Federal Court  Cour fédérale

Date: 20151020

Docket: IMM-1181-15

Citation: 2015 FC 1181

Ottawa, Ontario, October 20, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

ABDALLA KHALIFA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by the Refugee Protection Division [the Board] that Abdalla Khalifa's claim for protection is rejected as he acquired a new nationality and the reasons for which he sought protection have ceased to exist. Mr. Khalifa is

seeking an order from the Court to set aside the decision and refer the matter back to a differently constituted Board.

[1] For the reasons that follow, the application is dismissed.

II. Background

[2] Mr. Khalifa, a citizen of Egypt, was deemed a Convention Refugee by a differently constituted Refugee Protection Division Board on November 9, 2004.

[3] Mr. Khalifa became a permanent resident of Canada in October 2006. During this period, he obtained a permanent resident card in the United States [U.S.] through the lottery system.

[4] On July 27, 2010, Mr. Khalifa renewed his Egyptian passport.

[5] On December 31, 2010, Mr. Khalifa applied for Canadian citizenship.

[6] In February 2012, Mr. Khalifa applied for U.S. citizenship, which was granted to him in May 2012; a status he continues to maintain.

[7] On July 7, 2012, Mr. Khalifa filed a Canadian permanent resident card application and indicated that he travelled to the U.S. and Egypt on eight separate occasions between August 2008 and March 2011. On each occasion he used his U.S. travel document.

[8] The same month, July 2012, Mr. Khalifa passed his Canadian citizenship test. He was called to an interview with an immigration officer. At the conclusion of the interview, the officer gave Mr. Khalifa a residency questionnaire and his application was referred to a Citizenship Judge on July 10, 2012.

[9] The Citizenship office referred Mr. Khalifa's file to the Canada Border Services Agency [CBSA] National Security Unit for consideration based on his history of travels back to Egypt. The CBSA required Mr. Khalifa to attend an interview on November 27, 2013 on the basis that it had a *prima facie* case to nullify his refugee protection.

[10] After obtaining information from American authorities on Mr. Khalifa's residency status in that country, a Citizenship Judge refused Mr. Khalifa's citizenship application on January 20, 2014, indicating that as a result of undisclosed absences, a residency hearing to determine his eligibility was required.

[11] On March 3, 2014, the Minister of Citizenship and Immigration Canada [the Minister] filed an application for cessation with the Refugee Protection Division [RPD] to strip Mr. Khalifa of his Convention Refugee status. The Minister was of the view that Mr. Khalifa's status should be ceased based on sections 108(1)(a) and 108(1)(c) of the IRPA.

[12] Subsequently, Mr. Khalifa filed to have the Hearings Officer's decision, to submit the cessation application, judicially reviewed by the Federal Court [FC]. The judicial review

application was ultimately dismissed on October 20, 2014 in the matter of *Khalifa v Canada (Minister of Citizenship and Immigration)*, IMM-1407-14.

[13] Despite the National Security Unit indicating that citizenship was not to be granted because the issue was under investigation, Mr. Khalifa was advised to appear before a Citizenship Judge. It was subsequently withdrawn with the various reasons provided, and Citizenship and Immigration Canada failed to follow up to provide an explanation.

[14] On August 21, 2014, Mr. Khalifa provided evidence to clear up an incorrect entry concerning his residency such that he had the required residency prerequisite in Canada under the *Citizenship Act*. He requested a decision be made on the citizenship application within 60 days as required by the *Citizenship Act*.

[15] On September 8, 2014, Mr. Khalifa filed an application for *mandamus* requiring the Citizenship Judge to proceed with a decision on his application.

[16] The Minister requested that the RPD schedule a cessation hearing as soon as possible and one was scheduled for November 5, 2014.

[17] On October 20, 2014, Mr. Khalifa filed a Change of Date and Time [CDT] application with the RPD for abuse of process by the Minister because the "Minister refused to meet its statutory obligations to make a decision on [Mr. Khalifa]'s citizenship application." Furthermore,

Mr. Khalifa filed an application to the FC for a *mandamus* order "to compel the Minister to make a decision on the pending citizenship application."

[18] The CDT application was denied on November 4, 2014 by the Assistant Deputy Chair [ADC] noting that the judicial review was dismissed on October 20, 2014. Furthermore, the ADC indicated that whether other proceedings were in progress was not sufficient to allow a CDT application.

[19] The hearing took place on November 5, 2014 and the Board rendered its decision on February 20, 2015.

III. Impugned Decision

[20] On November 5, 2014, the Board heard the Minister's application for cessation based upon sections 108(1)(a) [voluntary re-availment of the protection of the country of nationality] and (c) [acquiring a new nationality and protection of another country]. Mr. Khalifa argued only section 108(1)(e) [reasons required for protection ceasing to exist] should have application to the exclusion of any other ground.

[21] The Board allowed the Minister's application for cessation under s 108(1)(c) of the IRPA deeming Mr. Khalifa's processed claim for refugee protection to be rejected because he acquired U.S. nationality and enjoys the protection of the U.S., and under section 108(1)(e) the reasons for which he sought protection ceased to exist.

[22] With respect to the abuse of process issue, the failure of Mr. Khalifa's application for citizenship not being processed by officials at the Citizenship office contrary to the *Citizenship Act*, the Board concluded that if officials acted without statutory authority or failed to act by not processing Mr. Khalifa's citizenship application, the Board could not provide a remedy to him. In the circumstances, the *mandamus* application was the appropriate venue to deal with this issue. It found that for the purposes of the cessation application, the Minister had not engaged in an abuse of process by filing an application before the RPD.

[23] Furthermore, the Board found that it has jurisdiction to consider all grounds for cessation under section 108(1) of the IRPA and is not limited solely to the grounds brought forth by the Minister. Thus, the Board considered subsections 108(1)(a) and 108(1)(c) brought forth by the Minister, as well as subsection 108(1)(e) brought forth by Mr. Khalifa.

[24] In assessing whether section 108(1)(e) applied, the Board had to determine whether the reasons for which Mr. Khalifa sought refugee protection had ceased to exist. The Board concluded that the regime in Egypt had undergone a durable and permanent change in 2010. As a result of this finding, Mr. Khalifa's protection had ceased and the Minister's cessation application was granted pursuant to section 108(1)(e) of the IRPA.

[25] Subsequently, the Board concluded that the exception in section 108(4) of the IRPA did not apply as Mr. Khalifa "had not provided any evidence to establish that there are compelling reasons arising out of his previous persecution, torture, treatment or punishment for refusing to avail himself of the protection of [sic] country which he left due to such previous treatment."

[26] The Board acknowledged that although a certain link exists between sections 108(1)(c) and 108(1)(e) of the IRPA, they are mutually exclusive and making a determination on section 108(1)(e) does not preclude the Board from making a determination on section 108(1)(c).

[27] Mr. Khalifa did not deny that he obtained U.S. citizenship. Consequently, the Board granted the cessation application under section 108(1)(c) of the IRPA because the Applicant acquired a new nationality and enjoys the protection of the country of that new nationality.

[28] The Board found it unnecessary, based on these findings, to further assess the application under section 108(1)(a) of the IRPA.

[29] The Board allowed the Minister's application and declared that Mr. Khalifa's claim for refugee protection was deemed rejected.

IV. Legislative Framework

[30] The following provisions of the IRPA are of interest in this proceeding:

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:	108. (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
(a) the person has voluntarily reavailed themself of the protection of their country of nationality;	a) il se réclame de nouveau et volontairement de la protection du pays dont il a la nationalité;

(b) the person has voluntarily reacquired their nationality;

b) il recouvre volontairement sa nationalité;

(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;

c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;

(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or

d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;

(e) the reasons for which the person sought refugee protection have ceased to exist.

e) les raisons qui lui ont fait demander l'asile n'existent plus.

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de protection des réfugiés, de tels des faits mentionnés au paragraphe (1).

(3) If the application is allowed, the claim of the person is deemed to be rejected.

(3) Le constat est assimilé au rejet de la demande d'asile.

(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution,

(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

torture, treatment or punishment.

V. Issues

[31] The following issues arise in this proceeding:

1. Did the Board err in refusing to determine whether the Minister engaged in an abuse of process by suspending the Applicant's citizenship application until the cessation proceedings were completed?

2. Did the Board err in making a section 108(1)(c) finding once a section 108(1)(e) was established?

VI. Standard of Review

[32] The Board's findings of fact are reviewable on the reasonableness standard. As long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision falls within a range of acceptable reasonable outcomes, the reviewing court does not have jurisdiction to substitute its own view of the preferred outcome: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 47.

[33] The refusal to exercise jurisdiction because the matter is before another Court should be decided on a correctness standard: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraphs 58-60.

Furthermore, as reiterated by Justice Rothstein in *A.T.A. v Alberta (Information & Privacy Commissioner)*, 2011 SCC 61, there are "categories of questions to which the correctness standard continues to apply, i.e., 'constitutional questions, questions of law that are of central importance to the legal system as a whole and that are outside the adjudicator's expertise, ... questions regarding the jurisdictional lines between two or more competing specialized tribunals [and] true questions of jurisdiction or vires' (Canada (Attorney General) v Mowat, 2011 SCC 53 (S.C.C.), at para. 18, per LeBel and Cromwell JJ., citing Dunsmuir, at paras. 58, 60-61)."

VII. Analysis

A. *Did the Board err in refusing to determine whether the Minister engaged in an abuse of process by suspending the Applicant's citizenship application until the cessation proceedings before the IRPA were completed?*

[34] Mr. Khalifa submits that it is an abuse of process for the Minister to ignore its statutory obligations and halt the processing of the citizenship application in order to bring this cessation proceeding, which will result in the loss of his permanent residence if granted. The focus of this pleading is therefore on the Minister's decision to suspend the processing of the citizenship application pursuant to section 13.1 of the *Citizenship Act*. It reads as follows:

Suspension of processing	**Suspension de la procédure d'examen**
13.1 The Minister may suspend the processing of an application for as long as is necessary to receive	13.1 Le ministre peut suspendre, pendant la période nécessaire, la procédure d'examen d'une demande :
(a) any information or evidence or the results of any investigation or inquiry for the purpose of ascertaining	a) dans l'attente de renseignements ou d'éléments de preuve ou des résultats d'une enquête, afin d'établir si

whether the applicant meets the requirements under this Act relating to the application, whether the applicant should be the subject of an admissibility hearing or a removal order under the Immigration and Refugee Protection Act or whether section 20 or 22 applies with respect to the applicant; and	le demandeur remplit, à l'égard de la demande, les conditions prévues sous le régime de la présente loi, si celui-ci devrait faire l'objet d'une enquête dans le cadre de la Loi sur l'immigration et la protection des réfugiés ou d'une mesure de renvoi au titre de cette loi, ou si les articles 20 ou 22 s'appliquent à l'égard de celui-ci;
(b) in the case of an applicant who is a permanent resident and who is the subject of an admissibility hearing under the Immigration and Refugee Protection Act, the determination as to whether a removal order is to be made against the applicant.	b) dans le cas d'un demandeur qui est un résident permanent qui a fait l'objet d'une enquête dans le cadre de la Loi sur l'immigration et la protection des réfugiés, dans l'attente de la décision sur la question de savoir si une mesure de renvoi devrait être prise contre celui-ci.
[Emphasis added]	[Soulignements ajoutés]

[35] In advancing this submission, Mr. Khalifa refers to provisions binding the Minister in the *Citizenship Act* to grant citizenship. He submits that sections 5 and 14 of the *Citizenship Act* compel the Minister to grant citizenship to individuals who meet the requirements. The Citizenship Judge has a duty to determine whether the requirements for citizenship are met within 60 days of being referred the matter.

[36] Mr. Khalifa cites decisions such as *Stanizai v Canada (Minister of Citizenship and Immigration)*, 2014 FC 74 [*Stanizai*] and *Godinez Ovalle v Canada (Minister of Citizenship and Immigration)*, 2015 FC 935 [*Ovalle*] for the proposition that a "lack of an 'immigration

clearance' is neither a barrier nor a justification to delay making a decision on a pending application for citizenship." Both of these decisions however, were *mandamus* applications.

[37] Mr. Khalifa submits that had the Minister complied with his statutory obligation found in section 5 of the *Citizenship Act*, he would not be subject to a cessation proceeding. The Minister is therefore benefiting from its misconduct in this matter which frustrates justice.

[38] Mr. Khalifa applied for judicial review to set aside the Minister's decision to initiate the cessation application, which was dismissed on October 20, 2014 (*Khalifa v Canada (Minister of Citizenship and Immigration)*, IMM-1407-14). The decision was not before the Court, but it appears to be a matter where the same argument on abuse of process could, and perhaps should, have been made.

[39] Moreover, Mr. Khalifa did not seek to judicially review the alleged illegality of the decision to suspend the citizenship process under section 13.1 of the *Citizenship Act*. This might have been the appropriate venue to challenge the legality of the proceedings' suspension, perhaps with a stay of the cessation application pending its determination, which might have been positively viewed.

[40] Mr. Khalifa has applied for a *mandamus* order requiring the Minister to proceed with the Citizenship hearing, but it was adjourned pending the outcome of the Board's decision in this matter.

[41] I fail to see how at this late stage, the cessation application under section 108 of the IRPA is the appropriate forum to decide whether the Minister exceeded his powers in suspending the citizenship application, or in doing so, acted in an abuse of power.

[42] I agree with the Board, that it cannot provide Mr. Khalifa with the remedy he seeks. I further agree that the Board validly exercised its discretion to conclude that, in the circumstances, the *mandamus* application was the appropriate venue for Mr. Khalifa to deal with the citizenship issue, as in the *Stanizai* and *Ovalle* decisions.

[43] Accordingly, I conclude that the Board did not err in refusing to determine whether the Minister engaged in an abuse of process by suspending Mr. Khalifa's citizenship application until the cessation proceedings were completed.

B. *Did the Board err in making a section 108(1)(c) finding once a section 108(1)(e) was established?*

[44] Mr. Khalifa submits that the Board exceeded its jurisdiction by considering whether his refugee protection had ceased pursuant to section 108(1)(a) to (d) once the Board had already determined that his protection had ceased pursuant to section 108(1)(e) of the IRPA.

[45] Mr. Khalifa further submits that such a finding frustrates the legislative intent of Parliament, which is to create an exemption for loss of permanent residence for those whose protection ceased pursuant to section 108(1)(e) of the IRPA "to avoid casting too broad a net so

as to punish refugees who have lost the need for protection due to changes that they did not bring about themselves."

[46] Mr. Khalifa submits that the finding that his protection ceased pursuant to section 108(1)(c), because he acquired a new nationality and enjoys the protection of the country of that new nationality, leads to an absurd result, coming after establishing that the protection ceased pursuant to section 108(1)(e) because the reasons for which the person sought refugee protection ceased to exist.

[47] I disagree. This interpretation contradicts the clear mandatory language of the section that "a claim for refugee protection shall be rejected … in any of the following circumstances" [paragraphs (a) to (e)]. Mr. Khalifa offers no jurisprudence or citations from texts on interpretive principles to support his argument limiting the discretion of the Minister under section 108.

[48] It is also reasonable that Parliament would terminate the privileged status of an applicant who no longer needs the protection of Canada because he has obtained citizenship in another safe country prior to becoming a citizen of Canada. Mr. Khalifa is now, by choice, a U.S. citizen who enjoys the protection of another country, and thus no longer needs protection from Canada. It is not the intention of refugee protection legislation under the IRPA that Canada become a country of convenience for those who wish to acquire protection in any number of countries. This determination is entirely independent of a determination that the reasons for refugee protection no longer exist in his country of origin.

VIII. Conclusion

[49] The Board's decision was reasonable given the facts and evidence before it. The application is dismissed.

[50] The issue of the refusal to exercise jurisdiction is factually determined, while the legal issue raised of the loss of refugee status upon a determination under section 108(1)(c) has no sound basis in law requiring consideration on appeal. Accordingly, no questions are certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no questions are certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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