Federal Court Cour fédérale

Date: 20240508

Docket: T-468-23

Citation: 2024 FC 705

Ottawa, Ontario, May 8, 2024

PRESENT: Associate Chief Justice Gagné

BETWEEN:

SULTAN LITON PARVEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Sultan Liton Parvez is one of the individuals whose citizenship revocation was cancelled as a result of this Court's decision in *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473. After the *Act to amend the Citizenship Act and to make consequential amendments to another Act*, SC 2017, c 14 (Bill C-6) came into force in

January 2018, the Minister of Immigration, Refugees and Citizenship Canada initiated a citizenship revocation procedure against him under the new regime.

[2] The Applicant did not contest that he obtained his citizenship by misrepresenting material facts but he submitted arguments related to his personal circumstances and requested special relief under paragraph 10(3.1)a) of the *Citizenship Act*, RSC, 1985, c C-29.

[3] In a decision rendered by an Immigration, Refugees and Citizenship Canada [IRCC] officer on February 6, 2023, the Minister rejected the Applicant's arguments and revoked his Canadian citizenship under subsection 10(1) of the *Citizenship Act*; it is that decision that is under review.

II. Facts

[4] The Applicant is a citizen of Bangladesh. He is married to a Canadian permanent resident and has four Canadian minor children.

[5] The Applicant arrived in Canada and claimed refugee status in April 1994. His claim was granted in April 1996 and he became a permanent resident of Canada under the Convention refugee category in December 1996. He applied for citizenship and became a Canadian citizen in December 1999.

[6] During a hearing before the IRB, held in October 2010, the Applicant admitted to providing false representations in support of his refugee claim and as a result, his refugee status was vacated.

[7] A notice of Intent to Revoke Citizenship was sent in May 2016 under the former revocation regime. As indicated above, it was cancelled following the decision in *Hassouna*, whereby this Court found that former paragraphs 10(3) and 10(4) of the *Citizenship Act* were null and void because they violated section 2(e) of the *Canadian Bill of Rights*, SC 1960, c 44.

[8] Following the *Hassouna* decision, the *Citizenship Act* was amended. The person who receives a notice may now make written representations with respect to the matters set out in the notice, including any considerations respecting their 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 (paragraph 10(3.1)(a) of the *Citizenship Act*). The person can also request that the case be decided by the Minister instead of being referred to this Court.

[9] The process for revoking the Applicant's Canadian citizenship was recommenced in 2018 and the Applicant requested that his case be decided by the Minister. The Applicant argued that his personal circumstances including the best interest of his children, his establishment and employment in Canada, his remorse, and the hardship stemming from an eventual removal from Canada all warrant special relief in his favour. He also argued that the new revocation procedure initiated by the Minister amounted to an abuse of process.

III. Decision Under Review

[10] The Minister's delegate assessed all the personal circumstances put forward by the Applicant and found that they were all the consequences of an eventual removal of the Applicant from Canada. The *Citizenship Act* is not concerned with removal; removal of a foreign national is rather assessed in subsequent procedures taken under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[11] The Minister's delegate gave little weight to the Applicant's personal circumstances and found that they did not outweigh the gravity of the Applicant's false representations.

IV. Issue and Standard of Review

[12] This application raises the following issues:

A. *Did the officer err by refusing to consider the hardship on the Applicant and his family resulting from the Applicants' removal from Canada?*

B. *Did the Minister err by not considering the immediate consequence of a revocation of the Applicant's citizenship on his capacity to work and support his family?*

C. *Is section 7 engaged by the citizenship revocation procedure?*

D. *Should the Court certify the proposed legal question?*

[13] There is no dispute that the standard of review applicable to the Minister's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

V. Analysis

A. *Did the officer err by refusing to consider the hardship on the Applicant and his family resulting from the Applicants' removal from Canada?*

[14] The Applicant first points out that as a direct and automatic consequence of the loss of his citizenship, he is inadmissible in Canada for misrepresentation, pursuant to subparagraph 40(1)d)(ii) of the IRPA. An inadmissibility report can be drafted and deferred to the Immigration Division without the need for the Minister to present or prove any additional element. Once the case is deferred, a removal order will be issued pursuant to paragraph 229(1)i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], without the possibility for the Immigration Division to consider any kind of humanitarian or mitigating circumstances.

[15] Finally, if removed from Canada, the Applicant would remain inadmissible for misrepresentation for a duration of five years following the removal (paragraph 40(2)a) of the IRPA).

[16] So far, and subject to the Minister's discretion provided for under section 233 of the IRPR and 25(1) of the IRPA, I agree with the Applicant.

[17] However, I disagree with the Applicant's argument that the Minister erred in finding that he did not have to assess the consequences of the Applicant's removal and that the citizenship revocation procedure is distinct from removal proceedings. The Applicant is mindful of this Court's previous decisions in *Xu v Canada (Citizenship and Immigration)*, 2021 FC 1102 and

Gucake v Canada (Citizenship and Immigration), 2022 FC 123 which affirm the distinction between citizenship revocation and removal. However, the Applicant invites the Court to revisit this issue, especially in light of the Supreme Court of Canada's decision in *Canadian Council of Refugees v Canada*, 2023 SCC 17 [*CCR*].

[18] *CCR* is not a citizenship revocation decision. It dealt with the removal of individuals to the United States who were ineligible to claim refugee protection in Canada under the Safe Third Country Agreement. The Supreme Court of Canada found that section 159.3 of the IRPR — that designates the United States as a country that complies with the Refugee Convention and the Convention Against Torture — was not *ultra vires* of the IRPA, nor did it breach section 7 of the Charter given the safety valves in the IRPA (i.e. the numerous proceedings that may serve to stay removals to the United States).

[19] The *Citizenship Act* does not provide for removals. When considering revocation of citizenship, the Minister's delegate cannot assume that a person will be removed from Canada if their citizenship is revoked. The person may avail himself of the proceedings provided for in the IRPA to stay his removal or permanently remain in Canada.

[20] I agree with the case law that it is premature for IRCC officers to speculate about foreign hardship that may never occur or that may occur several years after the citizenship revocation decision, and perhaps for different reasons.

[21] In *Xu*, Justice John Norris stated the following:

[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, [2002] 1 S.C.R. 84, 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, [2013] 2 S.C.R. 559, at paragraph 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 [*Canadian Charter of Rights and Freedoms*], 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.

[22] In my view, *Xu* and *Gucake* remain good law and the Applicant has failed to demonstrate why the Court should depart from this line of jurisprudence.

B. *Did the Minister err by not considering the immediate consequence of a revocation of the Applicant's citizenship on his capacity to work and support his family?*

[23] Although I am of the view that the Minister's delegate does not have to consider the consequences of the Applicant's removal in his assessment of the Applicant's personal circumstances, I am also of the view that the terms used in section 10 of the *Citizenship Act* are broader than those used in similar provisions of the IRPA (humanitarian and compassionate grounds to be assessed under section 25 and subsection 67(1) of the IRPA). Had the legislator intended to confer the same meaning to section 10 of the *Citizenship Act*, he would have used the same words. An applicant's "personal circumstances […] that warrant special relief in light of all the circumstances of the case" include but is not limited to "humanitarian and compassionate considerations [that] warrant special relief in light of all the circumstances of the case".

[24] That said, this distinction has no impact in the case before me as the Applicant has only raised standard humanitarian and compassionate factors before the IRCC officer.

[25] In both cases however, the best interest of the children impacted by the decision are to be considered.

[26] In *Sultana v Canada (Minister of Citizenship and Immigration),* 2009 FC 533, Justice Yves de Montigny (as he then was) found that "an immigration officer that is alive, alert and sensitive to the children's best interests should have been in a position to draw, and ought to have drawn, some inferences from these facts" (at para 36). "While an immigration official should not be left to speculate as to how a child will be impacted by his or her decision, it would be preposterous to require from an applicant a detailed and minute demonstration of how the negative consequences of such a decision when they can be reasonably deducted from the facts brought to his or her attention" (at para 36).

[27] In the affidavit evidence before the IRCC officer, the Applicant specified that he is the only wage earner for his wife and children. While the Applicant's written submissions focused on his eventual removal, he made it clear that if he could no longer work in Canada, his wife may be compelled to receive social assistance.

[28] As the Applicant notes in his further memorandum, the loss of status and right to work in Canada is a direct and undisputed legal consequence of the Applicant's citizenship revocation.

[29] There is no indication in the Minister's delegate's reasons that they considered the Applicant's loss of right to work in Canada, nor that they were "alive, alert and sensitive" to the children's best interest in this regard. Given the Minister's delegate's position as a decision maker at IRCC, they clearly should have been in a position to draw, and ought to have drawn, an inference that the children would be adversely affected by the Applicant's loss of citizenship status and consequently of his right to work in Canada.

[30] The officer's failure to grapple with the negative legal consequences of the Applicant's loss of citizenship status on his right to work in Canada and its effect on the best interest of the children in his reasons demonstrates that the decision is not justified in relation to the constellation of law and facts relevant to the decision (*Vavilov* at para 105).

[31] As stated by the Applicant, given the emphasis in his written submissions on the fact that losing his job in Canada would constitute a serious prejudice for his whole family, the IRCC officer should have addressed this in their analysis.

[32] The IRCC officer's failure to address this critical point pertaining to the children's best interest and their father's ability to support them financially read in conjunction with the record does not make it possible to understand the decision maker's reasoning on this critical point (*Vavilov* at para 103).

[33] I am also of the view that the Minister's delegate failed to assess the seriousness of the misrepresentation, the evidence that it was or was not out of character for the Applicant, any

mitigating circumstances, and any expressions of remorse in exercising the equitable discretion conferred to them to relieve a person of the usual consequences of the law. All factors raised by the Applicant are simply and individually outweighed by the misrepresentations, without any specific analysis of them.

C. *Section 7 engagement and proposed certified question*

[34] Considering my previous findings, I do not have to assess whether Section 7 of the Charter is engaged at the citizenship revocation stage, nor should I certify the following question:

> Does paragraph 10(3.1)a) of the Citizenship Act require an assessment, by the Immigration, Refugee and Citizenship Officer, of the hardship and consequences, which would occur upon removal from Canada?

[35] Since I find that the Minister's delegate erred by not analyzing the real and immediate consequences of their decision on the Applicant's children, the file will be sent back for a new determination, irrespective of my finding on this proposed question. It is therefore not determinative of this Court's decision.

VI. Conclusion

[36] Since I am of the view that the Minister's delegate failed to properly assess the short term impact of their decision on the Applicant's minor children, in light of all the circumstances of the case, including the circumstances surrounding the Applicant's misrepresentations and any

mitigating factors or remorse, the decision is set aside and the file is remitted to the Minister for a new determination. No question is certified.

JUDGMENT in T-468-23

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted;

2. The file is sent back to the Minister for a new determination;

3. No question is certified.

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

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