



Untangling The Law

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Losing Permanent Residency

Canadian permanent residents must be physically present in Canada for 730 days in every five year period to maintain their Canadian permanent residence. When applying for a permanent resident card, two questions that arise are: 1. when does Citizenship and Immigration Canada determine the five year period and, 2. if a person is issued a permanent resident card, can he or she can travel to Canada without any issues until the card expires. The answer to these questions can be found in the case of Faisal Nawaz Khan which was decided by the federal court in December.

What happened in Mr. Khan's case?

Mr. Khan submitted an application to renew his permanent resident card and, in assessing the application, the officer made a determination that Mr. Khan was in Canada for the minimum amount of time as of the date that the application was received. As a result, a letter was sent to Mr. Khan asking him to pick up his permanent resident card at the local immigration office within 180 days. Mr. Khan went to the local office within the 180 days.

When Mr. Khan went to the local office, the officer there asked Mr. Khan to write down all the dates he had been absent in Canada

as of that date. The officer then found that Mr. Khan did not meet the 730 day residency requirement as of that date. The officer then refused to give him his permanent resident card.

Can a local office refuse to hand over a Permanent Resident card?

In this case, the federal court judge found that once a decision has made to issue a permanent resident card, the role of the local officer is restricted. Under the law, the only job of the local officer was to compare Mr. Khan's original documents with the copies he provided in his mailed-in application. If the documents did not match, the permanent resident card could have been withheld. However, since they did match, the permanent resident card should have been given to Mr. Khan.

Does holding a valid Permanent Resident card mean that a person's Permanent Resident status cannot be taken away?

While Mr. Khan was entitled to a permanent resident card, the judge did say that the local officer was entitled to confirm whether Mr. Khan met the residency obligations as of the date that he appeared at the local office. While the local officer could not refuse to give Mr. Khan a permanent resident card, if the local officer

determined that Mr. Khan had not met the residency requirement, the local officer could have made an immigration report and begin proceedings to take away Mr. Khan's Canadian permanent residency.

What can be learned from this case?

As this case demonstrates, it is important to make careful note of the time an application to obtain a permanent resident card is submitted, especially, if the amount of time the permanent resident has spent in Canada is close to the minimum 730 day period over the 5 years. In addition, it is also important to note that even though an individual may have a valid permanent resident card, this does not stop Citizenship and Immigration Canada from investigating and perhaps even taking away permanent resident status if it can be determined that the individual does not meet the 730 day requirement after a Permanent Resident card is issued.

This Article is prepared for general information purposes only and is intended to provide comments for readers and friends of the Filipino Journal. The contents should not be viewed as legal advice or opinion.

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In the ascending moon of local celebrity, The Philippines, Happy Mother's Day 2013! You are the most gracious, hard working, giving and gentle hearted woman in our world! Lots of love from your children, The B. Dads, their spouses Lorraine & John, your grand kids, Landon, Liam, Leticia, and husband Tony.



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