the conclusion

she did reach was unreasonable, or that she failed to fulfill her obligation in reaching that conclusion.

(3) "Active presence"

[67] The Minister contends that the concerns regarding the changes in Mr. Yaghi's physical presence calculations, the inconsistencies outlined above, and the fact that Mr. Yaghi exceeded the minimum physical presence requirement by only 15 days should have led the Citizenship Judge to require additional proof of his "active presence" in Canada. Evidence of "active presence" is a type of evidence that demonstrates presence in Canada through a document or record generated by something an applicant did within Canada, such as an in-person medical visit or a purchase, *i.e.*, a "record of the transactions of daily life": *Othmani v Canada (Public Safety and Emergency Preparedness)*, 2021 CanLII 57894 (CA IRB) at paras 11, 15. The Minister also points to Mr. Yaghi's submission, filed between the two hearings, which refers to a number of business and social connections Mr. Yaghi had made in Canada, about which the Minister says the Citizenship Judge should have asked questions and required evidence.

[68] It is hard to view these criticisms as anything other than asking the Court to conduct a hindsight analysis of how the Citizenship Judge could have conducted her hearing, to impose on her particular analytical and evidentiary choices, and/or to undertake its own assessment of how it would have decided the case. This is not the role of the Court on judicial review. As this Court has made clear, it is up to a citizenship judge, taking the context into consideration, to determine the extent and nature of the evidence required to demonstrate that the physical presence requirement is met: *El Boussergh*ini at para 19; *Pereira* at para 22; *Abdulghafoor* at para 24.

[69] Deciding that an applicant's evidence is sufficient—even when other evidence might have been filed or might have demonstrated physical presence more conclusively—does not mean, as the Minister contends, that a citizenship judge has disregarded the requirement that they be satisfied that the applicant was actually in Canada when they claimed to be: *El Falah* at paras 18, 21; *Abidi* at paras 40–41. Parliament has accorded to citizenship judges, and not to either the Minister or to this Court, the responsibility to undertake the final assessment of whether the evidence presented by an applicant is sufficient to demonstrate that they meet the physical presence requirement. Provided that the citizenship judge's assessment shows that they have performed, and not abdicated, that duty, the fact that the Minister might think that better evidence should have been presented does not render the decision unreasonable.

(4) Evidence regarding Mr. Yaghi's mayorship of a town in Lebanon

[70] Lastly, the Minister argues the Citizenship Judge erred in her treatment of Mr. Yaghi's position as mayor of Majd el Meouch and the documents that showed delegation of his responsibilities to the vice-president of the municipal council. The Minister contends that the Citizenship Judge should have asked Mr. Yaghi further questions about (a) a month in 2016 and a few months in late 2018 that were not covered by delegation documents and not discussed by the Citizenship Judge; (b) another missing period of delegation in 2018, in respect to which the Citizenship Judge accepted it was possible that Mr. Yaghi simply forgot to submit council minutes; and (c) his signature on a delegation document at a time when he declared he was in Canada. The Minister argues that the Citizenship Judge received the delegation documents in advance of the second hearing, and that given the narrow margin by which Mr. Yaghi exceeded

the minimum presence requirements, failing to inquire further into these issues amounted to a reviewable error.

[71] The context in which these delegation documents arose is relevant. The citizenship officer who prepared the FPAT had discovered information about Mr. Yaghi's election to the municipal council on May 16, 2016, through an online search, and felt it raised questions about whether he had been in Canada until May 30, 2016, as he claimed. According to her notes of the first hearing, the Citizenship Judge asked questions not only about these dates, but about the requirements to be a member of the municipal council, the necessity of being in Lebanon for long periods, and the fact that the ROM from Lebanon had been created in Majd el Meouch. As the Citizenship Judge noted in her decision, Mr. Yaghi testified that he had been elected mayor, but stated that the position was honorific and unpaid, that it did not require him to reside in Lebanon, and that the vice-president "does all the work." After the first hearing, he submitted a series of council minutes showing the delegation of authority that generally corroborated his testimony, providing further reason for the Citizenship Judge to accept that testimony as credible.

[72] Given this context, I conclude that while the Minister raises issues that might reasonably have been the subject of further inquiry, there is no unreasonableness in the Citizenship Judge choosing to accept the explanations and testimony of Mr. Yaghi in light of this evidence. The Minister again seeks to impose on the Citizenship Judge the obligation to both identify and question on every possible line of inquiry that may arise from the evidence. As explained above, this is not the obligation on a citizenship judge. Rather, it is open to a citizenship judge to weigh

credible testimony equally with documentary evidence, and to rely on testimony they find credible to explain gaps in the record: *Abidi* at paras 39–41; *Sukkar* at para 20; *Gouza* at para 14. The Citizenship Judge explained her reasons for accepting Mr. Yaghi's testimony and recognized gaps in the documents, but was ultimately satisfied with Mr. Yaghi's evidence. This conclusion was open to the Citizenship Judge.

IV. Conclusion

[73] The scheme established by Parliament under the *Citizenship Act* provides that where the Minister is not satisfied that an applicant meets the physical presence requirement, the application is referred to a citizenship judge. The citizenship judge is then the person Parliament has designated to determine whether the applicant meets the requirement.

[74] Mr. Yaghi therefore had to satisfy the Citizenship Judge—not the Minister, and not this Court—that he had presented sufficient credible evidence to establish that he was physically present in Canada for at least 1,095 days in the five years prior to his application. He did so. Absent a failure by the Citizenship Judge to fulfill her duty to reasonably consider and analyze the evidence, including apparent gaps and inconsistencies in that evidence, this Court will not interfere with the decision. A hindsight analysis may of course identify additional inconsistencies or areas where further questioning might have been fruitful. However, this is not sufficient to demonstrate that a decision is unreasonable. I conclude that the concerns raised by the Minister in respect of Mr. Yaghi's evidence do not establish that the Citizenship Judge failed to fulfill her statutory duty, failed to consider any central issues or concerns, or that she fundamentally misapprehended the evidence.

[75] The application for judicial review is therefore dismissed.

[76] Neither party raised a question for certification pursuant to paragraph 22.2(d) of the *Citizenship Act*, and I agree that none arises in the matter.

JUDGMENT IN T-540-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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