Federal Court  Cour fédérale

Date: 20190529

Docket: T-239-18

Citation: 2019 FC 756

Vancouver, British Columbia, May 29, 2019

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

DAVIS WILLIAM LEZAMA CERNA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The present Application is for judicial review of a decision to suspend the Applicant's citizenship application. The Applicant seeks an order of *mandamus* compelling the Minister of Citizenship and Immigration (Minister) to resume processing the Applicant's application for citizenship.

I. OVERVIEW

[2] The essential issue is whether the suspension of the Applicant's application for citizenship is unlawful and therefore, whether there is a public duty requiring the Minister to continue processing the application. These questions engage the issue of the proper interpretation of the transitional provisions of the *Strengthening Canadian Citizenship Act*, S.C. 2014, c. 22 (*SCCA*) and s. 13.1 of the *Citizenship Act*, RSC 1985, c C-29 (*Citizenship Act*), which were recently clarified by the Federal Court of Appeal (FCA) in *GPP c Canada (Citoyenneté et Immigration)*, 2019 CAF 71 (*GPP)*.

[3] For the reasons that follow, I find that I cannot grant an order of *mandamus*.

II. BACKGROUND

[4] The Applicant is a citizen of Peru. In 2006, he entered Canada and claimed refugee status. The Refugee Protection Division (RPD) found that he was a Convention refugee in 2008. He was granted permanent residence status in Canada in 2009.

[5] The Applicant applied for Canadian citizenship in May 2012. In his application, he declared that he had travelled to Peru on multiple occasions in the four years prior to his application for citizenship. After clearing the initial immigration, security and criminal record clearances, the Applicant's citizenship application was forwarded to Citizenship and Immigration Canada (CIC), as it was then known. On September 19, 2013, a CIC Officer interviewed the Applicant and he passed his citizenship test that same day. However, the Officer did not refer the application to a citizenship judge for a decision because of concerns

about the possible cessation of the Applicant's refugee protection because he had reavailed to Peru. On October 11, 2013, without notice to the Applicant, the Applicant's file was placed "on hold". At this time, the Officer did not have the statutory authority to put the application on hold and should have forwarded it to a citizenship judge (see e.g. *Valverde v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1111, para 47).

[6] On August 1, 2014, pursuant to the SCCA, s. 13.1 of the Citizenship Act came into effect. It states:

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 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	*a)* dans l'attente de renseignements ou d'éléments de preuve ou des résultats d'une enquête, afin d'établir si 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.

[7] It is important to note that on November 18, 2014, after s. 13.1 came into effect, the Officer formally suspended the Applicant's application, once again without notice to the Applicant (Respondent's Record, Affidavit of Andrea Ebbels, para 29).

[8] Meanwhile, on October 22, 2013, the Canada Border Services Agency (CBSA) filed an application with the RPD for cessation of refugee protection, pursuant to section 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*). The RPD allowed CBSA's application on October 2, 2014. On September 15, 2015, Justice O'Reilly of this Court allowed the Applicant's application for judicial review of the cessation decision and referred the matter back for a redetermination hearing before the RPD. The redetermination hearing scheduled for November 7, 2017 was adjourned to February 19, 2018.

[9] On February 9, 2018, the Applicant commenced the present Application. On February 19, 2018, on the Applicant's motion, the RPD adjourned the outstanding cessation redetermination *sine die* pending the resolution of the present Application. In essence, the Applicant seeks an order of *mandamus* so that his citizenship application can be processed to conclusion before the resumption of his cessation proceedings.

III. THE DECISION IN *GPP*

[10] To stay abreast with the evolution of the interpretation of s. 13.1, the determination of the present Application was adjourned on November 5, 2018 pending the FCA's decision in *GPP*.

[11] In *GPP* at paragraph 1, the FCA answered "yes" to the following certified question:

> Does section 13.1 of the *Citizenship Act*, R.S.C., 1985, c. C-29, allow the Minister to suspend an application for citizenship made before August 1, 2014, that was not finally disposed of before that day?

[12] In so doing, the FCA upheld the decision of Madam Justice Roussel in *GPP v Canada (Citizenship and Immigration)*, 2018 FC 562 and her interpretation of s. 13.1 and the transitional provisions in s. 31 of the *SCCA*. At paragraphs 38-40 of her decision, Madam Justice Roussel stated the following regarding Parliament's intention in introducing s. 13.1:

> [38] The interpretation of the immediate application proposed by the Minister is in line with the legislator's intention, as evidenced by an excerpt from parliamentary debates regarding the bill on June 3, 2014. The Parliamentary Secretary to the Minister indicated at the time that "[t]he new authorities under proposed sections 13.1 and 13.2 [would] apply to applications that are under processing at the time of the coming into force of these provisions" (Standing Committee on Citizenship and Immigration, CIMM Number 031, 2nd Session, 41st Parliament, Evidence, Tuesday, June 3, 2014, at page 9).
>
> [39] Furthermore, this interpretation is also consistent with the summary of the *Strengthening Canadian Citizenship Act*, which states that the amendments to provisions governing the processing of applications and the review of decisions aim to expand the number of cases where the processing of an application may be suspended and modify the period for the suspension (see paragraph (b) of the third section of the summary).
>
> [40] Lastly, the Court is of the opinion that had the legislator taken the applicant's position, it would have been simpler to provide for applications for citizenship to be governed by the version of the *Citizenship Act* that existed at the time of their filing. Rather, the legislator provided for a provision allowing not only applicants to retain a vested right for their application to be governed by residency criteria applicable at the time that their application is made, but also authorities to have the tools and time they need to investigate the eligibility of an applicant to make an application for citizenship.

[13] Thus, Parliament's intention is an important contextual factor in determining the present Application.

IV. THE ARGUMENTS

A. *The Applicant*

[14] The Applicant advances the following arguments. The suspension of his citizenship application pending the determination of cessation proceedings was not lawful in September 2013. Under s. 5(1) of the *Citizenship Act* and s. 11(1) and (5) of the *Citizenship Regulations*, SOR/93-24, as they read at the time, his Application should have been forwarded to a citizenship judge for consideration in September 2013. Suspensions for the purpose of investigating possible cessation processing did not become lawful until s. 13.1 of the *Citizenship Act* came into force. The Applicant relies on two Federal Court cases with similar facts where the Court ordered *mandamus*. In both cases, the Minister had suspended processing the applicant's citizenship application prior to the new provision coming into force: *Valverde v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1111 and *Godinez Ovalle v Canada (Minister of Citizenship and Immigration)*, 2015 FC 935.

[15] Accordingly, the following approach was adopted in the narrative advanced in the Applicant's Notice of Application for Leave and for Judicial Review, filed on February 9, 2018:

> Given that Canadian citizenship under both current and prior legislation "shall" be granted once earned, any period of time where that was unlawfully suspended raises a legitimate issue, notwithstanding the change of law on August 1, 2014, in a

> mandamus application. It is asserted that an unlawful suspension where citizenship was fully earned and ought to have been granted cannot become a lawful suspension due to the passage of time or a change in law, especially where the Applicant is not notified that it is under suspension.

[16] After the publication of the FCA's decision in *GPP*, the Applicant's argument progressed to focus on the FCA's interpretation of s. 13.1 and the transitional provisions found at s. 31 of the SCCA. The Applicant requests that this Court finds *GPP* was wrongly decided. In the alternative, the Applicant argues that while the FCA has determined that the Minister has the authority to suspend applications made and not finally disposed of before August 1, 2014, it has not determined in which cases that authority must or ought to be exercised (Applicant's Amended Further Memorandum, paras 22-23). The Applicant further argues that when the FCA said "allow", it did not mean in every circumstance and this case can be differentiated from the facts in *GPP*.

B. *The Respondent*

[17] The Respondent argues that the continued suspension of the Applicant's application for Canadian citizenship pursuant to s. 13.1 of the *Citizenship Act* is lawful:

> The Respondent Minister's suspension of the Applicant's application for Canadian citizenship pursuant to section 13.1 of the *Citizenship Act* is lawful pending the resolution of the proceedings before the Refugee Protection Division for the possible cessation of the Applicant's refugee protection pursuant to section 108(2) of the *Immigration and Refugee Protection Act*.
>
> The Federal Court of Appeal has ruled in *Canada (Citizenship and Immigration) v. Nilam* [2017 FCA 44] that the Minister may suspend an application for Canadian citizenship under section 13.1 pending the resolution of cessation proceedings. The Federal Court of Appeal has now ruled in *GPP v. Canada (Citoyenneté et*

> *Immigration)* that the Minister's authority to suspend an application for Canadian citizenship pursuant to section 13.1 applies to all applications "not finally disposed of" prior to August 1, 2014.
>
> These rulings are binding on this Court and are determinative of this proceeding.
>
> The Applicant admits that, as of August 1, 2014, and to the current day, his application for Canadian citizenship is "not finally disposed of."
>
> This application for *mandamus* must therefore fail, as the Minister has no public duty to resume processing the Applicant's application for Canadian citizenship that is lawfully suspended under section 13.1 of the *Citizenship Act*.
>
> [Emphasis added]
>
> (Respondent's Amended Further Memorandum of Argument, paras 1-5)

[18] In *Nilam*, relied on by the Respondent, the FCA made the following statement at paragraphs 26 and 27:

> Finally, section 13.1 of the *Citizenship Act* allows the Minister to suspend the processing of an application for citizenship "for as long as necessary". Specifically, the Minister has the power to place a hold on citizenship applications where there are admissibility concerns under *IRPA*. Sections 40.1 and 44 of *IRPA* label cessation as an admissibility issue, and one that may result in removal from Canada. In the present case, the Minister's actions were thus permitted in at least two ways by the language of subsection 13.1(a) of the *Citizenship Act*: as awaiting "the results of any investigation or inquiry for the purpose of ascertaining … whether the applicant should be the subject of an admissibility hearing or a removal order under the *Immigration and Refugee Protection Act* …" [emphasis added]. As such, it follows that the Minister's interpretation to the effect that section 13.1 of the *Citizenship Act* allows him to suspend the processing of an application of citizenship for permanent residents whose refugee status has been challenged for cessation is reasonable and reflects Parliament's intention.

> Given this conclusion, it further follows that the Minister does not have a public legal duty to continue processing the respondent's application notwithstanding that the RPD cessation proceedings have yet to be determined. Because having a "public legal duty" is the first part of the test for *mandamus* as set out by this Court in *Apotex Inc. v. Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 F.C. 742, [1993] F.C.J. No. 1098 (C.A.) (QL), the test for *mandamus* is not met. The Judge's order for *mandamus* cannot stand.
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> [Emphasis added]

V. CONCLUSION

[19] I agree with the entirety of the Respondent's argument. I am bound by the FCA's decisions in *Nilam* and *GPP* and, therefore, I find that the Minister has authority to suspend the processing of the Applicant's citizenship application pursuant to s. 13.1. As a result, the present Application for an order for *mandamus* is dismissed.

VI. PROPOSED QUESTION FOR CERTIFICATION

[20] The Applicant has proposed the following question for certification:

> Do the transitional provisions of the *SCCA*, once s. 13.1 of the *Citizenship Act* came into force on August 1, 2014, serve to either retroactively or retrospectively authorize a suspension of a citizenship application made, but not finally disposed of, before August 1, 2014, where the Application was required to be disposed of prior to August 1, 2014, under the law in effect at that time?

[21] In the hearing of the present Application, the Applicant argued that the proposed question is different than that determined in *GPP* and while Parliament may have intended for s. 13.1 to have a retrospective effect, it is in fact having a retroactive effect on individuals such as the

Applicant who should have had citizenship before August 1, 2014. The Applicant argues that the FCA in *GPP* would have struggled to apply the certified question it answered to the facts of this case.

[22] The Respondent argues that this question is simply a variant of the one decided by the FCA in *GPP*. To certify this question would be asking the FCA to essentially reconsider the decision that it made in *GPP*.

[23] I agree with the Respondent's argument, and, therefore, decline to certify the question proposed.

JUDGMENT in T-239-18

THIS COURT'S JUDGMENT is that the present Application for judicial review is dismissed.

There is no question to certify.

"Douglas R. Campbell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Douglas Cannon	FOR THE APPLICANT
Mark E.W. East	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Elgin, Cannon & Associates Vancouver, British Columbia	FOR THE APPLICANT
The Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT