Federal Court Cour fédérale

Date: 20230830

Docket: T-1758-21

Citation: 2023 FC 1173

Ottawa, Ontario, August 30, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

SHAHID ALI KHAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant is a national of Pakistan by birth. He was granted refugee protection in Canada in November 2003, became a permanent resident in November 2005, and a Canadian citizen in February 2011.

[2] What the applicant did not disclose in his claim for refugee protection, in his application for permanent residence, or in his application for Canadian citizenship was that he had previously used two other Pakistani identities: Kabir Ali Quershi (DOB 21 February 1961) and Shahid Kabir Hussain (DOB 14 November 1965).

[3] Subsection 10(1) of the *Citizenship Act*, RSC 1985, c C-29, provides that the Minister of Citizenship and Immigration "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 citizenship by false representation or fraud or by knowingly concealing material circumstances." The Minister may decline to revoke citizenship despite it having been obtained by false representation or fraud or by knowingly concealing material circumstances if satisfied that special relief is warranted in all the circumstances of the case.

[4] On the basis of the non-disclosure described above, a delegate of the Minister revoked the applicant's Canadian citizenship on October 20, 2021.

[5] The applicant now applies for judicial review of this decision under section 22.1 of the *Citizenship Act*. He submits that the decision maker's determination that special relief is not warranted is unreasonable.

[6] As I explain in the reasons that follow, the applicant has not persuaded me that the decision is unreasonable. This application for judicial review will, therefore, be dismissed.

II. BACKGROUND

[7] The applicant's use of other identities besides the one he has used in Canada came to light in December 2013, when the applicant attempted to enter the United States using his Canadian passport in the name of Shahid Ali Khan (DOB 12 May 1963). US authorities found that the applicant had submitted three asylum applications in that country under other identities: two as Kabir Ali Quershi (in 1992 and 1993) and a third as Shahid Kabir Hussain (in 1994). The applicant had been ordered to leave the United States after his 1994 asylum claim was rejected but he remained there without status until December 2001, when he left to make a refugee claim in Canada. When US authorities questioned the applicant in December 2013 about his use of different identities, he told them that his correct identity is Kabir Ali Quershi and that the identity under which he obtained Canadian citizenship is false.

[8] On the basis of this information, the Minister revoked the applicant's Canadian citizenship in November 2016. However, in June 2017, the revocation was set aside following the decision in *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473, which declared that certain provisions of the *Citizenship Act* relating to citizenship revocation were inconsistent with the *Canadian Bill of Rights*, RSC 1985, Appendix III.

[9] In February 2018, after amendments to the *Citizenship Act* came into force, the process for revoking the applicant's Canadian citizenship began again. In the meantime, on February 18, 2020, the Refugee Protection Division of the Immigration and Refugee Board of Canada allowed an application to vacate the applicant's Convention refugee status on the basis of

misrepresentation under section 109 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*).

[10] In April 2019, the Minister provided notice to the applicant under subsection 10(3) of the *Citizenship Act* that his citizenship may be revoked. The notice set out in detail the grounds on which the Minister was considering revoking the applicant's Canadian citizenship and offered the applicant an opportunity to respond.

[11] With the assistance of a lawyer, the applicant provided extensive submissions and supporting evidence in response to the notice. This included two affidavits from the applicant – one sworn on August 6, 2019; the other sworn on August 8, 2019.

[12] The applicant maintained that his correct identity is Shahid Ali Khan, the identity under which he had obtained refugee protection, permanent residence, and Canadian citizenship. He claimed that he had used a false Pakistani passport in the name of Kabir Ali Quershi to enter the United States in August 1991 as part of a touring musical group. He admitted to making claims for refugee protection in the United States under the Quershi and Hussain identities. He did not dispute that, by falsely denying that he had ever used any other identity, he had obtained his permanent residence and, subsequently, his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. He submitted, however, that his citizenship should not be revoked because his personal circumstances warranted special relief in light of all the circumstances of the case.

[13] According to the applicant, he used false identities in the United States because of "difficult situations" he was facing there, something that he now regrets. He explained that he decided to use his real name when he applied for refugee protection in Canada because he realized that using false identities in the United States "had not gotten [him] anywhere" and he "had started to feel" that it was wrong to have made refugee claims in the United States under false identities.

[14] The applicant acknowledged that, although he used his real name when he sought refugee protection in Canada, he did not tell the truth when he said he had come directly from Pakistan via the United States. In fact, he had been living in the United States for many years. He now "greatly regret[s]" lying about this.

[15] The applicant explains that he had heard Canada was "a peaceful and compassionate country that is a great place to raise a family" and he wanted to "start over," obtain legal status, and build a new life for himself and his family. He does not address directly why, in his applications for permanent residence and Canadian citizenship, he denied having used any other identity.

[16] The applicant submitted that, after living in Canada for almost 20 years, he is well-established and a well-regarded member of the community. The applicant's children and grandchildren live in Canada. He stated that he would miss them deeply if he were forced to return to Pakistan and submitted that it was in their best interests that he remain in Canada.

[17] As well, the applicant is HIV-positive and, he submitted, he "would be at significant risk of death" if he were to return to Pakistan because he would be unable to afford the medications he requires, if they are even available there. (The applicant did not address the potential consequences for his access to health care in Canada if he were to lose his Canadian citizenship.) The applicant contended that he would also be stigmatized and ostracized in Pakistan because of his HIV status.

[18] Finally, the applicant noted that, if he were to lose his Canadian citizenship, he would be unable to continue his efforts to bring his wife from Pakistan to Canada so that she could be with him as he deals with his illness.

III. DECISION UNDER REVIEW

[19] In a decision dated October 20, 2021, a Senior Analyst with Immigration, Refugees and Citizenship Canada (IRCC), acting as a delegate of the Minister, revoked the applicant's Canadian citizenship.

[20] The analyst was satisfied on a balance of probabilities that the applicant obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. This was not in issue in any event.

[21] As well, the analyst was not persuaded that special relief was warranted in light of all the circumstances of the case. The analyst noted that many of the personal circumstances on the basis of which the applicant requested special relief presumed that he would have to leave

Canada and return to Pakistan if he lost his Canadian citizenship. In the analyst's view, however, this could not be presumed. While the applicant would become a foreign national if his Canadian citizenship is revoked, whether he would be required to leave Canada would be determined by other decision makers under the *IRPA*. Thus, the foreign hardship and family separation factors relied on by the applicant were not relevant to the analyst's determination. The analyst found that the applicant's misrepresentations about his use of other identities was serious and that the mitigating factors the applicant relied on were not compelling. Balancing all of the relevant considerations, the analyst concluded that special relief was not warranted.

IV. STANDARD OF REVIEW

[22] The parties agree, as do I, that the decision should be reviewed on a reasonableness standard.

[23] 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" (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85). A decision that displays these qualities is entitled to deference from the reviewing court (*ibid.*). 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).

[24] For a decision to be reasonable, a reviewing court "must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it

must be satisfied that there is a line of analysis within the reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" (*Vavilov* at para 102, internal quotation marks and citation omitted). On the other hand, "where reasons are provided but they fail to provide a transparent and intelligible justification [. . .], the decision will be unreasonable" (*Vavilov* at para 136).

[25] The onus is on the applicant to demonstrate that the decision is unreasonable. To set aside a decision 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).

V. ANALYSIS

[26] The applicant submits that the analyst's conclusion that the applicant's personal circumstances, considered in light of all the circumstances of the case, did not warrant special relief is unreasonable. In particular, he submits that the decision is largely perfunctory and lacks transparent, intelligible and justified reasons for why special relief was not warranted.

[27] I do not agree.

[28] Looking first at the analyst's assessment of the seriousness of the misrepresentation, contrary to the applicant's submissions, the analyst did not simply presume that the misrepresentation was serious. On the contrary, the analyst explained that the applicant's misrepresentation was serious because (a) identity is a very significant matter; (b) the applicant

deliberately deceived Canadian authorities in this regard in order to circumvent immigration and citizenship laws; and (c) this deception continued over an extended period of time. As the analyst stated:

> Your lack of respect for the immigration and citizenship laws of Canada prevented officials from accurately assessing your case and determining your admissibility to Canada and eligibility for citizenship. Yours is a case of identity misrepresentation where you deliberately led decision-makers to believe that you had adhered to our laws, when in reality you had not. Knowing exactly who we as a country are allowing to enter Canada is essential to maintaining the integrity of our programs and security interests of our country.

[29] The analyst also recognized that the seriousness of the applicant's misconduct could be mitigated by his personal circumstances, including the circumstances in which the misconduct occurred. The analyst was not persuaded, however, that the applicant had established much in the way of mitigating circumstances. Critically, the analyst found that the remorse the applicant was now expressing is not a "strong determinative factor." As the analyst explained, the applicant's expression of remorse is inconsistent with the evidence that he told US authorities in December 2013 that the identity he had used in Canada is not his true identity. Notably, even though this representation concerning his identity was highlighted in the letter from IRCC giving the applicant notice that the Minister was considering revoking his citizenship, the applicant did not address it in his responding submissions or his supporting affidavits. Against this backdrop, which leaves the applicant's true identity in doubt, it was altogether reasonable for the analyst to give the applicant's expression of remorse and acceptance of responsibility for misleading Canadian authorities limited weight.

[30] The applicant submits that the analyst should have engaged more fully with his account of the mitigating circumstances in which he engaged in the misrepresentations before concluding that the seriousness of the misrepresentations weighed against granting special relief. According to the applicant, in this respect, the analyst's decision suffers from the same flaw as I found in the decision at issue in *Xu v Canada (Citizenship and Immigration)*, 2021 FC 1102 at paras 76-77.

[31] I do not agree. The applicant's account of why he did not disclose his use of other identities in the United States was very limited. As set out above, he never addresses directly why he did not disclose this information. He simply states that he was "desperate for a peaceful and stable life" and wanted to bring his family to Canada "to give them a better future." The analyst acknowledged this evidence but found that it did little to mitigate the seriousness of the applicant's misrepresentations. In view of the limited information the applicant provided to explain his actions, the analyst's assessment of this factor meets the requirements of reasonableness. This is in contrast to the decision at issue in *Xu*. There, the applicant had provided a detailed account of compelling personal circumstances capable of mitigating her blameworthiness for failing to disclose that she had entered into a marriage of convenience to secure status in Canada but the decision maker did not engage with that evidence in any meaningful way when assessing the seriousness of her misconduct.

[32] Similarly, I do not agree with the applicant that the analyst was not "alert, alive, and sensitive" to his length and degree of establishment in Canada. The reasons demonstrate that the analyst considered this factor carefully. The reasons explain why the analyst did not consider it

sufficient to offset a serious and material omission on the applicant's part that "prevented the Department from performing the vital and necessary background verifications which are paramount to the protection, health and safety of all Canadians." The applicant has not provided any basis to question the reasonableness of this determination. Rather, his submissions effectively invite me to reweigh this factor and come to a different conclusion. That is not my role when conducting judicial review on a reasonableness standard.

[33] Although the applicant's submissions to the analyst relied heavily on foreign hardship and family separation as personal circumstances warranting special relief, on review the applicant does not challenge the reasonableness of the analyst's determination that those circumstances are not relevant to a decision concerning whether citizenship should be revoked under section 10 of the *Citizenship Act*.

[34] Finally, the applicant also submits that the decision is unreasonable because the analyst failed to address the Minister's lengthy delay in pursuing the revocation of his citizenship. This issue is raised for the first time on review. The decision maker cannot be faulted for not addressing an issue the applicant did not raise. As well, in his memorandum of argument (at para 24), the applicant submits that revocation proceedings were not initiated until 2018, five years after the events in December 2013. This is incorrect. The Royal Canadian Mounted Police informed the Minister in May 2014 about the events in the United States in December 2013. The citizenship revocation proceeding was initiated in June 2016. It concluded with the revocation of the applicant's citizenship in November 2016. That decision was withdrawn in June 2017. In his complaint about delay, the applicant omits all of these events. The submission

that “IRCC had all the information it needed to proceed with the revocation in December 2013, but instead, decided to initiate it 5 years later” (*Applicant’s Memorandum of Law and Argument*, para 30) is, frankly, misleading. In any event, while the overall revocation process was lengthy, there is no evidence that the applicant was prejudiced by this.

[35] In summary, the loss of citizenship is a matter of the utmost seriousness: see *Xu* at para 70 and the authorities cited therein. Under *Vavilov*, “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” (at para 133). I am satisfied that the analyst’s decision meets this requirement. In a justified, transparent and intelligible fashion, the analyst identified the relevant considerations, explained how they were assessed, and explained why the applicant’s personal circumstances did not warrant special relief in light of all the circumstances of the case. The applicant has not established any basis to interfere with the decision.

VI. CONCLUSION

[36] For these reasons, the application for judicial review will be dismissed.

[37] The parties did not propose any serious questions of general importance for certification under section 10.7 of the *Citizenship Act*. I agree that no question arises.

JUDGMENT IN T-1758-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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