Federal Court of Appeal | Cour d'appel fédérale

Date: 20210928

Docket: A-483-19

Citation: 2021 FCA 192

[ENGLISH TRANSLATION]

CORAM: **BOIVIN J.A.**
GLEASON J.A.
LEBLANC J.A.

BETWEEN:

SULAIMAN ALMUHAIDIB

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Online videoconference hearing organized by the Registry, on June 17, 2021.

Judgment delivered at Ottawa, Ontario, on September 28, 2021.

REASONS FOR JUDGMENT BY: LEBLANC J.A.

CONCURRED IN BY: BOIVIN J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

LEBLANC J.A.

I. Introduction

[1] This is an appeal from a judgment rendered by Justice Simon Noël of the Federal Court (the Federal Court or Justice Noël), on December 2, 2019. Pursuant to this judgment, indexed as 2019 FC 1543, [2020] 2 F.C.R. 505 (the Judgment), Justice Noël dismissed the application for

judicial review filed by the appellant regarding a decision rendered by a citizenship officer (the Officer) on behalf of the respondent Minister (the Minister). This decision declared the application for citizenship filed by the appellant in August 2010 abandoned under the *Citizenship Act*, R.S.C. 1985, c. C-29, as it read at the time (the Act). That application had previously been approved by a citizenship judge, and a delegate of the Minister had subsequently granted a certificate of citizenship.

[2] This case calls into question the power of the Minister—and his officials—to require that an applicant for citizenship, whose application has been approved by a citizenship judge, produce additional information when, subsequent to the decision of the citizenship judge, it is brought to his attention that material circumstances relating to the application have been misrepresented or withheld. It also calls into question the Minister's power to declare an application for citizenship abandoned in cases where that information is not, without a reasonable excuse, provided, or to terminate the process of granting citizenship when, based on that information, the Minister is of the opinion that the applicant does not meet the requirements of the Act.

[3] It is not disputed, nor disputable, that the Minister expressly possesses these powers since the Act underwent significant changes in 2014 pursuant to the adoption of the *Strengthening Canadian Citizenship Act*, S.C. 2014, c. 22 (the SCCA).

[4] However, the appellant argues that the Minister could not exercise these powers in his regard because his application for citizenship had been approved by a citizenship judge, and a

citizenship certificate had been granted. As a result, his application had to be considered, at the time when the provisions stipulating those powers came into force, as having been "finally disposed of", within the meaning of the transitional provision governing the coming into effect of these provisions, i.e., subsection 31(1) of the SCCA.

[5] Following a thorough and exhaustive analysis, Justice Noël rejected the appellant's submissions. He first expressed the opinion that the application for citizenship had not been "finally disposed of" at the time the SCCA came into force because the appellant had not yet taken the oath of citizenship, which according to Justice Noël, was an essential requirement to acquire Canadian citizenship. He held that, with respect to the said application, the Officer was therefore entitled to exercise the powers that had been vested in the Minister pursuant to the SCCA. Justice Noël further noted that the case law already recognized that, even before the SCCA came into force, the Minister possessed a discretionary power authorizing him to defer the granting of citizenship in cases where, on the basis of material facts not disclosed to the citizenship judge, he was satisfied that the conditions for citizenship were not met. Finally, he said he was satisfied that the Officer's decision to declare the appellant's application for citizenship abandoned was reasonable in the light of all the circumstances of this case.

[6] Also being of the view that this case raised "a serious question of general importance", Justice Noël certified the following question pursuant to section 22.2(*d*) of the Act:

> Is an application for citizenship that was made under subsection 5(1) of the *Citizenship Act*, R.S.C. 1985, c. C-29, as it read before the coming into force of the *Act to amend the Citizenship Act and to make consequential amendments to other Acts*, S.C. 2014, c. 22, and that received a positive decision from the

> citizenship judge and a positive grant from the Minister's delegate, an application that has been "finally disposed of" within the meaning of subsection 31(1) of the SCCA?

[7] After carefully weighing the arguments of the parties, I am of the opinion that this appeal should be dismissed for the following reasons.

II. Background

[8] The appellant is a national of the Kingdom of Saudi Arabia. In December 2006, he became a permanent resident of Canada. Less than four years later, he applied for Canadian citizenship. Pursuant to the residency requirement set out in paragraph 5(1)(*c*) of the Act, as it then read, the appellant reported six stays in Saudi Arabia, all for personal reasons, during the period from December 25, 2006, to August 12, 2010. These stays totalled 162 days of absence from Canada, which was below the maximum allowed. Regarding his occupation, he stated that he was the chairman of Almassa Group, a company that operated in Montreal.

[9] A few months later, law enforcement authorities asked him to complete a Residence Questionnaire. The appellant completed the questionnaire and reported eight stays in Saudi Arabia for personal purposes during the period, this time from January 2007 to August 2011. To this questionnaire, he attached an affidavit signed in September 2008, in another context, in which he stated that between December 19, 2007, and February 13, 2008, he visited Saudi Arabia as well as a number of other countries for both personal and business purposes. He also attached copies of passports to the questionnaire. However, none of them bore entry stamps from

countries other than Saudi Arabia, which according to his affidavit, he said had visited during that time.

[10] Despite these contradictions, a citizenship judge approved the appellant's application for citizenship in early March 2012. The Minister is not appealing against that decision. A few weeks later, a Minister's delegate granted the appellant a certificate of citizenship. The Canadian citizenship oath ceremony was then scheduled for May 9, 2012.

[11] However, on May 7, 2012, when he arrived in Canada to participate in this ceremony, a removal order was made against the appellant by the authorities responsible for enforcing the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. He was accused of failing to comply with the permanent residency requirement under this Act. This allegation arose from statements made by the appellant to immigration authorities upon his arrival at the airport in Montreal. According to these statements, the appellant travels frequently. He is a board member of several companies in Saudi Arabia and owns a construction company there. The removal order made against the appellant disrupted the citizenship process because, according to paragraph 5(1)(*f*) of the Act, as it then read, citizenship could not be granted to a person under a removal order.

[12] In June 2015, the removal order against the appellant was quashed. The appellant then asked the officials in charge of the Act to summon him again to take the oath of citizenship because, in his opinion, there was no longer any impediment.

[13] The SCCA came into force between the time the removal measure was made and the time it was quashed. The Act, as amended, specified, in particular, in paragraph 22(1)(*e*.1), that a person shall not be granted citizenship, or take the oath of citizenship, if the person misrepresents or withholds material circumstances relating to a relevant matter, which induces or could induce an error in the administration of this Act. It also confers on the Minister the power to require a citizenship applicant to provide any additional information (section 23.1) to suspend the processing of an application for citizenship pending receipt of information or evidence (section 13.1) and to treat any application for citizenship as abandoned when the applicant fails to comply with the request for additional information, without a reasonable excuse (section 13.2).

[14] It is common ground that by the time the removal order against the appellant was quashed in June 2015, all of these new provisions were already in force.

[15] In January 2016, the appellant's application for citizenship was reactivated, and the appellant was called for an interview with a citizenship officer. The notice to appear required that he bring any current or expired passport or travel document that he had in his possession. The appellant attended the interview but indicated that he wanted to answer the Officer's questions in writing. Also, he did not have all the passports and travel documents he had been asked to bring.

[16] On March 29, 2016, the appellant received written notice that according to a report prepared by law enforcement authorities, he was subject to the prohibition set out in paragraph 22(1)(*e*.1) of the Act, as amended by the SCCA. This report was based, in particular,

on two new pieces of information that contradicted the information that the appellant provided in support of his application for citizenship. The first involved the fact that, during the period of residence relevant to processing his application for citizenship, he was also chairman of a Saudi company, the Savola Group, whereas, in support of the said application, he had declared that he worked solely as chairman of Almassa Group in Montreal. The second had to do with the fact that according to a press release from the Savola Group, the appellant was in Saudi Arabia on May 20, 2008, to enter into a business agreement there on behalf of the Group. This absence was not for personal reasons and was not reported in his application for citizenship.

[17] On June 29, 2016, the appellant provided a written rebuttal of the allegations made in the letter dated March 29, 2016. However, he admitted that he was also chairman of Savola Group at that time. On August 9, 2016, the Minister informed the appellant that after having considered his response dated June 29, he maintained his decision to deny his application for citizenship.

[18] This refusal was subjected to judicial review. The matter was settled out of court, and the Minister accepted that the appellant's case be reconsidered by a citizenship officer other than the one who made the impugned decision. On August 2, 2017, as part of this reconsideration, the appellant received a request for additional information under section 23.1 of the Act, as amended by the SCCA. The appellant twice requested an extension of time to respond to this request. However, two days before the expiry of the final time limit granted by the Minister, the appellant filed a new application for judicial review under which, this time, he sought to have this new request for information, which he considered abusive, declared illegal, and to require that the Minister summon him for a citizenship oath ceremony.

[19] On June 13, 2018, this application was dismissed by Mr. Justice Michel Shore of the Federal Court on the ground of prematurity. According to him, an officer may request the information central to the application, based on "serious doubt" about the erroneous information submitted by the appellant (*Almuhaidib v. Canada (Citizenship and Immigration)*, 2018 FC 615, 2018 CarswellNat 3401 (WL Can) at paras. 5-7 (*Almuhaidib 2018*)).

[20] On September 7, 2018, the Minister reiterated his request to the appellant that he produce additional documents and advised him that he could declare his application for citizenship abandoned if the appellant refused to comply with this new notice. On October 2, 2018, the appellant notified the Minister that he refused to comply, reiterating that his application for citizenship had already been finally disposed of within the meaning of section 31 of the SCCA and that consequently the Minister had no authority to make this new request for information. He once again asked to be summoned to a citizenship oath ceremony.

[21] On October 30, 2018, the Officer rendered the decision that gave rise to this dispute. As indicated above, the decision declared the appellant's application for citizenship abandoned, as the Officer was satisfied that the said application was governed by the *Citizenship Act* as amended by the SCCA and that the application had to be declared abandoned in accordance with section 13.2 of the Act since the appellant did not, in her view, provide any reasonable excuse for not having produced the required documents.

III. The Federal Court Decision

[22] Applying the standard of reasonableness and given “the brevity of the (Officer’s) reasons”, Justice Noël conducted a four-part analysis in order to determine whether the Officer’s interpretation of the transitional provisions of the SCCA met the standard of reasonableness (Judgment at para. 61).

[23] He began by providing an overview of the Act, as it read when the appellant applied for citizenship. He then briefly described the procedure for processing an application for citizenship in effect at that time. In this overview, he noted that after having had his application for citizenship approved by a citizenship judge, a person who is granted a certificate of citizenship only became a Canadian citizen after they had taken the oath of citizenship which, he emphasized, was not the case here (Judgment at para. 68).

[24] He noted in this regard that the Act, at that time, provided for a number of instances in which taking the oath of citizenship was prohibited, despite a prior favourable ruling by a citizenship judge. This was the case, for example, where a person was under a removal order or if there were reasonable grounds to believe that he would engage in activities that would constitute a threat to national security. This was also the case for a person who was detained, was under a probation order, was a paroled inmate or who was charged with one of the offences set out in section 29 of the Act, including making any false representations, knowingly conceals any material circumstances that could interfere with the enforcement of the Act.

[25] Justice Noël then went on to determine whether the amendments to the Act under the SCCA had an impact on the appellant's application for citizenship after the removal order made against him three years before was lifted in June 2015. To make this determination, Justice Noël specified that we must consider whether, according to section 31 of the SCCA, the appellant's application for citizenship had been "finally disposed of" when the amendments came into force in 2014 or whether the application could only be finally disposed of after the applicant had taken the oath of citizenship, in which case, the Officer's decision to subject the application to the said amendments would be reasonable (Judgment at paras. 74-75).

[26] After reviewing the applicable principles of statutory interpretation, in this case those specific to bilingual texts, Justice Noël performed an analysis of the phrase "décidé définitivement"—"finally disposed of" in the English version—used in section 31 of the SCCA. He first examined the ordinary and grammatical meaning and identified a common meaning. According to him, the French and English versions of these terms both refer to the moment that ends the citizenship application process, which is the oath of citizenship. (Judgment at para. 100). He then analyzed the legislative intent of the SCCA. He noted, in this regard, that this Act aimed, in particular, to give the Minister more power than the citizenship judge in the citizenship application process "to enable him to better address cases involving security and fraud" (Judgment at paras. 103-105).

[27] According to Justice Noël, the amendments to the Act pursuant to the SCCA therefore tangibly demonstrated "the idea of the oath of citizenship as being the stage where an application for citizenship achieves finality" and as a corollary, that an application for citizenship was only

"finally disposed of" after the oath of citizenship was taken. Justice Noël was of the view that such an interpretation reflects Parliament's intention "to grant the Minister the power to terminate an application for citizenship right up to the taking of the oath of citizenship, for fraud or security reasons" (Judgment at paras.109-110).

[28] According to Justice Noël, an analysis of the legal context of the main stages involved in the processing of an application for citizenship when the appellant's application was filed, i.e., the decision of the citizenship judge, the granting of the citizenship certificate and the taking of the oath of citizenship, confirmed the reasonableness of the Minister's interpretation of section 31 of the SCCA. Indeed, as Justice Noël said, the Act, as it read when the appellant was granted a certificate of citizenship, clearly provided that in order to become a Canadian citizen it was necessary to take the oath of citizenship (Judgment at para. 112). He also said the case law pertaining to the Act, as it read at that time, also clearly held that taking the oath of citizenship was a fundamental and imperative requirement for obtaining Canadian citizenship. According to Justice Noël, "an oath of citizenship is not a mere formality, but rather the crystallization of what an applicant for citizenship becomes" (Judgment at paras.115-119).

[29] Justice Noël pointed out that two other considerations support the idea that an applicant for citizenship in the appellant's situation, i.e., someone who had not yet taken the oath of citizenship when the SCCA came into force does not acquire an absolute right to citizenship because a certificate of citizenship has been granted. As I have already noted in paragraph 24 of these reasons, the first consideration is related to the fact that the Act, as it read before the amendments made in 2014, gives the Minister the power to prohibit taking the oath of citizenship

in certain circumstances. The second arises from the case law which then recognizes that the Minister has a discretionary power to withhold citizenship, even in cases where a citizenship judge has approved the application, when he is informed that the said application may not meet the requirements for becoming a citizen. This power was "covered in depth" by this Court in *Khalil v. Canada (Secretary of State)*, [1999] 4 FC 661, 176 D.L.R. (4th) 191 (*Khalil*). Justice Noël was of the view that the SCCA simply crystallized this power (Judgment at paras.124-126).

[30] In short, Justice Noël was of the opinion that it was reasonable for the Officer to interpret section 31 of the SCCA in such a way as to make the substantive provisions of the SCCA applicable to any application for citizenship where the oath of citizenship had not yet been taken (Judgment at para. 129).

[31] Justice Noël was satisfied that the statements made by the appellant to the authorities responsible for enforcing the *Immigration and Refugee Protection Act* upon his return to Canada on May 7, 2012, contained facts that were not before the citizenship judge or the Minister when the certificate of citizenship was granted. He therefore considered that when the Minister reactivated the appellant's application for citizenship after the removal order was lifted, it was appropriate that he ensure that these facts did not contradict the information disclosed by the appellant regarding his residency obligation in the said application and that he require additional information for this purpose.

[32] Justice Noël also said he was satisfied that it was reasonable for the Officer to order that the appellant's application for citizenship be abandoned given the appellant's unjustified refusal to provide the information that the Officer had requested.

IV. Issue and Standard of Review

[33] In my opinion, this case raises two issues.

[34] The first involves the Minister's powers (i) to require additional information from a citizenship applicant whose application has been previously approved by a citizenship judge and to whom a citizenship certificate has already been granted when subsequently it comes to the Minister's attention that a material fact relating to the application has been misrepresented or withheld; and (ii) to declare the application abandoned where, without a reasonable excuse, the applicant has failed to provide the requested information. In this case, this first issue must be examined in the context of the amendments to the Act pursuant to the SCCA, and in particular of section 31 of the SCCA, which makes these amendments applicable to any application for citizenship that had not been finally disposed of before these amendments came into force.

[35] If the Minister has these powers, the second issue is whether, in the circumstances of this case, the Officer erred in declaring the appellant's application for citizenship abandoned.

[36] The law is well settled: when this Court hears an appeal from a judicial review decision of the Federal Court, our role is to determine whether the correct standard of review was used

and whether it was applied properly: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559 at para. 47).

[37] In this case, Justice Noël applied the standard of reasonableness in his review of these issues. The parties did not dispute this choice. I agree that this is the standard to be applied in this case and that *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 (*Vavilov*), a case decided by the Supreme Court of Canada, rendered subsequently to the judgment delivered by Justice Noël, has no bearing on the choice that he made. Indeed, in that case, the Supreme Court crystallized the presumption that the standard of reasonableness is the standard applicable in all cases of judicial review, including those where the impugned decision results from the interpretation that the administrative decision-maker may have given to its home statute (*Vavilov* at para. 25). Although this presumption is rebuttable in certain circumstances, no such circumstance arose in this case. Neither party argues otherwise.

[38] The appellant also raised the issue of the appropriate remedy, in the event that he should succeed. Given the outcome of this appeal, it will not be necessary to address this issue.

[39] Therefore, the issue is whether Justice Noël correctly applied the standard of reasonableness to the statutory and factual context of this case. In doing so, this Court should "step into the shoes" of the Federal Court and focus on the administrative decision that is the subject of the judicial review and determine whether the Officer's decision bears the hallmarks of reasonableness (*Canada (Citizenship and Immigration) v. Singh*, 2016 FCA 96, [2016] 4

F.C.R. 230, at para. 22; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23 at para. 247).

V. Analysis

A. *The Minister's Powers to Require the Appellant to Provide Additional Information and to Declare the Appellant's Application for Citizenship Abandoned*

[40] The appellant made a number of complaints against the Minister's decision—and the Judgment—on this issue. However, none of them warrants intervention by this Court.

[41] First, the appellant criticized Justice Noël for not having correctly applied the standard of reasonableness because, after noting the brevity of the decision declaring his application for citizenship abandoned, he failed to examine the evidence in the record to identify "the common thread" in the process leading to this decision. According to the appellant, this examination would have made it possible to identify the initial focus given to the reactivation of the review of his application for citizenship after the removal order against him was quashed. This focus was based on subsection 22(6) of the Act, as amended in June 2015. The very officials then responsible for the case admitted that this provision did not apply retroactively to applications filed prior to that date and that it was therefore irrelevant for the purposes of interpreting section 31 of the SCCA. Section 22 (6) provides that "a person shall not take the oath of citizenship if they never met or they no longer meet the requirements of this Act for the grant of citizenship".

[42] The appellant argues that by ignoring this "common thread" emanating from the evidence in the record and preferring to perform his own analysis regarding the scope of section 31 of the SCCA, Justice Noël failed to follow *Vavilov*, which required him to show deference to the expertise of the Minister and his officials. Indeed, he argues, it seems quite clear that Justice Noël based his analysis on the explanations given after the fact by the Minister's affiant in these proceedings, Valérie Catala, and thus improperly supported the reasons of the impugned decision.

[43] This argument cannot be accepted. On the one hand, the theory that Justice Noël "tacitly" based his decision on Ms. Catala's explanations is without merit. There is nothing in the Judgment that suggests that Justice Noël relied on Ms. Catala's explanations to support his reasoning in any way. This assertion is pure speculation. The appellant also argues that Justice Noël failed to consider the initial focus given to the applicant's case when it was reactivated in the summer of 2015. According to the appellant, this focus was based on subsection 22(6) of the Act, as amended by the SCCA, and hence, the judge ignored the evidence in the record according to which subsection 22(6) could not preclude the granting of citizenship to the appellant. This argument does not stand up to scrutiny either. Indeed, the decision to declare the appellant's application for citizenship abandoned is in no way related to that provision of the Act. This decision was strictly based on sections 13.2 and 23.1 of the Act, as amended by the SCCA.

[44] The views and working hypotheses that the officials assigned to the case may have expressed and discussed at that time, in a context of legislative upheaval, have no bearing here

on the decision under appeal. At any rate, it is clear from the first formal notice sent to the appellant dated March 29, 2016, that the entire process leading to the declaration that the appellant's application for citizenship was abandoned was based on paragraph 22(1)(*e*.1) of the Act, as amended by the SCCA, according to which a person shall not be granted citizenship or take the oath of citizenship "if the person directly or indirectly misrepresents or withholds material circumstances relating to a relevant matter, which induces or could induce an error in the administration of this Act" (Appeal Book at page 164). The appellant's argument, based on subsection 22(6) of the Act, is without merit.

[45] Second, the appellant submits that the decision to declare his application for citizenship abandoned was not warranted in view of the legal and factual constraints imposed on the Minister. More particularly, he criticized the Minister for not having taken into account the fact that the citizenship judge's decision approving his application for citizenship, which was not appealed against by the Minister, constituted a "binding precedent" within the meaning of *Vavilov*. He also submits that any interpretation to the contrary runs counter to the principles of statutory interpretation. This criticism does not stand up to scrutiny.

[46] With respect to the finality of the citizenship judge's decision, the appellant cites *Stanizai v. Canada (Citizenship and Immigration)*, 2014 FC 74, 446 F.T.R. 188 (*Stanizai*) and *Khalil*, which, according to him, hold "in principle" that such a decision is final when it is not appealed against by the Minister. In fact, the appellant concedes that these two cases recognize that, under the Act, before it was amended in 2014, the Minister possessed a residual power to deny citizenship after the citizenship judge had rendered a favourable decision, when the Minister

discovered that the applicant for citizenship had “made misrepresentation, that this misrepresentation was confirmed and that the citizenship judge was not informed of the conflicting information” (Factum of the appellant at para. 65). However, he argues that the existence of this residual power does not affect the finality of the citizenship judge’s decision.

[47] This argument cannot succeed. As this Court clearly indicated in *Khalil*, while the Minister cannot arbitrarily refuse to grant citizenship to a person who meets the requirements, the Act does not require him “to confer citizenship automatically . . . on every person who is recommended for citizenship by a citizenship judge”. The Court specified that this would be the case where the Minister “has information that the requirements of the Act have not been met”, in particular where it is “discovered before citizenship is granted that there has been a material misrepresentation, or some reasonable cause to believe that there was” (*Khalil* at para. 14), provided, as Justice Anne Mactavish, as she then was, stated in *Stanizai*, that the possible existence of such a misrepresentation is discovered after the citizenship judge has considered the application for citizenship (*Stanizai* at paras. 35-41).

[48] In *Stanizai*, the facts were “fundamentally different than those that confronted the Federal Court of Appeal in Khalil”, because the Minister was unable to “point to *any* new information regarding the frequency and duration of Mr. Stanizai’s absences from Canada during the relevant period that was not before the citizenship judge when he made his decision to approve Mr. Stanizai’s application for citizenship” (*Stanizai* at paras. 41-42, italics in original). However, here, as Justice Noël rightly pointed out, neither the citizenship judge who disposed of the appellant’s application, nor the Minister’s delegate who issued the citizenship certificate had the

facts that prompted the Minister to request additional information from the appellant (Judgment at para. 131).

[49] It therefore seems obvious to me that a favourable decision by a citizenship judge, even when it is not appealed against, is not final in all circumstances, and because it is the Minister who is vested with the power to grant Canadian citizenship under the Act, and not the citizenship judge, the Minister retains the power to deny citizenship in the circumstances contemplated by *Khalil*. It is this case that constitutes a "binding precedent", and not the decisions rendered in all circumstances by citizenship judges.

[50] The appellant argues that his position on the finality of decisions rendered by citizenship judges that were not appealed against is the only position consistent with the language, context and spirit of section 31 of the SCCA, and in particular with the phrase "décidé définitivement" / "finally disposed of", which is found in that section. In this regard, he is of the view that the language of the French version of section 31, which according to him is more restricted and refers to the concept of "final decision", should prevail over the English version of the provision, which has a broader scope. According to the appellant, the key element of this concept is the word "decision".

[51] As such, section 31 would only pertain to cases [TRANSLATION] "involving pending applications that have not yet been disposed of" (Factum of the appellant at para. 72), i.e., cases where the citizenship judge's decision remains subject to appeal or judicial review, which is not the case here. The appellant further submits that such an interpretation would be more in keeping

with the spirit of that provision and Parliament's intention, which, he said, was not to enshrine in section 31 [TRANSLATION] "applications for citizenship already decided by a citizenship judge because these applications cannot be considered "on hold" or "under way" or "pending" (Factum of the appellant at para. 87).

[52] The Officer, and after her, Justice Noël, would therefore have been mistaken in making the citizenship oath the final step or end of the citizenship application process for the purposes of interpreting the phrase "décidé définitivement" / "finally disposed of". According to the appellant, this interpretation would serve to support a foregone conclusion, an approach rejected by *Vavilov*.

[53] Again, this argument, based primarily on the idea that the citizenship judge's decision is final, must fail. As we have seen, this idea ignores the fact that, even before the SCCA came into force, the Minister already possessed a residual power to intervene after an application for citizenship had been approved by a citizenship judge, and to deny citizenship in cases where there were reasonable grounds to believe that such approval had been obtained on the basis of misrepresentations concerning material facts. Furthermore, although an application had been approved by a citizenship judge, the Minister could—and was even required to—intervene in specific cases, including those provided for in sections 20 and 22 of the Act, to deny citizenship to any person covered by any of these provisions. This is yet another indication that a citizenship judge's decision is not "final".

[54] I agree with Justice Noël that the amendments to the Act made in 2014, referred to by the Minister to rebut the appellant's argument, simply crystallized the residual power that the Minister already possessed under the Act. In this context, I find it entirely reasonable to relate the phrase "décidé définitivement" / "finally disposed of", as Justice Noël did, to the requirement of the taking of the oath of citizenship as a final step or culmination of the process of granting citizenship, because until this step had been taken when the SCCA came into force, there were—and still are—powers that the Minister can exercise to deny citizenship in cases where granting citizenship would have been—or prove to be—based on misrepresentations regarding material facts that would affect the application.

[55] The approach proposed by the appellant also ignored the special place and meaning of the citizenship oath in the process of becoming a Canadian citizen. As Justice Noël rightly noted, the case law uniformly makes it a fundamental *sine qua non* requirement for obtaining citizenship (Judgment at paras. 115-119); in other words, the taking of the oath is a necessary step in obtaining Canadian citizenship, and it is therefore reasonable to conclude that an application for citizenship is not finally disposed of, within the meaning of section 31 of the SCCA, as long as this step has not been taken.

[56] The citizenship judge's decision is certainly a step in the process of granting citizenship, but it is one step among others which, for the reasons mentioned above, does not mark the ultimate outcome of this process, as the appellant submits. This Court recently held to that effect in *Gupta v. Canada*, 2021 FCA 31, 77 Imm. L.R. 4th, 173). Although there was a different procedural context in this case, i.e., it involved a lawsuit for damages for negligence in the

processing of this appellant's application for citizenship, the Court reiterated that the oath of citizenship was not a mere formality in the process of acquiring citizenship. The Court noted in this regard that the Minister, even in cases where a citizenship judge had rendered a decision favourable to the applicant for citizenship, retained the power to postpone the oath because he had reasonable cause to do so, in order to satisfy himself, that the citizenship applicant still met the requirements for obtaining citizenship (*Gupta* at paras. 34-36). As in this case, the application for citizenship at issue in *Gupta* had been filed long before the 2014 amendments.

[57] Therefore, in my opinion, the approach advocated by the appellant in this case is not supported by the language, context and spirit of section 31 of the SCCA.

[58] The situation is even clearer with respect to the appellant's contention that the fact that he was issued a certificate of citizenship by the Minister's delegate somehow confirms that the citizenship judge's decision was final. However, this is not the case. When he was issued this certificate, the certificate did not take effect pursuant to subsection 12(3) of the Act "until the person to whom it [was] issued (. . .) complied with the requirements of (the) Act and the regulations respecting the oath of citizenship". Rather, subsection 12(3) tends to confirm the interpretation that an application for citizenship is not finalized until the oath of citizenship has been taken.

[59] I would add, in ruling on this first issue, that Parliament strengthened and clarified the powers allowing the Minister to fight more effectively against cases of fraud in 2014. It would have been at the very least incongruous if, for the purposes of the transition between the old and

new rules, it had simultaneously withdrawn the power that the Minister already possessed to intervene in such cases by making citizenship judges' decisions the culmination of the citizenship application process. This would have given persons who had not yet taken the oath of citizenship a certain form of immunity when the new rules came into force. This immunity did not exist under the old rules and does not exist under the new rules.

[60] The appellant correctly points out that Parliament is presumed not to have intended to produce illogical or absurd consequences through its statutes (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 154 D.L.R. (4th) 193 at para. 27). However, the appellant's interpretation of the scope of section 31 of the SCCA is likely to result in such a consequence. It must be rejected.

[61] In short, I am of the opinion that it was reasonable for the Officer to find that when the SCCA came into force, the appellant's application for citizenship had not been "finally disposed of" and that it was, therefore, subject to sections 13.1, 13.2, 23.1 and paragraph 22(1)(*e*.1). I am therefore of the view that Justice Noël did not err in ruling as he did on this issue.

[62] I would therefore answer the question certified by Justice Noël in the negative, given that, as specified in *Khalil* and *Stanizai*, the Minister must intervene based on material facts that were discovered after the citizenship judge dealt with the application for citizenship.

B. *The Decision to Declare the Appellant's Citizenship Application Abandoned is Reasonable*

[63] The Appellant submits that the Officer's decision was based on an irrational reasoning and should therefore be set aside. This argument was based on Ms. Catala's affidavit and the reference to subsection 22(6) of the SCCA in discussions between officials when the appellant asked to be summoned again to a citizenship oath ceremony after the removal order against him had been quashed. I have already covered these two points, which I dismissed as irrelevant. There is nothing to add.

[64] The appellant also submits that the Minister's decision is unreasonable because the Minister had neither the power to require additional information, nor the power to dismiss his application for citizenship, which had already been finalized when the SCCA entered into force. For the reasons previously stated, this argument is without merit.

[65] Finally, the appellant criticized the Officer for not having supported her reasoning with regard to the scope of section 31 of the SCCA. This argument is more academic in the context of this case because at the hearing the appellant conceded that Justice Noël had the authority to review this issue in depth. Be that as it may, *Vavilov* stated that administrative decision-makers are not required to provide a formalistic interpretation of the Act and formal reasons for a decision in this regard in every case. Their written reasons must not be assessed against a standard of perfection, nor are they expected to display the full range of legal techniques specific to "judicial Justice" (*Vavilov* at paras. 91-92). When it comes to statutory interpretation, it is sufficient that the substance of the interpretation adopted by the decision-maker be consistent

with the language, context and purpose of the statutory scheme at issue (*Vavilov* at paras.119-120). Justice Noël carefully followed these principles.

[66] In view of all the circumstances of this case, I am also satisfied that the decision to require the appellant to provide additional information and to declare his citizenship application abandoned was reasonable because the appellant failed to provide that information without giving a reasonable excuse. Justice Noël summarized these circumstances as follows:

> [130] The facts of this case show that the application for citizenship was still pending.
>
> [131] The applicant failed to note in his citizenship application and in his Residence Questionnaire that he was chairman of the Savola Group, a company based in Saudi Arabia. These new facts were revealed during his interview with an immigration officer at Pierre Elliott Trudeau Airport in Montréal on May 7, 2012, two days before the citizenship swearing-in ceremony. In addition, in 2015, a news release from the Savola Group was found, in which a press conference announcing a business agreement on May 20, 2008, in Jeddah, was mentioned. The news release also included a photograph in which the applicant can be seen with other people. The citizenship judge and the Minister's delegate did not have this information when the citizenship certificate was granted. No trip dated May 20, 2008, was declared in the application or in the Residence Questionnaire. Thus, following the reopening of the file in 2015, there was a need to make sure that the new facts did not contradict the May 2010 application for citizenship.

[67] Like the Minister, Justice Noël - and before him, his colleague Justice Shore - determined that these new facts called into question the days of residence in Canada declared in the appellant's application for citizenship and that it was appropriate for the Minister to enquire into the matter (Judgment at para. 132; *Almuhaidib 2018* at para. 7).

[68] By refusing to provide the requested information without any excuse other than denying that the Minister had the power to enquire into the omissions and contradictions discovered after a citizenship judge had approved his application for citizenship, the appellant opened the door to having his application for citizenship declared abandoned. Again, given the circumstances of this case, I conclude that it was reasonably open to the Officer to make such a decision.

[69] As the Minister rightly argues, the Officer's decision in that regard, although brief, bore the hallmarks of reasonableness insofar as it was based on rational and logical reasoning and to the extent that it documented

a) the jurisdiction authorizing the decision to declare an application for citizenship abandoned;

b) the applicability of this power regarding the appellant's application for citizenship, which, in the Officer's opinion, had not been finally disposed of within the meaning of section 31 of the SCCA on August 1, 2014, when the provision authorizing such a declaration came into force;

c) the power to require that additional information be produced, in effect when the removal order against the appellant was lifted;

d) the request made to the appellant in connection with the exercise of this power; and

e) the appellant's failure to comply with this request without a reasonable excuse.

[70] For all these reasons, I am of the view that this appeal must fail. I would therefore dismiss the appeal, all without costs, pursuant to rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22.

[71] In closing, the Minister asks that the style of cause of these procedures be changed to read "Minister of Citizenship and Immigration", and not "Minister of Immigration, Refugees and

Citizenship", because this is the designation used in the *Department of Citizenship and Immigration Act*, S.C. 1994, c. 31. The Minister is correct. I would therefore have the style of cause of these proceedings be amended accordingly.

"René LeBlanc"
J.A.

"I agree.
Richard Boivin J.A."

"I agree.
Mary J. L. Gleason J.A."

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-483-19
STYLE OF CAUSE:	SULAIMAN ALMUHAIDIB v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY ONLINE VIDEOCONFERENCE
DATE OF HEARING:	JUNE 17, 2021
REASONS FOR JUDGMENT BY:	LEBLANC J.A.
CONCURRED IN BY:	BOIVIN J.A. GLEASON J.A.
DATED:	SEPTEMBER 28, 2021

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