



IAD File No. / N° de dossier de la SAI : VB4-02641/2666/2667/2668/2745  
Client ID no. / N° ID client : 5188-4581/3944/3946/3947/3945

## Reasons and Decision – Motifs et décision

### RESIDENCY OBLIGATION

<b>Appellant(s)</b>	Muhammad Imtiaz AKHTAR Muhammad Farjad AKHTAR Rabha AKHTAR Shahnaz AKHTAR Muhammad Faraz AKHTAR	<b>Appelant(e)(s)</b>
<b>and</b>		<b>et</b>
<b>Respondent</b>	The Minister of Citizenship and Immigration	<b>Intimé(e)</b>
<b>Date(s) of Hearing</b>	September 10, 2015	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Heard by teleconference in Vancouver, BC	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	September 10, 2015 (rendered orally) September 21, 2015 (written decision)	<b>Date de la décision</b>
<b>Panel</b>	Sterling Sunley	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	Massood Joomratty Barrister and Solicitor	<b>Conseil(s) de l'appelant(e) / des appelant(e)(s)</b>
<b>Designated Representative(s)</b>	Muhammad Imtiaz Akhtar for Muhammad Farjad Akhtar	<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	Azeem Lalji	<b>Conseil du ministre</b>

## REASONS FOR DECISION

[1] These are the oral reasons for the decision in the appeals of Muhammad Imtiaz AKHTAR, Muhammad Farjad AKHTAR, Rabha AKHTAR, Shahnaz AKHTAR and Muhammad Faraz AKHTAR, (collectively the “appellants”), from a determination made by a visa officer outside Canada concerning their failure to comply with the residency obligations set out in the *Immigration and Refugee Protection Act* (the “Act”).<sup>1</sup>

[2] In light of the age of Muhammad Farjad Akhtar and with the consent of both parties, I have appointed Muhammad Imtiaz Akhtar as the designated representative for his minor son.

[3] S. 28 of the *Act* requires a permanent resident to be physically present in Canada for at least 730 days in every five year period, or otherwise comply with s. 28. The visa officer in this case held that the appellants have not met their residency obligations. The visa officer also held that there were insufficient humanitarian and compassionate considerations, taking into account the best interests of a child directly affected by the decision, to justify the retention of permanent resident status.

[4] The appellants are not in Canada, however the principal appellant participated by telephone from Karachi, Pakistan.

[5] The appellants waived their right to be connected during the oral delivery of these reasons.

[6] The appellants do not challenge the legal validity of the visa officer's decision but argue that the appeal should be allowed on the basis that sufficient humanitarian and compassionate considerations warrant special relief, in light of all the circumstances of the case, taking into account the best interests of a child directly affected by the decision.

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[7] I have come to the conclusion that the determination is valid in law and that there are not sufficient humanitarian and compassionate grounds, in light of all the circumstances of the case, taking into account the best interests of a child directly affected by the decision, for me to find in the appellants' favour.

[8] The appeal is therefore, dismissed.

[9] By way of background, the appellants constitute a single family comprised of a father, mother and three children. With the exception of one of their children, who is presently completing graduate studies in the US, the appellants are all residents of Pakistan, the country in which they hold citizenship status.

[10] The appellants obtained permanent resident status upon landing in Canada in July of 2006. The principal appellant was admitted under the skilled worker category. He is a senior employee of Pakistan International Airlines. His wife works in the home and his three children are students.

[11] In his oral testimony today, the primary appellant addressed a number of reasons why he and his family returned to Pakistan roughly a month after their landing. Principal among these was a perceived need to care for his father, who had undergone extensive cardiac/thoracic surgery a year earlier. He testified that other family members, including his mother, a sister and a brother, all of whom lived in Pakistan at the time, were unable to provide the level of care their father required, principally due to family and employee commitments.

[12] The second main explanation for the family's return to Pakistan, was the appellant's failure to find, in his words, a proper job in Canada.

[13] The appellant does not challenge the validity of the visa officer's decision. He admits that he and his family had not been physically present in Canada for the requisite period or otherwise complied with s. 28.

[14] On the basis of that concession and the materials contained in the record, I find the appellant has not met the residency requirements imposed under s. 28 of the *Act* and the determination, therefore, is, as noted earlier, valid in law.

[15] However, I also have the discretion to allow the appellants' appeal on humanitarian and compassionate grounds, taking into account the best interests of a child directly affected by the decision, in all the circumstances of the case.

[16] In considering the discretionary grounds, the Immigration Appeal Division has established the following appropriate, although not exhaustive, considerations, namely the appellants' initial and continuing degree of establishment in Canada, his or their reasons for departure from Canada, the reasons for a continued or lengthy stay abroad, ties to Canada in terms of family and other links, whether reasonable attempts to return to Canada were made at the first opportunity and generally, whether there are unique or special circumstances present in the case.

[17] Unique or special circumstances may, for example, be the relationship the appellant has to family in Canada, their personal circumstances, the family's circumstances in Canada, any inter-dependency between the appellant and the family in Canada and other relevant factual circumstances.

[18] I concur with the appellants' counsel in his submission that the appellant's testimony was honest and he did not extensively tailor his answers so as to put the facts of his case in a false light. That is to his credit.

[19] I also acknowledge that the appellant's testimony regarding his reasons for returning to Pakistan, mainly the health of his father, his own financial needs and his children's education, *inter alia*, are sincerely held.

[20] The extent of the failure to meet the residency obligation in this case is serious. The appellants were here only a few days during the relevant period and it cannot, in my view, be reasonably concluded that apart from their original landing, subsequent trips to Canada have been for any primary purpose but to simply visit.

[21] In considering the appellant's explanations for the breach, I am not satisfied that there is sufficient credible evidence before me to establish a pressing need for the appellants to return to Pakistan roughly a month after landing here.

[22] The principal appellant has a brother and sister within close proximity to his father and I am satisfied that they could have provided sufficient care to their father to allow the appellant and his family to meet their residency obligation.

[23] As noted at page 14 of the record, the appellant is fortunate in being able to fly around the world very economically as a result of his association with an international airline. I am not satisfied that he could not have returned sooner and far more frequently, if it was genuinely his intent to settle the family in Canada.

[24] I empathize with the appellant in as much as he was unable to find suitable employment but in my view, he did not make a reasonable effort. There's no documentary evidence before me of his attempts to gain employment in Canada, and I am satisfied that virtually every immigrant to Canada faces this challenge.

[25] In the case at bar, the challenge certainly does not, in my view, rise to the level of hardship. It is simply one of the factors that any immigrant to Canada needs to consider in deciding if they want to become permanent residents of Canada.

[26] There is no evidence that the secondary, or post-secondary education of the appellant's children will be, impaired to any great extent if the appeal is dismissed.

[27] The appellant has no significant real or financial assets in Canada and their family presence, namely the principal appellant's wife's sister, will not be greatly affected to any extent, if the appellants fail in their appeal.

[28] The country conditions in Pakistan while admittedly less attractive from an economic, political and legal perspective than Canada, are in the principal appellant's own words, much better than they were at the time he and his family sought to come to Canada. There is no evidence that the appellants are in any danger. In fact, they appear to have flourished from an academic and professional perspective.

[29] There is a minor child in this case, although he will reach the Canadian age of majority in a matter of days. In my view, it is in his best interest to remain in the company of his parents and siblings, and there is no evidence to suggest that it would be in his best interests to be allowed to retain his permanent resident status, apart from the prospect of less expensive tuition if he is a permanent resident. This does not, in my view, create any need for special relief.

[30] In conclusion, it is therefore my decision that the visa officer's determination of the contravention of the residency obligation is valid in law and that, taking into account the best interests of a child directly affected by this decision, there are not sufficient humanitarian and compassionate considerations warranting special relief in light of all the circumstances of the case.

[31] This appeal is dismissed.

*[Edited for spelling, grammar and syntax.]*

## NOTICE OF DECISION

The appeals are dismissed.

(signed)

**"Sterling Sunley"**

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**Sterling Sunley**

**September 21, 2015**

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**Date**

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits