Federal Court Cour fédérale

Date: 20211020

Docket: T-197-20

Citation: 2021 FC 1102

Ottawa, Ontario, October 20, 2021

PRESENT: Mr. Justice Norris

BETWEEN:

CECILLE JIAJIA XU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] In 2005, the applicant, who was then a twenty-four-year-old Chinese national studying in Canada, married a Canadian citizen. With her husband's sponsorship, the applicant became a permanent resident of Canada in 2006. The two divorced a short time later. The applicant eventually became a Canadian citizen in 2010.

[2] In fact, the marriage was a sham. The applicant had entered into it solely for the purpose of securing permanent residence in Canada. After this came to light in 2013, Citizenship and Immigration Canada (now Immigration, Refugees and Citizenship Canada ("IRCC")) undertook proceedings to revoke the applicant's citizenship on the basis that she had obtained permanent residence in Canada by false representation, fraud, or by knowingly concealing material circumstances: see *Citizenship Act*, RSC 1985, c C-29, subsection 10(1) and section 10.2. (The pertinent statutory provisions are reproduced in the Annex to this decision.)

[3] When eventually confronted with this allegation, the applicant admitted the marriage was a sham, offered extenuating circumstances to explain her actions, and expressed deep remorse for what she had done. The applicant submitted that her citizenship should not be revoked because her personal circumstances warranted special relief in light of all the circumstances of the case and because she would be rendered stateless if she lost her Canadian citizenship: see *Citizenship Act*, paragraph 10(3.1)(a) and subsection 10(3.2).

[4] In a decision dated January 8, 2020, a Senior Analyst with IRCC, acting as a delegate of the Minister, revoked the applicant's citizenship because she had misrepresented key aspects of her application for permanent residence by not disclosing that she had entered into a marriage of convenience for the sole purpose of obtaining immigration status in Canada. The Senior Analyst concluded that the applicant's personal circumstances did not warrant special relief from revocation given the serious misrepresentation engaged in by the applicant. The Senior Analyst also considered that, because the applicant had lost her Chinese citizenship when she became a

Canadian citizen, revoking her Canadian citizenship would render her stateless but found that this factor was insufficient to warrant relief from revocation in all the circumstances.

[5] The applicant now applies for judicial review of this decision under section 22.1 of the *Citizenship Act*. She asks that the decision be set aside and the matter returned for reconsideration because the decision is unreasonable. More particularly, she submits that the decision maker adopted an unreasonably narrow interpretation of what personal circumstances should be considered when determining whether special relief is warranted under paragraph 10(3.1)(a) of the *Citizenship Act*. The applicant also submits, in the alternative, that even if the decision maker's interpretation of the scope of paragraph 10(3.1)(a) is reasonable, this provision was applied unreasonably to the circumstances of her case.

[6] For the reasons that follow, this application must be allowed. I do not agree with the applicant that the Senior Analyst's interpretation of what personal circumstances are relevant to a decision to revoke citizenship is unreasonable. However, I am satisfied that the Senior Analyst did not apply paragraph 10(3.1)(a) of the *Citizenship Act* reasonably when considering the issues of statelessness and establishment in the context of the mitigating circumstances relied on by the applicant. The matter must therefore be reconsidered by another decision maker.

II. BACKGROUND

[7] The applicant was born in Zhejiang, China, in June 1981. She entered Canada on April 14, 2000, and was issued a study permit. She maintained her temporary resident status in

Canada by renewing her study authorizations until October 11, 2005, when her last study permit expired.

[8] On December 9, 2005, the applicant married someone who I will refer to in these reasons as GLJ, a Canadian citizen. GLJ then sponsored the applicant for permanent residence. The applicant became a permanent resident of Canada on November 10, 2006. She and GLJ divorced a short time later.

[9] The applicant applied for Canadian citizenship in February 2009. The application was approved and she became a Canadian citizen on January 8, 2010. Since Chinese law does not recognize dual nationality, the applicant lost her Chinese citizenship when she became a Canadian citizen.

[10] Meanwhile, in December 2008, the Canada Border Services Agency ("CBSA") had opened an investigation named "Project Honeymoon" into an individual who was suspected of arranging marriages between Chinese foreign nationals and Canadian citizens in order to obtain permanent resident status in Canada. As part of this investigation, the CBSA interviewed GLJ in April 2013. In a Statutory Declaration provided to the CBSA, GLJ confirmed that he had been paid a sum of money to marry the applicant and to sponsor her under the Family Class category so that she could obtain permanent resident status. As a result of this information, the applicant's case was referred to Citizenship and Immigration Canada for further review and possible revocation action.

[11] On February 22, 2017, IRCC sent the applicant a Notice of Intent to Revoke Citizenship. However, this Notice was cancelled on July 10, 2017, because of the decision of the Federal Court in *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473 (released on May 10, 2017), declaring certain provisions of the *Citizenship Act* relating to citizenship revocation to be inconsistent with the *Canadian Bill of Rights*, SC 1960, c 44. As well, on February 25, 2016, the Government of Canada had introduced amendments to the *Citizenship Act* in Bill C-6, "*An Act to amend the Citizenship Act and make consequential amendments to another Act*." This Bill eventually received Royal Assent on June 19, 2017. The relevant provisions for present purposes came into force in January 2018. (The legislative history of Bill C-6 is considered in more detail below.)

[12] The process for revoking the applicant's Canadian citizenship was recommenced in February 2018. Eventually, on July 11, 2018, IRCC sent the applicant a new Notice of Intent to Revoke Citizenship. The notice stated that the information on file indicated that the applicant may have entered into a marriage of convenience in order to obtain permanent resident status in Canada. The notice referred to the applicant's application for permanent residence submitted under the sponsorship of her husband, GLJ. The notice then went on to state: "However, evidence on file suggests that the primary purpose of this relationship was to acquire permanent resident status for yourself in exchange for financial compensation for [GLJ]. Therefore, it appears that you obtained permanent resident status, and subsequently Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances." The notice explained that this could constitute grounds to revoke the applicant's Canadian citizenship. The notice also offered the applicant an opportunity to provide written submissions and documentary

evidence addressing this allegation and the potential revocation of her citizenship. Finally, the notice stated that if, after reviewing the applicant's submissions, IRCC decides to pursue the revocation of the applicant's citizenship, the matter would be referred to the Federal Court for a decision unless the applicant elected to have the Minister make a decision on the matter instead.

[13] On August 31, 2018, the applicant elected to have the issue of revocation determined by the Minister rather than a Federal Court judge. She provided comprehensive written submissions and supporting evidence that were received by IRCC on September 18, 2018.

[14] The supporting evidence included an affidavit sworn by the applicant on August 31, 2018. In this affidavit, the applicant admits unequivocally to obtaining permanent resident status on the basis of a misrepresentation – namely, her failure to disclose that her marriage to GLJ was a marriage of convenience entered into solely to obtain permanent resident status in Canada. The applicant expresses deep remorse and regret for her actions, which she acknowledged were wrong. She also explains the circumstances that led her to do what she did as follows.

[15] In 2000, when she was 18 years of age, the applicant's parents had sent her to Canada to study after she failed her university entrance exam in China. The applicant enrolled in university but, knowing very little English, she struggled academically. She states in her affidavit: "But worse than my language problems, I suddenly went from my little sheltered life as a high school student living with my parents in China to fending for myself as an adult. My first few years in Canada were filled with hardship. I had never felt more alone in my life."

[16] In the spring of 2002, the applicant met another Chinese student who I will refer to in these reasons as TDL. The two quickly became friends. The applicant explains that this was partly because they were both from China but mainly because, from her perspective, TDL was "a truly special person who provided me with a shelter both mentally and physically." Their friendship developed into a romantic relationship after they became roommates. This was the first same-sex relationship either of them had been in. The applicant states: "I loved Terry more than I have ever loved anyone and [we] were just so compatible."

[17] The applicant explains in her affidavit that being in a same-sex relationship was not easy for her or for TDL. They were both from families that "not only denied the existence of same-sex relationship[s], . . . they despised homosexuality." In 2004, the applicant and TDL decided to tell their families about their relationship. Neither family reacted well. TDL's family threatened to kill her. The applicant's father threatened to break her leg and lock her up and threatened to disown her if she continued her relationship with TDL. Her mother cried uncontrollably. The applicant states: "It was a truly devastating feeling to know that your own family hates you. And for what? For who you choose to love."

[18] Country condition evidence provided in support of the applicant's submissions to the Minister demonstrated that homosexuality is stigmatized in China and that individuals with non-conforming sexual orientations suffer significant levels of discrimination and intra-familial violence.

[19] The applicant explains that, as a result of her family's reaction to her disclosure, she was desperate to stay in Canada. She continued to enroll in English as a Second Language courses so that she could maintain her temporary status but she needed to find a more permanent solution.

[20] A friend referred the applicant to someone who might be able to help her. At first the applicant understood this person to be a lawyer but he turned out to be an immigration consultant. The consultant told her the only way she could obtain secure status in Canada would be to marry a Canadian citizen. The consultant offered to arrange all the necessary documents for a fee of $2,500. While it is not entirely clear from the record, it appears that the consultant worked with the individual who was the alleged ringleader of the operation under investigation in Project Honeymoon.

[21] The applicant states in her affidavit that she and TDL were desperate to be together so, foolishly, they went ahead and followed the consultant's advice. They decided to approach GLJ, a university acquaintance of the applicant's. He was someone the applicant considered kind and compassionate and who had expressed sympathy for the challenges faced by same-sex couples. GLJ agreed to marry the applicant and then sponsor her for permanent residence. TDL and the applicant agreed to pay him $5,000 in installments.

[22] At the time, the applicant recognized that what they were doing was wrong but, as she explains in her affidavit, she and TDL "were so hopeless and desperate to find a way to be with each other that it seemed to be the only solution we had." The applicant expresses deep remorse for her actions. She states in her affidavit: "No matter how desperate I was, I don't believe that

what I did was right. I just hope that the Canadian Government will understand the circumstances that I was in and give me a second chance."

[23] The applicant and GLJ were married at City Hall in Toronto on December 9, 2005, with TDL as a witness. GLJ then sponsored the applicant for permanent residence. The two never lived together and documentation submitted in support of the sponsorship (e.g. employment information for GLJ) was fraudulent. The applicant became a permanent resident on November 10, 2006. She and GLJ divorced a short time later.

[24] GLJ provides a similar account of the events in the statutory declaration he provided to the CBSA in April 2013. He explains that he met the applicant at the University of Toronto in the summer of 2005. He could not recall whether it was through friends or at the gym. After getting together once or twice, the applicant introduced him to her partner, who he knew as Terry. According to GLJ, "They told me they were U of T students and were going to be prosecuted in China if they returned because of their relationship with each other. If I helped them they would pay me $5,000 plus any tax benefits." GLJ confirms that he agreed to do so. He and the applicant were married and he sponsored her for permanent residence. For doing this, he was paid $5,000 in three installments. He and the applicant divorced in 2007. They have had no contact since then.

[25] In June 2009, because of pressure from her family, TDL ended her relationship with the applicant and returned to China. The two have had no contact since they separated. The applicant had heard through a mutual friend that TDL is married and has a child in China.

[26] When TDL ended their relationship, the applicant became despondent and even attempted suicide by trying to hang herself but the strap broke. Years later, the applicant states in her affidavit: “I continue to be unsure about my sexuality. My sexuality is complicated. My culture and my background have their claws buried deep inside of me, make me ashamed of who I am.”

[27] The applicant remained in Toronto after TDL left. She slowly rebuilt her life. She obtained a B.A. degree in economics from York University in 2015. She has worked as a proprietary trader for an equity firm since 2011. She is working to become a Chartered Financial Analyst. She owns a dog and a home in Toronto. She has a strong network of friends and colleagues and is involved in her community in many ways.

III. DECISION UNDER REVIEW

[28] In a decision dated January 8, 2020, a Senior Analyst with IRCC, acting under delegated authority from the Minister, revoked the applicant’s citizenship due to her misrepresentation on her permanent residency application, as she had entered into a marriage of convenience in violation of the *Immigration and Refugee Protection Regulations*.

[29] The Senior Analyst considered five broad circumstances the applicant had raised in her written representations: statelessness; establishment in Canada; hardship upon removal from Canada; country conditions in China; and remorse for her past actions.

[30] The Senior Analyst began by noting that, while the applicant had framed her written submissions in terms of "humanitarian and compassionate considerations", this term is not used in the *Citizenship Act.* Rather, according to the Senior Analyst, in the citizenship context "we refer to these type[s] of representations as personal circumstances, as described in the *Citizenship Act* under section 10(3.1)(a). Therefore, going forward, I will address whether your submissions warrant special relief in light of all of the circumstances of the case in accordance to the *Citizenship Act*."

[31] In doing so, the Senior Analyst made the following determinations:

- **Statelessness**: the Senior Analyst found that while the applicant had lost her Chinese citizenship when she obtained Canadian citizenship, she would not necessarily be rendered stateless, because China has a legal process by which former nationals can apply for restoration of their status. However, as a positive decision cannot be assured if the applicant applied for the restoration of her Chinese citizenship, the Senior Analyst took into account the hardship that the applicant could face should the decision render her stateless. The Senior Analyst noted that while Canada is a signatory to the 1961 *Convention on the Reduction of Statelessness* (989 UNTS 175, in force December 13, 1975), which generally obliges a contracting state not to deprive a person of its nationality if to do so would render the person stateless, the Convention also provides that a state may do so "where the nationality has been obtained by misrepresentation or fraud": see Article 8(1) and (2) of the Convention. The Senior Analyst concluded that the applicant's personal circumstances as they relate to statelessness were entitled to "little weight." The Senior Analyst stated: "While I

understand your deep worries about being rendered stateless, I must examine the severity of the actions you committed against the integrity of our Immigration and Citizenship programs and do not believe they warrant special relief in light if [sic] all the circumstances of your case."

- **Establishment in Canada**: the Senior Analyst acknowledged the length of time the applicant had been in Canada (over 18 years at the time of the decision) and that she had created a stable life for herself and had developed lasting relationships with friends and colleagues. The Senior Analyst noted, however, that the applicant did not have a spouse or family in Canada and that she appeared to have stronger family ties in China (her mother, her father and an aunt). While the applicant had a good civic record, this was given little consideration "as it is expected that all members of Canadian society, whether temporary residents, permanent residents or citizens, abide by and adhere to [the] laws of Canada." The Senior Analyst concluded that the applicant's establishment in Canada was insufficient to warrant special relief because she was only able to build a life in Canada because of her fraud and misrepresentation. The Senior Analyst stated: "Therefore, when I consider your establishment in Canada, in light of your misrepresentation to citizenship and immigration officials, it does not justify not proceeding with citizenship revocation."

- **Hardship on removal**: the Senior Analyst noted that since removal would not necessarily follow from citizenship revocation, the issues the applicant raised regarding the hardship she would experience in China "would be more properly addressed at subsequent removal proceedings, should such proceedings take place." The Senior Analyst acknowledged that the applicant appeared to be suffering from depression and that her condition "may be derived from a sexual identity crisis and the uncertainty of

your citizenship status and possible removal from Canada" but then went on to find that the applicant's "mental illness is probable but that it relates to your possible removal from Canada and not necessarily from the loss of your Canadian citizenship." This and any other hardships relating to removal from Canada "would be better assessed during removal proceedings, should these occur."

- **Country conditions in China**: for the same reason, the Senior Analyst found that these were not relevant to the issues to be determined.

- **Remorse**: the Senior Analyst acknowledged that the applicant "appeared" to have taken responsibility for her past actions and that she "may have acted out of desperation." However, the Senior Analyst found that these circumstances "do not provide sufficient evidence for allowing an exception to Canada's citizenship laws."

[32] In summary, having given "very serious consideration" to the applicant's submissions and while being "sympathetic" to those related to her personal circumstances, the Senior Analyst concluded that these personal circumstances were not "such that they outweigh the Canadian public interest of revoking the citizenship of an individual who obtained it by misrepresentation or fraud." Accordingly, the Senior Analyst revoked the applicant's Canadian citizenship.

IV. STANDARD OF REVIEW

[33] At the heart of this application is a question of statutory interpretation. In her Memorandum of Fact and Law, the applicant suggested that the appropriate standard of review for this issue is correctness. However, at the hearing of this application, the applicant focused on

the reasonableness of the decision in all its respects, including the Senior Analyst's interpretation of the key statutory provision. I agree that this is the proper approach.

[34] Reasonableness is now the presumptive standard of review for administrative decisions, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10). There is no basis for derogating from this presumption here. Indeed, it is noteworthy that reasonableness is the standard of review applied in *Vavilov* itself – a case which, like the present one, concerned the interpretation and application of provisions of the *Citizenship Act*: see *Vavilov* at paras 169-70. See also *Tran v Canada (Citizenship and Immigration)*, 2020 FC 215 at para 24, where Justice Pentney found post-*Vavilov* that reasonableness remained the applicable standard of review for a decision to revoke citizenship (albeit a decision made under the former process).

[35] Reasonableness review "aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law" (*Vavilov* at para 82). The reasonableness standard is meant to ensure that "courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13).

[36] The exercise of public power "must be justified, intelligible and transparent, not in the abstract but to the individuals subject to it" (*Vavilov* at para 95). Consequently, an

administrative decision maker has a responsibility "to justify to the affected party, in a manner that is transparent and intelligible, the basis on which it arrived at a particular conclusion" (*Vavilov* at para 96). Moreover, where the impact of a decision on an individual's rights and interests is severe, "the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention" (*Vavilov* at para 133).

[37] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid*.).

[38] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125).

[39] While deferential review has never meant "blind reverence" for or "blind submission" to statutory decision makers (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 48; *Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 41), in *Vavilov* "the Court re-emphasized that judicial review considers not only the outcome, but also the justification for the result (where reasons are required)" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 29).

An assessment of the reasonableness of a decision must be sensitive and respectful yet robust (*Vavilov* at paras 12-13).

[40] Where, as in the present case, reasons have been given, the inquiry into the reasonableness of the decision must begin there. The reviewing court asks: Has the decision maker provided a reasoned explanation for the result? The focus "must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). A reviewing court must assess the reasonableness of the decision "by examining the reasons provided with respectful attention and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion" (*Vavilov* at para 84, internal quotation marks deleted). The reasons must be read in light of the record as a whole and with due sensitivity to the administrative setting in which they were given (*Vavilov* at paras 91-94). They deserve "close attention" and must be read "holistically and contextually, for the very purpose of understanding the basis on which a decision was made" (*Vavilov* at para 97).

[41] This approach must also be followed when reasonableness is the applicable standard of review on a question of statutory interpretation (*Vavilov* at para 116). The reviewing court does not undertake a *de novo* analysis of the question or ask itself what the correct answer is (*ibid*.). Instead, "just as it does when applying the reasonableness standard in reviewing questions of fact, discretion or policy, the court must examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached" (*ibid*.).

See also *Vavilov* at paras 120-22 and *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at paras 41-42.

[42] The applicant bears the onus of demonstrating that the Senior Analyst's decision is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). See also *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 15 at paras 12-13.

V. ISSUES

[43] I would state the issues arising in this application as follows:

a) Is the Senior Analyst's interpretation of paragraph 10(3.1)(a) of the *Citizenship Act* as precluding consideration of the consequences of removal from Canada unreasonable?

b) Is the Senior Analyst's application of paragraph 10(3.1)(a) of the *Citizenship Act* unreasonable?

VI. ANALYSIS

A. *Is the Senior Analyst's interpretation of paragraph 10(3.1)(a) of the Citizenship Act as precluding consideration of the consequences of removal from Canada unreasonable?*

[44] This issue is fundamentally a question of statutory interpretation. The "modern principle" of statutory interpretation is that the words of a statute must be read "in their entire

context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26, both quoting E. Driedger, *Construction of Statutes* (2nd ed 1983), at 87). Legislative intent "can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context" (*Vavilov* at para 118). While an interpretative exercise conducted by an administrative decision maker may look quite different from that of a court, both must apply the modern principle when interpreting statutory provisions (*Vavilov* at para 119). Thus, the administrative decision maker's task "is to interpret the contested provision in a manner that is consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue" (*Vavilov* at para 121). On judicial review, the court must determine whether the decision maker's interpretation is reasonable in the sense that it is based on an internally coherent and rational chain of analysis that is justified in light of the text, context, and purpose of the provision.

[45] Paragraph 10(3.1)(a) of the *Citizenship Act* provides that a person who has been given notice that their citizenship may be revoked may make written representations with respect to the matters set out in the notice, "including any considerations respecting his or her personal circumstances – such as the best interests of a child directly affected – that warrant special relief in light of all the circumstances of the case and whether the decision will render the person stateless." In turn, subsection 10(3.2) of the Act requires the Minister to consider any such representations before making a decision on whether to revoke the person's citizenship.

[46] As set out above, the applicant admitted that she had obtained permanent residence in Canada through misrepresentation. She submitted, however, that her personal circumstances warranted granting her special relief and her citizenship should therefore not be revoked despite the misrepresentation on which it is based. Among the personal circumstances the applicant relied on was the hardship she said she would suffer if she had to leave Canada and return to China – what the applicant referred to, in short, as "foreign hardship". (I note parenthetically that since the applicant framed her submissions to the Minister in terms of hardship, the question of whether it is always appropriate to apply a hardship "lens" does not arise here (*c.f. Kanthasamy v Canada (Citizenship and Immigration*, 2015 SCC 61 at para 33).)

[47] The Senior Analyst in effect determined that any such foreign hardship is not relevant to the exercise of discretion called for under subsection 10(3.2) of the *Citizenship Act*. The Senior Analyst explained the reason for this as follows:

> It must be understood that Citizenship revocation does not automatically result in removal. Removal is a separate process and depends on post-revocation decisions made pursuant to the *IRPA*. It is noted that revocation of your Canadian citizenship is the sole issue of these proceedings and that revocation of citizenship is a distinct matter that should not be confused with removal from Canada. Should your citizenship be revoked, you would become a foreign national. However, it does not automatically ensure that you will be removed from Canada. Whether removal would ensue following a decision to revoke your Canadian citizenship cannot be predicted at this time and would depend on a number of post-revocation decisions, some discretionary and others adjudicative. Therefore, issues that arise as a direct consequence of removal would be more properly addressed at subsequent removal related proceedings, should such proceedings take place.

[48] The applicant contends that this interpretation of paragraph 10(3.1)(a) of the *Citizenship Act* is untenable in light of the text, context and purpose of the provision. In a

nutshell, she argues as follows: “personal circumstances [. . .] that warrant special relief in light of all the circumstances of the case” in paragraph 10(3.1)(a) of the *Citizenship Act* has the same meaning as “humanitarian and compassionate considerations warrant[ing] special relief in light of all the circumstances of the case” in paragraph 67(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”); such humanitarian and compassionate considerations include foreign hardship; therefore the Senior Analyst erred in refusing to consider foreign hardship in this case. The soundness of the applicant’s argument turns on whether the first premise is true.

[49] I begin by observing that one apparent difficulty for the applicant’s argument is that Parliament did not use the phrase “humanitarian and compassionate considerations” in the *Citizenship Act*; rather, it used the phrase “personal circumstances”. Indeed, this was not only a deliberate choice by Parliament (which it would be presumed to be in any event), this choice of language was the subject of discussion in both the House and the Senate. To understand how and why this came about, it is necessary to say a little more about the history of Bill C-6 and the recent evolution of citizenship revocation based on misrepresentation.

[50] Prior to May 2015, the process for revoking citizenship on the basis of misrepresentation consisted of two main steps: first, a hearing before the Federal Court (if requested by the person in question) in which it would be determined whether the person had obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances; and second, if the Court so found, the matter would then be referred to the Governor in Council on the basis of a recommendation from the Minister of Citizenship and

Immigration. See *League for Human Rights of B'Nai Brith Canada v Odynsky*, 2010 FCA 307 at para 12, and *Hassouna* at paras 13-16. Even though not expressly set out in the legislation, it was accepted that the Governor in Council had a broad discretion to decide whether a person's Canadian citizenship should be revoked: see *Oberlander v Canada (Attorney General)*, 2004 FCA 213 at paras 42-43, and *Odynsky* at paras 81-82. As stated in *Hassouna*, the Governor in Council "could consider equitable circumstances and had the discretion to consider humanitarian and compassionate grounds when deciding whether to revoke an individual's citizenship" (at para 16).

[51] In May 2015, the process was streamlined so that the Minister of Citizenship and Immigration had sole responsibility for determining whether to revoke a person's Canadian citizenship on the basis of misrepresentation. Among other things, the *Strengthening Canadian Citizenship Act*, SC 2014, c 22, conferred on the Minister the power to revoke a person's citizenship "if the Minister is satisfied on a balance of probabilities that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances."

[52] Parliament returned to issues concerning citizenship in February 2016 when Bill C-6 received First Reading. In its original form, the bill addressed many other things relating to citizenship but not the citizenship revocation process. As a result, when it was referred from the House of Commons to the Senate, the bill had left intact the exclusive authority of the Minister to revoke citizenship on the basis of misrepresentation, it said nothing about the process that should be followed when the Minister is considering revoking a person's citizenship on this

basis, and it was silent about whether there were circumstances in which the Minister could decline to revoke a person's citizenship even though it had been obtained by false representation or fraud or by knowingly concealing material circumstances. However, Bill C-6 underwent significant revision in the Senate and it was returned to the House of Commons with substantive amendments.

[53] The relevant amendment for present purposes was the introduction of the predecessors to what are now subsections 10(3), (3.1) and (3.2) of the *Citizenship Act*. More particularly, the version of paragraph 10(3.1)(a) proposed by the Senate provided that the person may "make written representations with respect to the matters set out in the notice, *including any humanitarian and compassionate considerations* — such as the best interests of a child directly affected — that warrant special relief in light of all the circumstances and whether the Minister's decision will render the person stateless" (emphasis added). See *Debates of the Senate*, 42nd Parliament, 1st Session, Vol 150, No 108 (April 4, 2017), at 2682-85. Thus, the Senate proposed to make explicit in the legislation the implicit authority of the decision maker (previously the Governor in Council, now the Minister) to consider all the circumstances, including equitable circumstances, in determining whether someone should lose their citizenship because of misrepresentation.

[54] When the amended bill was returned to the House of Commons, the Government agreed in substance with several of the changes proposed by the Senate, including the addition of subsections 10(3), (3.1) and (3.2). However, regarding paragraph 10(3.1)(a) in particular, the Honourable Ahmed Hussen, the Minister of Immigration, Refugees and Citizenship, proposed

informing the Senate that the House would replace the words “humanitarian and compassionate considerations” with the words “personal circumstances”. (The Minister also proposed some other changes to paragraph 10(3.1)(a) that are inconsequential for present purposes as well as other amendments to other parts of the amended bill.) This proposal (along with the others) was accepted by the House of Commons and was later found acceptable by the Senate. See *House of Commons Debates*, 42nd Parliament, 1st Session, Vol 148, No 192 (June 12, 2017) at 12514-16, and *Debates of the Senate*, 42nd Parliament, 1st Session, Vol 150, No 133 (June 15, 2017) at 3461-66. In its amended form, Bill C-6 then received Royal Assent on June 19, 2017.

[55] Minister Hussen did not explain why he proposed to change “humanitarian and compassionate considerations” to “personal circumstances”. However, it was certainly the view of some members of the House of Commons who spoke to the amendments that the expressions were synonymous. Some members of the Senate expressed the same view. It may also be appropriate to note at this point that in *Hassouna*, which had been released just a month before these debates were taking place, Justice Gagné (as she then was) stated the following:

> In my view, given the importance of Canadian citizenship and the severe consequences that could result from its loss, the principles of fundamental justice require a discretionary review of all the circumstances of a case. This includes the consideration of humanitarian and compassionate grounds, the consideration of personal interests, or equitable discretion, *whichever expression is preferred*.
>
> (*Hassouna* at para 116, emphasis added)

[56] Returning to the applicant’s argument, even though Parliament decided to use the expression “personal circumstances” rather than “humanitarian and compassionate considerations,” this may not be as much of a problem for the applicant as it might have first

appeared. For whatever this may be worth, proceedings in the House and the Senate suggest that at least some members were of the view that there was no material difference between the two expressions. No one from the government side suggested otherwise. *Hassouna* expresses a similar view.

[57] As the applicant emphasizes, apart from this one difference in wording, the provision adopted by Parliament has unmistakeable similarities to paragraph 67(1)(c) of the *IRPA*. In the case of a permanent resident facing loss of this status due to misrepresentation, under paragraph 67(1)(c) of the *IRPA*, the Immigration Appeal Division ("IAD") must consider whether, "taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case." Similarly, in the case of someone facing a loss of citizenship due to misrepresentation, under the combined operation of subsection 10(3.2) and paragraph 10(3.1)(a) of the *Citizenship Act*, the Minister must consider "any considerations respecting [that person's] personal circumstances – such as the best interests of a child directly affected – that warrant special relief in light of all the circumstances of the case." The parallels between the two provisions and the determinations they authorize are striking, to say the least.

[58] The connection to loss of permanent resident status is particularly strong in the applicant's case because she stood to lose not only her Canadian citizenship but also her permanent resident status: see *Citizenship Act*, section 10.2. Her misrepresentation went directly to her eligibility for permanent resident status and only indirectly to her eligibility for Canadian citizenship. This is because, apart from obtaining permanent resident status through

misrepresentation, the applicant was otherwise entitled to Canadian citizenship when it was conferred on her. Her situation may be contrasted with that of someone who obtained permanent resident status legitimately but engaged in misrepresentation with respect to their eligibility for citizenship – e.g. with respect to the residency requirement. If established, such a person would lose their citizenship and revert to permanent resident status. Unlike the applicant, they would not become a foreign national under the *IRPA*.

[59] In my view, despite the parallels the applicant emphasizes, her contention that "personal circumstances" bearing on whether special relief should be granted under the *Citizenship Act* are exactly the same as "humanitarian and compassionate considerations" bearing on whether special relief should be granted under the *IRPA* begs the central question at issue here.

[60] There is no dispute that there are substantial similarities between the kinds of circumstances each expression encompasses and between the decisions each informs. In their respective spheres, both relate to a broad, equitable and discretionary authority to relieve a person from the usual consequences of the law. Both involve a balancing of the public interest in the general application of the law with the need to make exceptions when warranted by individual circumstances.

[61] The leading authority interpreting the concept of humanitarian and compassionate considerations in the *IRPA* (specifically, as it appears in subsection 25(1) of that Act) is *Kanthasamy*. It describes a decision based on humanitarian and compassionate considerations as one in which the decision maker must determine whether, in all of the circumstances of the case,

a reasonable person in a civilized community would be moved to relieve the misfortunes of another, as long as those misfortunes warrant the granting of special relief from the usual application of the legislation in question. See *Kanthasamy* at paras 29-31. By its own terms, the determination that must be made under paragraph 67(1)(c) of the *IRPA* must also be informed by humanitarian and compassionate considerations. The understanding of these considerations and the nature of the decision articulated in *Kanthasamy* also applies to paragraph 67(1)(c) of the *IRPA*: see, for example, *Phan v Canada (Citizenship and Immigration)*, 2019 FC 435 at paras 19-23.

[62] There is no issue that paragraph 10(3.1)(a) of the *Citizenship Act* serves the same sort of equitable underlying purpose as paragraph 67(1)(c) of the *IRPA* serves or that the authority the provisions confer on decision makers is very similar. Both provisions capture a wide range of circumstances that bear on what a reasonable and fair-minded person would judge to warrant special relief in all of the circumstances of a given case. Indeed, many of the same circumstances will be relevant whether the determination is being made under the *Citizenship Act* or under the *IRPA*, including the best interests of any child directly affected by the determination, establishment in Canada, and the impact of an adverse decision on one's physical and mental health and general well-being. Equally, in cases of misrepresentation, both decision makers must consider, among other things, the seriousness of the misrepresentation, the person's complicity in it, evidence that it was out of character, any mitigating circumstances, and any expressions of remorse in exercising the equitable discretion conferred on them to relieve a person of the usual consequences of the law.

[63] In view of all this, there can be no doubt that there are clear parallels between the two determinations. According to the applicant, this entails that, just as the IAD must consider foreign hardship in deciding whether special relief is warranted, so too must the Minister. The flaw in the applicant's argument is that the parallels break down at precisely the point identified by the Senior Analyst. The IAD must consider foreign hardship because it is considering an appeal of an inadmissibility determination that has resulted in a removal order. Thus, in connection with the predecessor to paragraph 67(1)(c), the Supreme Court of Canada held in *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, that foreign hardship is a relevant consideration for the IAD: see in particular paras 1-4, 64, 71 and 82-83. Similarly, foreign hardship is relevant when the Minister is asked to determine under subsection 25(1) of the *IRPA* whether someone should, on humanitarian and compassionate grounds, be exempted from a form of inadmissibility or from the usual rule that permanent residency must be applied for from outside Canada: see *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 41. In contrast, while a decision to revoke Canadian citizenship results in the loss of the right to remain in Canada guaranteed by subsection 6(1) of the *Charter*, it does not entail that the person must leave Canada. It is not an inadmissibility finding, let alone a removal order. The person concerned does not need to leave Canada to comply with the decision. As the Senior Analyst points out, a legally enforceable obligation to leave Canada will arise, if at all, only as a result of separate removal-related proceedings, should such proceedings take place. The respondent endorses this view, emphasizing that citizenship revocation by the Minister does not automatically trigger removal proceedings.

[64] In short, the nature of the question that must be decided by each decision maker determines what is relevant to their respective determinations. Foreign hardship is relevant to the determination the IAD must make under paragraph 67(1)(c) of the *IRPA* because the appeal concerns a removal order. It is irrelevant to the determination the Minister must make under paragraph 10(3.1)(a) of the *Citizenship Act* because, even if citizenship is revoked, it does not entail removal from Canada.

[65] The applicant attempts to counter this conclusion in two ways. First, she points out that, as a foreign national without status in Canada, the law does not permit her to remain here; she is required to leave. According to the applicant, revocation of her citizenship is therefore tantamount to a removal order. Second, in the event that she did face a separate removal proceeding, it would not include equitable consideration of whether foreign hardship, alone or in combination with other factors, warranted permitting her to remain in Canada. If the Minister does not consider this in deciding whether or not to revoke her citizenship, no one will.

[66] I am not persuaded that either response demonstrates that the Senior Analyst's understanding of the decision they are making is unreasonable. The applicant included in her Record a letter from IRCC to someone else whose application for a work permit was refused. The letter states: "You are a person in Canada without legal status and as such you are required to leave Canada immediately. If you do not leave Canada voluntarily, enforcement action may be taken against you." There is, however, no evidence that the applicant has received similar correspondence or that any enforcement action has been taken against her. Further, while the applicant has lost the status in Canada that she had, it does not follow that she will necessarily

remain without status. If she secures some form of status in Canada, she will not be required to leave. As the respondent notes, there is no reason to think that she cannot try to obtain at least temporary status in Canada (e.g. a temporary residence permit) or even permanent status under subsection 25(1) of the *IRPA*. If the applicant were to pursue the latter option, humanitarian and compassionate considerations (including foreign hardship) would have to be considered if raised. Of course, given the applicant's misrepresentation, a favourable decision is not a foregone conclusion despite her many other positive attributes and the equitable considerations that arguably weigh in her favour. However, the point is that, contrary to the applicant's submission, she does have a means by which foreign hardship could be considered in the context of the equitable exercise of discretion, even if she is not assured of a favourable decision.

[67] Furthermore, should removal proceedings be initiated, the foreign hardships relied on by the applicant could, at least to some extent, form the basis for a pre-removal risk assessment under section 112 of the *IRPA*. I acknowledge that this is narrower than the humanitarian and compassionate assessment that would be carried out by the IAD, a process to which the applicant, as a foreign national, would not have access if a removal order were to be made against her: see *IRPA*, subsection 63(3). The applicant argues that it is absurd that she would have fewer protections than a permanent resident simply because she took the extra step of obtaining Canadian citizenship. Given the other options that are still available to the applicant, at least in principle, I am not persuaded that the two situations are as different as the applicant suggests. If there is a lacunae in the legislative scheme, this can only be addressed by Parliament. It cannot be filled as a matter of statutory interpretation by broadening the mandate

of the decision maker under the *Citizenship Act* to consider what are, at the time of the decision, hypothetical possibilities at best.

[68] Long before the enactment of Bill C-6, Justice Décary observed in *Oberlander* that "the words 'humanitarian and compassionate considerations' do not appear in the *Citizenship Act* and are inappropriate as they invite comparison, and confusion, with these words as they are used and have been interpreted in other statutory instruments" (at para 57). This is equally true today. While there are many important similarities between the concept of humanitarian and compassionate considerations warranting special relief under the *IRPA* and the concept of personal circumstances warranting special relief under the *Citizenship Act*, this cannot be permitted to obscure the fact that the two concepts operate in distinct statutory frameworks and, as a result, do not encompass exactly the same factors or circumstances.

[69] In summary, the applicant has not persuaded me that the Senior Analyst's interpretation of paragraph 10(3.1)(a) of the *Citizenship Act*, under which the consequences of removal are not considered among the personal circumstances warranting special relief in all of the circumstances of the case, is unreasonable.

B. *Is the Senior Analyst's application of paragraph 10(3.1)(a) of the Citizenship Act unreasonable?*

[70] The loss of citizenship is a matter of the utmost seriousness. As the Supreme Court of Canada observed in *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at para 21, "a 'right to have rights' flows from citizenship and belonging to a distinct national

community" (quoting a phrase coined by Hannah Arendt in *The Origins of Totalitarianism*). Thus, Canadian citizenship is a necessary precondition to the enjoyment of certain fundamental rights guaranteed by the *Charter*: see sections 3 and 6(1). Moreover, it is generally by exercising the right to enter and remain in Canada guaranteed by subsection 6(1) of the *Charter* that a Canadian citizen is assured of the protections of the other rights guaranteed by the *Charter* and by other Canadian laws. In *Benner v Canada (Secretary of State)*, [1997] 1 SCR 358, Justice Iacobucci, writing for the Court, stated: "I cannot imagine an interest more fundamental to full membership in Canadian society than Canadian citizenship" (at para 68). In *Canada (Minister of Citizenship and Immigration) v Tobiass*, [1997] 3 SCR 391, the Court held that "[f]or some, such as those who might become stateless if deprived of their citizenship, it may be valued as highly as liberty" (at para 108). These observations were quoted with approval in *Vavilov* at para 191. See also *Odynsky* at para 80. There are additional adverse consequences for someone like the applicant who, if her citizenship is revoked, becomes a foreign national: see *Hassouna* at para 78. Finally, for someone who, again like the applicant, would become stateless if their citizenship is revoked, the consequences are even more profound: see *Hassouna* at para 86.

[71] The consequences of a loss of citizenship are no less serious when that citizenship was obtained by misrepresentation. In such a case, these consequences are generally considered justified because the person was not entitled to citizenship in the first place and because they are necessary to protect the integrity of the immigration and citizenship granting processes. Nevertheless, as Parliament recognized in enacting paragraph 10(3.1)(a) of the *Citizenship Act*, these consequences are not always justified in every case of misrepresentation. Sometimes they

are disproportionate having regard to all the circumstances of the case and special relief is warranted despite the fact that citizenship was obtained improperly. In view of the legislative and jurisprudential background discussed in the preceding section of these reasons, there can be no dispute that, even though these exact words are not used in the *Citizenship Act*, a decision maker must make this determination based on a humane and compassionate assessment of all of the circumstances of the case.

[72] When a decision maker determines that special relief is not warranted, the principle of responsive justification requires that reasons be provided that are commensurate with the seriousness of the issues at stake and the consequences of the adverse decision for the person concerned. To repeat, the reasons must explain why the decision best reflects the legislature's intention (*Vavilov* at para 133). They must do so in a way that meaningfully comes to grips with the key issues or central arguments raised by the person concerned. A failure to do so "may call into question whether the decision maker was actually alert and sensitive to the matter before it" (*Vavilov* at para 128).

[73] Under the legal framework adopted by Parliament, loss of Canadian citizenship is not automatic upon a finding of misrepresentation. Rather, the decision maker must determine whether this consequence is warranted in all of the circumstances of the case. Central to this determination is whether, in all of the circumstances, revoking a person's citizenship when it has been obtained by misrepresentation is a proportionate response to the misconduct that is necessary to protect the integrity of the immigration and citizenship processes. To be clear, this is not a punitive decision. Nevertheless, the seriousness of the misconduct and any

circumstances that may mitigate the person's degree of responsibility for the misconduct must be considered.

[74] In the present case, the Senior Analyst focused almost exclusively on the seriousness of the applicant's misconduct and gave little consideration to the question of the applicant's blameworthiness despite this being raised clearly in the applicant's evidence and submissions. The applicant acknowledged the seriousness of her misconduct but argued that the extenuating circumstances under which she had acted mitigated the blameworthiness of her actions such that the loss of her status in Canada – the foundation on which she had built her life here – and her resulting statelessness were disproportionate and therefore unwarranted consequences in all of the circumstances. The Senior Analyst was not required to accept this argument but it had to be addressed in a meaningful way. This did not happen. Instead, at key junctures in the decision, the applicant's blameworthiness is simply presumed because the misconduct was serious. This is evident, for example, from the Senior Analyst's conclusion that, even though an adverse decision will result in the applicant becoming stateless, this result is warranted because of the "severity of the actions [the applicant] committed against the integrity of our Immigration and Citizenship programs." No consideration was given to the mitigating circumstances on which the applicant relied and whether they reduced her blameworthiness such that this serious consequence was not warranted in her case.

[75] Similarly, the applicant's establishment in Canada was found not to justify not proceeding with citizenship revocation "in light of" the applicant's misrepresentation to citizenship and immigration officials. While noting the applicant's submission that she had

"extraordinarily established herself here and integrated into Canadian society," for the Senior Analyst, "the issue at hand is that you were only able to do this as a result of fraud and misrepresentation." However, the Senior Analyst never engages with why the misrepresentation happened in the first place. Instead, the decision maker's approach suggests that establishment based on misrepresentation can never be sufficient to warrant special relief since, almost by definition, that establishment was possible only because of the misrepresentation. Such a categorical approach, which pays no regard to the particular circumstances of the case – including why, according to the applicant, she felt compelled to mislead Canadian immigration authorities when she applied for permanent residence – is the antithesis of the equitable discretion meant to be captured by paragraph 10(3.1)(a) of the *Citizenship Act*. Even if, as the respondent submits, it is a well-established principle that generally establishment under unlawful circumstances should not be "rewarded" (in the *IRPA* context, see, for example, *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 48), it was incumbent on the decision maker to explain why this general principle applied in the applicant's case despite the extenuating circumstances under which she maintained she had acted (again in the *IRPA* context, see *Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 at paras 23-27, and *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at paras 26-27, which both emphasize the importance of assessing the particular circumstances under which the person's unlawful presence in Canada came about). This was not done.

[76] The Senior Analyst only addresses the mitigating circumstances relied on by the applicant elsewhere in the decision, under the heading "Remorse". To the extent that they are considered at all, they are largely dismissed in a perfunctory fashion. The Senior Analyst simply

observes that the applicant "appears" to have taken responsibility for her past actions and that she "may have acted out of desperation." In the decision maker's view, however, the applicant's "submissions do not provide sufficient evidence for allowing an exception to Canada's citizenship laws." Nothing more by way of explanation is provided.

[77] This falls well short of what is required in the circumstances of this case for the decision to be reasonable. To render a reasonable decision, the decision maker had to come to grips with the mitigating circumstances relied on by the applicant and then determine whether the usual consequences of misrepresentation would be considered unwarranted in the eyes of a reasonable and fair-minded member of the community. This was not done. The superficial analysis that was done calls into question whether the Senior Analyst was alert and alive to a central issue in this case. Simply asserting that the applicant's misconduct was serious without any meaningful consideration of why it happened does not explain why revoking the applicant's citizenship best reflects, in the circumstances of this case, the legislature's intention in enacting subsections 10(1), (3.1) and (3.2) of the *Citizenship Act*. As a result, the decision is unreasonable and must be set aside.

VII. CONCLUSION

[78] For these reasons, the application for judicial review is allowed. The decision of the Senior Analyst dated January 8, 2020, revoking the applicant's Canadian Citizenship and cancelling her citizenship certificate is set aside and the matter is remitted for redetermination by a different decision maker.

[79] Exceptionally, the Court agreed to give the parties an opportunity to review this decision before they would be asked for their position on whether a serious question of general importance should be stated under paragraph 22.2(d) of the *Citizenship Act.* The parties are therefore asked to confer and, if possible, communicate a joint position regarding whether any questions are proposed for certification and, if so, the wording of any such question(s). This communication shall be provided to the Court within 14 days of the date of this decision. In the event that the parties cannot agree, they shall each serve and file written submissions in support of their respective positions within 14 days of the date of this decision. These submissions may be in letter form and shall not exceed three single-spaced pages in length. Reply submissions in letter form not exceeding two single-spaced pages in length shall be served and filed within 7 days of the exchange of the parties' principal submissions. If additional time for any of these steps is required, the parties may submit an informal request to the Court.

JUDGMENT IN T-197-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Senior Analyst dated January 8, 2020, revoking the applicant's Canadian Citizenship and cancelling her citizenship certificate is set aside and the matter is remitted for redetermination by a different decision maker.
3. Whether any question(s) will be stated under paragraph 22.2(d) of the *Citizenship Act* will remain on reserve pending receipt and consideration of the parties' further written submissions.

"John Norris"
Judge

Annex

Citizenship Act, RSC 1985, c C-29

Loss of Citizenship	**Perte de la citoyenneté**
Revocation by Minister — fraud, false representation, etc.	**Révocation par le ministre — fraude, fausse déclaration, etc.**
10 (1) Subject to subsection 10.1(1), the Minister may revoke a person's citizenship or renunciation of citizenship if the Minister is satisfied on a balance of probabilities that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.	**10 (1)** Sous réserve du paragraphe 10.1(1), le ministre peut révoquer la citoyenneté d'une personne ou sa répudiation lorsqu'il est convaincu, selon la prépondérance des probabilités, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.
[…]	[…]
Notice	**Avis**
(3) Before a person's citizenship or renunciation of citizenship may be revoked, the Minister shall provide the person with a written notice that	**(3)** Avant que la citoyenneté d'une personne ou sa répudiation ne puisse être révoquée, le ministre lui envoie un avis écrit dans lequel :
(a) advises the person of his or her right to make written representations;	**a)** il l'informe qu'elle peut présenter des observations écrites;
(b) specifies the form and manner in which the representations must be made;	**b)** il précise les modalités de présentation des observations;
(c) sets out the specific grounds and reasons, including reference to materials, on which the Minister is relying to make his or her decision; and	**c)** il expose les motifs et les justifications, notamment les éléments de preuve, sur lesquels il fonde sa décision;
(d) advises the person that the case will be referred to the Court unless the person requests that the case be decided by the Minister.	**d)** il l'informe que, sauf si elle lui demande de trancher l'affaire, celle-ci sera renvoyée à la Cour.

Representations and request for decision by Minister

(3.1) The person may, within 60 days after the day on which the notice is sent, or within any extended time that the Minister may allow for special reasons,

(a) make written representations with respect to the matters set out in the notice, including any considerations respecting his or her personal circumstances — such as the best interests of a child directly affected — that warrant special relief in light of all the circumstances of the case and whether the decision will render the person stateless; and

(b) request that the case be decided by the Minister.

Consideration of representations

(3.2) The Minister shall consider any representations received from the person pursuant to paragraph (3.1)(a) before making a decision.

Hearing

(4) A hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required.

Referral to Court

(4.1) The Minister shall refer the case to the Court under subsection 10.1(1) unless

(a) the person has made written representations under paragraph (3.1)(a) and the Minister is satisfied

(i) on a balance of probabilities that the person has not obtained, retained,

Observations et demande que l'affaire soit tranchée par le ministre

(3.1) Dans les soixante jours suivant la date d'envoi de l'avis, ce délai pouvant toutefois être prorogé par le ministre pour motifs valables, la personne peut :

a) présenter des observations écrites sur ce dont il est question dans l'avis, notamment toute considération liée à sa situation personnelle — tel l'intérêt supérieur d'un enfant directement touché — justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales ainsi que le fait que la décision la rendrait apatride, le cas échéant;

b) demander que l'affaire soit tranchée par le ministre.

Obligation de tenir compte des observations

(3.2) Le ministre tient compte de toute observation reçue au titre de l'alinéa (3.1)a) avant de rendre sa décision.

Audience

(4) Une audience peut être tenue si le ministre l'estime nécessaire compte tenu des facteurs réglementaires.

Renvoi à la Cour

(4.1) Le ministre renvoie l'affaire à la Cour au titre du paragraphe 10.1(1) sauf si, selon le cas :

a) la personne a présenté des observations écrites en vertu de l'alinéa (3.1)a) et le ministre est convaincu que :

(i) soit, selon la prépondérance des probabilités, l'acquisition, la conservation

renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, or

(ii) that considerations respecting the person's personal circumstances warrant special relief in light of all the circumstances of the case; or

(b) the person has made a request under paragraph (3.1)(b).

Notice of decision

(5) The Minister shall provide his or her decision to the person in writing.

[…]

Presumption

10.2 For the purposes of subsections 10(1) and 10.1(1), a person has obtained or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances if the person became a permanent resident, within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, by false representation or fraud or by knowingly concealing material circumstances and, because of having acquired that status, the person subsequently obtained or resumed citizenship.

ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci n'est pas intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels,

(ii) soit des considérations liées à sa situation personnelle justifient, vu les autres circonstances de l'affaire, la prise de mesures spéciales;

b) la personne a fait une demande en vertu de l'alinéa (3.1)b).

Communication de la décision

(5) Le ministre communique sa décision par écrit à la personne.

[…]

Présomption

10.2 Pour l'application des paragraphes 10(1) et 10.1(1), a acquis la citoyenneté ou a été réintégrée dans celle-ci par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels la personne ayant acquis la citoyenneté ou ayant été réintégrée dans celle-ci après être devenue un résident permanent, au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*, par l'un de ces trois moyens.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-197-20
STYLE OF CAUSE:	CECILLE JIAJIA XU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MAY 20, 2021
JUDGMENT AND REASONS:	NORRIS J.
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APPEARANCES:

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