

Federal Court



Cour fédérale

**Date: 20160519**

**Docket: T-1077-15**

**Citation: 2016 FC 505**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Montréal, Quebec, May 19, 2016**

**PRESENT: The Honourable Madam Justice St. Louis**

**BETWEEN:**

**TAWFIK ASSAL  
NICOLE CHALABY (ON BEHALF OF LUCA  
TAWFIK SHAKER TAWFIK ASSAL)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] The parties agreed to group the six (6) dockets so they could be heard together, given that they present the same facts and raise the same questions. Thus, the Court will deliver a judgment in the docket T-1077-15 and will file a copy in the dockets T-1078-15, T-1079-15, T-1080-15, T-1081-15 and T-1082-15.

[2] Each docket pertains to a child, and three families are represented. Thus, Luca Tawfik Shaker Tawfik Assal is represented by Nicole Chalaby and Tawfik Assal; Sophie Paul George Antoun Sabbagh, Alain Paul George Sabbagh and Thomas Paul Georges Sabbagh are represented by Diane Labrie and Paul Sabbagh; Luca Andrew Maroun Aziz and Isabella Aziz are represented by Giuseppina Deponte and Andrew Aziz.

[3] The facts underlying the decision under appeal are allowed. Thus, between 1996 and 2007, the applicants, who are Canadian citizens, travelled to Egypt where they took in children who were not their own, obtained fraudulent birth certificates that falsely identified them as the biological parents of these children and presented these fraudulent birth certificates to Canadian authorities to obtain a citizenship certificate and a Canadian passport for each child.

[4] Canadian authorities therefore issued a certificate of citizenship for each of the children under paragraph 3(1)(b) of the *Citizenship Act*, R.S.C. 1985, v C-29 (the Act), presented in the appendix, which states that a person born outside Canada after February 14, 1977, of a father or a mother who is a citizen at the time of the birth, is a citizen.

[5] Each of the six (6) children therefore arrived in Canada shortly after birth and has lived here since.

[6] In 2009, the Canadian authorities discovered the fraudulent scheme and, in April 2012, charges were laid against the applicants. Citizenship and Immigration Canada (CIC) informed

them that the proceedings relating to the children would be concluded once the criminal proceedings were finished.

[7] In November 2014, the charges against Nicole Chalaby, Giuseppina Deponde and Paul Sabbagh were dropped, while in December 2014, Tawfik Assal, Andrew Aziz and Diane Labrie pleaded guilty to one charge of misrepresentation under section 127 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. On February 17, 2015, the Honourable Justice Jean-Pierre Boyer of the Court of Quebec (docket 500-73-004219-149) discharged them absolutely.

[8] On May 15, 2015, the Registrar of Canadian Citizenship (Registrar) delivered her decision, which was the same for each child, cancelling their birth certificates. The Registrar stated that the children do not have the right to hold the certificates of citizenship issued to them, and listed the information it considers relevant and asked that the certificates of citizenship be sent to the address listed. The Registrar supported her decision to cancel the children's certificates of citizenship on the basis of subsection 26(3) of the *Citizenship Regulations*, DORS/93-246 (Regulations), adopted under the authority of paragraphs 27(1)(j) and 27(1)(k) of the Act, all of which are presented in the appendix.

[9] The applicants requested a judicial review of the Registrar's decision. They argued that it is inconsistent with the rule of law because rescinding the certificates of citizenship does not constitute proper recourse in these circumstances, and that CIC should instead have applied the procedure for revocation under subsection 10(1) of the Act, as it was on May 15, 2015, and presented in the appendix. They also argue that the principles of natural justice and procedural

fairness were not respected in the process leading to the certificates of citizenship being rescinded, and that they have the right to costs on a solicitor-client basis.

[10] The respondent argued that the Registrar's decision is consistent with the rule of law because subsection 26(3) of the Regulations affords her jurisdiction to cancel certificates of citizenship issued illegally and because the revocation procedure does not apply in this instance. The respondent maintains that the principles of natural justice were respected and that no special reason justifies the awarding of costs.

[11] The Court is obviously sensitive to the children's situation, but is bound by the legislative and regulatory framework governing issues concerning Canadian citizenship. Thus, for the reasons stated hereafter, this Court concludes that the Registrar's decision is consistent with the rule of law, that the Registrar has the jurisdiction to cancel certificates of citizenship, that the revocation procedure does not apply in this case, that the principles of natural justice and procedural fairness were respected and that the facts do not justify the awarding of costs. Thus, the Registrar's decision is upheld and the application for judicial review is dismissed.

[12] The applicants are neither the biological parents, nor the adoptive parents of the children they are representing. However, for the purposes of this judgment, this Court will nonetheless identify them as *the parents* and will identify the children as *their* children.

II. Additional relevant facts

[13] The applicants relied on the statement of facts cited in the above judgment from Boyer J.C.Q. Thus, it is understood that the children were born outside of Canada to parents who were not Canadian citizens at the time of their birth, and that they are not Canadian citizens. It is not necessary to provide more details regarding this.

[14] However, the applicants alleged that the principles of natural justice and procedural fairness were not respected in the process leading to the Registrar's decision to cancel the children's certificates of citizenship. Thus, it becomes necessary to provide further detail about the exchanges that occurred between the applicants and CIC in order to assess this allegation.

[15] Yet the majority of these exchanges, letters and emails are not in the Certified Tribunal Record (CTR). They were submitted by the applicants with the affidavit from Sara Goessaert. The applicants requested that the Court consider these documents, particularly the demand letter addressed to the CIC Director General on April 17, 2015.

[16] The Court must regularly limit its review to CTR documents (*Ajeigbe v Canada (Minister of Citizenship and Immigration)*, 2015 FC 534 at paragraph 13). However, in this case, the applicants submitted documents with their docket that are not part of the CTR and requested that the Court consider them. The respondent consented to this, and the review of these documents is necessary to assess whether there was a breach of the principles of natural justice and procedural fairness (*Assoc. des universités et collèges du Canada v Canadian Copyright Licensing Agency*,

2012 FCA 22). Therefore, this Court agrees to consider the documents submitted by the applicants, despite the fact that they are not in the CTR.

[17] Thus, for the purposes of this docket, the exchanges between CIC and the applicants began on July 7, 2014. The case management analyst informed the applicants that CIC had determined that the children would not be expelled from Canada following the legal proceedings and would "recall" their certificates of citizenship. The analyst indicated that it was CIC's intention to issue temporary resident permits lasting three (3) years, a period during which they could apply for permanent residency on humanitarian and compassionate grounds, and then citizenship.

[18] On August 18, 2014, the applicants, through their solicitor, sent a letter to the CIC Director General in which they recognized the CIC's intention to rescind the children's certificates of citizenship and requested a point of contact with whom they could communicate at each step of the process to uphold their best interests. This letter went unanswered, so the applicants sent a reminder on September 11, 2014.

[19] On September 25, 2014, CIC informed the applicants that it had not received anything, and the latter therefore resent their letter from August 18.

[20] On October 1, 2014, CIC sent an email to the solicitor for the applicants, acknowledging receipt of the letters and noting that the certificates of citizenship would be rescinded once the criminal case had finished before the courts. CIC then outlined the two steps in the process of

recalling certificates of citizenship, namely (1) sending a letter of procedural fairness and the granting of a period of 30 days to respond and (2), once the submissions are received, sending the file to the Registrar who will render a decision to recall, or not to recall, the certificates of citizenship.

[21] On October 14, 2014, the applicants acknowledged receipt of the email from CIC and, specifically, reiterated their request to designate a point of contact with whom they would be able to communicate during each step.

[22] On December 17, 2014, the applicants informed CIC of the withdrawal of the charges filed against Nicole Chalaby, Giuseppina Deponte and Paul Sabbagh and reiterated their request to designate a point of contact. The word *revocation* appears for the first time, but the applicants referred then both to the [TRANSLATION] "recall of the certificates" and to the [TRANSLATION] "case of the children's citizenship recall" to describe the procedure chosen by CIC.

[23] On February 17, 2015, Boyer J.C.Q. delivered his decision, ending the criminal proceedings against the applicants.

[24] On April 17, 2015, having received no updates from CIC despite the end of criminal proceedings, the applicants sent a demand letter to the CIC Director General. They stressed that the legal proceedings against the applicants came to an end on February 17, 2015, and they restated their wish for a prompt recall of the certificates of citizenship, which would allow them

to submit their humanitarian reasons to the Governor in Council as part of the citizenship *revocation* procedure provided for in subsection 10(1) of the Act. They insisted on the urgent need for action because a legislative change affecting subsection 10(1) of the aforementioned Act was to come into force shortly and eliminate the possibility of submitting humanitarian reasons to the Governor in Council in the context of a revocation of citizenship for fraud. The applicants then listed numerous difficulties that the children will face in the event that their citizenship status is recalled as well as the impact of this loss on each of them; they requested that CIC not proceed with the *recall* of the certificates of citizenship, but revalidate them instead.

[25] On June 19, 2014, the *Strengthening Canadian Citizenship Act*, SC 2014, c. 22, modified subsection 10(1) of the Act by eliminating the intervention of the Governor in Council in the citizenship revocation procedure, and instead granted the exercise of this power to the Minister of Citizenship and Immigration (the Minister). However, this modification came into effect on May 28, 2015, after the Registrar had rendered her decision.

[26] On April 22, 2015, CIC acknowledged receipt of the applicants' demand letter and noted that the next step would be the *recall* of the children's certificates of citizenship, as mentioned previously, and not the *revocation* of the status of Canadian citizen. CIC reiterated the steps in the recall process for certificates of citizenship, as well as the procedure that would allow the children to qualify for legal status in Canada.

[27] On April 27, 2015, the applicants withdrew the letter of procedural fairness in order to accelerate the *recall* process for the certificates of citizenship.



[28] On May 5, 2015, the applicants sent their demand letter from April 17, 2015, to the Registrar and, on May 27, 2015, to the Minister.

[29] On May 15, 2015, the Registrar decided to cancel the certificates of citizenship, but this decision was not then conveyed to the applicants.

[30] On May 28, 2015, unaware that the Registrar had rendered her decision, the applicants submitted a request for a remedy of mandamus to force CIC to render a decision regarding the recall process for the children's certificates of citizenship.

[31] On June 11, 2015, the Registrar's decision from May 15, 2015, was brought to the attention of the applicants by counsel for the respondent and, on June 25, 2015, the decision was forwarded to them.

[32] Also, on August 5, 2015, the applicants submitted citizenship applications for the children under the auspices of subsection 5(4) of the Act, then in effect and presented in the appendix.

### III. Issues in dispute

[33] This Court must determine the appropriate standard of review and respond to the three questions raised by the applicants, namely:

- (1) Is the Registrar's decision consistent with the rule of law?
- (2) Were the principles of natural justice and procedural fairness respected?
- (3) Are the applicants entitled to costs?

IV. Status of the parties

A. *Status of the applicants*

(1) Is the Registrar's decision consistent with the rule of law?

[34] The applicants maintain that the Registrar could not use subsection 26(3) of the Regulations and cancel the children's certificates of citizenship, but that CIC should instead use the citizenship revocation procedure set out in subsection 10(1) and in section 18 of the Act in effect on May 15, 2015.

[35] The applicants maintain that they were thereby deprived of a remedy before the Governor in Council, whom they could have asked not to revoke the children's citizenship for humanitarian reasons.

[36] The applicants maintain that they always clearly took the position that the revocation procedure is the only one applicable to decide the children's citizenship because it applies to all citizens, both natural-born and naturalized citizens when there are cases of fraud, misrepresentations or intentional concealment of material circumstances.

[37] The applicants based their argument on a combined reading of subsection 10(1) of the Act and 26(3) of the Regulations in effect on May 15, 2015, as well as on the meaning of the terms used in these subsections.

[38] The applicants therefore argued that (1) the case law at subsection 26(3) of the Regulations includes administrative errors rather than misrepresentations, (2) the common meaning of the words does not make it possible to conclude that subsection 10(1) of the Act only applies to naturalized citizens and not to natural-born citizens, (3) the case law at subsection 10(1) of the Act is not restricted to naturalized citizens (*Canada (Minister of Citizenship and Immigration) v Obodzinsky*, 2003 FC 1080), and (4) distinguishing between natural-born citizens and other citizens is contrary to the provisions of section 6 of the Act, which stipulates that all citizens enjoy the same rights.

(2) Were the principles of natural justice and procedural fairness respected?

[39] The applicants argue that they always referred to the revocation procedure, that CIC did likewise and that the change of course was likely to take advantage of the imminent legislative change and to deprive them of the aforementioned remedy before the Governor in Council.

[40] The applicants argue that CIC violated the principles of natural justice and procedural fairness by failing to consider all of the evidence and the decision's impact on the lives of those involved, in this case innocent children, who will face significant administrative problems (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraphs 15, 22).

The impacts include ineligibility for health care, the imposition of school fees for foreign students, the loss of international mobility, the inability to obtain a driver's license and having the status of stateless person.

[41] The applicants also argue that CIC should have considered the humanitarian reasons put forward in their demand letter from April 17, 2015, being obliged to consider the best interests of the children, and also should have used the discretionary power under subsection 5(4) of the Act to grant Canadian citizenship to children.

(3) Are the applicants entitled to costs?

[42] The applicants maintain that there are special reasons justifying the awarding of costs and, furthermore, that the respondent's reprehensible behaviour justifies the awarding of costs on a solicitor-client basis. They argue that the respondent's decision-making process lacked all transparency, that the respondent created confusion by referring to the term recall rather than to the term cancellation, which is used in subsection 26(3) of the Regulations, and that the respondent refused to communicate adequately with the applicants.

B. *Status of the respondent*

(1) Is the Registrar's decision consistent with the rule of law?

[43] The respondent argued that the Registrar's decision is consistent with the rule of law and that she had the jurisdiction to cancel the children's certificates of citizenship, who had enjoyed a privilege to which they were not entitled.

[44] The respondent began by noting the legislative framework. The respondent stated that paragraphs 27(1)(j) and 27(1)(k) of the Act specify that the Governor in Council may, by law, provide for the surrender, the retention and the cancellation of certificates of citizenship issued

under the Act and that subsection 26(3) of the Regulations results from the exercise of this authority.

[45] Subsection 26(3) of the Regulations states that when the Minister has determined that the holder of a certificate of citizenship is not entitled to it, the Registrar will cancel the aforementioned certificate. In this case, the respondent took note of an undisputed fact, that the children were never Canadian citizens under paragraph 3(1)(b) of the Act, because they were not born outside Canada to a father or a mother who was a citizen at the time of their birth.

[46] The respondent relied mainly on the statements from Mr. Justice Harrington in the decision *Hitti v Canada (Minister of Citizenship and Immigration)*, 2007 FC 294 at paragraph 16, to the effect that "section 26 of the Citizenship Regulations, 1993, DORS/93-246, provides that the Registrar of Canadian Citizenship may cancel an unlawfully issued certificate."

[47] The respondent also relied on the statements from Mr. Justice Rennie in the decision *Afzal v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1028, according to which a certificate, even if issued, is of no effect where the conditions precedent to citizenship have not been met. At paragraph 25, Rennie J. also stated that sections 10 and 18 of the Act do not apply "because the applicants never obtained citizenship." "The requirements of the Act had not been fulfilled," and the Registrar has the jurisdiction to cancel a certificate of citizenship when, on an objective basis, it is obvious that the person concerned did not have the right to the aforementioned certificate of citizenship.

[48] In relation to the revocation procedure provided for in subsection 10(1) of the Act, the respondent highlighted three reasons to dismiss the applicant's arguments and argue that the revocation does not apply in this case.

[49] First, because the children never had, obtained or possessed Canadian citizenship, it cannot be taken from them. They were never entitled to it and they cannot have revoked what they never possessed.

[50] In the alternative, subsection 10(1) of the Act requires that the person *has obtained* citizenship, which involves a citizenship application having been submitted and citizenship having been granted. In fact, paragraph 3(1)(c) of the Act states that a person *acquires* citizenship as the result, among others, of the procedure set out in articles 5 and 11 of the Act. These steps do not apply when citizenship is the result of being born in Canada or filiation. Thus, in this case, because there was no claim or granting of citizenship, we are not faced with an acquisition case and subsection 10(1) of the Act therefore does not apply.

[51] Lastly, the respondent maintains that it would be paradoxical and absurd for a person who fraudulently obtained a certificate of citizenship to enjoy wider procedural rights than a person who obtained a certificate of citizenship following an administrative error.

[52] When a person bases their right to citizenship on the situation at birth, under paragraphs 3(1)(a) or 3(1)(b) of the Act, there is neither obtainment nor attribution of citizenship under section 5 of the Act, and citizenship can only be revoked under subsection 10(1) of the Act. This

conclusion applies equally when the incorrect application of paragraphs 3(1)(a) and 3(1)(b) of the Act stems from a fraud or a misrepresentation, and only the cancellation procedure of the certificate of citizenship by the Registrar then applies.

[53] Lastly, the respondent does not contest the fact that the revocation procedure in effect on May 15, 2015, was the same as the one that would apply if the circumstances allowed it. However, the respondent maintains that the revocation procedure is not at play and that legislative change is therefore irrelevant.

(2) Were the principles of natural justice and procedural fairness respected?

[54] The respondent maintains that the principles of natural justice and procedural fairness were respected. The respondent stresses that this was a case of fraud; that in July 2014 a CIC analyst confirmed that, taking into account the children's best interests, they would not be expelled from Canada; that CIC adopted a proactive position to allow the children to stay in Canada with a status and to obtain, after a certain period, Canadian citizenship; that CIC constantly referred to the recall procedure for the certificates of citizenship, which cannot be mistaken for the revocation procedure, which CIC stated to the applicants was not a revocation procedure; that one of the applicants' demand letters is even addressed to the Registrar, who does not have jurisdiction over revocations.

(3) Are the applicants entitled to costs?

[55] The respondent is opposed to the awarding of costs. The respondent argues that nothing in the applicants' correspondence makes it possible to infer that they did not understand the nature of the planned procedure, and that CIC never mentioned the revocation procedure and informed the applicants that it would not apply as soon as they mentioned it.

[56] The respondent sent numerous notifications to the applicants to state that the recall procedure for the certificates of citizenship was going to begin, and the applicants never indicated that they did not understand the nature of the planned procedure.

V. Standard of review

[57] The issues relating to the Registrar's jurisdiction and procedural fairness must be reviewed on the basis of the correct decision (*Dunsmuir v Nouveau-Brunswick*, 2008 SCC 9 [Dunsmuir] at paragraph 50 and (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paragraph 43)), whereas the Registrar's decision must be based on the standard of reasonableness (*Dunsmuir*, at paragraph 47).



VI. Analysis

A. *Is the Registrar's decision consistent with the rule of law?*

[58] The parties are pitting two distinct procedures against one other: the cancellation of a certificate of citizenship issued unlawfully, and the revocation of citizenship obtained fraudulently.

[59] The cancellation of a certificate of citizenship is provided for under subsection 26(3) of the Regulations and results from the exercise by the Governor in Council of the authority conferred upon him under paragraphs 27(1)(j) and 27(1)(k) of the Act and under which it may, by law, provide for the surrender, the retention and the cancellation of certificates of citizenship issued under the Act.

[60] Thus, subsection 26(3) of the Regulations confers upon the Registrar the jurisdiction to cancel a certificate of citizenship when the Minister determines that its holder is not entitled to it.

[61] The cancellation of a certificate of citizenship in this context does not, therefore, remove any right or status from the holder because he or she has none. This is merely the concrete action based on the finding that the holder of a certificate of citizenship is not a Canadian citizen, that a certificate was nonetheless issued to the holder and that the certificate must consequently be cancelled.

[62] The revocation of citizenship is set out in subsection 10(1) of the Act, a subsection found in Part II, entitled "Loss of Citizenship."

[63] The schema of the Act, as well as the meaning of the words "loss of citizenship" and "revocation of citizenship" require at least as a premise that the person affected "have" citizenship because, as the respondent argued, a person cannot lose what he does not have.

[64] The children are not Canadian citizens and never have been, and a procedure meant to revoke their citizenship when they do not have it therefore does not apply to them.

[65] This Court could end its analysis here. However, the applicants argue that subsection 10(1) of the Act, noted above, dealing with revocation, must be used when there is fraud, and that it applies as much to naturalized citizens as to natural-born citizens.

[66] Even if the Court agreed to this proposal, revocation could not have been used in this case because the children are neither naturalized nor natural-born citizens.

[67] Furthermore, this Court cannot agree to the applicants' proposal in this regard. In fact, subsection 10(1) of the Act then in effect states that "where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship ... under this Act by false representation or fraud or by knowingly concealing material circumstances, the person ... ceases to be a citizen" [my emphasis]. The language of the paragraph itself requires the acquisition of citizenship by fraud.

[68] Persons who are citizens are those born in Canada (paragraph 3(1)(a) of the Act), or born outside of Canada to a father or a mother who is a Canadian citizen at the time of the birth (paragraph 3(1)(b) of the Act), provided that they are not excluded. Canadian citizenship is therefore given to persons through their filiation (*jus sanguinis*) or through their birth on the territory (*jus soli*). They are then Canadian citizens regardless of whether they have applied for it, and regardless of whether they applied for or obtained a certificate of Canadian citizenship. For a citizen at birth, the certificate of citizenship only constitutes the recognition or evidence of this citizenship.

[69] Thus, persons who are not citizens due to their birth must apply for it. It will be granted to them if they meet the conditions set out in the Act and will then have acquired it.

[70] There is therefore a distinction between persons who are citizens due to their birth, and persons who do not have it and must acquire it and, therefore, have it granted to them.

[71] Subsection 10(1) of the Act in effect on May 15, 2015, clearly refers, in particular, to the acquisition of citizenship that occurred by false representation or fraud or by knowingly concealing material circumstances and, consequently, cannot be used in the absence of such an acquisition even in the presence of fraud.

[72] Also, the case law submitted by the parties makes no reference to a case where there was a revocation of citizenship from an individual who was falsely represented as a natural-born

citizen, nor a case of simple cancellation of the certificate of citizenship of an individual to whom citizenship had been granted.

[73] The revocation procedure for citizenship set out in subsection 10(1) in effect on May 15, 2015, of the Act requires that individuals be a Canadian citizen and that they acquired citizenship through fraud, thereby excluding natural-born citizens.

[74] In this case, the applicants misrepresented their children as Canadian citizens due to their births, under paragraph 3(1)(b) of the Act. However, these children were never citizens, they never *acquired* citizenship and it was never *granted* to them. CIC therefore could not follow the revocation procedure in this instance, even if fraud had been committed.

[75] The Registrar had the jurisdiction to cancel the certificates of citizenship, and her decision is consistent with the rule of law because the children did not have citizenship and were not entitled to it. The conditions precedent to citizenship listed in paragraph 3(1)(b) of the Act were never met and the certificate of citizenship, even if issued, had no effect (*Afzal*, at paragraph 25).

[76] Lastly, section 6 of the Act, cited by the applicants, also assumes the status of Canadian citizen, which the children do not have. It is therefore not useful in this debate.

B. *Were the principles of natural justice and procedural fairness respected?*

- (1) Representations from CIC relating to the revocation procedure at subsection 10(1) of the Act

[77] This Court substantiated the communication between CIC and the applicants and is satisfied that CIC never referred to the revocation procedure in subsection 10(1) of the Act.

[78] The correspondence from CIC to the applicants on July 7, 2014, clearly refers to the recall of the certificates of citizenship; that of October 1, 2014, details the steps that will follow the conclusion of the criminal proceedings, refers to the recall of the certificates of citizenship and, in particular, to the authority of the Registrar to decide whether to recall certificates of citizenship; and that of April 22, 2015, corrects the reference made by the applicants in their letter on April 17, 2015, and states that, in this case, it is not a revocation.

[79] Moreover, the applicants themselves mostly refer to the [TRANSLATION] "recall of certificates" in their correspondence. Based on the Court's review, the term *revocation* appears for the first time on December 17, 2014, in an email that the applicants sent to CIC, but there is no indication that they then wanted or were waiting for the revocation procedure.

[80] The applicants confirmed that they were expecting the revocation procedure in the demand letter dated April 17, 2015, which CIC corrected five (5) days later by insisting on the fact that this was a certificate recall procedure.

[81] On April 27, 2015, the applicants confirmed that they were withdrawing the letter of procedural fairness that [TRANSLATION] "noted the correspondences from October 1, 2014, and April 22, 2015," which describe the certificate recall procedure

[82] This Court cannot therefore find in favour of the applicants because CIC never referred to the citizenship revocation procedure, but instead referred to the certificate recall procedure and even explained the steps in this procedure, the outcome of which is decided by the Registrar. It certainly would have been preferable for CIC to refer to the cancellation of the certificates, following from the verb used at subsection 26(3) of the Regulations, instead of referring to the recall of the certificates, but this cannot lead to confusion with the revocation process.

(2) Minister's obligations

[83] This Court cannot conclude that the Minister breached procedural fairness and natural justice by not considering the humanitarian reasons raised by the applicants in their demand letter dated April 17, 2015, because there is no indication that the Minister has the discretionary authority that would allow him not to cancel a certificate of citizenship issued illegally.

[84] As stated by Mr. Justice Hughes in *Valois-D'Orleans v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1009, subsection 5(4) of the Act provides for the possibility for the Minister to attribute citizenship in cases of "special and unusual hardship." However, there is no indication that this authority must or can be exercised in a certificate of citizenship cancellation procedure in the absence of an application to this effect.

(3) Persona designata

[85] The applicants demanded that CIC designate a point of contact, something that was not done. After reviewing the communication, it cannot be concluded that this slowed or complicated the process to the point of representing a breach of procedural fairness.

C. *Are the applicants entitled to costs?*

[86] This Court is satisfied that the facts do not justify the awarding of costs.

**JUDGMENT**

**THE COURT'S JUDGMENT is that** the application for judicial review is dismissed without costs. There is no question to be certified.

This decision applies mutatis mutandis to dockets T-1078-15, T-1079-15, T-1080-15, T-1081-15 and T-1082-15. Copy to be filed in each of the dockets.

"Martine St. Louis"

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Judge



## APPENDIX

*Citizenship Act*, R.S.C. 1985, c. C-29, in effect on May 15, 2015

**3 (1)** Subject to this Act, a person is a citizen if

**(b)** the person was born outside Canada after February 14, 1977 and at the time of his birth one of his parents, other than a parent who adopted him, was a citizen;

**5 (4)** Despite any other provision of this Act, the Minister may, in his or her discretion, grant citizenship to any person to alleviate cases of special and unusual hardship or to reward services of an exceptional value to Canada.

**10 (1)** Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,

**3 (1)** Sous réserve des autres dispositions de la présente loi, a qualité de citoyen toute personne :

**b)** née à l'étranger après le 14 février 1977 d'un père ou d'une mère ayant qualité de citoyen au moment de la naissance;

**5 (4)** Malgré les autres dispositions de la présente loi, le ministre a le pouvoir discrétionnaire d'attribuer la citoyenneté à toute personne afin de remédier à une situation particulière et inhabituelle de détresse ou de récompenser des services exceptionnels rendus au Canada.

**10 (1)** Sous réserve du seul article 18, le gouverneur en conseil peut, lorsqu'il est convaincu, sur rapport du ministre, que l'acquisition, la conservation ou la répudiation de la citoyenneté, ou la réintégration dans celle-ci, est intervenue sous le régime de la présente loi par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels, prendre un décret aux termes duquel l'intéressé, à compter de la date qui y est fixée :

- (a) the person ceases to be a citizen, or
- (b) the renunciation of citizenship by the person shall be deemed to have had no effect,

- a) soit perd sa citoyenneté;
- b) soit est réputé ne pas avoir répudié sa citoyenneté.

as of such date as may be fixed by order of the Governor in Council with respect thereto.

**27** The Governor in Council may make regulations

**27** Le gouverneur en conseil peut, par règlement :

(j) providing for the surrender and retention of certificates of citizenship, certificates of naturalization or certificates of renunciation issued or granted under this Act or prior legislation or any regulations made thereunder if there is reason to believe that the holder thereof may not be entitled thereto or has contravened any of the provisions of this Act;

j) régir la restitution et la rétention des certificats de citoyenneté, de naturalisation ou de répudiation délivrés en vertu de la présente loi ou de la législation antérieure ou en application de leurs règlements lorsqu'il y a des raisons de croire que leur titulaire n'y a peut-être pas droit ou a enfreint la présente loi;

(k) providing for the surrender and cancellation of certificates referred to in paragraph (j) where the holder thereof has ceased to be entitled thereto; and

k) régir la restitution et l'annulation des certificats mentionnés à l'alinéa j) lorsque leur titulaire a cessé d'y avoir droit;

*Citizenship Regulations*, DORS/93-246

**26 (3)** Where the Minister has determined that the holder of a certificate of naturalization, certificate of citizenship, miniature certificate of citizenship or other certificate that contains the holder's photograph, or certificate of renunciation, issued or granted under the Act or prior legislation or any regulations made thereunder is not entitled to the certificate, the Registrar shall cancel the certificate.

**26 (3)** Lorsque le ministre a déterminé que le titulaire d'un certificat de naturalisation, d'un certificat de citoyenneté, d'un certificat de citoyenneté petit format ou autre certificat de citoyenneté portant sa photographie, ou d'un certificat de répudiation délivré ou attribué en vertu de la Loi ou de la législation antérieure ou en application de leurs règlements n'a pas droit à ce certificat, le greffier annule le certificat.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1077-15

**STYLE OF CAUSE:** TAWFIK ASSAL, NICOLE CHALABY v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** APRIL 4, 2016

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** MAY 19, 2016

**APPEARANCES:**

Hugues Langlais FOR THE APPLICANTS

Daniel Latulippe FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Hugues Langlais FOR THE APPLICANTS  
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Montréal, Quebec