

CANADIAN ADMINISTRATIVE LAW – SAMPLE QUESTION AND ANSWER

Session: Challenging Administrative Decisions

Topic: Remedies

Recommended time: 1 hour 20 Minutes

Score: 100 Marks

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Facts

Salsman is a Canadian permanent resident who had lived in Canada for 1094 days. He was already counting towards completing the mandatory 1095 days to be eligible for citizenship application when an extremely urgent family matter came up that required him to travel to his home country Belarus. Salsman had reckoned that he would be in Belarus for only five days so he could return to Canada to complete his mandatory 1095 days to qualify him to apply for citizenship. His permanent resident visa also had just 30 days to expire, and he had thought it would not be necessary to renew it since he would be applying for citizenship.

After two days in his home country, the Delta variant of the corona virus was detected as spreading fast in the country. The Belarus government reacted to this by imposing total lockdown, restricting movements except for absolute medical emergencies. The government also shut the airports and banned international travels for a period of 14 days in the first instance, making it impossible for Salsman to return to Canada.

After the initial 14 days, the Belarus government extended the lockdown for another 14 days, claiming that there has not been any noticeable improvement in the curtailment of the spread of this highly contagious variant of the virus. Salsman became worried that he might not be able to return to Canada before the expiration of his permanent resident visa and he might miss the opportunity of applying for his citizenship. Fortunately, the government eased the lockdown after

the second 14 days and permitted travels. Salsman quickly booked the next available flight and arrived in Canada at exactly midnight of the 30th day of his visa expiration, and the 1095th day of his permanent residence status. He waited till the following day and submitted an application for citizenship.

However, the Case Officer declined his application, on the ground that he had not validly stayed in Canada for the requisite 1095 days to qualify him for citizenship. Salsman applied for a reconsideration of application, submitting all available evidence to show that he returned to Canada midnight of the 1095th day. This also was rejected.

Salsman then filed an application for judicial review at the Federal Court against the Immigration, Refugees and Citizenship Canada (IRCC) and prayed for the following reliefs:

1. Declaration that his trip to Belarus was for urgent family matters.
2. Declaration that the decision of the Case Officer that he is not qualified to apply for citizenship was made in error.
3. An order quashing the decision of the Case Officer and rendering the decision that should have been rendered by the Case Officer.
4. Costs against the respondent.

Question

After consideration of the application for judicial review, the Federal Court came to the conclusion that the decision of the Case Officer was unreasonable and that Salsman meets the requirements for citizenship as stipulated in the Immigration Act.

Given the recent decision of the SCC in **Canada v. Vavilov** as to the remedial discretion of a reviewing court, is the Federal Court able to grant Salsman's prayers? What remedy or remedies, if any, may the Federal Court impose?