Immigration and
Refugee Board of Canada

**Immigration Appeal Division**

Commission de l'immigration
et du statut de réfugié du Canada

**Section d'appel de l'immigration**



**IAD File No. / N° de dossier de la SAI : VB6-01117 / VB6-01116**
**Client ID no. / N° ID client : 5356-5376 / 5972-0415**

# Reasons and Decision – Motifs et décision

## RESIDENCY OBLIGATION

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|---|---|---|
| **Appellant(s)** | Keat Hock EWE<br>Kwee Eng CHEW | **Appelant(e)(s)** |
| **and** | | **et** |
| **Respondent** | The Minister of Citizenship and Immigration | **Intimé(e)** |
| **Date(s) of Hearing** | February 6, 2017 | **Date(s) de l'audience** |
| **Place of Hearing** | Heard by teleconference in<br>Vancouver, BC | **Lieu de l'audience** |
| **Date of Decision** | February 6, 2017 (rendered orally)<br>February 28, 2017 (written decision) | **Date de la décision** |
| **Panel** | Sterling Sunley | **Tribunal** |
| **Counsel for the Appellant(s)** | Massood Joomratty<br>Barrister and Solicitor | **Conseil(s) de l'appelant(e) / des appelant(e)(s)** |
| **Designated Representative(s)** | N/A | **Représentant(e)(s) désigné(e)(s)** |
| **Counsel for the Minister** | Gregory Zuck | **Conseil du ministre** |



Canada

# REASONS FOR DECISION



[1] These are the oral reasons in the appeals of Keat Hock EWE and Kwee Eng CHEW (the "appellants"), who are Malaysian and Singapore nationals respectively, both of whom are between 54 and 55 years of age. They are appealing a decision made outside of Canada on their residency obligation as outlined in s. 28 of the *Immigration and Refugee Protection Act* (the "*Act*").[1]

[2] The appellant Mr. Ewe is a professional oil and gas project manager. He has had a long and successful career with the Shell Oil Company. He and his wife, the co-appellant in this case, have two daughters, one of whom resides in England and is studying the law, and another who is residing in Canada and is presently awaiting admission into a graduate studies program.

[3] The panel must initially consider whether the appellant has been physically present in Canada for 730 days in the relevant five-year period. In the case at bar, that relevant period is March 3, 2011 to March 2, 2016. Another side of the issue is whether the appellant was employed on a full-time basis by a Canadian business or in the public service of Canada or a province during that period. I am satisfied based on the evidence before me, and having noted the appellant's own admission that he was not physically present in Canada for 730 days and that neither he nor his wife otherwise met the requirements of s. 28. The finding against the appellant is legally valid in law.

[4] The onus on the appellant is to demonstrate that there are sufficient 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 in light of all the circumstances of the case.

[5] The relevant factors include: the reasons for the failure to comply; the extent and degree of that non-compliance; the length of time that the appellants have lived in Canada and the extent to which they are established in Canada; what continuing connections they have in Canada

[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

including family members; their establishment outside Canada; why they left and stayed outside Canada; whether they came back to Canada at the earliest opportunity; and, whether losing their status poses a hardship to the appellants or members of their family.



[6] In light of the Supreme Court of Canada's decision in *Baker*,[2] the Immigration Appeal Division must also consider the best interests of any child affected by the decision. These factors are not exhaustive, and in order to allow an appeal, the IRB must conclude that there are sufficient positive humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of the case. The onus on this is with the appellant.

[7] With respect to the seriousness of the breach, in this case I find that it is a very serious breach. The appellants stayed in Canada for 13 days after obtaining permanent resident status in Canada and only returned briefly three years later. There were some brief return visits to Canada which I would characterize as mainly to see family members rather than to seek to put down further roots in Canada. The appellants were last in Canada in 2014, and, that visit was also fairly brief; it was only 15 days. I find the residency breach in this case to be very serious, which is a negative factor in the appeals.

[8] The primary appellant testified that one of the reasons for his absence from Canada was his elderly mother's medical condition, and I am satisfied that the appellant testified sincerely about that. I am sure that, as a devoted son who was the one in the strongest financial position of his siblings by virtue of being able to work overseas, he felt an onus to provide support for his mother, and I have afforded that positive weight in considering my decision.

[9] However, and as counsel touched on during his submissions, economic reasons *per se* are not particularly good reasons to afford humanitarian and compassionate consideration. The primary appellant is clearly an intelligent person who felt that he needed to make economically based decisions, which of course is his right. But in this case the decision to leave Canada after a brief stay and return was his own, and while it is not my role to determine whether or not he

[2] *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

made the right decisions from a personal perspective, in the view of the *Act* and in the case law, I find that there are few compelling reasons to explain, beyond the economic interests of the appellant, his decision to leave Canada and not to seek to return at an early date.

[10] I found the testimony of the appellant to be credible. I found him to be candid and that he did not answer questions in a manner which struck me as being either evasive or disingenuous or that he was attempting to paint himself in a particularly favourable light. I think he recognizes the seriousness of his absence from Canada and I am sure he is quite genuine in his reasons for wanting to come back, i.e. that he is in a stronger financial position to do so now than he was before. The couple's daughter, who is here in Canada, is at the cusp of her own career, and I am quite confident that both appellants would want to be here to spend time with her.

[11] Both the appellants travelled extensively during the period under review. That causes me some trouble, because it seems to me that they did have the ability to leave Oman, where they were working or where Mr. Ewe, at any rate, was working, and they could have come back to Canada more frequently.

[12] Given that there is evidence that the appellant's did travel outside of Oman during the relevant period, it seems to me that one would have expected that if they were committed to a long-term relationship with Canada there would have been more return trips to Canada. I am not satisfied that it was not possible for them to do so. This is a negative factor in the appeal.

[13] The appellants do not have any real or familial roots here in Canada. By real, I refer to property or investments. Their only joint bank account is really more of a conduit for providing financial support to their daughter. The primary appellant also does not appear to have filed any income tax returns, and I accept that while he may have been unaware of his obligation to do so, permanent residents of Canada are expected to provide reports in the form of income tax returns which indicate the full amount of their worldwide income. Had those income tax returns been filed, I would have found that to be a positive factor. As it was, not having filed them takes that from a very positive factor and turns it into a neutral factor in the appeal.

[14] Apart from some family members and their daughter here in Canada, there really was not a lot of evidence of the couple's establishment in Canada. I do appreciate that they made some efforts to find employment in Canada, and there is evidence that counsel has put together which demonstrates that they have made efforts to try and obtain positions here, and I am satisfied that those efforts are genuine.

[15] The Minister's counsel, in his submission, also addressed the issue of applications in Australia, i.e. that the appellant had made applications or enquiries about opportunities not just in Canada, but also in Australia. I find that this diminishes the extent to which I am able to find that he has a particular establishment in Canada or is now seeking to provide a long-term establishment in Canada.

[16] The couple's one daughter is 19 years of age. It was in her best interests to be with her parents, and she was with her parents during childhood.

[17] There are other options available to the appellants. As a Singaporean national the female appellant does not need any kind of special documentation to travel to Canada. I cannot see any reason why, particularly given that the couple has a daughter here, the appellants would not be able to come to Canada on visitor visas. The appellants' daughter might wish to sponsor her parents in the interests of family reunification and I think in that circumstance the reasons for having lost their permanent residency, which are principally economic, would not likely be held against them.

[18] The primary appellant came to Canada as a skilled worker. He was chosen for that category because he had certain abilities and credentials, which would have been in demand here in Canada. While he made an effort to try and obtain a position here based on those credentials, I am really not satisfied that he made as reasonable an effort as perhaps he could have if it was his intent to put down roots in Canada. This is a factor which does not weigh in his favour in this appeal.

[19] I am also not persuaded that the appellants could not have come back to Canada sooner; there are no efforts during all that time that they were outside of Canada to demonstrate to me that they were keen on coming back to Canada and that they were making strong, strong efforts in order to be able to return to Canada. The appellant had a good job and was able to support his family. I think it is important that we look at it for what it was, which was a decision that the appellants took; there are consequences for all of us to the decisions we take, and the appellants are no exceptions.

[20] The time period required is two out of every five years, and in my view that is not particularly onerous. I think Canada recognizes that there are people who come to Canada whose jobs and circumstances require them to return to their country of origin or to other countries, or to travel regularly, and so the question is not how do you spend the balance of your five years, but what do you do during those 730 days that you are required to be here? I have looked at that fairly extensively, and in my view there are no compelling reasons beyond economic reasons which would satisfy me that the couple had good reasons not to meet their obligation.

[21] The decision I am taking today is not a decision which seeks to impugn the appellants' credibility in any way. The evidence shows the refusal to allow the appellants to retain their permanent residency status based on a breach of the residency obligation was legally valid, and further, that there are insufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of the case, particular attention having been paid to the best interest of any children that would be affected by my decision.

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

# NOTICE OF DECISION

The appeals are dismissed.

*(signed)* **"Sterling Sunley"**

**Sterling Sunley**

**February 28, 2017**

**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 for this application.