

Federal Court



Cour fédérale

**Date: 20260212**

**Docket: T-1501-24**

**Citation: 2026 FC 211**

**Ottawa, Ontario, February 12, 2026**

**PRESENT: The Honourable Mr. Justice Roy**

**BETWEEN:**

**SALEEM BAPARI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Saleem Bapari challenges the decision of the Minister of Citizenship and Immigration to revoke his citizenship. Under the *Citizenship Act*, RSC, 1985, c. C 29 [the *Act*], the Minister may revoke the citizenship of someone if “satisfied on the balance of probabilities that the person has obtained, retained, renounced or resumed his or her citizenship by false representations or fraud or by knowingly concealing material circumstances” (ss. 10(1) of the *Act*). That constitutes the allegation concerning the Applicant.

[2] Someone who receives the written notice which launches the proceedings against the citizen (ss. 10(3) of the *Act*) has the option of requesting that the case be decided by the Minister (para 10(3.1)(b) of the *Act*) or that the matter be decided by the Federal Court on the basis of an action commenced by the Minister for a declaration that the person has obtained or retained their citizenship by false representation, fraud or knowingly concealing material circumstances.

[3] In the case at hand Mr. Bapari chose to have his case decided by the Minister instead of having the matter to be the subject of adjudication through an action commenced by the Minister. Flows from that choice that the recourse once a decision has been made by the Minister is before this Court, but on judicial review. Thus, the *Vavilov* framework applies, and an applicant must convince the reviewing court that the decision rendered is not reasonable (*Vavilov v. Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65, [2019] 4 SCR 653. That burden is borne by the Applicant.

#### I. Facts

[4] The facts in this case are not disputed. They can be summarized quite quickly.

[5] The Applicant was born in Bangladesh on November 1, 1974. He first came to Canada on January 1, 1999. However, he was not using the name he currently uses, which appears to be his true identity. On January 1, 1999, he came to Canada under the name of Reza Ahmed; he also presented himself with a false date of birth (June 1, 1969). He came to claim refugee protection at the Vancouver International Airport. That claim for refugee status was rejected by the Immigration and Refugee Board in November 1999. The leave to launch a judicial review was

also unsuccessful in December 1999. A negative Pre-Removal Risk Assessment was issued in March 2005. A removal order was executed on April 2, 2005, to his country of nationality, Bangladesh.

[6] Five months later, on September 4, 2005, Mr. Bapari married, in Bangladesh, Dilara Easmin, a permanent resident of Canada. An application for permanent residence in Canada, sponsored by his spouse under the family class, was made for the Applicant and received by the Canadian authorities on June 19, 2006. Three months later, on September 18, 2006, he was interviewed at the Canadian High Commission in Bangladesh. The application was successful. Permanent resident status was obtained at the Vancouver International Airport on January 19, 2007. Mr. Bapari did not disclose his use of the name "Reza Ahmed" before, the date of birth he then used and the fact that he sought refugee status; the refusal of refugee status and the fact he was ordered deported were not disclosed either. These were not as a result of a failure to disclose generally. Specific questions on various documents were falsely answered. The activities and address history were also omitted. Mr. Bapari declared that his application was truthful, complete and correct; he understood that any false statement or concealment of a material fact may result in exclusion from Canada. He acknowledged that these may be grounds for prosecution or removal.

[7] An application for citizenship was made on August 9, 2010. For all intents and purposes, Mr. Bapari doubled down in his application for citizenship. Asked to disclose other names, date of birth or aliases, he chose not to disclose that information. He was not truthful when asked the question about having been under a removal order by answering "no." Again he declared the information to be true, complete and correct. He acknowledged that a false declaration or failure

to disclose all material information could result in the loss of Canadian citizenship and charged under the *Act*.

[8] On December 12, 2012, the Applicant took the oath of citizenship and became a Canadian citizen.

II. How were the misrepresentations discovered

[9] While the Applicant lived and operated in Canada from 1999 to April 2005, he had his driver's licence under the name of Reza Ahmed. Similarly, he had his British Columbia Identification Card in the name of Reza Ahmed; the card was renewed in 2004. He is said to have presented himself 32 times to the Insurance Corporation of British Columbia [ICBC] for driver testing. He was photographed for the identification cards twice and four times for his driver's licence. He even had three insurance claims with ICBC for a total of upwards of \$25,000.

[10] When he came back to Canada after having been sponsored by his wife, in January 2007, Mr. Bapari again obtained his driver's licence, but this time under the name of Saleem Bapari. He presented himself to ICBC for driver testing 19 times and was photographed 9 times.

[11] It is on December 16, 2013, that the Canada Board Services Agency [CBSA] received information from ICBC. The BC Crown Corporation had been utilizing facial recognition software to protect the integrity of the BC Driver's Licence and Identification Cards program.

[12] The comparison of the photographs taken of Riza Ahmed and Saleen Bapari revealed a possible match. An immigration consultant retained by Mr. Bapari communicated with CBSA two days later, to advise that Mr. Bapari was under investigation; ICBC had directed the Applicant to contact CBSA. The consultant indicated that a removal order had been issued against him a long time ago; he also said that he “came back to Canada in a different name by mistake” (Notification letter to the Applicant, January 5, 2024; CTR, p. 168). An interview was set up on January 2, 2014.

[13] On that date, the Applicant and his immigration consultant presented themselves to the CBSA office in Vancouver. Mr. Bapari confirmed that “Reza Ahmed” was not his real name and that “Reza Admed” and “Saleen Bapari” were the same person. The Applicant stated that his original arrangements to come to Canada were made by a “broker.” A different identity than his true identity was chosen because the “broker” indicated that using the original name for the refugee claim would get him in trouble in Bangladesh. The Applicant consented to his fingerprints being taken, which confirmed a positive match with the person who was in Canada from 1999 until April 2005.

[14] As of January 7, 2014, the case was referred by CBSA to the Immigration authorities with a view to launching citizenship revocation proceedings. It was alleged that obtaining permanent residence status and, subsequently, acquiring Canadian citizenship were a function of concealing the Applicant’s alternate identity and his removal from Canada. A person’s identity is said to be a crucial component of all immigration programs because it allows for the accurate assessment of eligibility and admissibility to Canada. This is critical to maintain the integrity of

immigration and citizenship programs, together with protecting the security interests of the country. The laws pertaining to immigration and citizenship are designed to ensure that applicants tell the truth about themselves as they apply for status. That allows officials to conduct the essential checks that are the foundation of the protection, health and safety of Canadians. In sum, had the hidden information been revealed, it may have impacted the decision to grant permanent residence status and citizenship.

### III. And then

[15] It is on October 13, 2023, that Immigration, Refugees and Citizenship Canada [IRCC] sent the Applicant a Request for Information letter, thus providing the Applicant an opportunity to offer written submissions which could include information concerning the Applicant's personal circumstances.

[16] It is possible for a citizen whose citizenship may be revoked to raise personal circumstances. Paragraph 10(3.1)(a) of the *Act* reads as follows:

#### **Loss of Citizenship**

##### **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

#### **Perte de la citoyenneté**

##### **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

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

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;

[17] Counsel for Mr. Bapari, who was not the Applicant’s current counsel, provided two sets of submissions, on December 7, 2023 and on March 4, 2024, following the formal notification concerning the possible revocation of citizenship.

[18] The December 7, 2023, submissions accept responsibility for not disclosing the Applicant’s true and complete immigration history. The Applicant apologizes. The letter from Counsel states that “There is no excuse that he MUST have declared the fact he had used a fictitious name...”. In essence, the submissions consist of requesting “that his error of judgment be excused in light of compelling humanitarian and compassionate grounds and be allowed to live in Canada with his wife” (CTR, p. 1989). From the beginning, the Applicant chose to accept responsibility and to apologize for his actions: he regretted his error in judgment. His motivation to leave Bangladesh was the lack of opportunities in his country of nationality, especially in view of his lack of education. The future was bleak. He was very concerned Canadian authorities would refuse the permanent residence application if they knew the truth about his attempt to be granted refugee status. The Applicant contended that he was left to believe by the CBSA officers

when they met that the whole episode was a minor error which would not result in any further action.

[19] The Applicant raised:

- the risk to his health;
- he supports family members in Bangladesh;
- he is gainfully employed; he has never been on social welfare and is involved in community and religious activities;
- if he had to return to Bangladesh, he highlights the security concerns in a country where police corruption is rampant according to some documentation.

[20] On January 5, 2024, IRCC sent a fulsome Notification Letter concerning Your Citizenship outlining submissions made on behalf of the Applicant. That constitutes the summary of the case against the Applicant. It summarized the submissions received to fall in various categories:

- circumstances surrounding the misrepresentations and remorse;
- establishment and social ties in Canada;
- hardship if removed to Bangladesh;
- financial support for family in Bangladesh;
- law-abiding permanent resident and citizen since his return to Canada.

With respect to each category, the immigration officer makes comments (“I have reviewed and considered your submissions regarding...”).

[21] On the misrepresentations, seeking a better life in Canada is no excuse to undermine the integrity and fairness of the immigration system. The misrepresentations were neither unintentional nor innocent. Furthermore, the contention that the CBSA officer said that this constituted a minor error not subject to further action was not accepted. Indeed the CBSA officer made a solemn declaration where he said that the Applicant was advised that the matter was to be referred to the IRCC to decide whether to proceed against him.

[22] The establishment in Canada is not enough to counterbalance the severity of the misrepresentation. It is to be noted that the submissions as made are more relevant to the potential removal than the revocation of citizenship. These are two different processes, with the removal from Canada being difficult to predict at this stage. That would explain why the focus here is on the impact the revocation of citizenship would have and not what may follow.

[23] A similar comment is made concerning the hardship suffered if the Applicant were removed. Thus comments about hardship are premature.

[24] On financial support for family in Bangladesh, it is acknowledged that the Applicant has sent money to family members. However, the Applicant may seek to regularize his situation in Canada, which would allow him to work and continue helping to support the family members.

[25] As for having been a law-abiding citizen, nothing less is expected from every citizen or resident. Special relief is not warranted.

[26] The Applicant is invited to make further submissions after the officer concluded that no special relief appears to be warranted:

### **Conclusion**

After careful review and assessment of all evidence on file, including your submissions, it appears that you may have obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. IRCC, on behalf of the Minister, is not satisfied that the personal circumstances described above warrant special relief from commencing citizenship revocation proceedings.

### **Current status**

Given the above, and in order to ensure all relevant information is considered, you will have **60 days from the date of this letter** to make any additional written submissions and to provide documentary evidence. Your submissions can include a description of your personal circumstances, including, but not limited to, the length of time you spent in Canada before acquiring citizenship and, since becoming a citizen, your ties or connections to Canada. Other personal circumstance submissions could include evidence of the presence of serious health issues, the best interests of a child directly affected, and a description of any hardships that you would experience if your citizenship is revoked. Submissions sent in response to the *Request for Information Letter* will be kept on file.

(CTR, p. 173).

That prompted the Applicant, through his former counsel, to supply supplementary submissions on March 4, 2024.

[27] In effect, the same submissions were reiterated with some emphasis put on the Applicant's apology for his past conduct (formal letter of apology dated March 1, 2014, CTR p.

23). The Applicant's wife's despair at the situation they found themselves in, and the financial situation the couple would be faced with if the citizenship of the husband were revoked, thus jeopardizing their way of life, were emphasized. Counsel put it in terms of "putting Mr. Bapari out of work will force his family into bankruptcy and financial ruins, not only for present but for long time in the future" (CTR, p. 21-22). The loss of health coverage is also invoked, together with the eventual removal from Canada.

[28] The decision from the Ministerial Delegate followed shortly thereafter, on May 3, 2024. It is the decision under review as the Applicant had chosen for the decision to be made by the Minister instead of an action being commenced by the Minister before the Federal Court.

#### IV. The decision under review

[29] The decision is articulated around two pillars. The Applicant completely misrepresented himself in order to gain access to Canada, and then became a citizen; second, in the analysis that takes place to decide if the revocation of the citizenship is warranted, revocation and removal from Canada should not be conflated, the outcome of the immigration process remaining unknown at this stage.

[30] The decision maker finds that the Applicant has obtained his Canadian citizenship by fraud or false representation or by knowingly concealing material circumstances. There is no reason to dwell on the misrepresentations as the Applicant never contested being guilty of making them. The failure to disclose the alternate identity and removal order prevented an accurate eligibility and admissibility assessment, thus allowing the Applicant's return to Canada

without the required written authorization. The application for Canadian citizenship suffered from the same defect. That application was not true, correct and complete in spite of the attestation to that effect given by the Applicant.

[31] In fact, the Applicant relied on the existence of considerations that warrant relief in view of all the circumstances (s.10 (3.1)(a) of the *Act*). Accordingly, the Minister's Delegate considered the representations made to that effect.

[32] The circumstances surrounding the misrepresentations do not constitute extenuating circumstances in the view of the Ministerial Delegate (MD), because they did not necessitate misrepresenting the identity. Wanting a better life in Canada cannot be an excuse to undermine the integrity and fairness of Canada's immigration system. The misrepresentations constitute a very serious and intentional deception. Emphasis was put on the fact that, as a previously deported person, the applicant was banned from returning to Canada: a written authorization was required. Hence, the misrepresentations had the effect of circumventing the process. The admission of guilt and the remorse expressed by the Applicant do not overcome the actions taken to circumvent immigration and citizenship laws.

[33] The establishment and social ties in Canada are examined. The decision maker notes in passing that the Applicant has been living with his wife for 23 years without any trouble with the law. Good ties and roots have been established, including participating in community and religious activities. Stable employment is acknowledged; the loss of citizenship would result in an inability to work, which would put the couple in financial distress. The MD reckons that the

revocation of citizenship could cause great emotional, psychological distress to the Applicant's wife, together with the financial stress resulting from his inability to work.

[34] Despite acknowledging the establishment and ties to Canada, the MD considers that the submissions are largely centred on removal from Canada. Revocation of citizenship and removal imply different processes. Removal proceedings have not been commenced, and their outcome cannot be predicted. Arguments about the consequences of removal are to be properly addressed post-revocation if proceedings are undertaken. Nonetheless, the decision maker highlights “that as a foreign national subject to the IRPA/ IRPR, various options to try to obtain temporary status or even permanent resident status remain available to you” (Ministerial Decision, p. 7/10, CTR p.13). No special relief is therefore warranted.

[35] Next, the decision maker addresses the “personal circumstances” resulting in the hardship to be suffered by the Applicant, whether removed from Canada or even if he is able to remain in Canada following the revocation of his citizenship. Thus, the presence of chronic diseases requiring monitoring and medications is noted. The loss of coverage for health care services is acknowledged, although the decision maker elliptically notes that “the revocation of citizenship would not impact your ability to access health care in Canada” (Ministerial Decision, p. 8/10, CTR p. 14]. Surprisingly, in my view, without much explanation the decision maker states that since the Applicant had been successful in having claimed for \$300 paid by his wife's health insurance, that suggested that he may be eligible for some health coverage under his wife's insurance. In the same breath, the MD suggests that the Applicant has the option to apply to regularize his status in Canada.

[36] Again, the decision maker finds premature to consider these issues because they are to be addressed at the removal-related proceedings, were they to occur. The decision maker relies on the same rationale (revocation of citizenship is not removal from Canada) to give short shrift to the contention that the Applicant would not have the financial resources to hire counsel to seek status through unspecified options available in the immigration process. At any rate, says the MD, legal representation is not required to seek temporary or permanent residence. No indication is given as to how an applicant can navigate the meanders of the immigration system. The MD had not offered either what may be the various options to try to obtain some sort of status in Canada.

[37] Finally, is addressed the impossibility to provide financial support to family members in Bangladesh. The decision maker does not dispute that the Applicant provides assistance. However, once again, the decision boils down to the possibility for the Applicant to regularize his status in Canada once his citizenship has been revoked. After all, says the decision maker, the financial assistance to be provided to family members was possible because of the misrepresentations used to obtain access to Canada as a permanent resident, and subsequently in being granted the Canadian citizenship.

[38] In effect, the decision maker concludes that the Applicant submitted his applications knowing full well that they constituted misrepresentations and having been advised of the negative consequences of misrepresenting oneself. These are evidently seen as consisting in very significant misrepresentations because, when considered in their totality, “the personal circumstances are insufficient to grant special relief in light of the Canadian public interest to

uphold and maintain the integrity of Canada's immigration and citizenship programs”

(Ministerial Decision, p. 9/10, CTR p. 15).

V. Arguments and analysis

[39] As noted earlier, the Applicant chose to have the matter of the revocation of his citizenship decided by the Minister, through a ministerial delegate. As a result, his only recourse is an application for judicial review, leave having been granted by this Court.

[40] The Applicant raises two issues. First, he contends that the proceedings constituted an abuse of process, such that the Court ought to stay citizenship revocation proceedings. Second, the Applicant argues that the decision is unreasonable. On that front, the Applicant argues that:

- the MD did not engage sufficiently with the consequences of citizenship revocation, citing repeatedly the ability for Mr. Bapari to regularize his immigration status to discount the positive consideration (establishment and hardship); the MD is faulted for not having discussed whether the Applicant was eligible for a remedy;
- the Applicant also argues that the MD established a test relative to the seriousness of misrepresentation higher than the test found in the *Act*. Paragraph 10 (3.1)(a) of the *Act* speaks of “personal circumstances...that warrant special relief in light of all the circumstances of the case,” while the MD spoke, with respect to the seriousness of the misrepresentation, of requiring the Applicant to demonstrate “extenuating circumstances that necessitated your misrepresentation to Canadian authorities” (Ministerial Decision, p. 6/10, CTR p. 12). In other words, a higher test has been used in that misrepresentation was necessary because of extenuating circumstances.

If the misrepresentation was not necessary, personal circumstances would not be sufficient to counterbalance the misrepresentation;

- at any rate, the reasons given did not offer any explanation of the weighing of the factors taken into account allowing the Applicant to determine the reasons why his personal circumstances did not suffice to remain a Canadian Citizen. Basically the reasons were insufficient in view of the stakes.

A. Abuse of process

[41] This is actually an awkward issue because, as we shall see, not only the MD did not pronounce on the argument, but it was never even presented before the decision maker. Before delving into the issue proper, must first be established the standard of review for a decision to be made about an abuse of process argument. Indeed the Applicant did not dwell on the issue, simply declaring that the abuse of process being a question of law, the standard of review is correctness. The authority cited in support is paragraph 30 of *Law Society of Saskatchewan v. Abrametz*, SCC 29, [2022] 2 SCR 220.

[42] With respect, that cannot be. Questions of law are presumptively subject to the reasonableness standard (*Vavilov*, para 23). What is more is that paragraph 30 of *Abrametz* is of little use as it does not apply to our case because the scheme considered in that case, which gave rise to paragraph 30, is different from the judicial review application in this case.

[43] In *Abrametz*, there was an appeal from the decision of the Law Society on a disciplinary case involving a member of the Bar to the Saskatchewan Court of Appeal. The recourse being an

appeal, the Supreme Court applied the *Vavilov* framework. Thus, the statutory appeal leads to the standards of review applicable to appeals. For questions of law, the standard is correctness, while it is the palpable and overriding error for questions of fact and of mixed fact and law (*Hausen v. Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235). We are here confronted to a judicial review application. The standard of review where the allegation is abuse of process must be found elsewhere.

[44] It is rather that abuse of process in administrative proceedings is a procedural fairness issue (*Abrametz*, para 38). It follows that the judicial review of an administrative decision on abuse of process will be judicially reviewed on a correctness standard (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339; *Mission Institution v Khela*, 2014 SCC 24, [2014], SCR 502). Paragraph 38 from *Abrametz* reads as follows:

[38] In administrative proceedings, abuse of process is a question of procedural fairness: *Blencoe*, at paras. 105-7 and 121; G. Régimbald, *Canadian Administrative Law* (3rd ed. 2021), at pp. 344-350; P. Garant, with P. Garant and J. Garant, *Droit administratif* (7th ed. 2017), at pp. 766-67). This Court dealt with abuse of process as it relates to administrative delay in *Blencoe*. Our Court recognized that decision makers have, as a corollary to their duty to act fairly, the power to assess allegedly abusive delay.

The standard of review will accordingly be correctness.

[45] But the Applicant is confronted with a more basic problem. The fundamental problem encountered by the Applicant is that there is no decision to be reviewed because none was made. And none was made because the argument was never presented. There was no allegation of an abuse of process that was made in this case. As was found in *Alberta (Information and Privacy*

*Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654, “Just as a court has discretion to refuse to undertake judicial review where, for example, there is an adequate alternative remedy, it also has a discretion not to consider an issue raised for the first time on judicial review where it would be inappropriate to do so...” (para 22). The Court goes on to observe at paragraph 23 that, “Generally, this discretion will not be exercised in favour of an applicant on judicial review where the issue could have been but was not raised before the tribunal.”

[46] As was seen from paragraph 38 of *Abrametz*, “...decision makers have, as a corollary to their duty to act fairly, the power to assess allegedly abusive delay.” It follows that where a matter such as abuse of process by reason of delay has not been raised before the decision maker, discretion to entertain the matter on judicial review will not generally be entertained by the reviewing court. That should dispose of the issue without more.

[47] I have nevertheless considered the matter more fully. Should this matter be an exception and be entertained further?

[48] The essence of the allegation of abuse of process stems from the fact that CBSA provided IRCC with the results of their encounter with Mr. Bapari concerning the possible misrepresentations on his part in January 2014. Confirmation of the receipt of the file took place on January 23, 2014. It is only on October 10, 2023 that IRCC started proceedings by sending a request for information to Mr. Bapari. Followed thereafter the first submissions on behalf of Mr. Bapari on December 7. Then there was the “Notification Letter concerning Your Canadian

Citizenship” on January 5, 2024. The second set of submissions came on March 4, 2023, with the decision being rendered on May 3, 2024. The file was not completely dormant from January 2014 to October 2023 when the formal revocation proceedings were launched. Very little is known, but it seems that there may have been some communications between CBSA and the IRCC, or internally within IRCC. But that is not surprising. The delay in launching the proceedings was not raised and the record is devoid of information.

[49] The Applicant notes that the decision did not explain the near ten-year delay between the interaction of the Applicant with the CBSA and the commencing of the revocation of citizenship proceedings. There is obviously a very good reason for this alleged omission: that was never raised by the Applicant. The record is incomplete because a decision was made to adopt a different strategy.

[50] I observed during the hearing of the judicial review application that the whole strategy adopted by the Applicant was to rely on paragraph 10 (3.1)(a) of the *Act* and plead that his personal circumstances warranted special relief. He did not even allude to some abuse of process resulting from the delay before launching the proceedings. Speaking about having been in Canada as an element of personal circumstances warranting special relief is far from claiming abuse of process. Alleging abuse of process may well have been counterproductive in view of the chosen strategy. There was no such argument made.

[51] Relying for the first time on the doctrine of abuse of process, and on *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307, the Applicant claims on judicial review that there is here an inordinate delay which causes him a significant prejudice.

[52] Of course, the delay may bring concern about the hearing fairness when, for instance, the ability to answer the complaint in a given case is compromised because witnesses have become unavailable or memories have faded. Such is evidently not been the case here. The Applicant never challenged he misrepresented himself, including in his submissions of December 2023, after the revocation process had started, and March 2024 following the “Notification Letter concerning Your Canadian Citizenship” (January 5, 2024), which constitutes the allegations made against the Applicant. In other words, the misrepresentations were acknowledged: There was no answer to the complaint.

[53] There are three steps in the analysis leading to a conclusion about the existence of an abuse of process. In *Abrametz*, the Supreme Court updated the law of abuse of process and brought precision to the doctrine. In order to prevail, if the fairness of the hearing was not jeopardized, an applicant must satisfy the three-step test usefully summarized at paragraph 101 of *Abrametz*:

[101] Where delay has not affected the fairness of a hearing, the test to determine if the delay amounts to an abuse of process has three steps:

1. First, the delay must be inordinate. This is determined on an assessment of the context overall, including the nature and purpose of the proceedings, the length and causes of the delay, and the complexity of the facts and issues in the case; and

2. Second, the delay itself must have caused significant prejudice;
3. When these two requirements are met, the court or tribunal should conduct a final assessment as to whether abuse of process is established. This will be so when the delay is manifestly unfair to a party to the litigation or in some other way brings the administration of justice into disrepute.

[54] The Applicant contends that the delay was inordinate because, in his view, it started in 2013-14 as opposed to when the process was actually begun with the Request for information of October 10, 2023. The Applicant does not explain why an initial contact with a CBSA officer would be the starting point.

[55] On the prejudice front which it is claimed came from the delay, the Applicant says in a new affidavit:

- when younger, Mr. Bapari would have been able to re-establish himself;
- the bar for misrepresentation would have been shorter in 2014 (two years), thus allowing for resumption of seeking permanent residency and citizenship quicker;
- the Applicant now suffers from chronic diseases, which require medical treatment for which he would need medical insurance with a now pre-existing condition;
- bank loans were taken under the assumption that he was not at risk of losing status. The Applicant would have made different plans for a future without employment;
- the stress caused by the revocation of citizenship proceedings was also noted.

[56] There are two observations that should be made at this stage. First, the Applicant insists that the only remedy that would be available is a stay of proceedings (further memorandum of fact and law, para 43). It follows that the Applicant must show that the delay had directly caused significant prejudice (*Abrametz*, para 43). More importantly where the stay is the only remedy, as claimed by the Applicant, it is recognized “that the threshold of ‘shocking abuse’ is necessary to justify a stay of proceeding” (*Abrametz*, para 44). Indeed, because a stay of proceeding constitutes the ultimate remedy for abuse of process, “a stay should be granted only in the ‘clearest of case,’ when the abuse falls at the high end of the spectrum of seriousness” (*Abrametz*, para 83).

[57] Second, the *Abrametz* Court found that “It is only where there is *detriment* to an individual that a court or tribunal will conclude that there has been an abuse of process.” The Court goes on to state that delay is not always a prejudice: “in some cases, delay by itself may be beneficial to the affected party. For example, if the affected party is facing the penalty of disbarment [which was the case in *Abrametz*], delay in the administrative process might be welcomed by the affected party, insofar as it enables him or her to continue practicing.” The benefit derived from staying in Canada for some not insignificant time is factored in the consideration of the prejudice: “These are some of the reasons why the doctrine of abuse of process as it relates to administrative delay requires proof of significant prejudice” (*Abrametz*, para 67).

[58] The Respondent argues that the argument for an abuse of power in this case has not been made out. The argument was improperly raised and, at any rate, it is without merit.

[59] The Respondent forcefully argues that the Applicant did not raise abuse of process before the decision maker, which would have allowed the MD to consider the reasons for the delay, whether there exists a prejudice, whether the prejudice has the severity required, considering the benefits derived from the delay, to qualify as “significant” enough to impose a stay of proceedings. Is this case one of the “clearest cases,” that is “at the high end of the spectrum of seriousness” (*Abrametz*, para 83). Evidence could, and should, have been led by the parties for the foundation of a reasoned decision to be laid. That evidence could have been tested. The Respondent refers to case law in this Court, the Federal Court of Appeal and the Supreme Court for the proposition that a reviewing court will generally refuse to consider an abuse of process argument when it could have been raised before the decision maker as the MD controls its process:

*Alberta Teachers’ Association*, para 22-23

*Obazughanmwun v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2023 FCA 151, para 48-51;

*Tan v Canada (Minister of Citizenship and Immigration)*, 2024 FC 600, para 37-54;

*Teklay v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2024 FC 843, para 1, 17-23;

*Banovic v. Canada (Minister of Citizenship and Immigration)*, 2024 FC 1990, para 14 and 45.

[60] In *Banovic*, our Court found that the proper forum for an allegation of abuse of process is the decision maker. We read at paragraph 45:

[45] In this case, the Immigration Officer is best placed to determine whether the delay constitutes an abuse of process.

Immigration Officers control their own process and must accordingly ensure that their processes comply with the rules of procedural fairness, and be responsive to allegations of abuse. The Immigration Officer is the proper forum in which the Applicant could bring his allegations of abuse of process at this stage of the immigration proceedings (*Najafi* at para 26; *Naimi* at para 27).

[61] Mr. Bapari stresses now that the delay is “inexplicable.” No wonder. No attempt could have been made to give an explanation since the delay was never raised by the Applicant before the decision maker or as part of the initial submissions made after the request for information was sent. To put it plainly, the Respondent was never allowed an opportunity to provide any explanation because the matter was never raised. The only information comes from the Applicant at this later stage in the form of various communications over the years that are found in the Certified Tribunal Record. Obviously the quality of the record on the time between 2014 and 2023 is less than adequate. Indeed no witness was able to shed light on a matter that was totally ignored by the Applicant. That, in and of itself, is problematic. The Alberta Teachers' Association Court makes as one of its principal rationale for declining to hear on judicial review for the first time the prejudice caused to one party and the fact that the record may be inadequate (para 26).

[62] In fact, as I have already pointed out, this is a case in point. There are good reasons why a reviewing court will decline to consider an abuse of process argument made for the first time before the Court. It starts with an improper record being made available to the review court. The place where to bring that kind of an argument is before the decision maker in front of whom not only statements are made, but evidence to counter may be presented and, at any rate, the evidence presented will be tested. In such circumstances, the decision maker is in a position to

control their own process because the process is challenged with a complete record being assembled.

[63] Here, there is no evidence as to whether the delay is inordinate or can be explained, in whole or in part. More importantly perhaps, the record before the decision maker is silent as to the prejudice suffered, and significant enough to justify a stay of proceeding because the prejudice was caused by the delay and falls at the high end of the spectrum of seriousness. Why can't that not be appraised? Because the matter was not raised. Everything raised was in the context of bringing to the fore personal circumstances that warrant special relief, not that the process followed was in any way abusive.

[64] As found by the Court of Appeal in *Obazughanmwun*, administrative decision makers are required to handle such matters. As a corollary to their duty to act fairly, decision makers have the power to assess abusive delay (*Abrametz*, para 38). In fact, it is their job, whereas "the role of the reviewing court is to assess the reasonableness (and in some cases, the correctness) of the Immigration Division's decision" (*Obazughanmwun*, para 50). The reviewing court is said at paragraph 50 to "benefit immensely from the expertise of administrative decision-makers, and from a full evidentiary and factual record that will inform their decision." To put it differently, the reviewing court is not a court of first view.

[65] The principles that guide reviewing courts and the rationale in support of the principles were expressed in *Alberta Teachers' Association*. I reproduce the most salient paragraphs.

A. *Judicial Review of an Issue That Was Not Raised Before the Tribunal*

[22] The ATA sought judicial review of the adjudicator's decision. Without raising the point before the Commissioner or the adjudicator or even in the originating notice for judicial review, the ATA raised the timelines issue for the first time in argument. The ATA was indeed entitled to seek judicial review. However, it did not have a right to require the court to consider this issue. Just as a court has discretion to refuse to undertake judicial review where, for example, there is an adequate alternative remedy, it also has a discretion not to consider an issue raised for the first time on judicial review where it would be inappropriate to do so: see, e.g., *Canadian Pacific Ltd. v. Matsqui Indian Band*, 1995 CanLII 145 (SCC), [1995] 1 S.C.R. 3, *per* Lamer C.J., at para. 30: “[T]he relief which a court may grant by way of judicial review is, in essence, discretionary. This [long-standing general] principle flows from the fact that the prerogative writs are extraordinary [and discretionary] remedies.”

[23] Generally, this discretion will not be exercised in favour of an applicant on judicial review where the issue could have been but was not raised before the tribunal (*Toussaint v. Canada Labour Relations Board* (1993), 160 N.R. 396 (F.C.A.), at para. 5, citing *Poirier v. Canada (Minister of Veterans Affairs)*, 1989 CanLII 5208 (FCA), [1989] 3 F.C. 233 (C.A.), at p. 247; *Shubenacadie Indian Band v. Canada (Human Rights Commission)*, 1997 CanLII 6370 (FC), [1998] 2 F.C. 198 (T.D.), at paras. 40-43; *Legal Oil & Gas Ltd. v. Surface Rights Board*, 2001 ABCA 160, 303 A.R. 8, at para. 12; *United Nurses of Alberta, Local 160 v. Chinook Regional Health Authority*, 2002 ABCA 246, 317 A.R. 385, at para. 4).

[24] There are a number of rationales justifying the general rule. One fundamental concern is that the legislature has entrusted the determination of the issue to the administrative tribunal (*Legal Oil & Gas Ltd.*, at paras. 12-13). As this Court explained in *Dunsmuir*, “[c]ourts . . . must be sensitive . . . to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislatures” (para. 27). Accordingly, courts should respect the legislative choice of the tribunal as the first instance decision maker by giving the tribunal the opportunity to deal with the issue first and to make its views known.

[25] This is particularly true where the issue raised for the first time on judicial review relates to the tribunal's specialized

functions or expertise. When it does, the Court should be especially careful not to overlook the loss of the benefit of the tribunal's views inherent in allowing the issue to be raised. (See *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, [2007] 1 S.C.R. 650, at para. 89, *per* Abella J.)

[26] Moreover, raising an issue for the first time on judicial review may unfairly prejudice the opposing party and may deny the court the adequate evidentiary record required to consider the issue (*Waters v. British Columbia (Director of Employment Standards)*, 2004 BCSC 1570, 40 C.L.R. (3d) 84, at paras. 31 and 37, citing *Alberta v. Nilsson*, 2002 ABCA 283, 320 A.R. 88, at para. 172, and J. Sopinka and M. A. Gelowitz, *The Conduct of an Appeal* (2nd ed. 2000), at pp. 63-68; *A.C. Concrete Forming Ltd. v. Residential Low Rise Forming Contractors Assn. of Metropolitan Toronto and Vicinity*, 2009 ONCA 292, 306 D.L.R. (4th) 251, at para. 10 (*per* Gillese J.A.)).

[My emphasis.]

Given the principles articulated by the Supreme Court and applied by the federal courts, I see no reason in this case to depart from not exercising the discretion in favour of this Applicant. He never intended to raise an abuse of process, choosing instead to argue for special relief.

[66] I respectfully agree wholeheartedly with Turley J in *Teklay* when she concluded on the issue of delay being properly before the Court:

[22] While I have sympathy for the Applicants' situations, it was incumbent on them to expressly raise the issue of delay before the RPD, adduce evidence of the prejudice that they alleged the delay caused, and seek a remedy. Had the Applicants properly raised the issue of delay and adduced evidence, the Minister would have had the opportunity to cross-examine the Applicants, adduce their own evidence, and make submissions. Allowing the Applicants to raise this issue for the first time on judicial review would be unfair to the Minister, and deprive the Court of a proper evidentiary record: *Alberta Teachers' Association* at para 26.

[67] Given the Court's conclusions on the availability of the abuse of process argument in this case, there is no need to address the merits. Nevertheless, I offer some observations on the merits of the argument as submitted.

[68] As seen, in order to prevail the Applicant must establish that the delay is inordinate, that the delay itself has caused significant prejudice and, thirdly, a final assessment is conducted to determine that the delay is manifestly unfair, or it brings the administration of justice into disrepute. In the case at bar, the fairness of the hearing was not compromised by the delay because it was never disputed that the Applicant had misrepresented himself twice, to become a permanent resident and to be granted Canadian citizenship. For a stay of proceedings to be warranted, the threshold of "shocking abuse" is necessary (*Abrametz*, para 44).

[69] There is no statute of limitation before starting revocation of citizenship proceedings. Assuming that the delay was inordinate, in spite of the fact that the proceedings arguably started per se on October 10, 2023 and were concluded on May 3, 2024, the Applicant never established that, all in all, the prejudice, once is factored in the beneficial effect of the delay if it is to be calculated starting in 2014, was significant enough to warrant a conclusion of the process being abusive. The burden is on the Applicant. The weak record plays against the Applicant (*Chabanov, supra*). It never reached the clearest of cases with the abuse falling at the high end of the spectrum of seriousness.

[70] The Applicant stresses that the prejudice said to have been caused by the alleged delay is that the Applicant is now older, which would make his re-establishment more difficult; he may

not be able to have access to free medical care in view of some chronic disease, he has contracted bank loans and has not saved as much as perhaps he should have, and the situation thus created has been a source of stress. In my view, it is less than obvious that these are the type of prejudice that fall at the high end of the spectrum of seriousness, leading to the clearest case in the context of the revocation of citizenship proceedings. It is rather in large part the consequences of having been undetected for a period of time and having benefited from a status illegally obtained in the knowledge that there were misrepresentations of significant nature and severity. In fact, the prejudice invoked falls more in the category of special relief which was to be examined as part of the plea made by the Applicant in his submissions pursuant to paragraph 10 (3.1)(a) of the *Act*.

[71] The Court turns to the other argument advanced by the Applicant. Was the decision reasonable?

B. Reasonableness of the decision under review

[72] The abuse of process leading to a stay of the proceedings, in view of the alleged delay having been unsuccessful, the Court must now determine if the MD's decision was reasonable.

[73] It is of course for the Applicant to establish, on a balance of probabilities, that the decision does not bear the hallmarks of a decision that is reasonable, that is that it is justified, transparent and intelligible, and that it is justified in view of the factual and legal constraints that bear on the decision. The shortcomings in the decision must be serious. Two types of fundamental flaws have been identified as being a failure of rationality internal to the reasoning

process, and a decision which, in some respect, is untenable in light of the factual and legal constraints (*Vavilov*, para 99-100-101).

[74] As importantly, the *Vavilov* decision insists on a culture of justification in administrative decision making (para 2). It does not suffice that a decision be reasonable as to its outcome. As stated at para 83, the reviewing court considers the decision actually made, “including both the decision maker’s reasoning and outcome.” The reasons matter: “In short, it is not enough for the outcome of the decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies” (para 86).

[75] It seems to me that the principle, and the limited role to be played by the reviewing court, are articulated in paragraphs 95 and 96 of the *Vavilov* decision, which I reproduce in their entirety:

[95] That being said, reviewing courts must keep in mind the principle that the exercise of public power must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to it. It would therefore be unacceptable for an administrative decision maker to provide an affected party formal reasons that fail to justify its decision, but nevertheless expect that its decision would be upheld on the basis of internal records that were not available to that party.

[96] Where, even if the reasons given by an administrative decision maker for a decision are read with sensitivity to the institutional setting and in light of the record, they contain a fundamental gap or reveal that the decision is based on an unreasonable chain of analysis, it is not ordinarily appropriate for the reviewing court to fashion its own reasons in order to buttress the administrative decision. Even if the outcome of the decision could be reasonable under different circumstances, it is not open to a reviewing court to disregard the flawed basis for a decision and substitute its own justification for the outcome: *Delta Air Lines*, at

paras. 26-28. To allow a reviewing court to do so would be to allow an administrative decision maker to abdicate its 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. This would also amount to adopting an approach to reasonableness review focused solely on the outcome of a decision, to the exclusion of the rationale for that decision. To the extent that cases such as *Newfoundland Nurses* and *Alberta Teachers* have been taken as suggesting otherwise, such a view is mistaken.

[My emphasis.]

[76] Finally, the Court stresses that the reasons must be commensurate with the impact a decision has on the individual:

[133] It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: *Baker*, at para. 25. However, this principle also has implications for how a court conducts reasonableness review. Central to the necessity of adequate justification is the perspective of the individual or party over whom authority is being exercised. 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. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

[My emphasis.]

The consequences of the revocation of one's citizenship are such that concerns about its arbitrariness will be more acute, thus requiring that the decision maker grapple with the consequences and provide adequate reasons. In the case at bar, it starts with the fact that the constitutional right to remain, and leave and return, to Canada (s. 6 of the *Canadian Charter of Rights and Freedoms*) is lost with the loss of citizenship. Once citizenship is revoked, the loss of

status brings into play the possibility of deportation orders, the ability to work and the access to various state services. There is no doubt, in my estimation, that the consequences are severe.

[77] With regards, the reasons given do not meet the requirement that they be adequate, that is that they are proportional to the stakes. The Applicant relied solely on his personal circumstances which, he claimed, warrant special relief (para 10 (3.1)(a) of the *Act*). He did not try to argue that because of delay in bringing proceeding against him, the proceedings had become an abuse of process. But no doubt the time spent in Canada is to be factored in, together with the circumstances which come from establishment for upwards of ten years without a blemish.

[78] The Court has reviewed in some detail the decision subject to the judicial review. Parliament has spoken when it provided that personal circumstances may be such that special relief if warranted. Indeed, the Minister is instructed to consider such circumstances in no uncertain terms at ss. 10(3.2):

**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.

**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.

Moreover, Parliament makes it a point that the decision made by the Minister must be in writing (ss. 10(5) of the *Act*).

[79] Mr. Bapari recognized that he had misled the authorities by relying on false identity when he first came to Canada, and then by not disclosing the misdeed when he claimed permanent residence and citizenship. But he raised a number of issues that qualify as personal circumstances. The MD had to address these in the reasons in writing he had to give.

[80] In particular, the decision maker had to account for what may qualify for special relief. To put it otherwise, the personal circumstances lead to the availability of special relief. The focus must be on the personal circumstances. It would be unreasonable to empty out the notion by requiring that the personal circumstances be in view of extenuating circumstances. Paragraph 10 (3.1) (a) speaks of “warrant relief in light of all the circumstances of the case”, not all of the extenuating circumstances of the case. There is no indication either that the misrepresentations were made because of extenuating circumstances as suggested by the MD: it must be explained why the circumstances presented here do not qualify in view of the bar set by Parliament. It is simply that the decision considers the special circumstances that warrant special relief in the circumstances. It would not be for the reviewing court to substitute its view on the merits. But it is the duty of the reviewing court to assess whether adequate reasons have been given in view of the impact on the Applicant. In *Vavilov*, we read at paragraph 135:

[135] Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law.

[81] In effect, the MD considers the misrepresentations in and of themselves as being so grave that no personal circumstances appear to warrant special relief. The integrity and fairness of the

immigration system are put on a pedestal without engaging with the actual personal circumstances. Furthermore, the MD puts the bar very high in requiring that the Applicant demonstrate “extenuating circumstances that necessitated your misrepresentation to Canadian authorities” (Decision, p. 6/10). Without any explanation, the MD turns “special relief” into a requirement that the misrepresentations be a necessity, perhaps even duress has become a must. If the reasons for the misrepresentations as part of “all circumstances of the case” are to be factored in, that should be explained and weight to be given to such consideration assessed. No explanation is offered in this case for such a restrictive view of what warrants “special relief.” An explanation is needed for the reviewing court to assess its reasonableness.

[82] The Applicant notes that repeatedly the MD seeks to discount the sting of the personal circumstances by alluding to the ability of the Applicant to seek various remedies under the Immigration and Refugee Protection Act to obtain some status, temporary or otherwise. I agree. The MD does not engage with the personal circumstances. Each one is discounted after the bar had been set at “extenuating circumstances” for making misrepresentations, not personal circumstances warranting relief in all the circumstances of the case. The MD goes so far as to state on the health care coverage that would be lost that “the revocation of your citizenship would not impact your ability to access health care in Canada; rather, only the coverage of these services” (CTR, p. 14, Decision, p. 8/10). To say the least, that is small comfort indeed.

[83] I have concluded that more and better is expected of a decision maker. The power over vulnerable persons brings with it the high responsibility to ensure that the reasons have duly considered the consequences of the decision when Parliament has instructed that personal

circumstances be considered with a view to warrant special relief. That was not done in this case in view of the reasons in writing given. They are not adequate to the task. Whether or not the outcome might be reasonable is not relevant. It is the process leading to the outcome which is deficient, making the decision under review not reasonable.

VI. Conclusion

[84] The issue of abuse of process has been determined and should not be raised again. As for the reasonableness of the decision, the reasons are inadequate in view of the stakes. As a result, the matter must be sent back to a different decision maker for redetermination on the basis of the record as constituted and reflected in the Certified Tribunal Record.

**JUDGMENT IN T-1501-24**

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

1. The judicial review application is granted in part. The matter of the reasonableness of the decision is returned to different decision maker for redetermination solely on the basis of the record as constituted.
2. There is no serious question of general importance that is stated in view of the record.
3. No costs are awarded.

“Yvan Roy”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1501-24

**STYLE OF CAUSE:** SALEEM BAPARI v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 17, 2025

**JUDGMENT AND REASONS:** ROY J.

**DATED:** FEBRURY 12, 2026

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