Federal Court  Cour fédérale

**Date: 20200203**

**Docket: T-951-19**

**Citation: 2020 FC 188**

**Toronto, Ontario, February 3, 2020**

**PRESENT: Mr. Justice Diner**

**BETWEEN:**

**ISRAEL WILSON ORTIZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Background

[1] Mr. Ortiz comes to this Court challenging the Registrar of Canadian Citizenship's decision to cancel his citizenship certificate. I find that decision to be reasonable for the following reasons.

[2] Mr. Ortiz is a 34-year-old citizen of Ecuador. On February 9, 2002, he became a permanent resident of Canada through a family sponsorship by his sister, as a dependent of his mother.

[3] Canada Border Services Agency [CBSA] later discovered that his sister had obtained permanent resident status by a fraudulent spousal sponsorship. In 2008, CBSA sent Mr. Ortiz a section 44 report that alleged he was inadmissible because his sponsor became a permanent resident by fraud. On January 27, 2014, following an admissibility hearing, the Immigration Division of the Immigration and Refugee Board of Canada [ID] issued a removal order against him. That day, Mr. Ortiz appealed the ID's decision to the Immigration Appeal Division [IAD].

[4] Meanwhile, in July 2010, over 3.5 years before, Mr. Ortiz had submitted his application for Canadian citizenship. On January 14, 2014, a citizenship judge approved Mr. Ortiz's application for citizenship. A delegate of the Minister granted the application on November 27, 2014, and Mr. Ortiz signed the oath of citizenship on December 20, 2014. The oath included a statement that he has "not been subject to any criminal or immigration proceedings since [he] filed [his] application for Canadian citizenship."

[5] In his affidavit accompanying this judicial review, Mr. Ortiz deposed that he was notified, via correspondence dated December 12, 2016, that Immigration, Refugees and Citizenship Canada [IRCC] intended to revoke his citizenship based on the allegation that he obtained it by false representation, fraud, or by knowingly concealing material circumstances. He was provided with a 60-day deadline to provide submissions, which he provided.

[6] However, on July 16, 2017, he was advised that the revocation proceedings were to be considered null and void in light of *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473 [*Hassouna*], which held that the revocation procedure violated the *Canadian Bill of Rights*, SC 1960, c 44, and declared its provisions inoperative.

[7] On September 26, 2018, the Registrar wrote to Mr. Ortiz advising him that he may not be entitled to his citizenship certificate because he was subject to a removal order at the time it was granted. The Registrar gave Mr. Ortiz the opportunity to reply, which he did through counsel. On April 25, 2019, the Registrar cancelled Mr. Ortiz's citizenship certificate. That decision to cancel [Decision] is now under review.

## II. Decision under Review

[8] The Registrar determined that Mr. Ortiz was not entitled to hold a Canadian citizenship certificate. Therefore, pursuant to subsection 26(3) of the *Citizenship Regulations*, SOR/93-246 [Regulations], she cancelled his citizenship certificate.

[9] Her reasons reviewed the sequence of events explained above, noting that during the application for and processing of his citizenship, Mr. Ortiz was still considered to be under a removal order. This included when he challenged the removal order at the ID and then the IAD. The Registrar pointed to paragraph 2(2)(c) of the *Citizenship Act*, RSC 1985, c C-29 [Act], which reads "a person against whom a removal order has been made remains under that order … until the order has been executed." The key passage of the Registrar's Decision reads as follows:

> 6. The salient point in your situation is whether or not you lawfully became a Canadian citizen, as you were under a removal order at the time you were granted citizenship by a citizenship officer contrary to paragraph 5(1)(f) of the *Citizenship Act*. That you failed to disclose this pertinent information when you signed the oath, confirming that you have not been subject to any criminal or immigration proceedings since you filed the application for citizenship, as was your responsibility under section 15 of the *Citizenship Act*, is secondary.
>
> 7. Paragraph 5(1)(f) of the *Citizenship Act* states that:
>
> > *The Minister shall grant citizenship to any person who is not under a removal order…*
>
> 8. Since you were under a removal order at the time you were granted citizenship, a fact you are not disputing, then a fundamental precondition necessary for you to lawfully acquire Canadian citizenship was absent and therefore you did not meet the requirements for citizenship.

[10] The Registrar concluded that Mr. Ortiz never acquired citizenship, and was not entitled to his Canadian citizenship certificate. She cancelled the certificate and requested it be returned to her office in Ottawa.

## III. Analysis

[11] Mr. Ortiz raises two issues with the Decision.

[12] First, he claims the Registrar used the incorrect procedure and had no jurisdiction to cancel his certificate. Mr. Ortiz, at the time of his written submissions in early 2019, contended that this issue is reviewable under the correctness standard, citing *Assal v Canada (Citizenship and Immigration)*, 2016 FC 505 at para 57 [*Assal*]. However, as the hearing before this Court took place in January 2020 – after the revised standard of review framework was enunciated in

*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] – Mr. Ortiz conceded that the governing standard should be "reasonableness." I agree: jurisdictional questions are not a distinct category that attract correctness review (*Vavilov* at para 65).

[13] Second, Mr. Ortiz argues that the Registrar erred in cancelling his citizenship certificate. Both parties agree that this issue is also reviewable for reasonableness (see *Assal* at para 57), which *Vavilov* has not affected due to the presumption that the merits of an administrative decision should be reviewed on a reasonableness standard (*Vavilov* at para 23). Of course, *Vavilov* itself also involved the review of the Registrar's cancellation of an applicant's citizenship certificate, and the Supreme Court applied the reasonableness standard.

[14] In reviewing a decision for reasonableness, this Court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99). I will consider both issues, but will preface my analysis by referencing a decision which is similar in its factual matrix to this case. I will review those facts and similarities below but, as an overview of the citizenship law context, I could not provide a better summary than the one supplied by Justice Rennie (as he then was) in *Afzal v Canada (Citizenship and Immigration)*, 2014 FC 1028 at para 15 [*Afzal*]:

> The foundation of Canadian citizenship is statutory. There is no independent or free-standing right to citizenship except as accorded by the provisions in Part I of the Act – *The Right to Citizenship*. Largely writ, citizenship can be acquired through birth (section 3(1)(a) and (b)) or, as in this case, consequent to permanent residency (section 3(1)(c)). Part II of the Act – *Loss of Citizenship* – authorizes revocation of citizenship pursuant to subsection 10(1) where the Governor-in-Council is satisfied, on the

> basis of a report from the Minister, that the person has obtained citizenship by fraud or misrepresentation. Administrative error is not one of the enumerated grounds in Part II.

[15] In *Afzal*, despite having failed certain knowledge and language components of the citizenship process – which were conditions precedent to the granting of citizenship in the absence of a recommendation to grant citizenship on compassionate grounds – the applicant took the citizenship oath and was issued a certificate of citizenship after a "series of administrative errors" (*Afzal* at para 5). Likewise, a series of errors occurred in this case, given that the IRCC knew of the outstanding removal order.

A. *The Registrar reasonably chose – and did not err in selecting – the cancellation procedure*

[16] Mr. Ortiz argues that the Registrar used the wrong procedure by cancelling his citizenship certificate under subsection 26(3) of the Regulations. He submits that doing so was unreasonable because subsection 26(3) only permits the Registrar to cancel a certificate if the holder is not entitled to it, but Mr. Ortiz is entitled to his certificate. Put otherwise, while he may not have been eligible for citizenship in the first place, subsection 26(3) is formulated in the present tense – that is, it empowers the Registrar to cancel the certificate of someone who "is not" entitled to it rather than who "was not" entitled to it – and Mr. Ortiz is now entitled to his certificate.

[17] Mr. Ortiz asserts that he properly became a citizen under paragraphs 3(1)(c) and 12(2)(a) of the Act, and then took the citizenship oath. Given this grant of citizenship, he argues that – pursuant to section 7 of the Act – his citizenship can only cease by renunciation or revocation under section 10.

[18] Mr. Ortiz submits that section 10 of the Act, which permits the Minister to revoke citizenship if obtained by false representation, fraud, or concealing material circumstances, was the only proper way to terminate his citizenship in the circumstances. By not complying with the section 10 revocation process, the Registrar deprived him of revocation safeguards. Mr. Ortiz cites these extra safeguards to include the procedural protections provided for in Part II of the Act, including relief available from the Minister, and this Court if the matter were to go to trial. Apart from arguing that he did not benefit from these procedural safeguards, Mr. Ortiz also argues that section 10 is rendered redundant if subsection 26(3) of the Regulations may be used in circumstances such as these, since there would never be a need to engage the more robust revocation process.

[19] Despite Mr. Ortiz's concerted arguments that this matter should have proceeded by revocation, I disagree that the Registrar's choice of procedure was unreasonable. Paragraph 3(1)(c) of the Act states that a person is a citizen if "the person has been granted or acquired citizenship pursuant to section 5." Paragraph 5(1)(f), as reproduced above (within the extract from the Decision), prohibits the Minister from granting citizenship to any person under a removal order (see Annex A to these Reasons for the full provision).

[20] Mr. Ortiz was under a removal order when the Minister granted him citizenship: the granting was therefore contrary – not pursuant – to section 5. Thus, it was reasonable to infer that Mr. Ortiz did not acquire citizenship. Paragraph 12(2)(a) of the Act entitles only those who have actually acquired citizenship to a citizenship certificate. Mr. Ortiz was not so entitled since he never acquired citizenship, despite having been mistakenly issued a certificate, and allowed to

take the oath, of citizenship. The certificate is simply a document that proves valid citizenship. It does not confer but rather confirms rights, which is why its surrender (subsections 26(1) and (2) of the Regulations) or return can be required. According to the Registrar's interpretation of the statutory scheme (which I have found reasonable), revocation is only engaged once the applicant acquires citizenship.

[21] Since the Registrar took the position that IRCC issued the citizenship certificate in error, cancellation was an entirely reasonable course of action. IRCC could have proceeded with revocation if it had alleged that Mr. Ortiz had acquired his citizenship by false representations, fraud or knowingly concealing material circumstances. Indeed, Mr. Ortiz is correct to point out that he would have secured more procedural safeguards had that procedure been chosen by the Registrar, given all the steps involved in a trial to revoke citizenship after the recent, post-*Hassouna* amendments came into force through the enactment of Bill C-6 (*An Act to amend the Citizenship Act*). Indeed, as explained in the background above, the Minister had initiated that process in late 2016. However, it doubled back on that avenue, ceasing its revocation proceedings in 2017 after the release of this Court's decision in *Hassouna*.

[22] Yet, another option that clearly lay open to the Registrar under the statutory framework was to proceed through the other avenue of cancellation. For this Court to supplant its preferred outcome for that of the administrative decision maker would inverse the instructions for reasonableness review contained in *Vavilov*. Rather, I am instructed to start with the reasons, and assess whether they justify the outcome. *Vavilov*, in other words, instructs the reviewing Court to take a reasons-first approach. Indeed, in addition to the latter portion of *Vavilov*'s paragraph 99

cited above harkening back to *Dunsmuir v New Brunswick*, 2008 SCC 9, that paragraph begins with the majority stating that a "reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable." That said, even if I had started with the outcome first and then looked back at the reasons, as was the approach under *Dunsmuir*, the Registrar's course of action would still have been reasonable.

B. *The Registrar did not err in cancelling Mr. Ortiz's citizenship certificate*

[23] Apart from the Registrar finding that a mistake had been made by IRCC officials, she found that Mr. Ortiz was never entitled to citizenship due to the valid and subsisting removal order. Thus, the Registrar found that he never had Canadian citizenship, and that she had to cancel the certificate as prescribed by subsection 26(3) of the Regulations. Like the Registrar's choice of procedure, this outcome was reasonable. Indeed, one flows naturally from the other.

[24] This interpretation has been endorsed by the jurisprudence. In particular, this Court has accepted that it is not the certificate itself that confers citizenship, but rather compliance with the Act. Thus, if a certificate was issued due to an administrative error where the requirements of the Act have not been satisfied, the Registrar has the authority to proceed via the cancellation provisions under section 26 of the Regulations and cancel the certificate if the individual is not entitled to it. As Applicant's counsel addressed each of the leading cases on this point both in written submissions and then at the hearing of the judicial review, I will briefly explain why each key case supports the Respondent's approach and does not suggest that cancellation was unreasonable in the circumstances.

[25] First, in *Giesbrecht Veleta v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 138 [*Veleta*], the Federal Court of Appeal found irregularities in the steps taken that were purported to be in accordance with section 26 of the Regulations, as well as procedural fairness breaches in the notification of the affected persons. The Court accepted the arguments on the unfairness of the notice of the cancellation of citizenship, but nonetheless recognized the authority of the Registrar to cancel the certificate if properly following the Regulations, when it wrote at paragraph 19 that "[i]f the person is deemed not entitled [to citizenship] then the Registrar 'shall cancel the certificate' [subsection 26(3)]."

[26] The following year, *Hitti v Canada (Citizenship and Immigration)*, 2007 FC 294 [*Hitti*], involved citizenship certificates that were issued to two Canadian-born children, while neither parent was a permanent resident or citizen of Canada and the father was in Canada on diplomatic status. Justice Harrington noted that the applicants' citizenship certificates were issued as a result of an administrative error, but stated that "it is not the citizenship certificate in itself that gives an individual the right to citizenship, but rather the legislation that sets it out" (at para 16). He ruled that it would be incorrect to claim that the children lost their right to citizenship, since they were never entitled to enjoy it.

[27] Then, in *Afzal*, as mentioned above, the applicant had taken the oath of citizenship and received a citizenship certificate despite failing mandatory pre-conditions under section 5 of the Act – namely the language and knowledge components on the written test and subsequently before the citizenship judge. The Registrar concluded that the certificate was issued in error, and

cancelled the certificate pursuant to subsection 26(3) of the Regulations. Justice Rennie held at para 16:

> In the case of a permanent resident seeking Canadian citizenship, the specific statutory pre-conditions of the *Act* must be met. Those conditions require demonstration of a certain level of linguistic competence in either of Canada's official languages and an adequate knowledge of Canada's social, civic and political norms. These competencies must be established before citizenship can be granted.

[28] Justice Rennie found that a "certificate, even if issued, is of no effect where the conditions precedent to citizenship have not been met. The applicant's citizenship was not revoked and sections 7, 10 and 18 not engaged, as the applicant never had citizenship" (at para 25). In dismissing the judicial review, Justice Rennie explained that a "[t]his is not a case where citizenship, once lawfully granted, is lost or revoked. Here, the applicant never had citizenship" (at para 29); "[s]ection 27 of the Act contemplates cancellation in situations such as those in this case where a certificate has been issued through administrative error as well as in exigent or emergent circumstances" (at para 30).

[29] Finally, *Assal* involved children obtaining citizenship certificates after the applicants, a group of Canadian citizens, had obtained fraudulent birth certificates for these children. The applicants falsely identified the children as their biological children and thus Canadian citizens as of right pursuant to paragraph 3(1)(b) of the Act. Five years later, Canadian authorities discovered the fraud. After a series of proceedings (including criminal charges) and the passage of three years, the Registrar cancelled the certificates for all children and asked that they be returned under subsection 26(3) of the Regulations.

[30] On judicial review before this Court, the *Assal* applicants argued that subsection 26(3) is intended for administrative errors rather than misrepresentations, and that the Registrar should have proceeded under the revocation proceedings, where they would have enjoyed greater procedural protections. Justice St. Louis held that the cancellation of a certificate does not remove any right or status from the holder, because s/he has none. Rather, it is merely the action taken to confirm that the certificate does not belong to the holder and thus should be cancelled. Loss or revocation of citizenship, on the other hand, can only apply to people who have citizenship; a person cannot lose what s/he does not have.

[31] The *Assal* decision relied on Justice Rennie's conclusions in *Afzal* regarding the cancellation of citizenship certificates, when Justice St. Louis wrote that the "Registrar had the jurisdiction to cancel the certificates of citizenship, and her decision is consistent with the rule of law because the children did not have citizenship and were not entitled to it. The conditions precedent to citizenship listed in paragraph 3(1)(b) of the Act were never met and the certificate of citizenship, even if issued, had no effect" (*Assal* at para 75).

[32] Mr. Ortiz attempts to parse out and distinguish this jurisprudence. He starts with the proposition that unlike his path to citizenship, the applicants in *Hitti* and *Assal* never applied for nor received a grant of citizenship. Rather, they simply applied for and were sent their citizenship certificates. Thus, he reasons, they were not deemed citizens to begin with.

[33] When counsel for Mr. Ortiz was then asked to reconcile this theory with the facts and decision in *Afzal*, he responded that *Afzal* was an outlier, and suggested it was wrongly decided.

Quite the contrary, I find Justice Rennie's reasons present a very thoughtful, in-depth exercise in statutory interpretation, and I have relied on it previously (*Berisha v Canada (Attorney General)*, 2016 FC 755 at para 24 [*Berisha*]). As noted above, Justice St. Louis also relied on it in *Assal*. And it is also consistent with *Veleta* and *Hitti* in supporting the proposition that it is the legislation, rather than the citizenship certificate, which bestows the right to citizenship on an individual. The key cases are therefore aligned that where a certificate was issued in error, the Registrar must cancel it. That is what happened here.

[34] Applying the ratio of these cases to the facts of this one, it was reasonable for the Registrar to cancel Mr. Ortiz's certificate after finding he was never entitled to citizenship. And contrary to counsel's arguments, the Decision aligned him on all fours with the applicant in *Afzal*, as well as with those in *Hitti* and *Assal* who never had a right to citizenship under the legislation in the first place. Here, the Registrar based the Decision on an administrative error within her department, which meant that Mr. Ortiz never actually acquired citizenship because he never satisfied the preconditions for a grant of citizenship. Since Mr. Ortiz, like Ms. Afzal, did not meet the conditions precedent, the certificate – even though issued and received – had a nil value. The applicable jurisprudence supports this principle.

## IV. Conclusion

[35] Mr. Ortiz, who was ineligible for Canadian citizenship because he was under a removal order, was nonetheless granted a certificate of citizenship due to an administrative error. Despite these regrettable circumstances, I find the decision to proceed under the cancellation procedure rather than the revocation procedure to be reasonable. I also find the decision to ultimately cancel

the certificate to be reasonable, as based on the finding that he never automatically obtained citizenship with the issuance of his certificate. The wording of the relevant statutory provisions and this Court's jurisprudence all support the outcome, as do the reasons. As a result, the Decision is reasonable and the judicial review is dismissed.

**JUDGMENT in T-951-19**

**THIS COURT'S JUDGMENT is that**:

1. This application for judicial review is dismissed.

2. No questions for certification were argued, and I agree none arise.

3. There is no award as to costs.

"Alan S. Diner"

Judge

ANNEX A

| Citizenship Act, RSC 1985, c C-29 | Loi sur la citoyenneté, LRC (1985), ch C-29 |
|---|---|
| Version of document from 2014-08-01 to 2015-02-25 | Version du document du 2014-08-01 au 2015-02-25 |
| Persons who are citizens | Citoyens |
| 3 (1) Subject to this Act, a person is a citizen if | 3 (1) Sous réserve des autres dispositions de la présente loi, a qualité de citoyen toute personne : |
| (a) the person was born in Canada after February 14, 1977; | a) née au Canada après le 14 février 1977; |
| (b) the person was born outside Canada after February 14, 1977 and at the time of his birth one of his parents, other than a parent who adopted him, was a citizen; | b) née à l'étranger après le 14 février 1977 d'un père ou d'une mère ayant qualité de citoyen au moment de la naissance; |
| (c) the person has been granted or acquired citizenship pursuant to section 5 or 11 and, in the case of a person who is fourteen years of age or over on the day that he is granted citizenship, he has taken the oath of citizenship; | c) ayant obtenu la citoyenneté — par attribution ou acquisition — sous le régime des articles 5 ou 11 et ayant, si elle était âgée d'au moins quatorze ans, prêté le serment de citoyenneté; |
| … | … |
| Grant of citizenship | Attribution de la citoyenneté |
| 5 (1) The Minister shall grant citizenship to any person who | 5 (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois : |
| (a) makes application for citizenship; | a) en fait la demande; |
| (b) is eighteen years of age or | b) est âgée d'au moins dix-huit |

over;

(c) s a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:

…

(d) has an adequate knowledge of one of the official languages of Canada;

(e) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and

(f) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.

…

Order in cases of fraud

10 (1) Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,

ans;

c) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :

…

d) a une connaissance suffisante de l'une des langues officielles du Canada;

e) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

f). a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

…

Décret en cas de fraude

10 (1) Sous réserve du seul article 18, le gouverneur en conseil peut, lorsqu'il est convaincu, sur rapport du ministre, que l'acquisition, la conservation ou la répudiation de la citoyenneté, ou la réintégration dans celle-ci, est intervenue sous le régime de la présente loi par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de

faits essentiels, prendre un décret aux termes duquel l'intéressé, à compter de la date qui y est fixée :

(a) the person ceases to be a citizen, or

a) soit perd sa citoyenneté;

(b) the renunciation of citizenship by the person shall be deemed to have had no effect,

b) soit est réputé ne pas avoir répudié sa citoyenneté.

as of such date as may be fixed by order of the Governor in Council with respect thereto.

Presumption

Présomption

(2) A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.

(2) Est réputée avoir acquis la citoyenneté par fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels la personne qui l'a acquise à raison d'une admission légale au Canada à titre de résident permanent obtenue par l'un de ces trois moyens.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | T-951-19 |
| **STYLE OF CAUSE:** | ISRAEL WILSON ORTIZ V THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JANUARY 14, 2020 |
| **JUDGMENT AND REASONS:** | DINER J. |
| **DATED:** | FEBRUARY 3, 2020 |

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| | |
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| Leanne Briscoe | FOR THE RESPONDENT |

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