Federal Court  Cour fédérale

Date: 20180213

Docket: T-1027-17

Citation: 2018 FC 151

Ottawa, Ontario, February 13, 2018

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

ANDREW JAMES FISHER-TENNANT BY HIS GUARDIAN AT LAW, JONATHAN TENNANT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This case concerns an application for a citizenship certificate by a minor, Andrew James Fisher-Tennant (the "Applicant"). Both the Applicant and his father (Jonathan Tennant, a Canadian citizen) were born outside of Canada. Although this would normally prevent an applicant from acquiring Canadian citizenship by descent, there is an exception where a

grandparent was employed outside of Canada in or with the federal public administration at the time of the applicant's parent's birth. The Applicant sought to rely on this exemption, furnishing documents to support the position that his paternal grandfather was employed with the Canadian International Development Agency ("CIDA") at the time of Jonathan Tennant's birth. As such, the Applicant claims Canadian citizenship by descent.

[2] Relying upon the advice of Immigration, Refugees and Citizenship Canada ("IRCC"), a Citizenship Officer (the "Officer") found that the Applicant's paternal grandfather was not employed in or with the federal public administration, and that therefore the Applicant is not a Canadian citizen by descent. Accordingly, she refused to issue a Canadian citizenship certificate.

[3] The Applicant seeks leave for judicial review of the Officer's decision, and requests relief in the form of a declaration that the Applicant is a Canadian citizen alongside an order in the form of *mandamus* to compel the Minister to issue a citizenship certificate.

[4] Conceding that the Officer fettered her discretion and failed to afford the Applicant procedural fairness, the Respondent requests that the application for judicial review be granted and the matter sent back for redetermination.

II. Facts

[5] The Applicant was born in the United States of America on November 10, 2015. His biological father is Jonathan Tennant, a Canadian citizen. Jonathan Tennant was also born outside of Canada. He was born in Malaysia on October 12, 1971, at which time his father, Dr.

Paul Tennant, was a University of British Columbia ("UBC") professor lecturing at the University of Penang.

[6] Dr. Tennant's arrival in Malaysia was the product of somewhat unique circumstances. At the time, Canada was part of a development initiative called the Colombo Plan for Co-operative Economic Development in South and Southwest Asia, and CIDA was responsible for fulfilling Canada's commitments under the plan with respect to the education sector. When a Malaysian academic became aware that Dr. Tennant was due for a sabbatical year, he contacted the CIDA office in Malaysia and requested that Dr. Tennant teach at the University of Penang for the 1971-1972 academic year. Dr. Tennant pursued the opportunity, and CIDA and UBC subsequently entered into negotiations about his deployment. It was agreed that Dr. Tennant would be issued a specially-endorsed Canadian passport in support of his travel, and that his family would accompany him to Malaysia. CIDA would pay for all travel and moving expenses. Dr. Tennant would receive his normal pay and benefits from UBC, and CIDA would fully reimburse UBC for those wages and benefits. Finally, Dr. Tennant and his wife were to conduct themselves at all times as representatives of Canada.

[7] On May 31, 2016, the Applicant's father applied for a citizenship certificate for his son. As part of the application, he submitted evidence about the nature of Dr. Tennant's employment in Malaysia: notably, a passport bearing the stamp of External Affairs Canada dated May 12, 1971 and accompanying special inscription stating:

> THE BEARER IS PROCEEDING TO MALAYSIA AS A UNIVERSITY PROFESSOR RETAINED BY THE GOVERNMENT OF CANADA UNDER THE SCHEME

ESTABLISHED BETWEEN CANADA AND MALAYSIA FOR TECHNICAL CO-OPERATION (Annex A).

[8] The passport also contains a stamp of External Affairs Canada dated November 5, 1973, alongside a notation to cancel the special inscription cited above.

[9] The Applicant furthermore submitted a letter from Allan Tupper, Professor and Head of the Department of Political Science at UBC. The letter confirms that Dr. Tennant taught at the University of Penang from 1971 to 1973, and that UBC paid his salary and benefits but was subsequently reimbursed by CIDA.

[10] Finally, the Applicant submitted the Application for Registration of a Birth Abroad ("RBA") form which was used to register Jonathan Tennant's birth. At the bottom of the form under the heading "Reasons for Absences," the form is marked "Serving on a CIDA project" (Annex B).

[11] On October 3, 2016, the Officer sought the advice of IRCC (Annex C) as to whether the Applicant is a citizen by virtue of ss. 3(5)(b) of the *Citizenship Act*, SC 1946, c 15 [the "*Act*"]. Normally, the fact that both the Applicant and his father were born outside of Canada would bar the Applicant from acquiring citizenship by descent pursuant to ss. 3(3)(b)(ii) of the *Act* (colloquially known as the "first generation limit"). However, ss. 3(5)(b) provides an exception where an applicant's grandparent was employed "in or with" the federal public administration at the time of an applicant's parent's birth (colloquially known as the "Crown servant" exception). The relevant provisions of the *Act* are as follows:

Persons who are citizens

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;

Not applicable — after first generation

(3) Paragraphs (1)(b), (f) to (j), (q) and (r) do not apply to a person born outside Canada

[…]

(b) if, at any time, only one of the person's parents was a citizen and that parent was a citizen under any of the following provisions, or both of the person's parents were citizens under any of the following provisions:

[…]

(ii) paragraph 5(1)(b) of the Canadian Citizenship Act, S.C. 1946, c. 15, as enacted by S.C. 1950, c. 29, s. 2,

Exception — child or grandchild of person in service abroad

Citoyens

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;

Inapplicabilité après la première génération

(3) Les alinéas (1)b), f) à j), q) et r) ne s'appliquent pas à la personne née à l'étranger dont, selon le cas :

[…]

b) à un moment donné, seul le père ou la mère avait qualité de citoyen, et ce, au titre de l'une des dispositions ci-après, ou les deux parents avaient cette qualité au titre de l'une de celles-ci :

[…]

(ii) l'alinéa 5(1)b) de la Loi sur la citoyenneté canadienne, S.C. 1946, ch. 15, édicté par S.C. 1950, ch. 29, art. 2,

Exception — enfant ou petit-enfant d'une personne en service à l'étranger

(5) Subsection (3) does not apply to a person	**(5)** Le paragraphe (3) ne s'applique pas :
[…]	[…]
(b) born to a parent one or both of whose parents, at the time of that parent's birth, were employed outside Canada in or with the Canadian Armed Forces, the federal public administration or the public service of a province, otherwise than as a locally engaged person.	**b)** à la personne née d'un parent dont, au moment de la naissance de celui-ci, le ou les parents étaient, sans avoir été engagés sur place, au service, à l'étranger, des Forces armées canadiennes ou de l'administration publique fédérale ou de celle d'une province;
[Emphasis added]	[Je souligne]

[12] On May 26, 2017, a Senior Program Advisor of the Citizenship and Passport Program Guidance branch of IRCC responded to the Officer's inquiry (Annex C). He indicated that "[u]nfortunately, employment abroad with the University of British Columbia (UBC) would not qualify for the grandparent Crown servant exception to the first generation limit to Canadian citizenship by descent" and that "[i]f the applicant has supporting documentation from the Government of Canada which demonstrates that their grandparent was employed abroad by the Canadian government at the time of their parent's birth abroad, then we would take it into consideration." No further inquiries were made by the Officer, either to IRCC with regard to the evidence that had been provided, or to the Applicant to seek additional evidence in support of the Crown servant exception.

[13] In a letter dated June 12, 2017, the Officer rejected the Applicant's request for a citizenship certificate on the grounds that he is subject to the first generation limit to Canadian citizenship by descent, because both he and his father were born outside of Canada (Annex D).

While this letter was sent to the Applicant, he was not provided with a "Concurrence Note" dated May 30, 2017 (Annex E) which also outlines the basis of the Officer's conclusion, and forms part of the reasons for the decision. The reasons in the Officer's email and the Concurrence Note are substantially the same, but the latter makes specific reference to the Crown servant exception while the former does not.

III. Issues

[14] The Applicant and Respondent agree that there has been a breach of procedural fairness. They further agree that the Officer fettered her discretion by failing to independently analyze the evidence presented to her and relying solely upon the advice of IRCC. The only dispute remaining between the parties is with respect to the issues of remedy and costs. I shall address each in turn.

IV. Analysis

A. *Remedy*

(1) Availability of the Directed Verdict

[15] The Applicant seeks relief in the form of a declaration that the Applicant is a Canadian citizen, arguing that he meets the requirements of Canadian citizenship under the *Act*. The Applicant states that this form of relief is not without precedent, pointing to the case of *Glynos v. Canada*, [1992] 3 FCR 691 [*Glynos*]. In that case, the Federal Court of Appeal analyzed the requirements of the *Act* applicable to the applicant's case and, finding that they were met on the

facts, held that he was eligible for a grant of citizenship. The Applicant underlines that, in this case, the Federal Court of Appeal affirmed that the status of citizen is a state of being, writing that "a person is a citizen or he is not": *Glynos* at para. 27. On this basis, the Federal Court of Appeal affirmed the applicant's citizenship.

[16] The Respondent argues that there is no basis for granting a directed verdict. In support of this argument, the Respondent relies on the Federal Court of Appeal decision in *Canada (Minister of Human Resources Development) v. Rafuse*, 2002 FCA 31 at paras 13-14 [*Rafuse*], which states:

> 13. On an application for judicial review, the role of the Court with respect to a tribunal's findings of fact is strictly circumscribed. In the absence of an error of law in a tribunal's fact-finding process, or a breach of the duty of fairness, the Court may only quash a decision of a federal tribunal for factual error if the finding was perverse or capricious or made without regard to the material before the tribunal: *Federal Court Act*, paragraph 18.1(4)(*d*). Hence, if, as a result of an error of law, a tribunal has omitted to make a relevant finding of fact, including a factual inference, the matter should normally be returned to the tribunal to enable it to complete its work. Accordingly, in our opinion, the Judge would have erred in law if, having set aside the decision of the Board, she had remitted the matter with a direction that the Board grant Mr. Rafuse leave to appeal.
>
> 14. While the directions that the Court may issue when setting aside a tribunal's decision include directions in the nature of a directed verdict, this is an exceptional power that should be exercised only in the clearest of circumstances: *Xie*, *supra*, at paragraph 18. Such will rarely be the case when the issue in dispute is essentially factual in nature (*Ali v. Canada (Minister of Employment and Immigration)*, 1994 CanLII 3480 (FC), [1994] 3 F.C. 73 (T.D.)), particularly when, as here, the tribunal has not made the relevant finding.
>
> [Emphasis added]

[17] It is undoubtedly the case that the Federal Court of Appeal's decision in *Rafuse* reflects the current state of the law on directed verdicts. In spite of the Respondent counsel's valiant attempt to persuade the Court that *Rafuse* and the line of case law following it are both analogous to the case at bar and exclude the possibility of a directed verdict, I do not find this to be the case.

[18] The Respondent asserts that the decision-maker has yet to make a factual determination with respect to Dr. Tennant's employment as a Crown servant. I disagree. In the case at bar, a citizenship officer has made the relevant finding of fact; this is plain on the face of the Concurrence Note dated May 30, 2017, which states "[a]s per information received and through verification with Nat Cit, it was determined that the Crown Servant exemption was not applicable in this case" (Annex E). In the face of this statement, the Respondent cannot argue that the decision-maker must be left to complete its work. The relevant factual finding was made, albeit not in the manner required by law.

[19] For this reason, the cases of *Canada (Chief Electoral Officer) v. Callaghan*, 2011 FCA 74 [*Callaghan*] and *Doyle v. Canada (Attorney General)*, 2012 FC 408 [*Doyle*] are distinguishable from the case at hand. In *Callaghan* at para. 125, the Federal Court of Appeal found that the Chief Electoral Officer of Canada had "made no decision with respect to the reasonable allocation of pooled advertising expenses." In *Doyle* at paras. 21-23, this Court found that the Director of Compensation and Benefits Administration was the appropriate tribunal to make a finding of fact, and that neither the Chief of Defence Staff nor the Federal Court should

pre-empt its decision with a directed verdict. These are true instances where a decision on a factual matter was yet to be made, and they are unlike the case at bar.

[20] Somewhat relatedly, the case of *Malicia v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 755 [*Malicia*] is distinguishable from that of the Applicant. In that case, Justice Russell found that, because the parties were contesting material facts, the Court lacked a "secure factual basis" to warrant a directed verdict. The same cannot be said in the case before me. The Respondent has made reference to an incomplete factual record, but I have been provided with no submissions as to the type of evidence that would complete the record in this case. On the contrary, there was substantial evidence before the decision-maker concerning the nature of Dr. Tennant's employment in Malaysia. I will come to that in a moment. For now, I find that the caution of the Federal Court of Appeal in *Rafuse*, i.e. to avoid wading into the decision-making process on the basis of an incomplete factual record, or to weigh evidence in place of the decision-maker, does not apply here.

[21] Finally, the Respondent points to the very recent Federal Court of Appeal decision in *Makara v. Canada (Attorney General)*, 2017 FCA 189 at para. 16 for the proposition that declarations are a "judicial statement confirming or denying a legal right," and that this Court does not have jurisdiction to make declarations pertaining solely to findings of fact. This statement is quite correct. However, while the question as to whether Dr. Tennant was a Crown servant is one of fact, the declaration sought by the Applicant is one of law (that is, that he is a Canadian citizen by virtue of s. 3 of the *Act*). Once again, this authority of the Federal Court of Appeal does not exclude the possibility of declaratory relief in the case at hand.

(2) Appropriateness of a Directed Verdict

[22] Having found that I am not precluded from issuing a directed verdict, I must now determine whether such extraordinary relief is warranted in this case. The ample authorities cited by the Respondent explain that this remedy is an "exceptional power" (*Rafuse* at para 14) to be "exercised only in the clearest of circumstances" (*Xie v. Canada (Minister of Employment and Immigration*) (1994), 75 F.T.R. 125 at para. 18) and only "where the case is straightforward" (*Dai v Canada*, 2000 CanLII 15181 at para. 18).

[23] In my view, the Applicant's case warrants the exceptional remedy of a directed verdict. I reach this conclusion based on the clarity of the evidence before the Officer and her approach to its evaluation, as well as the absence of Ministerial discretion in the determination at hand.

(a) *Evidence before the Officer and Evaluation*

[24] The evidence before the Officer clearly demonstrates that the Applicant's grandfather was a Crown servant during his time in Malaysia.

[25] First, there is the passport. The special inscription at page 4 of Dr. Tennant's passport, which was endorsed by External Affairs Canada prior to Dr. Tennant's engagement at the University of Penang and then cancelled upon his return, is not an ordinary feature of a Canadian passport. It specifically informs any authority reviewing the passport about the purpose of Dr. Tennant's travel; namely, he had been "retained by the Government of Canada under the scheme established between Canada and Malaysia for technical cooperation" (Annex A). During oral

submissions, Respondent's counsel made much of the term "retained" and questioned whether the usage of this term might have evolved within External Affairs Canada over time. Nevertheless, I find that term's use in this instance to be clear: the Government of Canada engaged Dr. Tennant to fulfil its commitments under a bilateral, technical cooperation agreement. Page 8 of the passport reveals further details about the nature of Dr. Tennant's visit: the Malaysian authorities indicate his entry is authorized "[f]or employment as Lecturer with [t]he University of Penang under Colombo Plan" (Annex A). In my view, this constitutes further evidence about the official, bilateral nature of Dr. Tennant's service in Malaysia.

[26] Second, there is the letter of Professor Tupper. This letter explains the compensation and reimbursement scheme that applied during Dr. Tennant's employment in Malaysia; namely, UBC would continue to pay his salary and benefits, but would be subsequently reimbursed by CIDA. The letter leads to the inescapable conclusion that Dr. Tennant was compensated for his service in Malaysia, indirectly, by CIDA.

[27] Third, there is the RBA form, which clearly indicates the purpose of Dr. Tennant's presence in Malaysia as "serving on a CIDA project" and is stamped "VERIFIED" (Annex B).

[28] The veracity of the passport, letter, and RBA form are uncontested, and taken together, I find that they constitute clear evidence that Dr. Tennant was employed "in or with" the federal public administration at the time of his son's birth. The only logical conclusion on the evidence is that Dr. Tennant was in the employment of CIDA and thereby he was a Crown servant. The

futility of returning the decision in the face of such clear evidence militates in favour of a directed verdict.

[29] Citizenship is at the core of what it means to have membership in a political community. In the Canadian context, it affords substantial rights and privileges related to mobility, voting, running for elected office, and consular assistance when travelling abroad. It can also form an important part of an individual's identity. As such, it is not a matter to be taken lightly. The consequences of failing to recognize a person's Canadian citizenship are serious, and can have a substantial, negative impact on the individual. Indeed, the Federal Court of Appeal recognized as much when it wrote "[t]o be a Canadian citizen by birth is a most cherished privilege": *Glynos*, para. 17.

[30] I am troubled by the Officer's approach to considering the Applicant's request for a citizenship certificate. During the hearing, the Respondent urged that the Officer made an honest mistake with regard to the denial of procedural fairness and fettering of her discretion, and I would not speculate otherwise. However, this does not detract from the important consequences that the Officer's error entails: it means that a Canadian might fail to have his citizenship recognized, which is no trivial matter. It is incumbent upon officers to take far more care when making these consequential determinations.

[31] In my view, the Officer's approach demonstrates a lack of diligence similar to that which was condemned by this Court in *Murad v. Canada (Citizenship and Immigration)*, 2013 FC 1089 [*Murad*]. In *Murad*, the Minister's lack of diligence in its treatment of a citizenship application

resulted in the issuance of a *mandamus* order to grant citizenship. While I acknowledge that the level of official "misbehaviour" (in the words of Justice Roy) in *Murad* does not arise on the facts of this case, I find that the behaviour of the Officer nevertheless militates in favour of a remedy that is commensurate with the seriousness of the consequences flowing from the Officer's conduct.

(b) *Ministerial Discretion*

[32] Finally, I wish to address the issue of Ministerial discretion. The Respondent argues that this Court should be loath to issue a directed verdict in cases where a decision is at the sole discretion of the Minister: *Edgar v. Canada*, 1999 CanLII 3821 (ON CA) at paras 52-56. Underlying this approach is the principle of separation between the executive and judicial branches of government. Importantly, that case turned on a provision in the *Customs and Excise Award Payment Regulations*, CRC 1978, c 457, ss. 3(1) which provides that the Minister may, "…in his sole discretion, authorize payment of an award in the amount that he considers appropriate."

[33] No such language is present in the *Citizenship Act*. On the contrary, the language at s. 3 of the *Act* is declaratory: once the requirements under s. 3 are met, the person is a citizen, irrespective of Ministerial action. Thus, if the Applicant's grandfather was employed "in or with" the federal public administration – which is not a question of discretion, but rather one of fact – then the Applicant is a citizen. As such, the issuance of a directed verdict in the case at bar does not impinge on Ministerial discretion.

(3) Directed Verdict: Conclusion

[34] The Applicant's case is one which merits a directed verdict. Compelling evidence in the form of Dr. Tennant's passport, Professor Tupper's letter and the RBA form were placed before the Officer which, in my view, affirmed that Dr. Tennant was serving "in or with" the federal public service at the time of his employment in Malaysia. In the face of this evidence, the Officer sought the opinion of IRCC, and, in a manner which amounted to fettering her discretion, relied on the IRCC opinion to reject the application. The Officer compounded this error by failing to afford the Applicant procedural fairness.

[35] I decline to return this matter for redetermination. Based on the evidence on the record, any decision that fails to affirm or delay the recognition of the Applicant's citizenship would be unjust. To find otherwise would be to place dedicated people like Dr. Tennant, who at great personal sacrifice agree to advance the goals of the Canadian government abroad, at a serious disadvantage. It would deprive him of a right that he would have otherwise retained should he have stayed in Canada, defeating the very purpose of the Crown servant exception in the *Act*.

[36] Convinced as I am by the evidence that Dr. Tennant was a Crown servant, I have no hesitation in concluding that the Applicant is a Canadian citizen and entitled to a declaration of this Court recognizing him as such. Having affirmed that Dr. Tennant was serving abroad as a Crown servant at the time of Jonathan Tennant's birth, the Applicant is a Canadian citizen as a matter of law.

B. *Costs*

[37] The Applicant seeks costs with respect to the Respondent's motion for judgment. In the Applicant's view, the costs associated with responding to the Respondent's motion were unnecessary because a hearing on the merits had already been scheduled.

[38] The Respondent maintains that costs are not merited in this case, arguing that the motion for judgment was legitimate and brought expeditiously once settlement discussions failed to result in a resolution. The Respondent furthermore notes that the request for costs was brought under the incorrect rule in the *Federal Courts Act,* RSC 1985, c F-7.

[39] I am unpersuaded that this case is one which merits a cost award against the Respondent. The Respondent is quite correct in noting that the request for costs brought by the Applicant was made under the incorrect rule. Moreover, I do not view the Respondent's conduct as motivated by bad faith, noting both the early attempts at resolution as well as the acknowledgement that the Officer fettered her discretion and breached procedural fairness. I am of the view that the Respondent's attempt to dispose of the matter by way of motion rather than oral hearing was motivated by nothing other than the interest of judicial economy.

V. Certification

[40] The Respondent proposes the following question for certification:

> Does the Federal Court have the jurisdiction to issue a directed verdict or a declaration that an applicant is a Canadian citizen under the Citizenship Act, when a decision-maker has not made a

> factual determination that the applicant is a Canadian citizen as per the provisions of the Citizenship Act?

[41] I find that this question does not merit certification. As mentioned above, and as counsel for the Applicant rightfully noted during the hearing, the question as to whether the Federal Court has the jurisdiction to issue directed verdicts is already well established. This Court has jurisdiction to grant directed verdicts by virtue of s. 18.1 of the *Federal Courts Act*, RSC 1985 c F-7, as affirmed both broadly (*Singh v. Canada (Citizenship and Immigration)*, 2010 FC 757 at para. 38) and more specifically in a citizenship case (see *Glynos* at para. 33).

JUDGMENT in T-1027-17

THIS COURT'S JUDGMENT is that:

1. I hereby declare, Andrew James Fisher-Tennant is a citizen of Canada.

2. No costs are awarded.

3. There is no question for certification.

"Shirzad A."

Judge

ANNEX A

OBSERVATIONS

4

THE BEARER IS PROCEEDING TO MALAYSIA AS A UNIVERSITY PROFESSOR RETAINED BY THE GOVERNMENT OF CANADA UNDER THE SCHEME ESTABLISHED BETWEEN CANADA AND MALAYSIA FOR TECHNICAL CO-OPERATION.

LE TITULAIRE SE REND MALAISIE À TITRE DE PROFESSEUR D'UNIVERSITÉ IL EST ENGAGÉ PAR LE GOUVERNEMENT DU CANADA EN VERTU DU PLAN ÉTABLI ENTRE LE CANADA ET LA MALAISIE POUR LA COOPÉRATION TECHNIQUE.

EXTERNAL AFFAIRS CANADA
MAY 12 1971
AFFAIRES EXTÉRIEURES

PASSPORT OFFICER.

See information on inside back cover. Voir l'Avis en troisième page de couverture.

ENDORSEMENTS AND LIMITATIONS

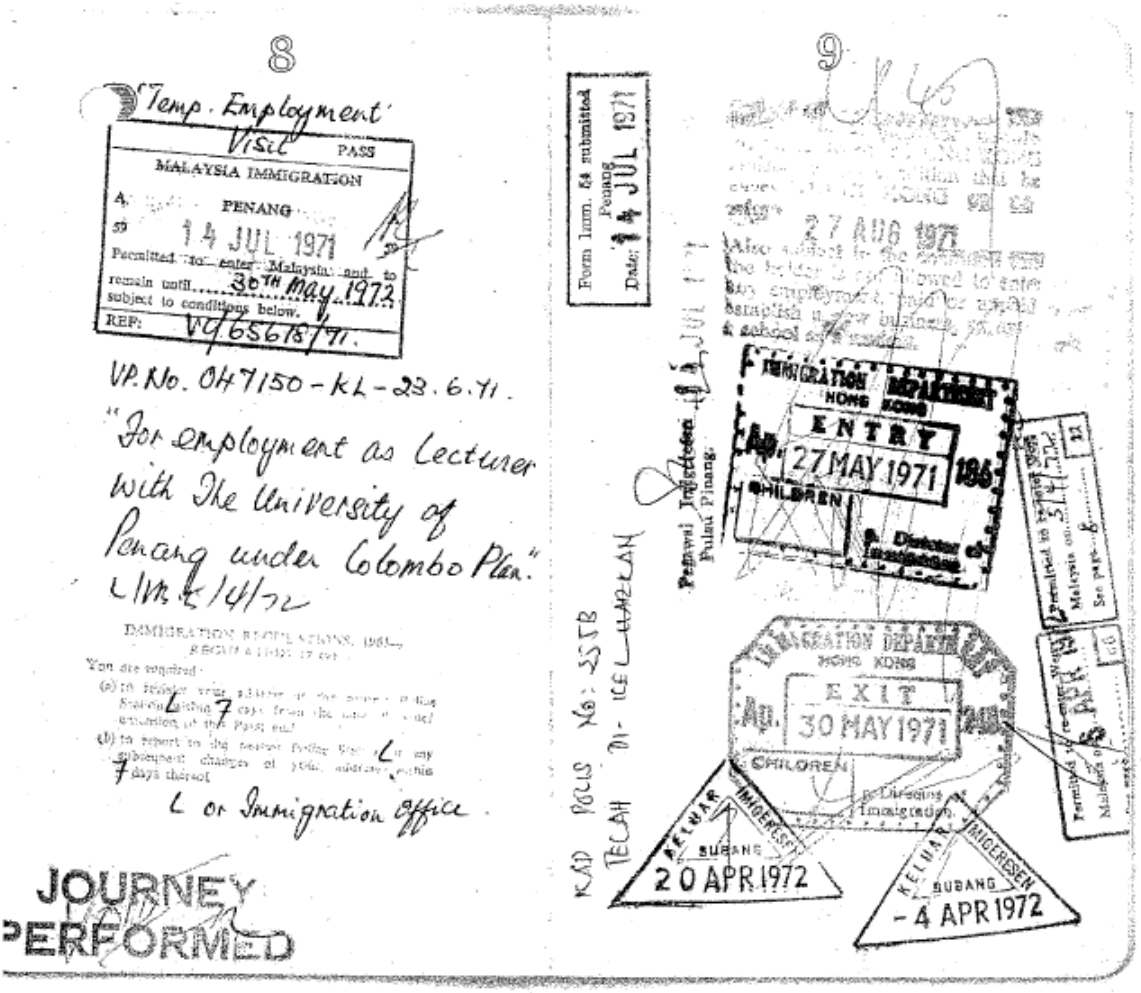
5

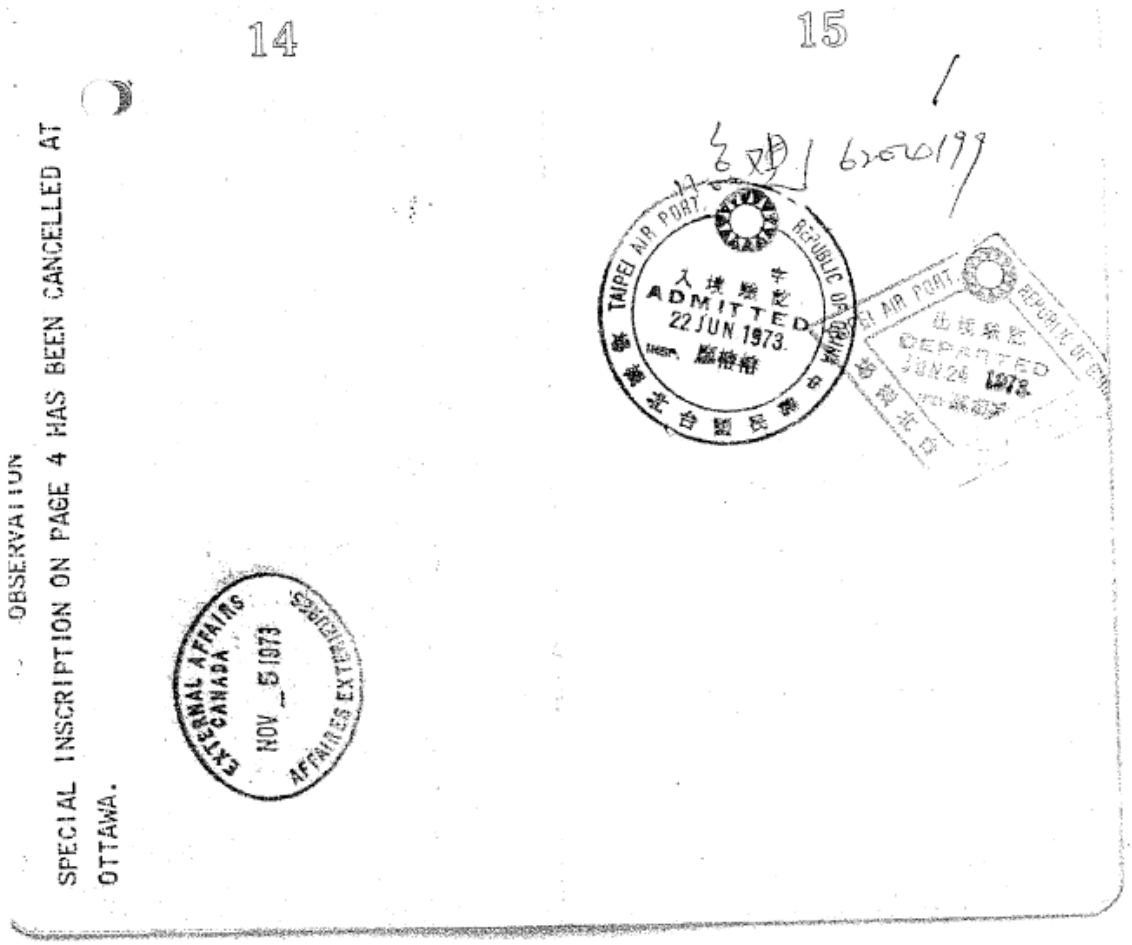
MENTIONS ET RESTRICTIONS

This passport is valid for all countries unless otherwise endorsed (subject to any visa or other entry regulations of countries to be visited).

Ce passeport est valable pour tous pays, sauf mention spéciale (sous réserve des formalités de visas ou autres règlements d'entrée des divers pays).

See information on inside back cover. Voir l'Avis en troisième page de couverture.


8
Temp. Employment
Visit PASS
MALAYSIA IMMIGRATION
PENANG
14 JUL 1971
Permitted to enter Malaysia and to remain until 30TH May 1972 subject to conditions below.
REF: VP/65618/71.
VP. No. OH7150 - KL - 23.6.71.
"For employment as Lecturer with The University of Penang under Colombo Plan."
L/M. K/14/72
IMMIGRATION REGULATIONS, 1963
You are required
(a) to register your address at the nearest Police Station within seven days from the date of your arrival at this Port; and
(b) to report to the nearest Police Station or any subsequent changes of your address within 7 days thereof
L or Immigration office.
JOURNEY PERFORMED
9
Form 1xxx. 64 submitted Penang Date: 14 JUL 1971
27 AUG 1971
IMMIGRATION DEPARTMENT HONG KONG
ENTRY
Ad. 27 MAY 1971 186
CHILDREN
Director of Immigration
Penang Immigration Pulau Pinang.
IMMIGRATION DEPARTMENT HONG KONG
EXIT
Ad. 30 MAY 1971
CHILDREN
for Director of Immigration
KAD POLIS No: 25718
TELAH DI-ICE LAMPELAH
KELUAR IMIGRESEN SUBANG 20 APR 1972
KELUAR IMIGRESEN SUBANG - 4 APR 1972


14
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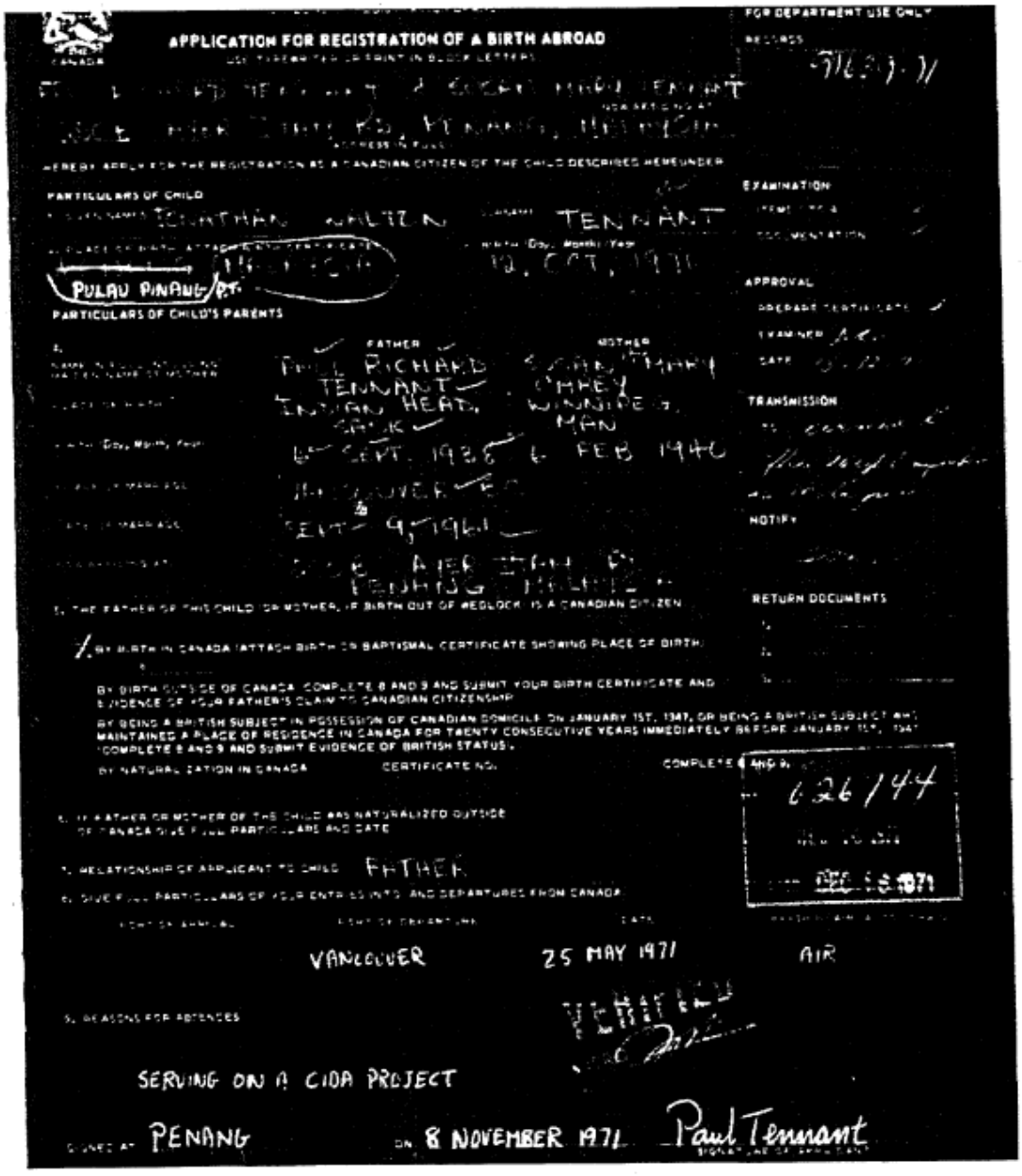
OBSERVATION
SPECIAL INSCRIPTION ON PAGE 4 HAS BEEN CANCELLED AT OTTAWA.
EXTERNAL AFFAIRS CANADA
NOV 5 1973
AFFAIRES EXTERIEURES
TAIPEI AIR PORT
ADMITTED
22 JUN 1973
REPUBLIC OF CHINA
DEPARTED
JUN 26 1973

ANNEX B

91639-71



APPLICATION FOR REGISTRATION OF A BIRTH ABROAD

FOR DEPARTMENT USE ONLY

91639-71

(PLEASE TYPEWRITE OR PRINT IN BLOCK LETTERS)

I, [illegible] TENNANT (USUAL RESIDENCE)

[illegible] (ADDRESS IN FULL)

HEREBY APPLY FOR THE REGISTRATION AS A CANADIAN CITIZEN OF THE CHILD DESCRIBED HEREUNDER

PARTICULARS OF CHILD

1. SURNAME: TENNANT GIVEN NAMES: JONATHAN WALTER

2. PLACE OF BIRTH: PULAU PINANG

3. DATE OF BIRTH: Day, Month, Year: 12 OCT 1971

PARTICULARS OF CHILD'S PARENTS

	FATHER	MOTHER
4. NAME IN FULL AND MAIDEN SURNAME OF MOTHER	PAUL RICHARD TENNANT	SUSAN MARY
PRESENT ADDRESS	INDIAN HEAD SASK	CRANEY WINNIPEG MAN
DATE OF BIRTH: Day, Month, Year	6 SEPT 1936	6 FEB 1946
PLACE OF MARRIAGE	VANCOUVER BC	
DATE OF MARRIAGE	SEPT 9 1961	
RESIDENCE AT TIME OF MARRIAGE	[illegible] PENANG MALAYSIA	

5. THE FATHER OF THIS CHILD (OR MOTHER, IF BIRTH OUT OF WEDLOCK) IS A CANADIAN CITIZEN

/ BY BIRTH IN CANADA (ATTACH BIRTH OR BAPTISMAL CERTIFICATE SHOWING PLACE OF BIRTH)

BY BIRTH OUTSIDE OF CANADA COMPLETE 8 AND 9 AND SUBMIT YOUR BIRTH CERTIFICATE AND EVIDENCE OF YOUR FATHER'S CLAIM TO CANADIAN CITIZENSHIP

BY BEING A BRITISH SUBJECT IN POSSESSION OF CANADIAN DOMICILE ON JANUARY 1ST, 1947, OR BEING A BRITISH SUBJECT WHO MAINTAINED A PLACE OF RESIDENCE IN CANADA FOR TWENTY CONSECUTIVE YEARS IMMEDIATELY BEFORE JANUARY 1ST, 1947 COMPLETE 8 AND 9 AND SUBMIT EVIDENCE OF BRITISH STATUS.

BY NATURALIZATION IN CANADA CERTIFICATE NO. COMPLETE 8 AND 9

626/44

DEC 1 8 1971

6. IF FATHER OR MOTHER OF THE CHILD WAS NATURALIZED OUTSIDE OF CANADA GIVE FULL PARTICULARS AND DATE

7. RELATIONSHIP OF APPLICANT TO CHILD FATHER

8. GIVE FULL PARTICULARS OF YOUR ENTRIES INTO AND DEPARTURES FROM CANADA

PORT OF ARRIVAL	PORT OF DEPARTURE	DATE	
VANCOUVER	25 MAY 1971		AIR

9. REASONS FOR ABSENCE

SERVING ON A CIDA PROJECT

SIGNED AT PENANG ON 8 NOVEMBER 1971 Paul Tennant

(SIGNATURE OF APPLICANT)

RETURN DOCUMENTS

APPROVAL

EXAMINATION

TRANSMISSION

NOTIFY

ANNEX C

Jerr Burns.Susan

From: Langille.Colin
Sent: May 26, 2017 5:34 PM
To: Jerrott-Burns.Susan
Cc: Nat-Cit-Operations; Clement.Corrina
Subject: RE: FOR YOUR APPROVAL --> FW: [CPD-2016-0873] FW: Verification of crown servant employment/FILE 4797458

Hi Susan.

Thank you for your e-mail and please accept my apologies for the delay in getting back to you.

Unfortunately, employment with the University of British Columbia (UBC) would not qualify for the grandparent Crown servant exception to the first generation limit to Canadian citizenship by descent.

Paragraph 3(5)(b) of the *Citizenship Act* states that a person can avail themselves of the grandparent Crown servant exception if they were "born to a parent one or both of whose parents, at the time of that parent's birth, were employed outside Canada in or with the Canadian Armed Forces, the federal public administration or the public service of a province, otherwise than as a locally engaged person". Employment abroad with UBC does not fall under either the "federal public administration" or "public service of a province" categories of Crown service.

If the applicant has supporting documentation from the Government of Canada which demonstrates that their grandparent was employed abroad by the Canadian government at the time of their parent's birth abroad, then we would take it into consideration.

I trust that the above satisfies your request, but if you have any further questions or concerns related to general citizenship program operations, please do not hesitate to e-mail Nat-Cit-Operations@cic.gc.ca. Thank you.

Colin Langille

Senior Program Advisor, Citizenship and Passport Program Guidance
Immigration, Refugees and Citizenship Canada / Government of Canada
Colin.Langille@cic.gc.ca / Tel: 613-437-8912

, Orientation des programmes de citoyenneté et de passeport
Immigration, Réfugiés et Citoyenneté Canada / Gouvernement du Canada
Colin.Langille@cic.gc.ca / Tél.: 613-437-8912

From: Jerrott-Burns.Susan
Sent: October 3, 2016 8:34 AM
To: Nat-Cit-Operations <Nat-Cit-Operations@cic.gc.ca>
Subject: Verification of crown servant employment/FILE 4797458

Hello,
I have attached information for the grandparent, Paul Richard Tennant, of a 3(1)(b) applicant as I am trying to apply the crown servant exception 3(5).
The passport provided does show the beginning of the assignment and then end of the assignment of the grandparent with a notation on Page 4 and 14. However, the employment letter provided is actually from the University of British Columbia.
I have also attached a partial print of the RBA file for the parent of the 3(1)(b) which shows his parent (the applicant's grandparent) as serving on a CIDA project.

Can [redacted]dvise if this documentation is acceptable in order to apply crown servant grandparent exception?

Applicant: Andrew James Fisher-Tennant (possible 3(1)(b))
DOB: 2015/11/10
COB: USA

Applicant's parent: Jonathan Walton Tennant (3(1)(d) previous 5(1)(b)/RBA)
DOB: 1971/10/12
COB: Malaysia

Grandparent of applicant: Paul Richard Tennant
DOB: 1938/09/06
COB: Canada

Thank you for your assistance.

Susan Jerrott-Burns
Program Support Officer | Agente de soutien au programme
CPC - Sydney | CTD - Sydney
Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
49 Dorchester Street Sydney Nova Scotia B1P 5Z2 | 49 rue Dorchester Sydney Nouvelle Écosse B1P 5Z2
Susan.Jerrott-Burns@cic.gc.ca
Telephone | Téléphone 1-888-242-2100
Government of Canada | Gouvernement du Canada

ANNEX D

Immigration, Refugees and Citizenship Canada
Immigration, Réfugiés et Citoyenneté Canada

Citizenship Processing Centre
PO Box 12000
Sydney, NS B1P 7C2

GCMS File: 4797458

COPY

June 12, 2017

Mr. Jonathan Walton Tennant
622 Lenox Road
Glen Ellyn, IL 60137
USA

Dear Mr. Tennant:

This letter refers to the Application for a Citizenship Certificate (Proof) for your child that we received on June 3, 2016. I regret to inform you that we are unable to issue **Andrew James Fisher-Tennant** a citizenship certificate as he does not meet the legislative requirements of the *Citizenship Act*.

The reasons why Andrew James Fisher-Tennant is not eligible for a citizenship certificate are based on the Citizenship Act. Section 3 of the Act sets out who is a Canadian citizen. The pertinent paragraph for your child's application is 3(1)(b) which describes how certain persons born outside Canada are Canadian citizens and the pertinent sub-section of the Citizenship Act (as amended by Bill C-37 effective April 17, 2009) is 3(3) which limits citizenship by descent to the first generation born outside Canada. Sub-section 3(3) is specific to persons born outside Canada whose parent(s) were born or adopted outside Canada.

Because your child was born outside Canada on November 10, 2015 and you are a Canadian who was born outside Canada on October 12, 1971 your child does not meet the statutory requirements for citizenship outlined in paragraph 3(1)(b) of the current Citizenship Act.

Consequently, your child's application has been refused and we are unable to issue a citizenship certificate to Andrew James Fisher-Tennant at this time.

I understand this conclusion to your child's application may be disappointing. However, citizenship can be granted to a minor child if he has a Canadian parent and is admitted to Canada as a permanent resident.

If you wish to find out more about applying for permanent residence and Canadian citizenship or to obtain an application for your child, please visit the CIC Web site at www.cic.gc.ca.

Sincerely,

S. Jerrott-Burns

S. Jerrott-Burns
Citizenship Officer

ANNEX E

Citizenship and Immigration Canada | Citoyenneté et Immigration Canada

Concurrence

NAME : Andrew James Fisher-Tennant File : 4797458

Applicant, Andrew James Fisher-Tennant was born in the US on November 10, 2015. (after coming into force of C-37)

Applicant has same sex parents. One father, was born in the US and stated that he was the adoptive parent. The other father, Jonathan Walton Tennant is Canadian. He has a claim through his Canadian father as per paragraph 5(1)(b) of the CCA. With information provided, it was determined that the Canadian parent was the biological parent of the applicant. Applicant has a possible claim to Canadian citizenship as per paragraph 3(1)(b) of the Citizenship Act.

Applicant would not have a claim to Canadian citizenship as they are second generation born outside Canada to a Canadian parent (who was born outside Canada to a Canadian parent) after April 16, 2009. However, Legislative amendments in Bill C-24, *Strengthening Canadian Citizenship Act* came into force on June 19, 2014. The exception to the first generation limit to Canadian citizenship is extended to grandchildren (subsection 3(5)). As per information received and through verification with Nat Cit, it was determined that the Crown Servant exemption was not applicable in this case.

Therefore, applicant is subject to first generation limit 3(3)(b)(ii) as one of his parents was a citizen as per paragraph 5(1)(b) of the CCA at the time of his birth.

The applicant does not have a claim to Canadian citizenship. In order to become Canadian, he would have to be landed as a permanent resident and fulfill the requirements for naturalization under Section 5 of the Citizenship Act.

Name: S. Jewett-Burns Date: May 30, 2017

Do you concur? Yes, I concur 2017/05/31

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1027-17
STYLE OF CAUSE:	ANDREW JAMES FISHER-TENNANT BY HIS GUARDIAN AT LAW, JONATHAN TENNANT v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 16, 2018
JUDGMENT AND REASONS:	AHMED J.
DATED:	FEBRUARY 13, 2018

APPEARANCES:

Martha Cook	FOR THE APPLICANT
Eleanor Elstub	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Martha Cook Professional Corporation Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT