Federal Court Cour fédérale

Date: 20150730

Docket: T-2186-14

Citation: 2015 FC 935

Ottawa, Ontario, July 30, 2015

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

OTTO RAUL GODINEZ OVALLE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

I. <u>INTRODUCTION</u>

[1] This is an application under s 22.1(1) of the *Citizenship Act*, RSC 1985, c C-29 for a writ of *mandamus* pursuant to s 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. The Applicant seeks to compel the Minister of Citizenship and Immigration [Minister] to process his citizenship application.

II. BACKGROUND

[2] The Applicant arrived in Canada with his family in May 2002. They received refugee status in October 2003. The Applicant became a permanent resident in June 2005.

[3] The Applicant applied for Canadian citizenship in April 2012. He attended an interview with a Citizenship and Immigration Canada [CIC] officer in February 2014. He says that he was told that his application was being referred to a citizenship judge to make a final decision.

[4] On March 4, 2014, a CIC officer contacted a Canada Border Services Agency [CBSA] officer to ask if they were interested in the Applicant's periods of absence from Canada. The CBSA officer indicated that the Applicant's file was of interest and asked that any documentation be forwarded.

[5] A record was added to the Global Case Management System [GCMS] notes on March 12, 2014 which indicates that the "Applicant is a subject of interest with CBSA National Security Unit-EID. Pending more information from CBSA. BF until September 2014." On the same date, the Applicant's Field Operations Support System [FOSS] Clearance was updated to indicate "BF – Under Review."

[6] In June 2014, CBSA invited the Applicant to an interview. The Applicant requested disclosure prior to the interview. CBSA declined to disclose any documents and suggested that

the Applicant make an Access to Information and Privacy [ATIP] request. The interview was cancelled.

[7] On October 23, 2014, the Applicant launched the present application for an order of *mandamus*. On the same day, a CIC officer suspended the processing of the Applicant's citizenship application pursuant to s 13.1 of the *Citizenship Act* pending CBSA's cessation investigation.

[8] In December 2014, CBSA filed an application for cessation of the Applicant's refugee status. Through this notice, the Applicant also received notice that his citizenship application was suspended.

III. ISSUES

[9] The only issue in this proceeding is whether the Applicant has established that the Court should issue an order of *mandamus*.

IV. STATUTORY PROVISIONS

[10] The following provisions of the *Citizenship Act* are presently in force and applicable in this proceeding:

Grant of citizenship	**Attribution de la citoyenneté**
5. (1) The Minister shall grant citizenship to any person who	5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

(a) makes application for citizenship;	a) en fait la demande;
(b) is eighteen years of age or over;	b) est âgée d’au moins dix-huit ans;
(c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, has, subject to the regulations, no unfulfilled conditions under that Act relating to his or her status as a permanent resident and has, since becoming a permanent resident,	c) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l’immigration et la protection des réfugiés, a, sous réserve des règlements, satisfait à toute condition rattachée à son statut de résident permanent en vertu de cette loi et, après être devenue résident permanent :
(i) been physically present in Canada for at least 1,460 days during the six years immediately before the date of his or her application,	(i) a été effectivement présent au Canada pendant au moins mille quatre cent soixante jours au cours des six ans qui ont précédé la date de sa demande,
(ii) been physically present in Canada for at least 183 days during each of four calendar years that are fully or partially within the six years immediately before the date of his or her application, and	(ii) a été effectivement présent au Canada pendant au moins cent quatre-vingt trois jours par année civile au cours de quatre des années complètement ou partiellement comprises dans les six ans qui ont précédé la date de sa demande,
(iii) met any applicable requirement under the Income Tax Act to file a return of income in respect of four taxation years that are fully or partially within the six years immediately before the date of his or her application;	(iii) a rempli toute exigence applicable prévue par la Loi de l’impôt sur le revenu de présenter une déclaration de revenu pour quatre des années d’imposition complètement ou partiellement comprises dans les six ans qui ont précédé la date de sa demande;
(c.1) intends, if granted citizenship,	c.1) a l’intention, si elle obtient la citoyenneté, selon le cas :
(i) to continue to reside in	(i) de continuer à résider au

Canada,

Canada,

(ii) to enter into, or continue in, employment outside Canada in or with the Canadian Armed Forces, the federal public administration or the public service of a province, otherwise than as a locally engaged person, or

(ii) d'occuper ou de continuer à occuper un emploi à l'étranger, sans avoir été engagée sur place, au service des Forces armées canadiennes ou de l'administration publique fédérale ou de celle d'une province,

(iii) to reside with his or her spouse or common-law partner or parent, who is a Canadian citizen or permanent resident and is employed outside Canada in or with the Canadian Armed Forces, the federal public administration or the public service of a province, otherwise than as a locally engaged person;

(iii) de résider avec son époux ou conjoint de fait, son père ou sa mère — qui est citoyen ou résident permanent — et est, sans avoir été engagée sur place, au service, à l'étranger, des Forces armées canadiennes ou de l'administration publique fédérale ou de celle d'une province.

(d) if under 65 years of age at the date of his or her application, has an adequate knowledge of one of the official languages of Canada;

d) si elle a moins de 65 ans à la date de sa demande, a une connaissance suffisante de l'une des langues officielles du Canada;

(e) if under 65 years of age at the date of his or her application, demonstrates in one of the official languages of Canada that he or she has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and

e) si elle a moins de 65 ans à la date de sa demande, démontre dans l'une des langues officielles du Canada qu'elle a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

(f) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.

f) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20.

[…]

[…]

Suspension of processing

13.1 The Minister may suspend the processing of an application for as long as is necessary to receive

(a) any information or evidence or the results of any investigation or inquiry for the purpose of ascertaining whether the applicant meets the requirements under this Act relating to the application, whether the applicant should be the subject of an admissibility hearing or a removal order under the Immigration and Refugee Protection Act or whether section 20 or 22 applies with respect to the applicant; and

(b) in the case of an applicant who is a permanent resident and who is the subject of an admissibility hearing under the Immigration and Refugee Protection Act, the determination as to whether a removal order is to be made against the applicant.

Suspension de la procédure d’examen

13.1 Le ministre peut suspendre, pendant la période nécessaire, la procédure d’examen d’une demande :

a) dans l’attente de renseignements ou d’éléments de preuve ou des résultats d’une enquête, afin d’établir si le demandeur remplit, à l’égard de la demande, les conditions prévues sous le régime de la présente loi, si celui-ci devrait faire l’objet d’une enquête dans le cadre de la Loi sur l’immigration et la protection des réfugiés ou d’une mesure de renvoi au titre de cette loi, ou si les articles 20 ou 22 s’appliquent à l’égard de celui-ci;

b) dans le cas d’un demandeur qui est un résident permanent qui a fait l’objet d’une enquête dans le cadre de la Loi sur l’immigration et la protection des réfugiés, dans l’attente de la décision sur la question de savoir si une mesure de renvoi devrait être prise contre celui-ci.

Consideration by citizenship judge

14. (1) If an application is accepted for processing and later referred to a citizenship judge because the Minister is not satisfied that the applicant meets the requirements of the following provisions, the citizenship judge shall

Examen par un juge de la citoyenneté

14. (1) Lorsqu’une demande est reçue aux fins d’examen puis transmise à un juge de la citoyenneté parce que le ministre n’est pas convaincu que le demandeur remplit les conditions mentionnées dans les dispositions ci-après, le

determine whether the applicant meets those requirements within 60 days after the day on which the application is referred:

juge de la citoyenneté statue, dans les soixante jours suivant sa saisine, sur la question de savoir si le demandeur les remplit :

(a) subparagraphs 5(1)(c)(i) and (ii), in the case of an application for citizenship under subsection 5(1);

a) les sous-alinéas 5(1)c)(i) et (ii), dans le cas de la demande de citoyenneté présentée au titre du paragraphe 5(1);

[…]

[…]

Notice to Minister

(2) Without delay after making a determination under subsection (1) in respect of an application, the citizenship judge shall approve or not approve the application in accordance with his or her determination, notify the Minister accordingly and provide the Minister with the reasons for his or her decision.

Communication au ministre

(2) Aussitôt après avoir statué sur la demande visée au paragraphe (1), le juge de la citoyenneté approuve ou rejette la demande selon qu'il conclut ou non à la conformité de celle-ci et transmet sa décision motivée au ministre.

Notice to applicant

(3) If a citizenship judge does not approve an application under subsection (2), the citizenship judge shall without delay notify the applicant of his or her decision, of the reasons for it and of the right to apply for judicial review.

Communication au demandeur

(3) En cas de rejet de la demande, le juge de la citoyenneté en informe sans délai le demandeur en lui faisant connaître les motifs de sa décision et l'existence du droit de demander le contrôle judiciaire.

[11] The following provision of the *Citizenship Act* was repealed on July 31, 2014 but remains at issue in this proceeding:

Suspension of processing of application	**Suspension de la procédure d'examen**
17. Where a person has made an application under this Act and the Minister is of the opinion that there is insufficient information to ascertain whether that person meets the requirements of this Act and the regulations with respect to the application, the Minister may suspend the processing of the application for the period, not to exceed six months immediately following the day on which the processing is suspended, required by the Minister to obtain the necessary information.	17. S'il estime ne pas avoir tous les renseignements nécessaires pour lui permettre d'établir si le demandeur remplit les conditions prévues par la présente loi et ses règlements, le ministre peut suspendre la procédure d'examen de la demande pendant la période nécessaire — qui ne peut dépasser six mois suivant la date de la suspension — pour obtenir les renseignements qui manquent.

[12] The following provisions of the *Citizenship Regulations*, SOR/93-246 [*Citizenship Regulations*] were repealed on July 31, 2014 but remain applicable in this proceeding:

11. (1) On receipt of an application made in accordance with subsection 3(1), 3.1(1), 7(1) or 8(1), the Registrar shall cause to be commenced the inquiries necessary to determine whether the person in respect of whom the application is made meets the requirements of the Act and these Regulations with respect to the application.	11. (1) Sur réception d'une demande visée aux paragraphes 3(1), 3.1(1), 7(1) ou 8(1), le greffier fait entreprendre les enquêtes nécessaires pour déterminer si la personne faisant l'objet de la demande remplit les exigences applicables de la Loi et du présent règlement.

[…]	[…]
(5) After completion of the inquiries commenced under subsection (1), the Registrar shall	(5) Une fois que les enquêtes entreprises en vertu du paragraphe (1) sont terminées, le greffier :
(a) in the case of an application and materials filed in accordance with subsection 3(1), request the citizenship officer to whom the application and materials have been forwarded to refer the application and materials to a citizenship judge for consideration; and	a) dans le cas d'une demande et des documents déposés conformément au paragraphe 3(1), demande à l'agent de la citoyenneté à qui ils ont été transmis d'en saisir le juge de la citoyenneté;
(b) in the case of an application and materials filed under subsection 3.1(1), 7(1) or 8(1), forward the application and materials to a citizenship officer of the citizenship office that the Registrar considers appropriate in the circumstances, and request the citizenship officer to refer the application and materials to a citizenship judge for consideration.	b) dans le cas d'une demande et des documents déposés conformément aux paragraphes 3.1(1), 7(1) ou 8(1), les transmet à l'agent de la citoyenneté du bureau de la citoyenneté qu'il juge compétent en l'espèce et lui demande d'en saisir le juge de la citoyenneté.

V. ARGUMENT

A. *Applicant*

[13] The Applicant submits that the Minister has no authority to suspend a citizenship application after all conditions are met. He submits that the *Citizenship Act* uses mandatory language to require the Minister to grant citizenship if all conditions are met. The Applicant says that he has met all of the statutory requirements and so is entitled to a grant of citizenship.

[14] The test for *mandamus* was set out in *Dragan v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 211 at para 39:

> a) There must be a public legal duty to act.
>
> b) The duty must be owed to the applicant.
>
> c) There is a clear right to the performance of that duty, in particular:
>
> > i) The applicant has satisfied all conditions precedent giving rise to the duty;
> >
> > ii) There was (i) a prior demand for performance of the duty; (ii) a reasonable time to comply with the demand unless refused outright; and (iii) a subsequent refusal which can either be expressed or implied, e.g. unreasonable delay.
>
> d) No other adequate remedy is available to the applicant.
>
> e) The order sought will be of some practical value or effect.
>
> f) The Court in the exercise of discretion finds no equitable bar to the relief sought.
>
> g) On a "balance of convenience" an order in the nature of mandamus should issue.

(1) Duty owed to the Applicant

[15] The *Citizenship Regulations* provide that after a citizenship registrar is satisfied that an applicant has met the requirements of the *Citizenship Act* and the *Citizenship Regulations*, he or she is required to forward the application a citizenship judge: *Citizenship Regulations*, s 11(1), 11(5) [repealed 31 July 2014]. A citizenship judge is then required to render a decision within sixty days of receipt of the application: *Citizenship Act*, s 14. The Minister can only interfere with this process if the applicant is subject, or should be subject, to an admissibility hearing or removal order: *Citizenship Act*, s 14(1.1); *Stanizai v Canada (Citizenship and Immigration)*,

2014 FC 74 [*Stanizai*]; *Conille v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 2 FC 33 (TD) [*Conille*].

[16] The Applicant submits that the citizenship registrar had completed the necessary inquiries in February 2014. There was no relevant information missing from the Applicant's citizenship application, and so the Applicant's citizenship application was referred to a citizenship judge in February 2014.

[17] The Applicant submits that s 13.1 of the *Citizenship Act* has no application to his citizenship application. In *Stanizai*, the Court held that s 13.1 of the *Citizenship Act* has no application when there is no relevant information missing from a file, and that a cessation proceeding has no relationship to any reason upon which the Minister can suspend a citizenship application. The Minister cannot suspend an application to gather more information. In addition, no further information has become available as a result of CBSA's investigation.

[18] In addition, the Applicant says that in reality, his application was suspended in February or March 2014, months before s13.1 of the *Citizenship Act* even came into force. Furthermore, in *Murad v Canada (Citizenship and Immigration)*, 2013 FC 1089 at para 61 [*Murad*], the Federal Court held that all steps taken after a *mandamus* application are irrelevant. See also *Magalong v Canada (Citizenship and Immigration)*, 2014 FC 966 [*Magalong*]. In the present proceeding, this includes the s 13.1 of the *Citizenship Act* suspension and CBSA's cessation application.

[19] The Applicant also says that CIC's decision to suspend his citizenship application was a breach of procedural fairness because he did not receive notice: *Roncarelli v Duplessis*, [1959] SCR 121 at 140.

(2) Applicant has satisfied the conditions precedent giving rise to the duty

[20] Section 5(1) of the *Citizenship Act* clearly sets out the conditions precedent to a grant of citizenship. It provides that the Minister shall grant citizenship to any person who: makes an application for citizenship; is eighteen years or over; is a permanent resident and has, within the last four years immediately preceding the date of his or her application accumulated at least three years of residence in Canada; has an adequate knowledge of one of the official languages of Canada; has an adequate knowledge of Canada; and, is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to s 20 of the *Citizenship Act*. The Applicant has met all of these requirements.

[21] The only exception to a grant of citizenship after an applicant has met all of the statutory requirements provides that a citizenship judge shall not make a decision if an applicant is the subject of an admissibility hearing: *Citizenship Act*, s 14(1.1). Section 13.1 of the *Citizenship Act* provides that the Minister may suspend processing an application where there is insufficient information to ascertain whether an applicant meets the requirements of the *Citizenship Act* and *Citizenship Regulations*; however, there is no information missing from the Applicant's application.

[22] In *Murad*, the Court implied that the right to citizenship vests at the time citizenship should have been granted and that whatever happens after is irrelevant. The Applicant says that his citizenship should have been granted within sixty days after it was referred to a citizenship judge in February 2014.

(3) There was a prior demand for performance of the duty; reasonable time to comply with the demand; and a subsequent refusal

[23] The Applicant requested that CIC perform its duty when he filed his citizenship application. In both September and October 2014, the Applicant's counsel requested that his application continue to be processed. The Applicant says that given that he met all of the requirements for citizenship in February 2014, and that no information is missing from his file, the Minister has been provided a reasonable amount of time to act in good faith.

(4) No other adequate remedy available and the order is of practical value or effect

[24] There is no other remedy available to compel CIC to act.

[25] The Applicant says that he faces irreparable harm if *mandamus* is not granted. If the cessation application proceeds and is accepted by the Refugee Protection Division of the Immigration and Refugee Protection Board [RPD], the Applicant will lose his permanent resident status and become removable from Canada. He says that he has a strong argument that the cessation application is an abuse of process due to the unconstitutional, unreasonable and prejudicial delay in bringing the application: see e.g. *Bermudez v Canada (Citizenship and Immigration)*, 2015 FC 639 at paras 27-28 [*Bermudez*]. CBSA has always had access to the

information that they have now. Nothing changed to precipitate the cessation application. The application to revoke his permanent resident status is also retroactive and contrary to the rule of law because all of his travel occurred before the *Protecting Canada's Immigration System Act*, SC 2012, c 17 came into force.

[26] The Applicant is a long-term permanent resident who is established in Canada, whose family members are all Canadian citizens, and who suffers from chronic health conditions. The Applicant requires care for life, and his doctors are unsure if he could receive the care he requires in Guatemala.

(5) No equitable bar and balance of convenience

[27] The Applicant says that he has always complied with the applicable legislation, has always been honest with authorities and has not been responsible for any of the delay in processing his citizenship application. He says that he was not required to attend the CBSA interview for any purpose related to the furtherance of his citizenship application. He says the balance of convenience lies in his favour.

B. *Respondent*

[28] The Respondent agrees with the test as set out by the Applicant for an order of *mandamus*. See also *Kaur v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1040 at para 4; *Apotex v Canada (Attorney General)* (1993), [1994] 1 FC 742 (CA) [*Apotex*].

(1) Public duty to act and duty owed to the Applicant

[29] The Respondent accepts that the Minister owes a duty to the Applicant to process the Applicant's citizenship application. However, the Applicant's file has never been referred to a citizenship judge and so the sixty day deadline does not apply. The Respondent says that the Minister has not exceeded the estimated time typically required to process a citizenship application, and the application should be dismissed on this basis alone: *Tumarkin v Canada (Citizenship and Immigration)*, 2014 FC 915 at para 19 [*Tumarkin*]; *Conille*, above. The Respondent submits that the Applicant's cessation proceeding must be concluded prior to the continuation of the citizenship application. The question of the Applicant's status in Canada is a satisfactory justification for suspending the Applicant's citizenship application under s 13.1 of the *Citizenship Act*: *Conille*, above.

(2) Reasonable time to comply

[30] In order for the Court to find that the delay in processing the citizenship application has been unreasonable, the Court must be satisfied that: (1) the delay in question has been longer than the nature of the process requires; (2) the Applicant and his counsel are not responsible for the delay; and, (3) the authority responsible for the delay has not provided a satisfactory justification. See *Conille*, above.

[31] The Respondent says that there has been no unreasonable delay in processing the Applicant's citizenship application. CIC estimates that routine applications are typically processed in thirty-six months, while non-routine applications may take longer. The Applicant

only applied for citizenship in March 2012. The Minister must be given the necessary time when there is a preliminary indication that a lengthened processing period is required due to the presence of special circumstances: *Torres Victoria v Canada (Minister of Citizenship and Immigration)*, 2006 FC 857 at para 37. In addition, the Applicant's citizenship application was only suspended in October 2014 and the cessation application was filed in November 2014. This does not constitute unreasonable delay: *Wang v Canada (Citizenship and Immigration)*, 2010 FC 841 at paras 29-30. The Respondent says that the Applicant's permanent residence status has immediate and direct implications on the Applicant's citizenship application. Until this is resolved, relevant information remains outstanding. Citizenship officials must be diligent in ensuring they have all of the necessary facts: *Tumarkin*, above, at para 17.

(3) Conditions precedent are not satisfied

[32] The Applicant's permanent residence status is currently at issue. This is one of the statutory requirements for citizenship and is a satisfactory reason for suspending a citizenship application: *Conille*, above.

(4) Other adequate remedy available

[33] The Respondent submits that the Applicant can appear before the RPD and make submissions in response to the cessation application. Once those proceedings are concluded and the Applicant's permanent residence status is not in question, the Minister can assess his citizenship application. There is no evidence that the Minister has acted in bad faith or that the Applicant's citizenship application is suspended indefinitely.

(5) Order has no practical effect

[34] The *mandamus* order that the Applicant seeks would effectively override or ignore the suspension validly in place. Even if the Court orders the Minister to continue processing the Applicant's citizenship application, his permanent residence status will continue to be at issue until the RPD reaches a determination on the cessation application.

(6) Equitable bar and balance of convenience

[35] The Respondent submits that the Applicant was notified of the CBSA's investigation in June 2014. He was invited to attend an interview in August 2014 and he refused to comply with the request. The Applicant has not been cooperating with CBSA to resolve the matter as expeditiously as possible.

[36] The Respondent distinguishes the Court's decision in *Stanizai*, above. In *Stanizai*, the applicant's citizenship application had already been approved by a citizenship judge before the Minister initiated cessation proceedings. In the present proceeding, the Applicant's file has not even been referred to a citizenship judge. In addition, the Applicant's application is currently suspended under s 13.1 of the *Citizenship Act*; this section was not in force when *Stanizai* was decided. Finally, in *Stanizai*, the application had been outstanding for five years; the Applicant's citizenship application has not even taken the routine three years.

[37] There is also no abuse of process in the Minister's decision to begin cessation proceedings. An application for *mandamus* in relation to a citizenship application is not the

forum for the Applicant to challenge the Minister's decision to begin cessation proceedings. In addition, the Applicant has been provided procedural fairness and was invited to meet with CBSA regarding the cessation application.

[38] The Respondent also distinguishes the Court's *obiter* comments in *Bermudez*, above. First, the *Bermudez* decision is currently under appeal to the Federal Court of Appeal. Second, *Bermudez* involved an application to challenge the Minister's decision to file cessation proceedings. The Applicant has already challenged the Minister's decision to file cessation proceedings and his application was denied at the leave stage. Third, the Court has twice considered whether a cessation application constitutes an abuse of process and has decided that there was no abuse of process: *Li v Canada (Citizenship and Immigration)*, 2015 FC 459 at paras 26-34; *Olvera Romero v Canada (Citizenship and Immigration)*, 2014 FC 671.

VI. ANALYSIS

[39] The Applicant says that his citizenship application has been unlawfully suspended and asks the Court to order CIC to continue processing the application. The Respondent says that the suspension of the Applicant's citizenship application is a normal and lawful part of the process and that *mandamus* is not warranted in this case because the normal processing time for non-routine applications has not expired.

[40] I see no dispute between the parties as to the appropriate test for *mandamus*. As the Federal Court of Appeal noted in *Apotex*, above, the following criteria must be satisfied before this Court will order a writ of *mandamus*:

> a) There must be a public legal duty to act.
>
> b) The duty must be owed to the applicant.
>
> c) There is a clear right to the performance of that duty, in particular:
>
> i) The applicant has satisfied all conditions precedent giving rise to the duty;
>
> ii) There was (i) a prior demand for performance of the duty; (ii) a reasonable time to comply with the demand unless refused outright; and (iii) a subsequent refusal which can either be expressed or implied, e.g. unreasonable delay.
>
> d) No other adequate remedy is available to the applicant.
>
> e) The order sought will be of some practical value or effect.
>
> f) The Court in the exercise of discretion finds no equitable bar to the relief sought.
>
> g) On a "balance of convenience" an order in the nature of mandamus should issue.

See also *Stanizai*, above, at para 27.

[41] The Applicant submitted his citizenship application in March 2012, and the record before me suggests that the process was suspended on March 12, 2014. A GCMS entry on that date indicates: "Applicant is a subject of interest with CBSA National Security Unit-EID. Pending more information from CBSA. BF until September 2014" (CTR at 110). In addition, the Applicant's FOSS Clearance status was changed to "BF-Under Review" on that same date (CTR at 199). The processing of the application ceased.

[42] The Applicant was not informed of this suspension, and it seems as though nothing further was done on the citizenship file between March 12, 2014 and October 23, 2014. In the

meantime, CBSA sent a letter to the Applicant, on June 23, 2014, and invited him to an interview. At this point, the Applicant obtained legal counsel.

[43] CBSA refused to provide the Applicant with any documentation relevant to the scheduled interview, which was then postponed while the Applicant made an ATIP request for both CIC and CBSA files. The ATIP response was sparse and did not include CIC's FOSS notes. However, FOSS notes from CBSA allowed the Applicant to surmise that CIC had suspended his citizenship application pending cessation proceedings.

[44] Relying upon the decision in *Stanizai*, above, counsel for the Applicant attempted to contact CIC about the status of the citizenship application and to request that processing continue in compliance with the law. CIC refused to communicate with the Applicant or his counsel.

[45] The Applicant filed his *mandamus* application on October 23, 2014, and, on the same day, CIC Officer Ko filled out a form that purported to suspend processing of the Applicant's citizenship application under s 13.1 of the new *Citizenship Act* pending CBSA's "cessation investigation." Once again, the Applicant was not informed of the purported s 13.1 suspension or permitted to make any submissions about it.

[46] Section 13.1 of the *Citizenship Act* came into force on August 1, 2014, but the record shows that the citizenship application was suspended on March 12, 2014 when a GCMS note indicates that the Applicant's citizenship application was "[p]ending more information from CBSA," and the Applicant's FOSS Clearance was changed to "BF – Under Review." There is

nothing to suggest that this earlier suspension related to anything other than possible cessation issues. In fact, the Respondent says that the Minister initiated an investigation into possible cessation proceedings following the Applicant's CIC interview in February 2014 when the Applicant was asked to explain his returns to Guatemala. This accounts for the *de facto* suspension in March 2014. The Applicant says, however, that CIC always knew about his visits back to Guatemala and renewed his permanent residence card in 2011 after the final visit.

[47] The Respondent has not been forthcoming with relevant information about these purported suspensions or why the Applicant was not informed about them. In written submissions in this application the Respondent says the Applicant's citizenship application was formally suspended by Officer Ko in October 2014 pursuant to s 13.1 which came into force on August 1, 2014. But this does not account for the *de facto* suspension that occurred on March 12, 2014 before s 13.1 came into force.

[48] When I put this issue to the Respondent at the oral hearing before me on July 8, 2015, I was informed that the *de facto* suspension had been implemented under s 17 of the old *Citizenship Act* while the Registrar was making inquiries, and that the suspension could have continued under s 17 but was formally implemented under s 13.1 when that provision came into force on August 1, 2014. The GCMS notes indicate that the Applicant's application was "[p]ending more information from CBSA." When the s 13.1 suspension was implemented, the GCMS notes explicitly said: "Suspension under Section 13.1(a) of the Citizenship Act pending the outcome of active CBSA investigation." The CIC officer also filled out a form entitled "Suspension under Section 13.1." It seems likely then that if the original suspension had been

taken pursuant to s 17, then the GCMS notes would have indicated as much. I think the Respondent is speculating as there is no indication on the record that CIC was acting pursuant to s 17 in March 2014. Clearly any such inquiries undertaken after March 12, 2014 and before August 1, 2014 had to relate to the issues of cessation and immigration clearance.

[49] The record shows that the Applicant's citizenship application was complete by February 14, 2014. The Applicant received FOSS Clearance on May 28, 2013 (CTR at 120). So it is not clear why, then, on March 12, 2014, the Applicant's FOSS Clearance was changed to "BF – Under Review." It appears that even the FOSS Clearance was complete on February 14, 2014. A GCMS record dated May 28, 2013 says that the Applicant passed his FOSS Clearance. It was in March 2014 that the FOSS Clearance was updated to say "BF – Under Review" but it appears that in February 2014, it still would have been considered completed since May 2013. The Applicant had met all the requirements of citizenship and he has always been honest with authorities about his visits back to Guatemala which have now, years later, been invoked for cessation purposes. His permanent residence status was renewed by CIC with full knowledge of those visits.

[50] After having his permanent residence status confirmed by CIC with a full knowledge of his visits to Guatemala, CBSA has now decided to seek cessation against the Applicant for those same visits on the basis of re-availment and, in November 2014, the Minister filed an Application for Cessation of Refugee Protection with the RPD. The implications are obvious. If the Minister is successful before the RPD, then the Applicant will lose his permanent residence status and he will become ineligible for citizenship. This notwithstanding that the Applicant

arrived in Canada on May 22, 2002 with his family and they were all accepted as genuine refugees. All of the Applicant's family have been granted citizenship. The Applicant became a permanent resident on June 2, 2005 and since that time he has complied with all of the conditions of permanent residence. At no point has the Applicant tried to conceal the visits he made back to Guatemala and his permanent residence card was renewed without issue in 2011, the date of his last travel to Guatemala. He also has serious health problems.

[51] To now seek to deny the Applicant citizenship on the grounds of re-availment seems inhumane to say the least – and I suspect that is the reason for the lack of notification and denial of disclosure by CIC and CBSA - but is it against the law? That is the core question before me in this *mandamus* application.

[52] The Applicant's case is that there was no legal basis for CIC to suspend his citizenship application. He says that whether the suspension took place under s 17 of the old *Citizenship Act* or s 13.1 of the new *Citizenship Act* is irrelevant because the Minister has no powers under the former or present version of the *Citizenship Act* to interfere with the discretion of the Registrar or a citizenship judge to decide a citizenship application unless the Applicant is subject to, or should be subject to, an admissibility hearing or removal order (s 14(1.1)), and the Minister's duties have been clearly explained by this Court in *Stanizai*, above, which continues to provide a complete answer on the issue.

[53] The Respondent says that *Stanizai* does not provide an answer to the present situation and can be distinguished in three ways:

a) In *Stanizai*, the applicant's citizenship application had already been approved by a citizenship judge before the Minister initiated cessation proceedings before the RPD, but in the present case the Applicant's file had not been referred to a citizenship judge;

b) The Applicant's file is currently suspended under s 13.1 of the *Citizenship Act*, which provision was not in force at the time of the *Stanizai* application; and,

c) The *Stanizai* citizenship application had been outstanding for over five years while in the present case the routine thirty-six months has not yet passed.

[54] There is a significant difference in the fact situation in the present case and what Justice Mactavish was asked to deal with in *Stanizai*, above. Justice Mactavish sets out the core issues in *Stanizai* as follows:

> [3] For the reasons that follow, I am satisfied that Mr. Stanizai meets all of the statutory requirements for citizenship, that his application for citizenship has been approved by a citizenship judge and that no new information came to the attention of Canadian immigration authorities after the citizenship judge made his decision that would justify this Court exercising its discretion to deny *mandamus* in this case. Consequently an order of *mandamus* will issue.
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> […]
>
> [29] The question at the heart of this application is whether CIC has the authority to hold off on granting citizenship to an applicant whose application for citizenship has been approved by a citizenship judge, pending the receipt of an immigration clearance.
>
> [30] Mr. Stanizai's application for citizenship was approved by the citizenship judge on February 21, 2012. Subsection 14(2) of the *Citizenship Act* provides that "forthwith" after approving an application for citizenship, the citizenship judge shall "notify the Minister accordingly and provide the Minister with the reasons therefore".
>
> [31] The jurisprudence of this Court is clear: "unless there is an appeal, the approval or refusal by a citizenship judge, is a final matter as to the applicant's Canadian citizenship. The Minister has no further function to perform or other remedy other than an appeal": *Canada (Minister of Citizenship and Immigration) v. Mahmoud*, 2009 FC 57, 339 F.T.R. 273, at para. 6. See also *Canada (Minister of Citizenship and Immigration) v. Abou-Zahra*,

> 2010 FC 1073, [2010] F.C.J. No. 1326; *Canada (Minister of Citizenship and Immigration) v. Farooq*, 2009 FC 1080, 84 Imm. L.R. (3d) 64; *Canada (Minister of Citizenship and Immigration) v. Jeizan*, 2010 FC 323, 386 F.T.R. 1; *Canada (Minister of Citizenship and Immigration) v. Wong*, 2009 FC 1085, 84 Imm. L.R. (3d) 89; *Canada (Minister of Citizenship and Immigration) v. Wang,* 2009 FC 1290, 360 F.T.R. 1.
>
> [32] There is a limited exception to this principle. The Federal Court of Appeal held in *Khalil v. Canada (Secretary of State)*, [1999] 4 FC 661, [1999] F.C.J. No. 1093, that the Minister retains a residual discretion to withhold citizenship from a person who meets the requirements of citizenship if he discovers misrepresentations after the citizenship judge has submitted his report (see also *Canada (Minister of Citizenship and Immigration) v. El Bousserghini*, 2012 FC 88, 408 F.T.R. 9, at para. 27).

[55] In the present case, the Applicant has not been approved for citizenship by a citizenship judge. In fact, there is no evidence to support the Applicant's assertion that his file has even been referred to a citizenship judge. However, this does not mean that *Stanizai* has no significance for the present case.

[56] The Applicant seeks to extend *Stanizai* by saying that he meets all the requirements for citizenship and his application should be processed accordingly, and the Minister has no legal basis to suspend his application on the basis of immigration clearance.

[57] Notwithstanding the specific facts of *Stanizai*, Justice Mactavish does provide some general guidance about immigration clearance, and that is because the Minister in that case argued that the citizenship judge had approved the application for citizenship even though Mr. Stanizai did not have current immigration clearance.

[58] Justice Mactavish points out that (at para 45):

> … Once again, if the respondent was of the view that the citizenship judge's decision was defective in this regard, the proper course of action was for the respondent to appeal that decision within the 60 day appeal period provided for in the Act.

[59] Justice Mactavish then goes on to make the following observations:

> [46] I would also note that there is an element of circularity to the respondent's argument. The respondent says that there was no duty to confer Canadian citizenship on Mr. Stanizai because an immigration clearance had not been obtained. However, an immigration clearance had not been obtained because the respondent did not seek one.
>
> [47] An immigration clearance essentially requires a computer search - something that ordinarily takes a matter of minutes: see *Martin-Ivie v. Canada (Attorney General)*, 2013 FC 772, [2013] F.C.J. No. 827, at para. 32. There is no suggestion that any attempt was made to obtain an immigration clearance for Mr. Stanizai in the weeks and months after the citizenship judge approved his application for citizenship and no explanation has been offered for CIC's failure to do so. Nor is there any suggestion that such a search would have revealed any statutory impediment to Mr. Stanizai being granted citizenship during the 14 months prior to the commencement of the cessation proceedings in April of 2013.
>
> [48] There is no statutory authority for the obtaining of immigration clearances prior to granting citizenship; such clearances appear to be creatures of departmental policy. Section 14 of the *Citizenship Act* provides that a citizenship judge "shall ... determine whether or not the applicant meets the requirements of the Act and the regulations". While the Act is clear that citizenship may not be granted to an individual who is the subject of an admissibility hearing or a removal order, neither limitation applies in this case. The respondent has, moreover, not identified any provision of either the Act or the regulations that would require the obtaining of a current immigration clearance prior to the granting of citizenship.
>
> [49] In addition, subsection 5(1) of the *Citizenship Act* provides that "[t]he Minister shall grant citizenship" to any person who meets a series of statutory conditions. A current immigration clearance is not one of those conditions.

[60] The Applicant interprets these words as saying that immigration clearance is not required for the granting of citizenship, so that his own citizenship application should proceed. However, Justice Mactavish is referring to "a current immigration clearance" in the context of a decision that has already been made by a citizenship judge to grant citizenship.

[61] In the present case, the immigration clearance at issue is the Applicant's right to permanent residence status that will be challenged and decided in cessation proceedings before the RPD that are currently underway in a context where there has been no decision by a citizenship judge, and the Applicant's application has yet to be referred to a citizenship judge. The Applicant may think he qualifies for citizenship, but no citizenship judge has decided that.

[62] In my view, then, *Stanizai* does not, as the Applicant argues, deal directly with the present situation and, in effect, exclude s 17 of the previous *Citizenship Act* or s 13.1 of the present *Citizenship Act* from impacting the Applicant's citizenship application. The suspension is presently a function of the application of s 131 which reads as follows:

13.1 The Minister may suspend the processing of an application for as long as is necessary to receive	13.1 Le ministre peut suspendre, pendant la période nécessaire, la procédure d'examen d'une demande :
(a) any information or evidence or the results of any investigation or inquiry for the purpose of ascertaining whether the applicant meets the requirements under this Act relating to the application, whether the applicant should be the subject of an admissibility hearing or a removal order under the	a) dans l'attente de renseignements ou d'éléments de preuve ou des résultats d'une enquête, afin d'établir si le demandeur remplit, à l'égard de la demande, les conditions prévues sous le régime de la présente loi, si celui-ci devrait faire l'objet d'une enquête dans le cadre de la Loi sur l'immigration et la protection

Immigration and Refugee Protection Act or whether section 20 or 22 applies with respect to the applicant; and	des réfugiés ou d'une mesure de renvoi au titre de cette loi, ou si les articles 20 ou 22 s'appliquent à l'égard de celui-ci;
(b) in the case of an applicant who is a permanent resident and who is the subject of an admissibility hearing under the Immigration and Refugee Protection Act, the determination as to whether a removal order is to be made against the applicant.	b) dans le cas d'un demandeur qui est un résident permanent qui a fait l'objet d'une enquête dans le cadre de la Loi sur l'immigration et la protection des réfugiés, dans l'attente de la décision sur la question de savoir si une mesure de renvoi devrait être prise contre celui-ci.

[63] Clearly, the wording of this new provision allows suspension beyond the narrow security and admissibility context and permits it "for as long as necessary" to receive "any information or evidence or the results of any investigation or inquiry for the purpose of ascertaining whether the applicant meets the requirements under the Act relating to the application…." The issue for me is whether these words authorize the Minister to suspend a citizenship application in order to allow CBSA to conduct cessation proceedings before the RPD.

[64] As the Applicant points out, he is currently a permanent resident and will remain one until such time as that status is removed, which may never happen. So he does meet the permanent residence requirement under the Act. No inquiry is needed to establish that fact. The purpose of the suspension in this case is to allow CBSA to conduct cessation proceedings that may result in the Applicant losing permanent residence status at some time in the future. I do not think that either the old s 17 or the present s 13.1 authorize suspension for that reason. The Minister has suspended the application not because the Applicant does not meet the permanent

residence requirement (it was reconfirmed in 2011 after the Applicant's final visit to Guatemala with a full knowledge of the Applicant's comings and goings). The Minister has suspended the citizenship application to give CBSA time to, possibly, strip the Applicant of his permanent residence status at some time in the future so that he will no longer be eligible for citizenship. In my view, that is a misplaced and abusive use of s 13.1.

[65] I say this because under s 13.1 those specific instances where this provision can be used to suspend the processing of an application, and that are contingent upon something that could happen in the future, are clearly set out. They deal with admissibility and security issues. Re-availment, and cessation proceedings based upon re-availment, are not admissibility or security issues. Even if cessation proceedings before the RPD could be called an investigation or an inquiry, they are not an investigation or inquiry into whether the Applicant meets the requirements under the Act; they are an investigation or an inquiry into whether the Applicant should be stripped of a qualification and a requirement (permanent residence) that CIC knows full-well he holds because CIC has granted and confirmed that requirement.

[66] The consequences of allowing s 13.1 to be used in this way would be devastating and inhumane in the present case. The Applicant is in his sixties and is a sick man. He has been in Canada since 2002 and a permanent resident since June 2005. He has a clean record and has been entirely honest with CIC about his visits to Guatemala. His permanent residency has been confirmed with a full knowledge of those visits. The family members he came to Canada with are all Canadian citizens.

[67] I agree with the Respondent that the citizenship process under the *Citizenship Act* and immigration status should be coordinated. The Respondent's concern here is that a citizenship application should be suspended if immigration clearance is an issue; otherwise it just becomes a race between the two systems as to what happens first. However, my reading of the evidence before me is that the Respondent is not unaware that there is a problem in suspending the Applicant's citizenship application under s 13.1. I say this because the record shows that the Applicant was not notified of what was happening and the Respondent went to considerable pains to block the Applicant's attempts to access the record so that he could discover for himself what was happening. Citizenship is a matter of great importance to all those who seek it and, for this Applicant, it could well be a life or death issue given the current state of his health.

[68] The record indicates that the Applicant received RCMP clearance on May 21, 2013, has a valid CSIS clearance until May 2017, and received immigration clearance on May 28, 2013. On February 14, 2014, CIC completed a Citizenship Application Review form which shows that the Applicant had fulfilled the statutory requirements for citizenship. This is the form that goes to a citizenship judge who will assess the application and complete the form. Yet on March 12, 2014 the Applicant's immigration clearance was altered to shows "BF – Under Review," and the application was deemed "[p]ending further information from CBSA."

[69] What appears to have happened is that, at the citizenship interview that the Applicant attended on February 14, 2014, the Applicant was asked questions about his visits to Guatemala and his answers gave rise to "residency concerns," which concerns were passed on to CBSA who then investigated those concerns and eventually began cessation proceedings.

[70] CBSA sent a letter to the Applicant on June 23, 2014 inviting the Applicant to an interview to deal with the residency concerns. The Applicant declined to attend this interview because he realized he needed legal counsel and further communication with CBSA took place through counsel.

[71] It seems clear, then, that notwithstanding that the Applicant had been provided immigration clearance on May 28, 2013, CIC did not accept this and prompted CBSA to investigate residency and consider cessation proceedings. The legal justification offered for the *de facto* suspension of the citizenship application on March 12, 2014 is s 17 of the old *Citizenship Act*, and for the current suspension is s 13.1 of the new *Citizenship Act* which came into force on August 1, 2014 and which was relied upon by Officer Ko when he completed a form to suspend the citizenship application on October 23, 2014, the same day this *mandamus* application was filed.

[72] I think it is worth repeating what Justice Mactavish said about immigration clearance generally in *Stanizai*, above:

> [48] There is no statutory authority for the obtaining of immigration clearances prior to granting citizenship; such clearances appear to be creatures of departmental policy. Section 14 of the *Citizenship Act* provides that a citizenship judge "shall ... determine whether or not the applicant meets the requirements of the Act and the regulations". While the Act is clear that citizenship may not be granted to an individual who is the subject of an admissibility hearing or a removal order, neither limitation applies in this case. The respondent has, moreover, not identified any provision of either the Act or the regulations that would require the obtaining of a current immigration clearance prior to the granting of citizenship.
>
> [49] In addition, subsection 5(1) of the *Citizenship Act* provides that "[t]he Minister shall grant citizenship" to any person who

> meets a series of statutory conditions. A current immigration clearance is not one of those conditions.

[73] In my view, there is also no statutory authority for what CIC has done in the present case. As I have already said, I do not think that s 17 of the old *Citizenship Act* or s 13.1 of the present *Citizenship Act* address the Applicant's situation. This is because the Applicant clearly met all of the requirements of the *Citizenship Act* when he was interviewed on February 14, 2014. He had received immigration clearance on May 28, 2013 and this was on his application file. Neither s 17 nor s 13.1 say that the Minister can or should suspend an application to investigate the cessation process though CBSA. Maybe s 13.1 should allow for that to occur, but, in my view, it does not. And just as judges cannot make law by attempting to fill in gaps in legislation, nor can public servants give themselves powers by filling gaps through the use of policy directives. It seems to me that this is such an important and far-reaching issue that only Parliament can address and legislate what is to happen if residency concerns arise when someone, such as the Applicant, has permanent residence that has been cleared by CBSA with a full knowledge of the Applicant's visits to Guatemala, and where CBSA has both endorsed his permanent residency card and provided immigration clearance. And it really does seem unfair to me that CIC and/or CBSA should take the steps they did here without alerting the Applicant of the perceived problem. The Respondent says this process should not be a race, but clearly that is what CIC and CBSA have decided it is because, by not alerting the Applicant to the fact that his permanent residency and his chance at citizenship were at stake, they gave themselves the head start they felt they needed to investigate and complete the cessation process before the Applicant could take any action (including a *mandamus* application) to protect his rights. As things stand, this is a race, but it is a race in which people like the Applicant may not even know they are running

because of lack of notification and strenuous resistance to disclosure by a powerful state apparatus. In my view, only Parliament can address this problem if it is considered to be one. However, it is noteworthy that when Parliament amended the *Citizenship Act* and brought the present s 13.1 into being, it did not extend the Minster's suspension powers to include "immigration clearance," so that, for the time being at least, I think it has to be assumed that what Justice Mactavish said about this issue generally in *Stanizai* – decided before the new *Citizenship Act* came into force – reflects Parliament's present intentions on this issue. As the Applicant points out, the RPD itself has found that bringing cessation proceedings to vitiate permanent residence after years of delay is contrary to Canada's obligations under both the *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 and the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. See *Re X* (7 October 2014), Vancouver VB4-01572 (RPD) at para 35. In addition, in reviewing a decision to bring an application for cessation before the RPD, Justice Mosley commented on the fact that long-time permanent residents' travel was always within the knowledge of the Minister which suggested that the Minister "had been lying in the weeds waiting for the legislative change to pursue permanent residents" (*Bermudez,* above, at para 28). The Minister may have received the legislative change necessary to pursue permanent residents, but, in my view, the Minister did not receive the legislative change necessary to suspend citizenship applications to pursue permanent residents in this manner.

[74] If the suspension is not supported by either s 17 of the old *Citizenship Act* or s 13.1 of the new *Citizenship Act* as discussed above, then the Minister is bound by s 5(1) to continue processing the Applicant's application. I note that s 11(5) of the *Citizenship Regulations*, which

made it mandatory to forward the file to a citizenship judge for consideration, has been repealed. But, in my view, the repeal of s 11(5) of the *Citizenship Regulations* does not affect the Minister's obligation under s 5(1) to grant the Applicant citizenship if he fulfills the statutory requirements. In this case the Applicant's citizenship application was improperly suspended four months before s 13.1 came into force and the Minister seems to have made no effort to invoke and rely upon s 13.1 until after this *mandamus* application was filed on October 23, 2014.

[75] In this situation, the Applicant relies upon *Murad* and *Magalong*, both above, for the proposition that anything that happens after the *mandamus* application is filed is irrelevant. The Respondent says that, even if s 13.1 cannot be used to support suspension in this case, then the old s 17 was sufficient. The old s 17 was not used in March 2014 as justification for the suspension and cannot be used as justification before the Court. Notwithstanding, as I have made clear above, it is my view that neither section supports the suspension that occurred in this case and the Applicant's citizenship application should have been processed in accordance with the mandatory requirements of s 5(1) of the present *Citizenship Act* and s 11(5) of the old *Citizenship Regulations*. Of course, the delay that has resulted from the Applicant having to discover what was taking place and then bring this application may have created all the time the Minister needs to complete the cessation process before the Applicant is finally granted citizenship. I think I must infer that the Minister was fully aware of what Justice Mactavish said generally about "immigration clearance" in *Stanizai*, above, but chose to disregard the implications of that case for the present situation in the hope that cessation could be completed before citizenship was decided. This is why the Respondent has made strenuous efforts to deny the Applicant knowledge of what was happening. Given *Stanizai*, and given the Respondent's conduct, I think

I have to find that a significant abuse of process has occurred in this case and that the Applicant has been denied procedural fairness. The *Citizenship Act* requires that the Applicant's application be processed promptly and transparently. See *Murad*, above, at para 52. The delay caused by the Respondent's conduct in this case was unreasonable and unfair. That is because the delay has been longer than the nature of the process required; this was not a problematic application that required additional time for review. The Respondent made it into a non-routine application by invoking suspension powers to deal with possible future revocation of permanent residency. The Applicant is not responsible for the delay in the citizenship process, and the Respondent, in my view, has not provided a satisfactory justification for the delay. See *Conille*, above, at para 23.

[76] I have no means of knowing at this stage how long it will take the RPD to complete the cessation process, or whether the RPD will find that, in this case, an abuse of process has occurred given either CIC's actions that followed CBSA's confirmation of permanent residence, or because CBSA's action are a breach of Canada's obligations under the Refugee Convention and IRPA. See *Re X*, above, at para 35. However, for purposes of this *mandamus* application and the citizenship process, I do think there has been an abuse of process on the facts of this case. I cannot find conclusive evidence that the Applicant's application had actually been referred to a citizenship judge before the *de facto* suspension, thus bringing s 14(1) of the *Citizenship Act* into play, but I think the evidence is clear that the Applicant's file was complete and ready for referral and should have been referred to a citizenship judge on February 14, 2014 when the CIC official completed the Citizenship Application Review form that showed that the Applicant had fulfilled all of the statutory requirements for citizenship.

[77] Given the delays and resistance that the Applicant has experienced it could well be that he may lose permanent residence status in the cessation proceedings before his citizenship application is decided. This could render an order of *mandamus* nugatory and it would mean that, notwithstanding an abuse of process, the objectives of the Respondent to deprive the Applicant of his permanent residence status, and hence any chance at citizenship, would have been achieved. If this were to occur then, in my view, the Applicant will have been deprived of his right to have his citizenship application processed and decided in accordance with the *Citizenship Act*, and in particular the mandatory requirements set out in ss 5(1) and 14(1) of the *Citizenship Act*, as his application file stood on February 14, 2014 when the Citizenship Application Review form indicated that the Applicant had fulfilled all of the statutory requirements for citizenship, and stood ready to be referred to a citizenship judge. In addition, it would mean that a significant abuse of process in breach of Canadian law would have been successful. It would also mean, on the facts of this case, the inhumane treatment of a sick man who could face deportation away from his family at a difficult time in his life.

[78] In order to avoid these unacceptable possibilities and maintain the integrity and credibility of our immigration and citizenship system, and its humane underpinnings, any order I make will have to address those contingencies.

[79] In conclusion, I am satisfied that an order for *mandamus* should issue. The Respondent owed a public legal duty to refer the Applicant's citizenship file to a citizenship judge as of February 14, 2014 and had no legal authority to suspend the application. In accordance with the *Citizenship Act*, there was a clear right to the performance of that duty in that the Applicant had

satisfied all the conditions precedent giving rise to the duty. In addition, the Applicant has made a prior demand for performance of that duty and the Respondent has had a reasonable time to comply with the demand but has refused to comply for reasons that are not in accordance with Canadian law as set out in the *Citizenship Act*. No other adequate remedy is available. The Respondent says that the Applicant should simply go through the cessation process before the RPD, but this will not recognize or redeem his rights as they existed in February 2014 and will confirm and continue the abuse of process the Applicant has suffered. The Order I make will have a practical value in that it will recognize and sustain the Applicant's rights under the *Citizenship Act*. Also, I find no equitable bar to relief. The Applicant's resistance to the cessation proceedings is simply his way of identifying an abuse of process and a suspension that was not imposed in accordance with Canadian law. Given the above factors, I think that, on a balance of convenience, an order for *mandamus* should issue. If the Respondent wishes to ensure that cessation proceedings and a loss of permanent residence status should precede any citizenship decision, then it need only bring those proceedings in a timely and non-abusive manner, or seek Parliament's assistance in providing the legislative authority to act as the Respondent wishes to act. The Respondent should not award itself suspension powers through policy or otherwise that are not commensurate with the rights of applicants under the *Citizenship Act*.

[80] In addition, given the inordinate delay in this case, and the possible consequences of that delay upon the Applicant's rights under the *Citizenship Act*, I believe that timing restrictions are required to ensure that those rights are preserved until such time as a citizenship judge makes a decision.

[81] Neither party has asked for costs in this application and both sides have agreed to absorb their costs whatever the result.

[82] The Respondent has indicated to the Court that it does not wish to raise an issue for certification, so I think I must assume that the Respondent is willing to live with my interpretation of s 17 of the old *Citizenship Act* and s 13.1 of the new *Citizenship Act* which is at the core of this decision. My own view is that it is clear that neither provision authorizes a suspension in order to allow CBSA to investigate cessation proceedings after it has been determined that an applicant has satisfied the requirements of s 5(1) of the *Citizenship Act*. Consequently, I see no need to certify a question for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. An order for *mandamus* is granted. The suspension of the Applicant's citizenship application is vacated and the Respondent will immediately notify the Applicant of any deficiencies that have developed in the Applicant's citizenship application file since it was assessed as fulfilling the statutory requirements for citizenship in February 2014 and shall allow the Applicant a reasonable time within which to remedy those deficiencies, following which the file will be immediately referred to a citizenship judge for a decision, which will be rendered within 30 days of the referral. The citizenship judge's decision will be immediately communicated to the Applicant;
2. No costs are awarded to either party;
3. There is no question for certification; and,
4. A copy of this order shall be provided to the RPD so that my findings can be taken into account in so far as they are relevant in the cessation proceedings presently underway and the RPD can decide how best to coordinate its proceedings with my conclusions and judgment in this application.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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