Federal Court  Cour fédérale

Date: 20170119

Docket: T-1014-16

Citation: 2017 FC 73

Ottawa, Ontario, January 19, 2017

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

VITALIY CHABANOV

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the May 27, 2016 decision of a delegate of the Minister of Citizenship and Immigration Canada ("Delegate") revoking the citizenship of the Applicant, pursuant to s 10(1) of the *Citizenship Act*, RSC 1985, c C-29 ("*Citizenship Act*"), on the basis that he obtained permanent residence status, and subsequently Canadian citizenship, by false representation, fraud, or by knowingly concealing material circumstances.

Background

[2] The Applicant was born in Ukraine. In 1990, he was convicted under the *Criminal Code of the Ukrainian Soviet Socialist Republic* of fraud; foreign currency rules operation violation; speculation; and, forgery and utilization of forged documents, stamps and seals and their private individual usage. Initially, he was sentenced to a term of six years imprisonment, confiscation of property, and was prohibited from occupying an official position with financial responsibility for five years. In 1992, the Supreme Court of Ukraine amended the verdict and sentence, removing the conviction for speculation and reducing the sentence to five years imprisonment. The Applicant was released from custody on March 11, 1992.

[3] The Applicant's spouse applied for permanent residence at the Canadian Embassy in Kiev on December 26, 1994, the Applicant was included as a dependant in her application. The application for permanent residence was granted on July 19, 1997. The Applicant applied for Canadian citizenship on July 25, 2000 and took the Oath of Citizenship on February 15, 2001.

[4] In January of 2000, the Royal Canadian Mounted Police ("RCMP") received a tip that the Applicant had submitted fraudulent documents in support of his application for permanent residence. On March 13, 2001, Interpol confirmed the Applicant's convictions. On October 20, 2004, the RCMP contacted Citizenship and Immigration Canada ("CIC") - Case Management Branch regarding the Applicant's case.

[5] On August 7, 2015, a Notice of Intent to Revoke Citizenship ("Notice of Intent") was sent to the Applicant. The Notice of Intent informed him that his citizenship may be revoked on the grounds that he obtained citizenship by false representation, fraud or knowingly concealing material circumstances and advised him that he had the opportunity to provide any information or documentation that he believed was relevant to the decision of whether his citizenship should be revoked. He was given sixty days within which to provide written submissions as to why his citizenship should not be revoked.

[6] The Notice of Intent enclosed copies of the documents in CIC's possession which were relevant to the Applicant's case, including a copy of the Report of the Minister re Revocation Report with attachments ("Report"). The Report states, amongst other things, that if the Applicant had declared his criminal conviction, his residence in a correctional labour settlement, and his activity as an incarcerated prisoner on his application for permanent residence, it is likely that his spouse's application for permanent residence would have been refused by the visa office and that the Applicant would not have been issued a permanent resident visa.

[7] Upon the Applicant's request, CIC granted him a sixty day extension to provide his written submissions as to why his citizenship should not be revoked.

[8] In his submissions, the Applicant conceded that he obtained citizenship by false representation. However, that the inordinate delay in the initiation of the revocation proceeding caused him prejudice and hardship which, when balanced against the public interest in enforcement of the legislation, required that the revocation proceeding be stayed. He submitted

that the delay constituted an abuse of process and also resulted in a loss of procedural safeguards because of changes to the revocation procedure arising from the coming into force, on May 28, 2015, of Bill C-24, *Strengthening Canadian Citizenship Act*, SC 2014, c 22, which amended the *Citizenship Act's* revocation provisions.

[9] By letter dated May 27, 2016, the Applicant was advised that the Delegate was satisfied that the Applicant had obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. Accordingly, his citizenship was revoked. A copy of the decision was attached.

Decision Under Review

[10] The decision sets out the relevant sections of the *Citizenship Act* and the information considered by the Delegate, which was listed as the *Citizenship Act* and the *Citizenship Regulations*, SOR/93-246 ("*Citizenship Regulations*"), the Notice of Intent and the submissions received from the Applicant's counsel on October 4, 2015 and on December 4, 2015. The decision included a chronology of events and summarized the Applicant's submissions. The Delegate considered s 10(4) of the *Citizenship Act* and s 7.2 of the *Citizenship Regulations* and concluded that a hearing was not required in this matter.

[11] In the Delegate's analysis, the facts, essentially as described above, were set out and the Delegate concluded that the evidence showed that the Applicant had misrepresented himself on the application for permanent residence in Canada and that the Applicant had conceded his misrepresentation. The Delegate was therefore satisfied that the Applicant had obtained

permanent residence and subsequently, citizenship, by false misrepresentation or fraud or by knowingly concealing material circumstances.

[12] As to the Applicant's submission that delay in initiating the revocation proceedings resulted in prejudice and constitutes an abuse of process, the Delegate found that information was provided to the RCMP in January 2000, the RCMP initiated an investigation but did not receive a response from Interpol confirming the overseas convictions until March 2001. Accordingly, CIC was not in a position to initiate an immigration inquiry and was not in possession of the necessary evidence to support the writing of a report under the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA") until that time, which was after the Applicant had become a Canadian citizen.

[13] The Delegate stated that the current decision-making model was applied to the Applicant. The Applicant had not requested an oral hearing and conceded that he obtained permanent residence, and subsequently citizenship, on the basis of the concealment of his criminal convictions. Accordingly, the Delegate concluded that the Applicant had not been prejudiced by the change to the decision-making model.

[14] The Delegate did not accept the submission by the Applicant's counsel that the Delegate had no discretion but to revoke citizenship without consideration of personal circumstances. The Delegate noted that s 10(1) of the *Citizenship Act* provides that the Minister may revoke citizenship, which means that the authority to revoke is discretionary. Further, the Applicant's submissions concerning his personal circumstances would be considered.

[15] The Delegate also did not accept the submissions of the Applicant's counsel that the Minister or his Delegate is not an independent and impartial decision-maker and noted that the Applicant had submitted no evidence in support of that position.

[16] The Delegate noted the Applicant's submissions on the hardship he would face if his citizenship is revoked: his establishment in Canada since 1997; he supports his elderly mother emotionally and financially and his removal would be fatal to her; he supports his unemployed daughter; he is a cancer patient and is dependent upon medical treatment; and, he has no relatives in Ukraine to support his transition. The Delegate noted that these submissions were mostly predicated on the fact that the Applicant would be removed from Canada should his citizenship be revoked. However, a clear distinction must be made between the revocation process and the removal process. Upon the revocation of citizenship, the Applicant would become a foreign national in Canada but it did not necessarily follow that Canada Border Services Agency would choose to pursue removal proceedings against the Applicant. Further, the Applicant may choose to submit an application to regularize his status under the IRPA which would take into account his personal circumstances.

[17] Based on information in CIC's system, the Delegate found that the Applicant's mother was sponsored for immigration to Canada by her daughter, not the Applicant, and the last available information indicated that his mother resided in northern Ontario with her daughter. While the Applicant may be providing his mother with financial support, the Delegate was not satisfied that she would be without support should he be unable to continue to do so. Further, the Applicant's daughter is 28 years old and sponsored her spouse for immigration to Canada in

2011. The Delegate stated that, presumably, her spouse could assist with her financial support if it is necessary given her age and long term establishment in Canada. As to the Applicant's health concerns, evidence had not been submitted to suggest that the Applicant would be denied access to healthcare services in Canada should his citizenship be revoked. The Delegate concluded that he was not satisfied that the Applicant had been prejudiced by a delay in proceedings with the revocation of his citizenship, rather, that he had benefitted as he had lived and worked in Canada for a number of years.

[18] The Delegate revoked the Applicant's citizenship with the result that he is now a foreign national and subject to the IRPA.

Issues

[19] The Applicant submits that the issues are as follows:

(1) Was the Delegate's decision to revoke the Applicant's citizenship unreasonable?

(2) Do the cumulative delays in the case constitute an abuse of process?

(3) Does the prejudice to the Applicant constitute a breach of s 7 of the *Charter of Rights and Freedoms*?

[20] The Respondent submits that the only issue to be decided is whether the Delegate's decision was reasonable.

[21] In my view, the issues can be reframed as follows:

(1) Was there an unreasonable and unjustified delay, and if so, did it directly cause significant prejudice amounting to an abuse of process?

(2) Was the Delegate's decision reasonable?

Standard of Review

[22] The Applicant submits that it is well established that the Delegate's decision is reviewable on the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47("*Dunsmuir*")). The Applicant makes no clear submission on the standard of review applicable to an abuse of process but appears to suggest that the reasonableness standard applies. The Respondent makes no submissions on the applicable standard of review.

[23] In my view, it is clear that abuse of process is a matter of procedural fairness and therefore attracts a correctness standard of review (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 ("*Khosa*"); *Montoya v Canada (Attorney General)*, 2016 FC 827 at para 20 ("*Montoya*"); *Smith v Canada (National Defence)*, 2010 FC 321 at para 37).

[24] This Court has previously determined that decisions to revoke citizenship made pursuant to the *Citizenship Act* attract the reasonableness standard of review. This was because the Governor in Council, the final decision-maker, had broad discretion at the stage of citizenship revocation after receiving a recommendation from the Minister and the decision involved a balancing of policy, personal interests and the public interest (*Oberlander v Canada (Attorney General)*, 2004 FCA 213 at paras 37-43; *Montoya* at para 21; *League for Human Rights of B'nai Brith Canada v Odynsky*, 2010 FCA 307 at paras 83-85). Where jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a

particular category or question, that standard may be adopted by the reviewing court (*Dunsmuir* at para 62; *Khosa* at para 53).

[25] The *Strengthening Canadian Citizenship Act*, SC 2014, c 22 came into force on May 28, 2015. It revised the revocation of citizenship provisions, including s 10, of the *Citizenship Act*, RSC 1985, c-29 (for ease of reference, the *Citizenship Act* as it read prior to revision by the *Strengthening Canadian Citizenship Act* shall be referred to as the "Former Citizenship Act" and, as it read after those revisions, as the "Revised Citizenship Act"). However, while the revocation provisions were changed, decisions made pursuant to s 10(1) of the Revised Citizenship Act remain discretionary and, as such, in my view, they attract a deferential standard of review.

[26] Further, I find nothing to suggest that, in adopting the amendments, Parliament intended for the decision-making of the Minister or his delegate to now be held to a correctness standard or that the nature of the decision or decision-making process is so altered as to attract a different standard of review. In any event, considering the *Dunsmuir* factors in the context of the revocation provisions of the Revised Citizenship Act, I would reach the same conclusion.

[27] Accordingly, in my view, revocation decisions made pursuant to s 10(1) of the Revised Citizenship Act attract the reasonableness standard of review. In judicial review, reasonableness is concerned with the existence of justification, transparency and intelligibility within the decision-making process and with whether the decision falls within a range of possible,

acceptable outcomes which are defensible in respect of the facts. And, when applying that standard, the decision-maker is owed deference (*Dunsmuir* at paras 47, 49 and 50).

Preliminary Observation

[28] In other, unrelated proceedings, the Revised Citizenship Act revocation process has been challenged on a number of grounds, including that it violates the *Canadian Charter of Rights and Freedoms* ("Charter"). Eight of those challenges were heard together in *Abdulla Ahmad Hassouna v Minister of Citizenship and Immigration* (T-1584-15) on November 15, 2016, however, a decision has not yet been rendered in that matter. In view of the challenges, this Court has also been proactively case managing applications for judicial review commenced by applicants who have received notices of intent to revoke citizenship under the Revised Citizenship Act, including the issuance of stays in certain circumstances. In this case, citizenship was revoked pursuant to the procedure contained in the Revised Citizenship Act and prior to the filing of the application to review the revocation decision. As the Applicant in this matter did not seek a stay, the matter proceeded (*Monla v Canada (Citizenship and Immigration)*, 2016 FC 44; *British Columbia Civil Liberties Association v Canada (Citizenship and Immigration)*, 2016 FC 1223).

Issue 1: Was there an unreasonable and unjustified delay, and if so, did it directly cause significant prejudice amounting to an abuse of process?

Applicant's Position

[29] The Applicant submits that the administrative delay was unacceptable, unexplained and was therefore unreasonable and an abuse of process based on a factual and contextual analysis

(*Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras 121 and 160 ("*Blencoe*")). The time taken to process the matter far exceeded its inherent time requirements, the standards for which have been determined by the jurisprudence (*Canada (Citizenship and Immigration) v Parekh*, 2010 FC 692 at para 30 ("*Parekh*"); *Fabbiano v Canada (Citizenship and Immigration)*, 2014 FC 1219 at para 11 ("*Fabbiano*"); *Watson v Regina (City) Chief of Police*, 2005 SKQB 286 at para 33). The causes of the delay are either unexplained or insufficient to outweigh the substantial length and impact of the delay itself. The case was simple and the Applicant did not contribute to the delay. Therefore, the causes of delay do not justify the amount of time taken by CIC to address the revocation of the Applicant's citizenship.

[30] Further, the delay substantially impacted the Applicant because of his personal circumstances and because of the change in the decision-making model. The delay has caused hardship for the Applicant and his family as the Applicant is now well established in Canada, he financially and emotionally supports his elderly mother and, as a cancer patient, he is dependent upon medical treatment in Canada that can only be provided by the medical personnel who performed his surgery and are responsible for his ongoing care. Removal would put his health and security at risk.

[31] The delay resulted in a loss of procedural safeguards, which the Delegate failed to consider. The Applicant submitted that the Revised Citizenship Act drastically removed procedural rights that he would have been entitled to under the Former Citizenship Act but for the delay; specifically, the loss of access to a Federal Court reference. Thus, he lost his right to a

fair process by way of a formal oral hearing before an independent and impartial judge, which was not addressed by the Delegate's reasons.

[32] Finally, the Applicant submits that where there is evidence of prejudice or unfairness, delay in the processing of a refugee or citizenship revocation matter may result in a breach of Charter rights (*Akthar v Canada (Minister of Employment and Immigration)*, [1991] 3 FC 32 (CA); *Hernandez v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 345; *Canada (Secretary of State) v Charran* (1988), 6 Imm LR (2d) 138 (FCTD) ("*Charran*"); *R v Sadiq*, [1991] 1 FC 757 (TD)). He submits that the prejudice he has experienced as a result of the delay infringes his right to life and security of the person granted by s 7 of the Charter as he has become reliant on medical assistance during the time he has established himself in Canada and requires continual care and treatment that he could not access if he is removed from Canada. The revocation now, rather than at an earlier time, is a direct consequence of the delay, and removal now places the Applicant's health at risk and thereby interferes with his life and security of the person. Had the delay not occurred, he would not be in this vulnerable situation.

Respondent's Position

[33] The Respondent submits that state-caused delay, without more, does not warrant a stay of proceedings as an abuse of process. The delay must be unreasonable or inordinate, the assessment of which is contextual and will depend upon the nature and complexity of the case, the facts and issues, the purpose of the proceedings and whether the party contributed to the delay (*Blencoe* at paras 101, 120-122, 160).

[34] There must also be proof of significant prejudice resulting from the unacceptable delay in order to amount to an abuse of process. A reviewing Court must be satisfied that the damage to the public interest in the fairness of the administrative process, should the matter proceed, would exceed the harm to the public interest in the enforcement of the legislation if the proceeding were halted. The proceeding must be unfair to the point that it is contrary to the interests of justice or will undermine the integrity of the judicial process (*Blencoe* at para 120).

[35] Here the Applicant concedes that he obtained his citizenship through false representation and fraud. Thus, the harm would be greater if the proceedings were halted.

[36] In applying the three main factors to be assessed when considering the reasonableness of delay, the Respondent submits that as to the time taken compared to the inherent time required for the matter, the Minister only became aware of the Applicant's case when the RCMP initiated contact in October 2004 and Interpol only confirmed the conviction after the Applicant became a citizen. Further, the Applicant became aware of the intention to revoke his citizenship on August 7, 2015 and revocation occurred less than a year later, on May 27, 2016. The Applicant has not provided evidence to demonstrate that the period of delay exceeded the time required by the Report or the exercise of the Delegate's discretion. And, because of this, there exist no causes of delay beyond the inherent requirement of the matter that require assessment for legitimacy.

[37] Further, even if the Applicant had established that the period exceeded the time inherent in the proceeding and that such a delay was unjustified, he failed to provide sufficient evidence

to demonstrate that the delay directly caused a significant prejudice (*Canada (Citizenship and Immigration) v Bilalov*, 2013 FC 887 at para 24 ("*Bilalov*"); *Canada (Minister of Citizenship and Immigration) v Coomar*, [1998] FCJ No 1679; *Canada (Minister of Citizenship and Immigration) v Kawash*, 2003 FCT 709 at para 17).

[38] The Respondent submits that the evidence of potential prejudice to the Applicant is neither directly caused by the delay nor significant. Further, the Applicant's submissions relating to the prospect of deportation are irrelevant. While the Applicant may face deportation in the future, given the reasons for revoking his citizenship, it is not for the Court to speculate or make a determination on the harm that deportation might cause (*Montoya* at para 44).

[39] Further, any delay did not cause the Applicant actual prejudice of such a magnitude that the public's sense of decency and fairness would be offended by it. The Applicant's mother was sponsored to Canada by her daughter and currently lives with her in northern Ontario. The Applicant's daughter is 28 years old and successfully sponsored a spouse in 2011. Further, the evidence submitted does not suggest that the Applicant would be denied access to healthcare services in Canada following the revocation of his citizenship. Nor did the Applicant provide any evidence as to his medical condition, diagnosis treatment and care or the financial support he asserts that he provides to his mother and daughter. He also provided insufficient evidence of employment, economic, family and social ties and overall establishment.

[40] The Applicant has not met the high threshold required to establish abuse of process (*Hinse v Canada (Attorney General)*, 2015 SCC 35 at paras 40-41; *Kanagaratnam v Canada (Citizenship and Immigration)*, 2015 FC 885 at para 51; *Bilalov* at paras 15-16, 24).

[41] As to the alleged prejudice arising from the amendments to the Former Citizenship Act, Parliament is free to amend, repeal or otherwise change the law at any time. Individuals do not have a right to the continuation of favourable law (*Interpretation Act*, RSC 1985, c 1-21 at s 42; *Gustavson Drilling (1964) Ltd v Minister of National Revenue*, [1977] 1 SCR 271).

[42] Moreover, the Applicant has not demonstrated how he has been prejudiced by the legislative change. A reference to the Court pursuant to the Former Citizenship Act was simply an investigative tool whereby the Court made findings of fact as to whether a defendant obtained citizenship by false misrepresentation or fraud or knowingly concealing material circumstances. Those findings, in and of themselves, did not determine any legal rights, but could form the basis of a report from the Minister to the Governor in Council requesting the revocation (*Canada (Citizenship and Immigration) v Houchaine*, 2014 FC 342 at paras 10-16 ("*Houchaine*")). Here, while it was open to him, the Applicant did not challenge the credibility of the allegations against him and conceded the misrepresentation. Accordingly, a proceeding before the Federal Court would have been nothing more than a formality. Further, the Applicant was given an opportunity to provide information or documentation as to why his citizenship should not be revoked, which he did and which was considered by the Delegate. Section 10 of the Revised Citizenship Act permits discretion in this regard.

[43] With respect to the Applicant's Charter arguments, the prevailing jurisprudence is that citizenship revocation proceedings themselves do not engage s 7. Although the process has changed as a result of the Revised *Citizenship Act*, the jurisprudence supports that citizenship revocation itself does not deprive individuals of their life, liberty and security of the person (*Canada (Secretary of State) v Luitjens*, [1992] FCJ No 319 at paras 8-9 (leave to appeal refused); *Canada (Minister of Citizenship and Immigration) v Katriuk*, (1999) 11 Imm LR (3d) 178 (FCA) (leave to appeal refused); *Canada (Minister of Citizenship and Immigration) v Obodzinsky*, [2000] FCJ No 1675 at paras 11-14 (aff'd 2001 FCA 158, leave to appeal refused); *Houchaine* at paras 67-70; *Chang Lee v Canada (Citizenship and Immigration)*, 2008 FC 614 at paras 67-70 ("*Chang Lee*"); *Canada (Minister of Citizenship and Immigration) v Tobiass*, [1997] 3 SCR 391 at para 108).

[44] There is no evidence of pending deportation proceedings or that any such proceedings are inevitable. The Applicant's arguments on the unavailability of medical care in Ukraine is not established nor is this Court the proper forum to advance such arguments. The Applicant has other avenues available to him to secure his status in Canada or stay a potential removal proceeding under the IRPA.

Analysis

[45] The starting point for this issue is the decision of the Supreme Court of Canada in *Blencoe*. There, the Supreme Court held that delay, without more, will not warrant a stay of proceedings as an abuse of process and, that in the administrative law context, there must be proof of significant prejudice which results from an unacceptable delay (*Blencoe* at para 101).

Further, that where delay impairs a party's ability to answer the complaint against him or her, because, for example, memories have faded, essential witnesses have died or are unavailable, or evidence has been lost, then administrative delay may be invoked to impugn the validity of the administrative proceedings and provide a remedy.

[46] The Supreme Court of Canada in *Blencoe* also addressed the possibility that undue delay may, in limited situations, amount to an abuse of process in circumstances where the fairness of a hearing was not compromised but the delay is clearly unacceptable and directly caused a significant prejudice:

> 115 I would be prepared to recognize that unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised. Where inordinate delay has directly caused significant psychological harm to a person, or attached a stigma to a person's reputation, such that the human rights system would be brought into disrepute, such prejudice may be sufficient to constitute an abuse of process. The doctrine of abuse of process is not limited to acts giving rise to an unfair hearing; there may be cases of abuse of process for other than evidentiary reasons brought about by delay. It must however be emphasized that few lengthy delays will meet this threshold. I caution that in cases where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process. It must be a delay that would, in the circumstances of the case, bring the human rights system into disrepute. The difficult question before us is in deciding what is an "unacceptable delay" that amounts to an abuse of process.
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> …
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> 120 In order to find an abuse of process, the court must be satisfied that, "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (Brown and Evans, *supra*, at p. 9-68). According to L'Heureux Dubé J. in *Power*, *supra*, at p. 616, "abuse of process" has been characterized in the jurisprudence as a process tainted to such a degree that it amounts

> to one of the clearest of cases. In my opinion, this would apply equally to abuse of process in administrative proceedings. For there to be abuse of process, the proceedings must, in the words of L'Heureux Dubé J., be "unfair to the point that they are contrary to the interests of justice" (p. 616). "Cases of this nature will be extremely rare" (*Power*, *supra*, at p. 616). In the administrative context, there may be abuse of process where conduct is equally oppressive.

[47] The Supreme Court went on to state that to constitute a breach of the duty of fairness, the delay must have been unreasonable or inordinate. The party relying on delay must demonstrate that it was unacceptable to the point of being so oppressive as to taint the proceedings (*Blencoe* at para 121). The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the party contributed to or waived the delay, and other circumstances of the case (*Blencoe* at para 122). The Supreme Court set out three factors to be considered is assessing delay:

> 160 As indicated above, the central factors toward which the modern administrative law cases as a whole propel us are length, cause, and effects. Approaching these now with a more refined understanding of different kinds and contexts of delay, we see three main factors to be balanced in assessing the reasonableness of an administrative delay:
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> (1) the time taken compared to the inherent time requirements of the matter before the particular administrative body, which would encompass legal complexities (including the presence of any especially complex systemic issues) and factual complexities (including the need to gather large amounts of information or technical data), as well as reasonable periods of time for procedural safeguards that protect parties or the public;
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> (2) the causes of delay beyond the inherent time requirements of the matter, which would include consideration of such elements as whether the affected individual contributed to or waived parts of the delay and whether the administrative body used as efficiently as possible those resources it had available; and

> (3) the impact of the delay, considered as encompassing both prejudice in an evidentiary sense and other harms to the lives of real people impacted by the ongoing delay. This may also include a consideration of the efforts by various parties to minimize negative impacts by providing information or interim solutions.
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> (See generally: *Ratzlaff*, *supra*, at p. 346; *Saskatchewan (Human Rights Commission) v. Kodellas* (1989), 60 D.L.R. (4th) 143 (Sask. C.A.); *R. v. Morin*, [1992] 1 S.C.R. 771; *McMurtrie*, *supra*; and *Skiffington*, *supra*.) Obviously, considering all of these factors imposes a contextual analysis. Thus, our Court should avoid setting specific time limits in such matters. A judge should consider the specific content of the case he or she is hearing and make an assessment that takes into account the three main factors that have been identified above.

[48] This Court has previously considered these three main factors in assessing the reasonableness of the delay, in the immigration and citizenship context (*Parekh* at paras 30-55; *Bilalov* at paras 21-24; *Canada (Citizenship and Immigration) v Omelebele*, 2015 FC 305 at paras 28-29; *Montoya*). Similarly, that contextual analysis will be applied in this case.

i. *Time taken compared to the inherent time requirements of the matter*

[49] In the decision, the Delegate noted the Applicant's assertion that it took CIC approximately sixteen years to initiate revocation proceedings against him. However, in considering the length of delay, the Delegate stated only that information pertaining to the Applicant's overseas convictions was provided to the RCMP in January 2000, that the RCMP then initiated an investigation into the reliability of that information but did not receive a response from Interpol confirming the information until March 2001, which was after the Applicant had become a Canadian citizen. The Delegate states that, therefore, CIC was unable to

commence its Immigration Inquiry until after citizenship had been acquired as CIC was not in possession of the necessary evidence to support the writing of the Report.

[50] In my view, the Delegate was unresponsive to the issue of the prolonged delay. While the "tip letter" to the RCMP states that "Original documents has been sent to Citizenship and Immigration Canada", the certified tribunal record contains nothing to indicate that CIC received this information until October 20, 2004 when the RCMP initiated contact with CIC. Thus, the first part of the delay by CIC may be explained by this, although the delay by the RCMP from the time of receiving confirmation from Interpol of the convictions, in March 2001, to contacting CIC in October 2004 is not. Further, the second part of the delay, being the nearly eleven years between October 20, 2004 when CIC were alerted to the issue and August 7, 2015 when the Notice of Intent was issued, is not explained by the fact that the Applicant was already a citizen in October 2004 nor otherwise.

[51] In its submissions, the Respondent ignores this eleven year delay and instead submits that the Applicant received the Notice of Intent in August 2015 and that his citizenship was actually revoked less than a year later, on May 27, 2016. It further submits that the Applicant did not provide evidence to demonstrate that the period between the notice and the revocation, the third part of the delay, exceeded the inherent time requirements for revocation. In support of this approach the Respondent refers to *Montoya* (at paras 35-37).

[52] There is also jurisprudence, not cited by the Respondent, which suggests that for delay to qualify as an abuse of process, it must have been part of an administrative or legal proceeding

already underway. In *Torre v Canada (Citizenship and Immigration)*, 2015 FC 591 at paras 30-33 ("*Torre*"), Justice Tremblay-Lamer found that the only delay that the Court should consider was the delay between the decision made by the Minister to prepare an inadmissibility report pursuant to s 44 of the IRPA and the Immigration Division's admissibility finding. However, and in any event, if the seventeen year delay before the inadmissibility proceeding was instituted were part of the calculation to determine whether there was an abuse of process, the Applicant would have to establish that the delay caused "actual prejudice of such a magnitude that the public's sense of democracy and fairness is affected" as stipulated in para 133 of *Blencoe*.

[53] I would also note, however, that in *Parekh*, Justice Tremblay-Lamer referenced the testimony of a CIC case analyst which suggested that a typical revocation case "might take a couple of years to conclude, depending on the complexity of the case". From this, it was concluded that the time elapsed between the moment CIC was aware of the defendants' fraud and the issuance of the statement of claim - five years - was long even for a typical case (*Parekh* at para 30).

[54] In this matter, for the eleven year period from October 20, 2004 when CIC was alerted to the fraud to when it issued the Notice of Intent on August 7, 2015, there is no evidence that delay was the result of an ongoing investigation or evidence gathering. The delay is unexplained. Nor is this a situation where the administrative process was slowed down because of the procedural safeguards that permit the person concerned to participate in the process (*Parekh* at para 34). If the eleven year delay is included, then the revocation proceeding was well beyond normal time parameters within which the case law indicates that a matter of this nature can be concluded and

was not due to the complexities of the case. Hence, the time taken compared to the inherent time requirements of the matter was excessive.

ii. *Causes of the delay*

[55] As noted above, the Delegate's reasons offer little explanation for the prolonged delay in issuing the Notice of Intent.

[56] The Respondent directs the Court to an affidavit of Salima Sajan, legal assistant with the Department of Justice, sworn on November 1, 2016. This attaches as exhibits a copy of a Monthly Statistical Overview of citizenship revocation cases at Case Management Branch as of September 5, 2012; a copy of a print out of the Citizenship Dashboard of the Operations Performance Management Branch of CIC, dated December 2012; a print out of an Audit of the Citizenship Program conducted between December 2010 and April 2011; and, a copy of a print out of a Revocation Action Plan dated December 6, 2010. The affidavit does not speak to these documents. Nor were they before the Delegate when making his or her decision.

[57] The Respondent submits that the audit reveals that the citizenship program was under-resourced and had growing file inventories and that by 2010 citizenship revocation had been identified as a priority. A revocation action plan developed and additional funding was made available to hire more staff to assist with the various investigations increasing the number of notices of revocation that were issued.

[58] Submissions by counsel for the Respondent do not serve as evidence as to the reason for the delay. The affidavit itself does not explain the content of the exhibits or depose as to how the exhibits explain the delay. It was sworn by a legal assistant and not someone from CIC with knowledge of its operations at the relevant time. It is also of limited value as it was not before the decision-maker. And, as noted above, the record does not indicate that further investigative efforts were undertaken after CIC was contacted by the RCMP or offer any explanation for the eleven year delay.

[59] This case is not complicated and the Applicant did not contribute to the delay. Absent any reasons to justify the prolonged delay, in my view, a delay of nearly eleven years is inordinate.

iii. *Impact of the delay*

[60] As noted above, in order to be considered an abuse of process, there must be evidence that the delay "directly caused a significant prejudice to amount to an abuse of process" (*Blencoe* at para 115).

[61] The Applicant made submissions to the Delegate dated December 4, 2015 in which he stated that he has become well-established in Canada since arriving as a permanent resident in 1997. He claimed that he has become a licensed marine engineer and maintained steady employment; that he provides financial and emotional support to his elderly mother and that his deportation would be fatal to his mother's condition; that he also financially supports his daughter who recently graduated from university but had been unable to find a job. The

Applicant also submitted that he is a cancer patient scheduled to have surgery in December 2015 and required comprehensive treatments that could only be provided by the medical personnel that performed his surgery and are responsible for his care and ongoing treatment. Further, that he had no relatives in Ukraine who could support his transitions nor does he own property there. Accordingly, revoking his citizenship would put his health and safety at risk.

[62] In my view, none of his personal hardships can be said to have been directly caused by the delay. In any event, the record contains no affidavit or other evidence to corroborate his employment history. Nor does it contain any proof of financial support provided to his mother or his daughter. Nor was any evidence provided as to his mother's condition that would cause the Applicant's deportation to be fatal to her. Similarly, although the Applicant submitted that he required comprehensive cancer treatments that could only be provided by the medical personnel set to perform his surgery and be responsible for his care and ongoing treatment, he provided no documentation to confirm either his illness or his treatment.

[63] In this regard, the Delegate noted that the last information available to the Delegate through CIC's system indicated that the Applicant's mother resides with her daughter in northern Ontario. The Delegate acknowledged that the Applicant may be providing financial support to his mother, but was not satisfied that she would be without support should the Applicant not be able to provide this. The Delegate also noted that the Applicant's daughter is 28 years old, successfully sponsored her spouse in 2011 and that her spouse could, presumably, assist with her financial support if such a need arose.

[64] In my view, this matter can also be distinguished from *Parekh*, where the affected parties were denied passport issuance as well as the ability to travel and sponsor their daughter as a direct result of the delay (*Parekh* at paras 20, 48, 49, 51). In that case, Justice Tremblay-Lamer stated that it was important to note that the matter before her was unlike cases such as *Charran* and *Canada (Minister of Citizenship and Immigration) v Copeland*, [1998] 2 FCR 493 which considered that delays in citizenship revocation proceedings were, if anything, to the defendant's advantage, since they allowed them to remain in Canada rather than be deported (also see *Torre* at para 38). Whereas, in *Parekh*, the defendants gained no advantage from the delays in the revocation of their citizenship as they could not be deported. They would become permanent residents and would be entitled to re-apply for citizenship. Had the plaintiff not delayed proceeding with the revocation of the defendants' citizenships, they could have already applied for, and may have again obtained, Canadian citizenship. Therefore, if the proceedings were not stayed, their ability to apply for citizenship for the next five or more years would be a prejudice directly resulting from the Minister's delay. Nor is it a circumstance such as *Fabbiano*, where delay directly prejudiced the applicant as he was not given the opportunity to update his prior submissions and present relevant evidence before a decision was rendered seven years later.

[65] In conclusion, while the delay in this case was excessive and largely unexplained, the Applicant failed to provide sufficient proof of significant prejudice resulting directly from the unacceptable delay that amounted to an abuse of process. I am not satisfied that in these circumstances the damage to the public interest in the fairness of the administrative process in the revocation of the Applicant's citizenship exceeds the harm to the public interest in the enforcement of the legislation.

Loss of Procedural Safeguards

[66] The Applicant also submits that the delay by the Minister has resulted in a loss of procedural safeguards given the amendments contained in the Revised Citizenship Act.

[67] Under the Former Citizenship Act, citizenship could be revoked pursuant to s 10 by order of the Governor in Council where it was satisfied that citizenship had been obtained "by false representation or fraud or by knowingly concealing material circumstances". The decision of the Governor in Council was based upon a report from the Minister.

[68] Prior to issuing his report, the Minister was required, pursuant to s 18 of the Former Citizenship Act to send a notice of intention to revoke citizenship to the person concerned, outlining the grounds for revocation. The person concerned had the right to request that the matter be referred to the Federal Court to determine whether he or she obtained Canadian citizenship by false representation or fraud or knowingly concealing material circumstances.

[69] If the person did not refer the matter to the Federal Court within thirty days, then the Minister could submit his report to the Governor in Council recommending that citizenship be revoked.

[70] If the person did request that the matter be referred to the Federal Court, then the Minister could bring an action in the Federal Court seeking a declaration that the person concerned obtained Canadian citizenship by false representation or fraud or by knowingly concealing

material circumstances. If, after a trial, the Court was satisfied on the balance of probabilities that the affected person obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, then a declaration to that effect would be issued.

[71] Only then could the Minister make his report to the Governor in Council. The text of the report that the Minister presented to the Governor in Council was disclosed to the person concerned, who had the opportunity to make written submissions. Any such submissions were considered by the Minister and attached to the final report presented to the Governor in Council. If the Governor in Council decided to revoke the person's citizenship, it would be by Order-in-Council.

[72] Under the Revised Citizenship Act, citizenship can be revoked pursuant to s 10(1) by the Minister if he "is satisfied on the balance of probabilities that the person has obtained, retained or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances". It is only when an exceptional circumstance specified in the Revised Citizenship Act applies that the Minister is required to refer the matter to the Federal Court for a declaration. None of those exceptions apply in this matter.

[73] Pursuant to s 10(3) of the Revised Citizenship Act, before the Minister can revoke the citizenship of the person concerned, he must issue a notice that specifies the person's right to make written representations and the grounds upon which the Minister is relying to make his or her decision. A hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is necessary.

[74] Rule 7.2 of the *Citizenship Regulations*, SOR/93-246 describes the circumstances when an oral hearing may be held:

A hearing may be held under subsection 10(4) of the Act on the basis of any of the following factors:	Une audience peut être tenue en vertu du paragraphe 10(4) de la Loi compte tenu de l'un ou l'autre des facteurs suivants:
(a) the existence of evidence that raises a serious issue of the person's credibility;	a) l'existence d'éléments de preuve qui soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause; b) l'incapacité pour la personne en cause de présenter des observations écrites;
(b) the person's inability to provide written submissions; and	b) l'incapacité pour la personne en cause de présenter des observations écrites;
(c) whether the ground for revocation is related to a conviction and sentence imposed outside Canada for a offence that, if committed in Canada, would constitute a terrorism offence as defined in section 2 of the *Criminal Code*.	c) le fait que le motif de révocation est lié à une condamnation et à une peine infligées à l'étranger pour une infraction qui, si elle était commise au Canada, constituerait une infraction de terrorisme au sens de l'article 2 du *Code criminel*.

[75] The Minister's decision to revoke citizenship is required to be made in writing and may be the subject of a judicial review application in this Court.

[76] In this matter, the procedure set out in the Revised Citizenship Act was followed. The Applicant was served with the Notice of Intent which included the information being considered

by the decision-maker. The Applicant was given sixty days to provide submissions and was also was granted a sixty day extension from the initial deadline.

[77] The submissions were considered by the Minister's Delegate who concluded that an oral hearing was not required because the Applicant's written representations did not question the credibility of the evidence being relied on in the making of the decision; rather, the Applicant conceded that he had made false representations on his permanent residence and citizenship applications. On this basis, the Delegate concluded that the Applicant had failed to establish how he had been prejudiced by the change to the decision-making model. The Applicant's citizenship was subsequently revoked on May 27, 2016.

[78] The Applicant submits that the process prescribed by the Revised Citizenship Act and followed by the Delegate deprived him of procedural safeguards that, but for the delay, he would have been entitled to pursuant to the previsions of the Former Citizenship Act. Further, that the Delegate failed to consider his submission that under the former process he would have been entitled to a three-part procedure. First, the Minister would have prepared a report if satisfied that the Applicant had obtained citizenship fraudulently. Next the Minister would have submitted a notice of intent to revoke to which the Applicant would have had an opportunity to respond and request that the matter be referred to the Federal Court for a hearing. Third, if the Federal Court made the finding requested by the Minister the Governor in Council would have considered equitable factors, in addition to the breach of the Former Citizenship Act itself:

> The amended version of the *Citizenship Act* now removes Mr. Chabanov's access to a Federal Court reference, since this is now reserved for people who have engaged in conflict against Canada or have misrepresented in relation to specific inadmissibility

> grounds under IRPA. In all other cases, the Minister arrives at a decision with no requirement of a formal hearing, nor any considerations of equitable factors. Where the Minister is responsible for revoking citizenship, there is no discretion. Even if discretion could be implied, the Minister is not an independent or impartial decision-maker. For a matter as serious as revocation of citizenship, Mr. Chabanov loses his right to a fair process by way of a formal oral hearing before an independent and impartial judge.

[79] In my view, there are several difficulties with this position. First, it fails to acknowledge the purpose of a reference to this Court as pursuant to the process contained in the Former Citizenship Act. This was summarized by Justice Mactavish in *Houchaine*:

> [10] In order to situate the arguments of the parties, it is necessary to have an understanding of the citizenship revocation process.
>
> [11] A reference by the Minister under paragraph 18(1)(b) of the *Citizenship Act* is not an action in the conventional sense of the word. Rather, it is "essentially an investigative proceeding used to collect evidence of facts surrounding the acquisition of citizenship, so as to determine whether it was obtained by fraudulent means": *Canada (Minister of Citizenship and Immigration) v. Obodzinsky*, 2002 FCA 518 at para. 15, [2002] F.C.J. No. 1800.
>
> [12] The task for the Court in a proceeding such as this is to make factual findings as to whether the defendants obtained their Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. Findings made by this Court under paragraph 18(1)(b) of the *Citizenship Act* are final, and cannot be appealed.
>
> [13] The Court's factual findings are not determinative of any legal rights. That is, the decision does not have the effect of revoking the defendants' Canadian citizenship: *Canada (Minister of Citizenship and Immigration) v. Tobiass*, [1997] 3 S.C.R. 391 at para. 52, [1997] S.C.J. No. 82, citing *Canada (Secretary of State) v. Luitjens*, [1992] F.C.J. No. 319 at 152, 142 N.R. 173 (FCA).
>
> [14] These findings may, however, form the basis of a report by the Minister to the Governor in Council requesting the revocation of the defendants' citizenship. The ultimate decision with respect

> to the revocation of citizenship rests with the Governor in Council, which is the only authority empowered to revoke citizenship.
>
> [15] Subsection 10(1) of the *Citizenship Act* allows the Governor in Council to revoke the citizenship of an individual where the Governor in Council is satisfied, on the basis of a report from the Minister, that the person has obtained his or her citizenship "by false representation or fraud or by knowingly concealing material circumstances".
>
> [16] A decision by the Governor in Council to revoke an individual's citizenship may be judicially reviewed in this Court: *Canada (Minister of Citizenship and Immigration) v. Furman*, 2006 FC 993 at para. 15, [2006] F.C.J. No. 1248.

[80] In this case the Applicant conceded that he obtained his permanent residence status, and thereby his citizenship, by false representation or fraud or by knowingly concealing material circumstances. Thus, there is no reason to believe that in this circumstance he would have requested that the matter be referred to the Federal Court to make factual findings as to whether he obtained his citizenship by false representation or fraud or by knowingly concealing material circumstances. There would have been no point in doing so. And, even if he had done so, based on his concession, the Court would have issued the declaration sought by the Minister.

[81] Under the Revised Citizenship Act the Applicant would be entitled to a hearing under s 10(4) only in the situations prescribed by Rule 7.2 of the *Citizenship Regulations*. The only one of these which applied to the Applicant is s 7.2(a), being the existence of evidence that raises a serious issue of the person's credibility. But the Applicant conceded to the breach. And, although the Notice of Intent stated that following the receipt of his submissions a decision would be made as to whether an oral hearing was required on the basis of the factors identified in Rule 7.2 of the *Citizenship Regulations*, which were set out, the Delegate stated in his decision

that the Applicant made no submissions calling into question the credibility of the evidence being relied upon in making the revocation decision. In these circumstances, it is difficult to see how he was denied a substantive procedural fairness protection as a result of the revision of the revocation process.

[82] The Delegate does appear to have discretion as s 10(1) of the Revised Citizenship Act states that the Minister may revoke citizenship. Further, as in the prior process, the Applicant was permitted to and did make written submissions to the Delegate as to why his citizenship should not be revoked. And, the Delegate did consider the Applicant's representations as to why his citizenship should not be revoked, being the delay, the Applicant's established ties in Canada, and his claims to hardship in the event of removal.

[83] The Applicant does not develop his submission that the Delegate is not an independent or impartial decision-maker and provides no grounds to support this assertion. Rather, he submits that because of the loss of the right of reference to the Federal Court the right to a fair process by way of a formal hearing before an independent and impartial judge is lost. Again, however, the decision that would be made by reference to this Court was whether he obtained his citizenship by false representation or fraud or by knowingly concealing material circumstances. The Applicant has conceded these facts in this case.

[84] Accordingly, I am not convinced that in these circumstances, the delay resulted in a loss of procedural safeguards.

Section 7

[85] In my view, the Applicant's submissions on s 7 of the Charter are likely premature given that the revocation proceedings do not automatically trigger removal proceedings (see *Montoya* at para 50; *Chang Lee* at paras 68-70). It has also consistently been held that deportation or the prospect of removal from Canada do not, *per se*, engage s 7 of the Charter (*B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at para 75; *Torre* at para 69; *Stables v Canada (Citizenship and Immigration)*, 2011 FC 1319 at para 40; *Chiarelli v Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 711; *Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51).

[86] However, I need not decide this as the Applicant's submission on this point is that the prejudice he has experienced as a result of the delay infringes his right to life and security of the person granted by s 7 of the Charter because he has become reliant on medical assistance during the time he has established himself in Canada and requires continual care and treatment that he could not access if he is removed from Canada. As noted above, the Applicant submitted no evidence confirming his diagnosis, indicating what treatment he has received or will receive, confirming that such treatment must be provided by his current healthcare team as he submits or to establish that treatment will not be available to him either upon revocation of his citizenship or if he is ultimately removed to Ukraine. In the absence of evidence to corroborate his argument that his s 7 rights, if any, have been infringed as a result of delay, the Applicant's claim cannot succeed.

Issue 2: Was the Delegate's decision reasonable?

[87] The Applicant submits that the decision lacks justification, transparency and intelligibility and was therefore was unreasonable.

[88] As to justification, the Applicant submits the Delegate only addressed the delay between January 2000 and March 2001 leaving an unexplained cumulative delay of over fourteen years. Further, the Applicant takes issue with the Delegate's distinction between the revocation process and the removal process. He submits that as a foreign national who is inadmissible on the grounds of serious criminality, as described in s 36(1)(b) of the IRPA, he is subject to a removal order and would have no right of appeal to the Immigration Appeal Division. Therefore, it was unreasonable for the Delegate to suggest that revocation could lead to any result other than removal. By doing so, the Delegate fettered his discretion in determining that the consequences of removal, including the prejudice suffered by the Applicant in the event of his removal, are not relevant to a decision to revoke his citizenship.

[89] The Applicant submits that the Delegate's reasoning was not transparent because clear and complete reasons responding to his submissions were not provided and the delay remains largely unexplained. Further, the decision was unintelligible because it is unclear how, if the Applicant were to apply for status under the IRPA, the same circumstances raised at that stage could be reconsidered favourably. Further, that the Delegate failed to consider the Applicant's circumstances in considering whether to revoke citizenship on the grounds that those

circumstances could be considered by another decision-maker if the Applicant subsequently applies for status, and merely passed the buck abrogating his discretion.

Respondent's Position

[90] The Respondent essentially relies on its prior submissions that the Applicant has not established unreasonable delay or an abuse of process.

Analysis

[91] Reasons need not be perfect. If the reasons allow a reviewing court to understand why the decision-maker made the decision and allow the court determine whether the conclusion is within the range of acceptable outcomes, then the *Dunsmuir* criteria are met (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[92] In this matter the Delegate's reasons for revocation focus on the fact that the Applicant misrepresented himself on the application for permanent residence in Canada by failing to disclose his foreign convictions and that this was conceded by the Applicant in his submissions. Based on the record and the concession, the Delegate was satisfied that the Applicant obtained permanent residency and subsequently, citizenship, by false representation or fraud or knowingly concealing material circumstances. The Delegate provides justification for why the evidence led to the decision to revoke the Applicant's citizenship. There is no error in this conclusion and it is reasonable.

[93] I have addressed above the question of delay in the context of abuse of process.

[94] Finally, and as noted above, the Delegate found that, even if the Applicant was providing financial support to his mother, the Delegate was not satisfied that she would be without support should the Applicant be unable to continue to do so. The Applicant submitted no evidence as to his financial or emotional support to his mother, nor of her medical condition that he said would be fatal to her if he were to be removed from Canada. Similarly, as noted by the Delegate, the Applicant's daughter is 28 years old and she sponsored her spouse who could presumably assist her financially if necessary. And again, the Applicant provided no evidence of financial support provided to his daughter. The Delegate similarly found that there was no evidence that the Applicant would be denied access to healthcare services in Canada should his citizenship be revoked. These findings were reasonable given the lack of evidence in the record to support the Applicant's submission concerning his mother and daughter, the related information found in CIC's systems, and, the absence of any evidence as to the Applicant's condition and treatment or the lack of availability of treatment in Canada or Ukraine. Given the total lack of documentation to support any of the Applicant's hardship and establishments submissions, the Applicant's submissions that the Delegate fettered his or her discretion cannot succeed.

[95] Viewed in the context of the record as a whole, the Delegate's decision falls within a range of acceptable outcomes.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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