Federal Court  Cour fédérale

Date: 20120125

Dockets: T-405-11
T-406-11

Citation: 2012 FC 98

Ottawa, Ontario, January 25, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

T-405-11

IAN WILLIAM JABOUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AND BETWEEN:

T-406-11

ADAM GEORGE JABOUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants, brothers Ian William Jabour and Adam George Jabour, are contesting a Citizenship Officer's refusal to issue them citizenship certificates on the basis that they do not meet the requirements of the *Citizenship Act*, RSC, 1985, c C-29 (the *Act*).

[2] Their applications for judicial review (T-405-11 and T-406-11), as brought under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, were consolidated into one by an order dated April 12, 2011.

[3] For the following reasons, this application is dismissed.

I. Facts

[4] The Applicants' paternal grandmother, Alice Brady (known as Alice Jabour following her marriage), was born in Vancouver, British Columbia on June 25, 1921. Since Canada did not have citizenship legislation at the time, she was initially considered a British subject.

[5] The coming into force of the *Citizenship Act*, SC 1946, c 15 (*1947 Act*) described her as a natural-born Canadian citizen. However, she lost this citizenship in 1949 when she became a naturalized citizen of the United States of America.

[6] Her son, Dale Timothy Jabour, was born in the United States of America on July 8, 1953. His parents were not Canadian citizens at the time of his birth.

[7] The Applicants are the sons of Dale Timothy Jabour. Adam was born on December 29, 1984 and Ian was born October 22, 1991 also in the United States of America.

[8] On July 30, 2010, the Applicants applied along with their father for Canadian citizenship certificates (or "proof of citizenship"). Only their father was ultimately issued a certificate.

[9] When it came into force on April 17, 2009, *Bill C-37* (or *An Act to Amend the Citizenship Act*, 2nd Sess, 39th Parl, 2008) restored the citizenship of the Applicants' grandmother, Alice Jabour, back to the date of loss in 1949. As a consequence, their father was entitled to a citizenship certificate as a person born outside Canada to a citizen parent under subsection 3(1)(g). His citizenship was also deemed retroactive to his date of birth by the operation of subsection 3(7)(e).

II. Decision Under Review

[10] In letters dated February 8, 2011, the Citizenship Officer refused to issue certificates to the Applicants because subsection 3(3)(a) of the *Act* limits citizenship by descent to the first generation born outside Canada. Since their father was also born outside Canada and issued a certificate under subsection 3(1)(g), the Applicants could not meet the requirements for citizenship prescribed by subsection 3(1)(b).

III. Legislative Scheme

[11] Canadian citizenship legislation has undergone several changes since the introduction of the first *1947 Act*. In 1977, parents were allowed to pass citizenship to their children born outside Canada irrespective of their marital status. Prior to this change, women married to foreign nationals were unable to do so since citizenship followed the "responsible parent", deemed to be the male in a marriage. At that time, citizenship could also be passed to subsequent generations born outside of the country, provided certain retention requirements were met.

[12] The most significant changes, however, came with an attempt to simplify the existing scheme and restore citizenship to those individuals termed "lost Canadians" in 2009 by way of *Bill C-37*, referred to above. This introduced the amended version of section 3 central to the application before this Court.

[13] Subsection 3(1)(b) confers citizenship on those persons born outside the country to a Canadian parent. It provides:

3. (1) Subject to this Act, a person is a citizen if	3. (1) Sous réserve des autres dispositions de la présente loi, a qualité de citoyen toute personne :
[…]	[…]
(b) the person was born outside Canada after February 14, 1977 and at the time of his birth one of his parents, other than a parent who adopted him, was a citizen;	b) née à l'étranger après le 14 février 1977 d'un père ou d'une mère ayant qualité de citoyen au moment de la naissance;

[14] Under subsection 3(1)(f), persons having ceased to be citizens for reasons other than the following prohibited grounds are entitled to have their citizenship restored. This includes restoration for those who became naturalized citizens of another country.

(f) before the coming into force of this paragraph, the person ceased to be a citizen for any reason other than the following reasons and did not subsequently become a citizen:	f) qui, avant l'entrée en vigueur du présent alinéa, a cessé d'être citoyen pour un motif autre que les motifs ci-après et n'est pas subséquemment devenu citoyen:
(i) the person renounced his or her citizenship under any of the following provisions:	(i) elle a renoncé à sa citoyenneté au titre de l'une des dispositions suivantes :
(A) paragraph 19(2)(c) of the *Canadian Citizenship Act*, S.C. 1946, c. 15, as enacted by S.C. 1951, c. 12, s. 1(3),	(A) l'alinéa 19(2)c) de la *Loi sur la citoyenneté canadienne*, S.C. 1946, ch. 15, édicté par S.C. 1951, ch. 12, art. 3,
(B) paragraph 19(2)(c) of the *Canadian Citizenship Act*, R.S.C. 1952, c. 33,	(B) l'alinéa 19(2)c) de la *Loi sur la citoyenneté canadienne*, S.R.C. 1952, ch. 33,
(C) subparagraph 19(1)(b)(iii) of the *Canadian Citizenship Act*, R.S.C. 1952, c. 33, as enacted by S.C. 1967-68, c. 4, s. 5,	(C) le sous-alinéa 19(1)b)(iii) de la *Loi sur la citoyenneté canadienne*, S.R.C. 1952, ch. 33, édicté par S.C. 1967-68, ch. 4, art. 5,
(D) subparagraph 18(1)(b)(iii) of the former Act,	(D) le sous-alinéa 18(1)b)(iii) de l'ancienne loi,
(E) section 8 of the *Citizenship Act*, S.C. 1974-75-76, c. 108, or	(E) l'article 8 de la *Loi sur la citoyenneté*, S.C. 1974-75-76, ch. 108,

(F) section 9 of this Act,

(F) l'article 9 de la présente loi,

(ii) the person's citizenship was revoked for false representation, fraud or concealment of material circumstances under any of the following provisions:

(ii) sa citoyenneté a été révoquée pour cause de fausse déclaration, fraude ou dissimulation de faits importants ou essentiels au titre de l'une des dispositions suivantes :

(A) paragraph 21(1)(b) of the *Canadian Citizenship Act*, S.C. 1946, c. 15,

(A) l'alinéa 21(1)b) de la *Loi sur la citoyenneté canadienne*, S.C. 1946, ch. 15,

(B) paragraph 19(1)(b) of the *Canadian Citizenship Act*, S.C. 1946, c. 15, as enacted by S.C. 1950, c. 29, s. 8,

(B) l'alinéa 19(1)b) de la *Loi sur la citoyenneté canadienne*, S.C. 1946, ch. 15, édicté par S.C. 1950, ch. 29, art. 8,

(C) paragraph 19(1)(b) of the *Canadian Citizenship Act*, R.S.C. 1952, c. 33, as it read before the coming into force of *An Act to amend the Canadian Citizenship Act*, S.C. 1967-68, c. 4,

(C) l'alinéa 19(1)b) de la *Loi sur la citoyenneté canadienne*, S.R.C. 1952, ch. 33, dans ses versions antérieures à l'entrée en vigueur de la *Loi modifiant la Loi sur la citoyenneté canadienne*, S.C. 1967-68, ch. 4,

(D) paragraph 19(1)(a) of the *Canadian Citizenship Act*, R.S.C. 1952, c. 33, as enacted by S.C. 1967-68, c. 4, s. 5,

(D) l'alinéa 19(1)a) de la *Loi sur la citoyenneté canadienne*, S.R.C. 1952, ch. 33, édicté par S.C. 1967-68, ch. 4, art. 5,

(E) paragraph 18(1)(a) of the former Act,

(E) l'alinéa 18(1)a) de l'ancienne loi,

(F) section 9 of the *Citizenship Act*, S.C. 1974-75-76, c. 108, or

(F) l'article 9 de la *Loi sur la citoyenneté*, S.C. 1974-75-76, ch. 108,

(G) section 10 of this Act, or	(G) l'article 10 de la présente loi,
(iii) the person failed to make an application to retain his or her citizenship under section 8 as it read before the coming into force of this paragraph or did make such an application that subsequently was not approved;	(iii) elle n'a pas présenté la demande visée à l'article 8, dans ses versions antérieures à l'entrée en vigueur du présent alinéa, pour conserver sa citoyenneté ou, si elle l'a fait, la demande a été rejetée;

[15] The restoration of citizenship occurs to the date those persons ceased to be citizens by the wording of subsection 3(7)(c):

(7) Despite any provision of this Act or any Act respecting naturalization or citizenship that was in force in Canada at any time before the day on which this subsection comes into force	(7) Malgré les autres dispositions de la présente loi et l'ensemble des lois concernant la naturalisation ou la citoyenneté en vigueur au Canada avant l'entrée en vigueur du présent paragraphe :
[…]	[…]
(c) a person referred to in paragraph (1)*(f)* who, at the time he or she ceased to be a citizen, was a citizen by way of grant is deemed to have been granted citizenship under that paragraph at that time;	c) la personne visée à l'alinéa (1)*f)* qui, au moment où elle a cessé d'être citoyen, avait obtenu la citoyenneté par attribution, est réputée avoir acquis par attribution la citoyenneté au titre de cet alinéa à partir de ce moment;

[16] In addition, persons born outside the country to a parent who was a Canadian citizen at the time of their birth before 1977 but had not become a citizen prior to the coming into force of *Bill C-37* could obtain citizenship under subsection 3(1)(g):

(g) the person was born outside Canada before February 15, 1977 to a parent who was a citizen at the time of the birth and the person did not, before the coming into force of this paragraph, become a citizen;	g) qui, née à l'étranger avant le 15 février 1977 d'un père ou d'une mère ayant qualité de citoyen au moment de la naissance, n'est pas devenue citoyen avant l'entrée en vigueur du présent alinéa;

[17] Subsection 3(7)(e) deems them to be citizens from their date of birth:

(7) Despite any provision of this Act or any Act respecting naturalization or citizenship that was in force in Canada at any time before the day on which this subsection comes into force	(7) Malgré les autres dispositions de la présente loi et l'ensemble des lois concernant la naturalisation ou la citoyenneté en vigueur au Canada avant l'entrée en vigueur du présent paragraphe :
[…]	[…]
(e) a person referred to in paragraph (1)*(g)* or *(h)* is deemed to be a citizen from the time that he or she was born;	e) la personne visée aux alinéas (1)*g)* ou *h)* est réputée être citoyen à partir du moment de sa naissance;

[18] Nevertheless, the passing of citizenship by descent to children born outside Canada is now limited to the first generation by the operation of subsection 3(3)(a):

(3) Subsection (1) does not apply to a person born outside Canada	(3) Le paragraphe (1) ne s'applique pas à la personne née à l'étranger dont, selon le cas :
(a) if, at the time of his or her birth or adoption, only one of the person's parents is a citizen	a) au moment de la naissance ou de l'adoption, seul le père ou la mère a qualité de citoyen, et

and that parent is a citizen under paragraph (1)*(b), (c.1), (e), (g)* or *(h)*, or both of the person's parents are citizens under any of those paragraphs; or	ce, au titre de l'un des alinéas (1)*b), c.1), e), g)* et *h)*, ou les deux parents ont cette qualité au titre de l'un de ces alinéas;

[19] *Bill C-37* did provide transitional provision 3(4) as an exception for those persons born abroad to succeeding generations who were already considered citizens. It enables them to retain their existing citizenship as follows:

(4) Subsection (3) does not apply to a person who, on the coming into force of that subsection, is a citizen.	(4) Le paragraphe (3) ne s'applique pas à la personne qui, à la date d'entrée en vigueur de ce paragraphe, a qualité de citoyen.

IV. Issue

[20] The sole issue raised by these applications is:

(a) Did the Citizenship Officer err in refusing to issue citizenship certificates to the Applicants based on subsection 3(3)(a)?

V. Standard of Review

[21] The parties disagree as to the appropriate standard.

[22] The Applicants assert that the Citizenship Officer's decision should be reviewed based on correctness as it turns on the interpretation of the exception provided in subsection 3(4) of the *Act*. They refer to the factors relevant to standard of review analysis as described in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190. The Applicants note that there is no privative clause and the ministerial function of the Case Processing Centre (CPC) in Nova Scotia is to issue proof of citizenship rather than to act as a tribunal. They insist that this is a matter of statutory construction, not specialized knowledge of the subject matter of the *Act*. While the CPC has expertise in fact-finding, this does not extend to the questions of law of general significance raised in the present case.

[23] By contrast, the Respondent contends that the decision is deserving of the deference afforded by the reasonableness standard. Despite the absence of a privative clause, Citizenship Officers have special expertise in the exact issue under review – whether an individual has established they are a Canadian citizen based on the legislative requirements and should be issued a certificate. The *Act* establishes a discrete and specialized regime. Citizenship Officers do not consider questions of law of central importance to the legal system outside of their specialized area of expertise in the administration of this regime. The Respondent also highlights recognition in *Dunsmuir*, above at paragraph 56 that some questions of law may be more appropriately decided on the basis of reasonableness.

[24] The parties direct the Court's attention to two cases referring to the standard of review and decisions made under this *Act*. While instructive, neither provides an extensive analysis of the issue.

[25] For example, *Azziz v Canada (Minister of Citizenship and Immigration)*, 2010 FC 663, [2010] FCJ no 767 at para 27 simply states:

> [27] Having analyzed the standard of review based on the usual tests, I am of the opinion that the correctness standard applies to the questions of law raised in this case, while the reasonableness standard applies to the findings of fact regarding which the analyst has recognized expertise. The questions of procedural fairness or bias are subject to the standard of correctness.
>
> [28] In this respect, an analyst's decision concerning the sufficiency of the evidence submitted by an applicant to confirm the citizenship of a person is reasonableness (*Worthington v. Canada*, 2008 FC 409, [2009] 1 F.C.R. 311 at paragraph 63). […]

[26] Since the decision proceeds to address the sufficiency of evidence to conclude that the individual was not a Canadian citizen under the *Act* based on the reasonableness standard, it does not clarify what, if any, distinct questions of law warranted a determination based on correctness.

[27] In *Rabin v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1094, 2010 CarswellNat 4208 at paras 16-17, Justice Richard Boivin quoted the passage from *Azziz*, above, and determined that a "Citizenship Officer's decision must therefore be reviewed on the standard of reasonableness" without distinguishing questions of law. However, he goes on to assert at paragraph 19 of his decision that "[t]he interpretation of section 3 of the Act – more particularly paragraphs 3(1)(b), 3(1)(g) and 3(3)(a) – is at the heart of this judicial review application." This assertion is supported by his subsequent references to how the provisions applied to the applicants in that case.

[28] Although *Rabin*, above, did not consider the impact of subsection 3(4), as brought forward by the Applicants in this instance, it appears to address sufficiently similar issues of the interpretation and application of the other statutory requirements. Based on this decision and the role of the Citizenship Officer in the administration of a discrete regime, I am inclined to agree with the Respondent that at least some deference is owed to the decision-maker and the reasonableness standard should be applied.

[29] In any event, the intervention of this Court in favour of the Applicants' approach to applying the legislation would not be warranted under either standard.

VI. Analysis

[30] The Applicants assert that they should not have been excluded from citizenship based on the first generation limit imposed by subsection 3(3)(a) in light of transitional provision 3(4). Since the citizenship of their grandmother is restored to the date of loss and their father's citizenship is retroactive to his date of birth under the deeming provisions of subsection 3(7), they argue citizenship should be regarded as having passed to them irrespective of the new first generation limit.

[31] Although not previously recognized, they would be considered citizens "on the coming into force" of subsection 3(3)(a) and able to benefit from the exception provided in subsection 3(4). According to the Applicants, the transitional provision ensured that the first generation limit was only to be applied prospectively to persons born after the coming into force date of April 17, 2009.

This approach is also consistent with the primary goal of *Bill C-37* to restore citizenship to "lost Canadians."

[32] The Respondent contends that the exception contained in subsection 3(4) does not apply to the Applicants and cannot be used to trump the first generation limit. The aim of the transitional exception was to avoid taking away previously vested citizenship rights, not to provide citizenship retroactively beyond the first generation. This interpretation of subsection 3(4) ensures consistency in the application of the entire *Act*, given prior retention requirements and the other specific exceptions it contains. The Respondent notes that the imposition of the first generation limit would conform to previous jurisprudence. The interpretation adopted also represents good public policy as it promotes fairness and clarity in the application of legislative requirements.

[33] To determine whether the Citizenship Officer erred in imposing the first generation limit of subsection 3(3)(a) despite the exception in 3(4), I must consider the words of the provisions as applied to the Applicants and "read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, [1998] SCJ no 2 at para 21; *Canada Trustco Mortgage Co v R*, 2005 SCC 54, [2005] 2 SCR 601 at para 10).

[34] On its face, subsection 3(3)(a) clearly excludes the Applicants from citizenship, as they are the second generation born outside Canada. They cannot meet the requirements under subsection 3(1) to be recognized as citizens because their father has citizenship based on

subsection 3(1)(g). This straightforward reading of the *Act* was emphasized by Justice Boivin in similar circumstances in *Rabin*, above at paragraph 22:

> [22] However, paragraph 3(1)(b) cannot be read in a vacuum. The legal effect of applying for citizenship by virtue of paragraph 3(1)(g) - which is the case for the applicant's mother - triggers paragraph 3(3)(a) and consequently the non-applicability of paragraph 3(1)(b) to the applicant. The introductory wording of subsection 3(1) of the Act is clear: Subject to this Act (...), as is the wording of paragraph 3(3)(a): Subsection (1) does not apply to a person born outside Canada (...).
>
> [Emphasis in original]

[35] Justice Boivin maintained that subsection 3(3)(a) applied to the applicant in that case because his mother acquired her citizenship based on 3(1)(g) and the applicant was part of the second generation born in the United States. He expressly rejected arguments that the applicant should be able to benefit retroactively from his mother's citizenship as this intent was not clear from the relevant provisions. As stated at paragraphs 27-28 of the decision:

> [27] Paragraph 3(3)*(a)* thus expressly excludes from citizenship by descent persons born outside Canada if, at the time of their birth or adoption, one of their parents is a Canadian citizen under paragraphs (1)*(b)*, *(c.1)*, *(e)*, *(g)*, or *(h)* of the Act. The evidence establishes that the applicant's mother's situation is covered by paragraph 3(1)*(g)*: she was not a citizen prior to the coming into force of Bill C-37 on April 17, 2009, but was eligible to apply for proof of citizenship under paragraph 3(1)*(g)* of the Act which she did in May 2009. By virtue of paragraph 3(3)*(a)*, paragraph 3(1)*(b)* of the Act does not apply to the applicant and, as a result, the limitation of citizenship by descent to the first generation born outside Canada to a Canadian parent rule applies to the applicant.
>
> [28] The applicant also raised an argument based on the legal theory of retroactivity by which he should benefit retroactively form his mother's citizenship. The Court is of the view that the relevant statutory provisions of the Act - paras 3(1)*(b)*, 3(1)*(g)* and 3(3)*(a)* - read together cannot sustain the applicant's retroactivity argument. The Court is unable to find any intent or clear indication in the Act with respect to retroactivity as it relates to the applicant in the case at

> bar. In accordance with the principle of the rule of law, the applicant's retroactivity argument is unsustainable.

[36] I acknowledge that transitional provision 3(4) was not directly addressed by Justice Boivin in *Rabin*, above. Given the similarity of the facts scenario and the nature of the retroactivity argument, however, the general principles remain relevant to this analysis.

[37] *Rabin* supports the imposition of a bar to citizenship after the first generation born abroad to the Applicants' circumstances as described by subsection 3(3)(a). This in spite of their father's citizenship having been deemed retroactive to the day he was born.

[38] I must nonetheless consider whether the transitional provision has any bearing in this particular case.

[39] The Applicants have stressed the use of the words "on the coming into force of that subsection, is a citizen" as distinct from the terminology "before coming into force" employed elsewhere in the legislation. They claim this supports their position that with the operation of the other deeming provisions introduced by *Bill C-37* they were citizens "on the coming into force", even though they were not previously recognized in this manner.

[40] There is some logic to this argument. As stated in *Peach Hill Management Ltd v Canada*, [2000] FCJ no 894, 257 NR 193 at para 12, "[w]hen an Act uses different words in relation to the same subject such a choice by Parliament must be considered intentional and indicative of a change in meaning or a different meaning."

[41] However, I am not convinced that this automatically leads to the conclusion that Parliament intended the transitional provision to be applied to the Applicants based on the retroactive acquisition of their father's citizenship. On the contrary, there appears to have been no real consideration of a situation such as the Applicants as the reason for including subsection 3(4).

[42] For example, the Clause-by-Clause analysis of *Bill C-37* prepared for Parliament states:

> **Subsection 3(4)** clarifies that, despite subsection 3(3) no one will lose their Canadian citizenship on the coming into force of the bill even if they are already the second or subsequent generation born abroad.

[43] This suggests that the motivation behind the transitional provision was the loss of citizenship by those in the second or subsequent generations born abroad, rather than the recognition of new rights arising from the retroactivity provided for in other components of section 3.

[44] In a statement to the Standing Senate Committee on Social Affairs, Science and Technology on April 10, 2008, the Honourable Diane Finley, the Minister of Citizenship and Immigration, as she then was, listed the impact of *Bill C-37* on the citizenship of various individuals:

> Those who have Canadian citizenship when the amendments come into force would remain Canadian citizens. Second, anyone who became a citizen under the Canadian Citizenship Act of 1947 and subsequently lost his or her citizenship would have it restored. Third, anyone who was born in Canada on or after January 1, 1947, and who subsequently lost his or her citizenship, would have it restored. Fourth, anyone who was naturalized as a citizen of Canada on or after January 1, 1947 and subsequently loss his or her citizenship, would have it restored. Finally, <u>those born abroad to a Canadian</u>

> citizen on or after January 1, 1947, who were not already citizens would become citizens if they were the first generation born abroad.
>
> [Emphasis added]

[45] While this statement anticipated the granting of citizenship to the Applicants' father, it does not appear to contemplate the acquisition of citizenship among those, such as the Applicants, outside the first generation born abroad by implication.

[46] Issued by Citizenship and Immigration Canada (CIC), *Operational Bulletin 102 – February 26, 2009* on the Implementation of *Bill C-37* indicated that certain "individuals will not become citizens" on April 17, 2009 [Emphasis in original]. This included "[p]eople who were born to a Canadian parent in the second or subsequent generation outside Canada, who are not already citizens or who lost their citizenship in the past (including people who did not take steps needed to retain their citizenship); (…)" [Emphasis in original].

[47] To support their claim that the first generation limit would only be applied prospectively, the Applicants rely on the *Legislative Summary – Bill C-37: An Act to Amend the Citizenship Act* prepared by the Parliamentary Information and Research Service (January 9, 2008). Describing exception 3(4), it states:

> This new rule cutting off citizenship after one generation born abroad is only applicable to people born after the rule comes into effect. People born before the rule comes into effect and who are second- or subsequent generation Canadians born abroad retain their existing Canadian citizenship (new section 3(4)). In fact, their position is improved under Bill C-37 as they are no longer subject to the requirement to register and retain citizenship by age 28. However, Bill C-37 provides no relief for those people who are the second or subsequent generation born abroad since 14 February 1977 and who

> have lost their citizenship because they failed to register and retain it before reaching age 28.

[48] Read in isolation the first sentence would seem to support the Applicants contention, however, the remainder of the paragraph provides greater precision. It only refers to individuals in the second or subsequent generations born abroad whose citizenship was previously subject to retention requirements. Despite the broad assertion, it never expressly addresses a situation analogous to the Applicants.

[49] Indeed, the exclusion of those individuals who failed to meet the earlier retention requirements from the acquisition of citizenship reinforces that the Applicants should not be given the benefit of retroactivity and automatic recognition of citizenship status. Upholding the necessity of the retention requirement to have maintained citizenship "on the coming into force" of *Bill C-37* while at the same time allowing second or subsequent generations born abroad to acquire previously unrecognized rights would be inconsistent.

[50] Moreover, if the use of the terminology "on the coming into force" in subsection 3(4) was intended to have the significance suggested by the Applicants, it is not unreasonable to expect some acknowledgement of that purpose in recognizing citizenship for those in second or subsequent generations born in another country more broadly.

[51] To clarify such an intention, Parliament could have worded the transitional provision differently. For example, it could have stated that anyone born abroad in the second or subsequent generation prior to the coming into force date (April 17, 2009) is excluded from the first generation

limit, but chose not to do so. Instead, exception 3(4) is associated with preventing the loss of citizenship by those having previously retained it.

[52] Undoubtedly, a main aim of *Bill C-37* was to address the issue of "lost Canadians." However, it also sought to protect the value of citizenship by limiting it to the first generation born abroad and ensure simplicity and clarity missing in previous enactments. Providing avenues to restore citizenship to the Applicant's grandmother and by implication their father, while at the same time restricting any further benefits to those beyond the first generation born abroad and excluding the Applicants is reflective of these combined objectives.

[53] The Citizenship Officer cannot be said to have erred in its approach to refusing proof of citizenship to the Applicants based on subsection 3(3)(a). Those born in the second generation outside of Canada were not expected to be granted citizenship as a result of the amendments. Consequently, subsection 3(4) does not apply to the Applicants.

VII. Conclusion

[54] The Applicants were precluded from receiving citizenship certificates based on subsection 3(3)(a) as part of the second generation born abroad. The Citizenship Judge did not err in reaching this conclusion and failing to apply transitional provision 3(4). That provision was not intended for the Applicants, but those who had already acquired citizenship and met the retention requirements.

[55] Accordingly, this application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

" D. G. Near "

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	**T-405-11 & T-406-11**
STYLE OF CAUSE:	**IAM WILLIAM JABOUR v. MCI** **ADAM GEORGE v. MCI**
PLACE OF HEARING:	**HALIFAX**
DATE OF HEARING:	**DECEMBER 15, 2011**
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DATED:	**JANUARY 25, 2012**

APPEARANCES:

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