Federal Court  Cour fédérale

Date: 20180622

Docket: T-1169-17
T-1170-17

Citation: 2018 FC 653

Ottawa, Ontario, June 22, 2018

PRESENT: The Honourable Mr. Justice Annis

Docket: T-1169-17

BETWEEN:

SAMA SAAB
(BY HER LITIGATION GUARDIAN,
SAMEER SAAB)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: T-1170-17

AND BETWEEN:

TALA SAAB
(BY HER LITIGATION GUARDIAN,
SAMEER SAAB)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] These are applications under section 22.1(1) of the *Citizenship Act*, RSC 1985, c C-29 [the Act], for judicial review of two decisions of a Citizenship Official [Officer] in Immigration, Refugees and Citizenship Canada [IRCC], both dated July 14, 2017 [Decisions], which declared that the Applicants' applications for Canadian citizenship would be treated as abandoned. Because both applications arise from an identical evidentiary record and the Applicants' citizenship applications were processed by the same Officer, they were heard together. These reasons will address both applications.

[2] For the reasons that follow, the applications are dismissed.

II. Background

[3] The Applicant in Court File T-1169-17, Sama Saab, was eight years old at the time of her citizenship application. She was born in the United States and is an American citizen. The

Applicant in Court File T-1170-17, Tala Saab, is Sama's sister, and was twelve years old at the time of her citizenship application. Tala was born in Kuwait and is a citizen of Lebanon. Along with their mother and father, both Applicants became permanent residents of Canada on June 30, 2010.

[4] The Applicants' father became a Canadian citizen on March 31, 2016 and the Applicants applied for Canadian citizenship later that year. Their applications are dated September 28, 2016 and were received by IRCC on October 12, 2016. Both Applicants' applications listed their home address as being in Kuwait and indicated that they had been outside of Canada from August 12, 2010 to November 29, 2011 and from February 12, 2012 to September 27, 2016 – a period totalling to 2165 days. Included in their applications were photocopies of their permanent resident cards [PRCs] which had expired on August 5, 2015.

[5] Because of concerns that the Applicants had not maintained their permanent resident status, the Officer sent each of the Applicants a Notice to Applicant – Request for Supplementary Evidence, form CIT 0520. The notices indicated that "[o]ne of the requirements for citizenship is that 'the minor must be a permanent resident of Canada, not have lost that status and have no unfulfilled conditions relating to that status.'" The Officer requested that the Applicants provide additional documents including copies of updated PRCs. The Officer instructed the Applicants that, if they were outside of Canada, they "may have to contact the nearest visa office to have a determination made on [their] permanent residence status".

[6] In response, the Applicants provided partial submissions of the requested documents on March 16, 2017. However, a letter from their authorized representative disputed the need to undergo a residency determination because "[t]he Act requires only that the applicant must be a [permanent resident] who has not lost status. The applicants have not lost [permanent resident] status and are currently lawful permanent residents."

[7] The Officer replied to the Applicants on March 28, 2017, in a Final Notice – Request for Supplementary Evidence, form CIT 0519, stating that "the evidence on file does not satisfy me that the [A]pplicant[s] ha[ve] retained [their] permanent resident status". The notices informed the Applicants that they were to provide the requested documentary evidence of their residence in Canada within thirty days or their citizenship applications would be treated as abandoned.

[8] In a letter dated April 6, 2017, the Applicants' authorized representative replied to the Officer's second request and indicated that IRCC's own information could establish that the Applicants were permanent residents. The Applicants' position was that since they had not lost or renounced their permanent resident status, they were permanent residents "by operation of law".

[9] The Officer sent letters to the Applicants on April 12, 2017. The letters informed the Applicants that the Officer had received their letter of April 6, 2017, but indicated that the requested information was not submitted. The letters also referenced the time that the Applicants indicated they had been out of the country and that they were residing in Kuwait. The Officer requested that the Applicants provide "confirmation that [they] ha[d] not lost [their] permanent

resident status… by submitting a valid permanent resident card or results of a permanent residence determination (PRTD)".

[10] On May 4, 2017, in Court Files T-666-17 and T667-17, the Applicants filed applications for leave and judicial review seeking an order of *mandamus* to compel the Respondent to finalize their citizenship applications. The applications for leave were dismissed on September 13, 2017 as the Officer had already made the Decisions to treat the citizenship applications as abandoned.

III. Impugned Decision

[11] Both Applicants were sent identical letters informing them of the Officer's Decisions to treat their citizenship applications as abandoned.

[12] The Officer explained that section 13.2(1) of the Act requires an applicant to provide reasonable excuse for not being able to attend an appointment on the date specified or provide additional information or evidence by the date specified. The Applicants' applications were to be treated as abandoned because IRCC had not heard any response from the Applicants.

[13] The Officer noted that no documents were received to show that the Applicants had maintained their permanent resident status.

[14] The Decisions conclude by informing the Applicants that IRCC will take no further action on their applications and that, should they still wish to become Canadian citizens, they will have to submit new applications.

IV. Legislative Framework

[15] The following provisions of the Act, as it appeared at the time of the Applicants' citizenship applications, are applicable in these proceedings:

Grant of citizenship	**Attribution de la citoyenneté**
5 (1) The Minister shall grant citizenship to any person who	5 (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :
(a) makes application for citizenship;	a) en fait la demande;
(b) is eighteen years of age or over;	b) est âgée d'au moins dix-huit ans;
(c) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, has, subject to the regulations, no unfulfilled conditions under that Act relating to his or her status as a permanent resident and has, since becoming a permanent resident,	c) est un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*, a, sous réserve des règlements, satisfait à toute condition rattachée à son statut de résident permanent en vertu de cette loi et, après être devenue résident permanent :
(i) been physically present in Canada for at least 1,460 days during the six years immediately before the date of his or her application,	(i) a été effectivement présent au Canada pendant au moins mille quatre cent soixante jours au cours des six ans qui ont précédé la date de sa demande,

(ii) been physically present in Canada for at least 183 days during each of four calendar years that are fully or partially within the six years immediately before the date of his or her application, and	(ii) a été effectivement présent au Canada pendant au moins cent quatre-vingt trois jours par année civile au cours de quatre des années complètement ou partiellement comprises dans les six ans qui ont précédé la date de sa demande,
…	…
5 (2) The Minister shall grant citizenship to any person who is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* and is the minor child of a citizen, if	5 (2) Le ministre attribue en outre la citoyenneté à l'enfant mineur d'un citoyen qui est résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* si les conditions suivantes sont réunies :
(a) an application for citizenship is made to the Minister by a person authorized by regulation to make the application on behalf of the minor child;	a) la demande lui est présentée par la personne autorisée par règlement à représenter le mineur;
(b) the person has, subject to the regulations, no unfulfilled conditions under that Act relating to his or her status as a permanent resident;	b) le mineur a, sous réserve des règlements, satisfait à toute condition rattachée à son statut de résident permanent en vertu de cette loi;
(c) in the case of a person who is 14 years of age or over at the date of the application, he or she has an adequate knowledge of one of the	c) s'il est âgé d'au moins 14 ans à la date de la demande, le mineur a une connaissance suffisante de l'une des langues officielles du

official languages of Canada; and

Canada;

(d) in the case of a person who is 14 years of age or over at the date of the application, he or she demonstrates in one of the official languages of Canada that he or she has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship.

d) s'il est âgé d'au moins 14 ans à la date de la demande, le mineur démontre dans l'une des langues officielles du Canada qu'il a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté.

…

…

Abandonment of application

Abandon de la demande

13.2 (1) The Minister may treat an application as abandoned

13.2 (1) Le ministre peut considérer une demande comme abandonnée dans les cas suivants :

(a) if the applicant fails, without reasonable excuse, when required by the Minister under section 23.1,

a) le demandeur omet, sans excuse légitime, alors que le ministre l'exige au titre de l'article 23.1 :

(i) in the case where the Minister requires additional information or evidence without requiring an appearance, to provide the additional information or evidence by the date specified, or

(i) de fournir, au plus tard à la date précisée, les renseignements ou les éléments de preuve supplémentaires, lorsqu'il n'est pas tenu de comparaître pour les présenter,

(ii) in the case where the Minister requires an appearance for the purpose of providing additional information or evidence, to appear at the time and at the

(ii) de comparaître aux moment et lieu — ou au moment et par le moyen — fixés, ou de fournir les renseignements ou les éléments de preuve

place — or at the time and by the means — specified or to provide the additional information or evidence at his or her appearance; or	supplémentaires lors de sa comparution, lorsqu'il est tenu de comparaître pour les présenter;
(b) in the case of an applicant who must take the oath of citizenship to become a citizen, if the applicant fails, without reasonable excuse, to appear and take the oath at the time and at the place — or at the time and by the means — specified in an invitation from the Minister.	b) le demandeur omet, sans excuse légitime, de se présenter aux moment et lieu — ou au moment et par le moyen — fixés et de prêter le serment alors qu'il a été invité à le faire par le ministre et qu'il est tenu de le faire pour avoir la qualité de citoyen.
…	…
Additional information, evidence or appearance	**Autres renseignements, éléments de preuve et comparution**
23.1 The Minister may require an applicant to provide any additional information or evidence relevant to his or her application, specifying the date by which it is required. For that purpose, the Minister may require the applicant to appear in person or by any means of telecommunication to be examined before the Minister or before a citizenship judge, specifying the time and the place — or the time and the means — for the appearance.	23.1 Le ministre peut exiger que le demandeur fournisse des renseignements ou des éléments de preuve supplémentaires se rapportant à la demande et préciser la date limite pour le faire. Il peut exiger à cette fin que le demandeur comparaisse — devant lui ou devant le juge de la citoyenneté pour être interrogé — soit en personne et aux moment et lieu qu'il fixe, soit par le moyen de télécommunication et au moment qu'il fixe.

[16] On June 19, 2017, shortly before the Decisions to treat the Applicants' applications as abandoned, section 5(1)(b) of the Act was repealed by the coming into force of section 1(0.1) of

An Act to amend the Citizenship Act and to make consequential amendments to another Act, SC 2017, c 14.

[17] The following provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] are relevant:

Definitions	**Définitions**
2 (1) The definitions in this subsection apply in this Act.	2 (1) Les définitions qui suivent s'appliquent à la présente loi.
[…]	[…]
permanent resident means a person who has acquired permanent resident status and has not subsequently lost that status under section 46. (*résident permanent*)	***résident permanent*** Personne qui a le statut de résident permanent et n'a pas perdu ce statut au titre de l'article 46. (*permanent resident*)
…	…
Residency obligation	**Obligation de résidence**
28 (1) A permanent resident must comply with a residency obligation with respect to every five-year period.	28 (1) L'obligation de résidence est applicable à chaque période quinquennale.
Application	**Application**
(2) The following provisions govern the residency obligation under subsection (1):	(2) Les dispositions suivantes régissent l'obligation de résidence :
(a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in	a) le résident permanent se conforme à l'obligation dès lors que, pour au moins 730 jours pendant une période quinquennale, selon le cas :

that five-year period, they are

(i) physically present in Canada,

(ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,

(iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province,

(iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, or

(v) referred to in regulations providing for other means of compliance;

(b) it is sufficient for a permanent resident to demonstrate at examination

(i) il est effectivement présent au Canada,

(ii) il accompagne, hors du Canada, un citoyen canadien qui est son époux ou conjoint de fait ou, dans le cas d'un enfant, l'un de ses parents,

(iii) il travaille, hors du Canada, à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale,

(iv) il accompagne, hors du Canada, un résident permanent qui est son époux ou conjoint de fait ou, dans le cas d'un enfant, l'un de ses parents, et qui travaille à temps plein pour une entreprise canadienne ou pour l'administration publique fédérale ou provinciale

(v) il se conforme au mode d'exécution prévu par règlement;

b) il suffit au résident permanent de prouver, lors du contrôle, qu'il se conformera à l'obligation pour la période quinquennale suivant l'acquisition de son statut, s'il est résident permanent depuis moins de cinq ans, et, dans le cas contraire, qu'il s'y est conformé pour la période quinquennale précédant le

contrôle;

(i) if they have been a permanent resident for less than five years, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;

(ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year period immediately before the examination; and

(c) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.

c) le constat par l'agent que des circonstances d'ordre humanitaire relatives au résident permanent — compte tenu de l'intérêt supérieur de l'enfant directement touché — justifient le maintien du statut rend inopposable l'inobservation de l'obligation précédant le contrôle.

…

…

Effect

31 (2) For the purposes of this Act, unless an officer determines otherwise

Effet

31 (2) Pour l'application de la présente loi et sauf décision contraire de l'agent, celui qui est muni d'une attestation est présumé avoir le statut qui y est mentionné; s'il ne peut présenter une attestation de

statut de résident permanent, celui qui est à l'extérieur du Canada est présumé ne pas avoir ce statut.

(a) a person in possession of a status document referred to in subsection (1) is presumed to have the status indicated; and

(b) a person who is outside Canada and who does not present a status document indicating permanent resident status is presumed not to have permanent resident status.

…

…

Permanent resident

Résident permanent

46 (1) A person loses permanent resident status

46 (1) Emportent perte du statut de résident permanent les faits suivants :

(a) when they become a Canadian citizen;

a) l'obtention de la citoyenneté canadienne;

(b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;

b) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;

(c) when a removal order made against them comes into force;

c) la prise d'effet de la mesure de renvoi;

(c.1) on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d);

c.1) la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de

	l’asile;
(d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination to vacate a decision to allow their application for protection; or	d) l’annulation en dernier ressort de la décision ayant accueilli la demande d’asile ou celle d’accorder la demande de protection;
(e) on approval by an officer of their application to renounce their permanent resident status.	e) l’acceptation par un agent de la demande de renonciation au statut de résident permanent.

[18] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], are relevant:

Document indicating status	**Attestation de statut**
53 (1) For the purposes of subsection 31(1) of the Act, the document indicating the status of a permanent resident is a permanent resident card that is	53 (1) Pour l’application du paragraphe 31(1) de la Loi, l’attestation de statut de résident permanent est une carte de résident permanent :
(a) provided by the Department to a person who has become a permanent resident under the Act; or	a) soit remise par le ministère à la personne qui est devenue résident permanent sous le régime de la Loi;
(b) issued by the Department, on application, to a permanent resident who has become a permanent resident under the Act or a permanent resident who obtained that status under the *Immigration Act*, chapter I-2 of the Revised Statutes of Canada, 1985, as it read immediately before the coming into force of section	b) soit délivrée par le ministère, sur demande, à la personne qui est devenue résident permanent sous le régime de la Loi ou à celle qui a acquis ce statut en vertu de la *Loi sur l’immigration*, chapitre I-2 des Lois révisées du Canada (1985), dans sa version antérieure à l’entrée en vigueur de l’article 31 de la

31 of the Act.	Loi.
…	…
Issuance of new permanent resident card	**Délivrance d'une nouvelle carte de résident permanent**
59 (1) An officer shall, on application, issue a new permanent resident card if	59 (1) L'agent délivre, sur demande, une nouvelle carte de résident permanent si les conditions suivantes sont réunies :
(a) the applicant has not lost permanent resident status under subsection 46(1) of the Act;	a) le demandeur n'a pas perdu son statut de résident permanent aux termes du paragraphe 46(1) de la Loi;
(b) the applicant has not been convicted under section 123 or 126 of the Act for an offence related to the misuse of a permanent resident card, unless a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*;	b) sauf réhabilitation — à l'exception des cas de révocation ou de nullité — en vertu de la *Loi sur le casier judiciaire*, le demandeur n'a pas été condamné sous le régime des articles 123 ou 126 de la Loi pour une infraction liée à l'utilisation frauduleuse d'une carte de résident permanent;
(c) the applicant complies with the requirements of sections 56 and 57 and subsection 58(4); and	c) le demandeur satisfait aux exigences prévues aux articles 56 et 57 et au paragraphe 58(4);
(d) the applicant returns their last permanent resident card, unless the card has been lost, stolen or destroyed, in which case the applicant must produce all relevant evidence in accordance with subsection 16(1) of the Act.	d) le demandeur rend sa dernière carte de résident permanent, à moins qu'il ne l'ait perdue ou qu'elle n'ait été volée ou détruite, auquel cas il doit donner tous éléments de preuve pertinents conformément au paragraphe 16(1) de la Loi.

V. Issues

[19] The following issues arise in this application:

1. Did the Minister act reasonably in treating the Applicants' applications for Canadian citizenship as abandoned pursuant to section 13.2(1)(a)(ii) of the *Citizenship Act*?

2. Do sections 31(2)(b) of the IRPA and 53 of the IRPR apply to presume that the Applicants did not have permanent resident status at the time of applying for Canadian citizenship?

VI. Standard of Review

[20] The standard of review applicable to the first issue concerning the Officer's Decisions to treat the citizenship applications as abandoned is reasonableness: *Kamel v Canada (Citizenship and Immigration)*, 2017 FC 946 at para 4.

[21] The second issue is also subject to a standard of review of reasonableness inasmuch as it involves the interpretation of the Respondent's home statutes: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 34; *Canada (Citizenship and Immigration) v Nilam*, 2017 FCA 44 at para 19-21; *Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 at paras 21-25, leave to appeal to SCC granted, 37748 (10 May 2018).

VII. Analysis

A. *Overview*

[22] The core interpretive issue issues contested by the parties concern first, the appropriate interpretation of "permanent resident" in section 5(2) of the Act as determined under the IRPA, and second, whether the Applicants' application is deemed to have been abandoned pursuant to section 13.2(1)(a)(ii) of the Act.

[23] The parties are in agreement that the interpretation of these provisions must apply Professor Driedger's modern principle adopted in numerous Supreme Court decisions that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21.

[24] Despite the first issue concerning the Minister's Decisions to treat the Applicants' applications for Canadian citizenship as abandoned, the parties' submissions focused largely on whether sections 31(2)(b) of the IRPA and 53 of the IRPR should apply to presume that the Applicants did not have permanent resident status for the purposes of section 5(2) the Act. This had the effect of rendering the deemed abandonment issue an alternative, or related question.

[25] Accordingly, the Court will first consider the reasonableness of the Minister's interpretive arguments pertaining to the permanent resident status of Applicants at the time they

applied for Canadian citizenship, after which it will consider the alternative argument of deeming the abandonment of an application pursuant to section 13.2(1)(a)(ii) of the Act.

B. *Do sections 31(2)(b) of the IRPA and 53 of the IRPR apply to presume that the Applicants did not have permanent resident status at the time of applying for Canadian citizenship?*

(1) Granting the Applicants Canadian citizenship when not meeting the permanent residency requirements would undermine the administration of the statutory procedures established to grant citizenship

[26] The Applicants seek to set aside the Officer's Decisions that they abandoned their applications for Canadian citizenship by failing to comply with a requirement to provide additional information pursuant to section 13.2(1)(a)(ii) of the Act.

[27] They do so on the basis that the only reasonable interpretation of section 5(2) of the Act is that they meet all of the requirements for the mandatory grant of Canadian citizenship and that it should therefore be accorded. In particular, they maintain they remain permanent residents unless a final determination has been made that their status has been lost pursuant to provisions of the IRPA, thereby fulfilling that requirement under the Act.

[28] In the Court's view, the two interpretive issues defined above are distinct, but they appear to share the same fundamental obstacle. The Applicants' arguments would frustrate the administration of justice applicable to the granting of Canadian citizenship by preventing an appropriate final determination on the Applicants' permanent residency status as a condition for Canadian citizenship.

[29] The parties acknowledge that the only ground upon which the grant of citizenship to the Applicants can be denied is if they are found not to be “permanent residents” within the meaning of section 5(2) of the Act. This in turn, refers back to the IRPA.

[30] Section 46(1)(b) of the IRPA states that the loss of permanent resident status should occur only upon the final determination of a decision made outside of Canada of a failure to comply with the residency obligations under section 28 of the IRPA. The relevant portions of sections 28(2)(a)(i) and (ii) provide that a permanent resident complies with the residency obligations of a total of 730 days, if during a five-year period, (i) they are physically present in Canada, or (ii) outside of Canada in the case of a child accompanying a Canadian citizen who is their parent.

[31] The facts in the case clearly indicate that the Officer in charge of processing the Applicants’ citizenship applications had initiated a process to determine whether they met the conditions for its grant. The information on their applications indicated that they had not complied with the residency requirements under the IRPA. The Officer sought confirmation that they could establish compliance by a simplified statutory procedure of providing a valid PRC. If they could not establish their permanent residency by that means, they would have to undergo a process for its final determination.

[32] A final determination of permanent resident status is not based exclusively on meeting residency requirements, but also permits exceptions on humanitarian and compassionate grounds. Obviously, this means that a final determination of permanent resident status would

have to occur in the future. The inquiry would consider in the first instance whether the Applicants have permanent resident status, because if so found, there would be no need to consider the further exculpatory conditions.

[33] The Applicants refused to comply with the request of the Officer who was discharging his duties in considering applications for Canadian citizenship. The Applicants argue that the request was not reasonable because the strict and clear meaning attributable to section 5(2) of the Act is that they remained permanent residents at the time of their application. Thus, their submission is that the Act should be interpreted in a mandatory fashion so as to allow them to obtain the privileges of a permanent form of permanent residency (not expiring every five years), topped up by Canadian citizenship, before the Officer could complete his inquiry and set in motion the procedures for finally determining their permanent resident status.

[34] In effect, the Applicants are arguing that Canadian citizenship should be a race to the finish. They should be able to pass freely without restriction through the citizenship granting process to obtain all the benefits of Canadian citizenship, before their status as permanent residents can be determined, in the face of an Officer initiating an inquiry into that very question based on information provided by the Applicants.

[35] In considering the Applicants' submission, the Court understands that there is a fundamental principle relating to the administration of justice that should inform the interpretation of these provisions. That principle would declare that in any circumstance giving rise to a legal determination that may negatively affect a person, it is a logical and imperative

tenet, whether stated or not, that a person cannot benefit by the reasonable delay required in making a juridical determination, so as to render that determination as not serving its full purpose. It is the same principle that largely underlies injunctions and stays. The final determination of the Applicants' permanent resident status would never occur if the Applicants' submissions on interpreting these provisions were accepted.

[36] Accordingly, the statutory provisions being debated by the parties must be interpreted in a fashion to ensure that such an unreasonable outcome is not realized.

(2) Sections 31 of the IRPA and 53 of the IRPR are contextually and purposively relevant to the interpretation of "permanent resident" in the *Citizenship Act*

[37] Where the parties primarily disagree is whether sections 31 of the IRPA and 53 of the IRPR relating to PRCs are contextually relevant for interpreting the meaning of "permanent resident" in section 5(2) of the Act.

[38] Section 31(1) of the IRPA requires that a permanent resident be provided with a PRC. Section 53(1) of the IRPR provides that for the purposes of section 31(1), a PRC is indicative of the permanent resident status of its holder. Most significantly, section 31(2)(b) of the IRPA indicates that a person who is outside of Canada and who does not present a PRC is presumed not to have permanent resident status. The Applicants do not deny that they did not meet the residency requirements of section 28 of the IRPA at the time of applying for citizenship; they simply say that their loss of permanent resident status had not been determined at the time they applied.

[39] The Applicants argue that the Respondent was attempting to use section 31(2)(b) of the IRPA as a provision that caused them to lose their permanent resident status if they were outside of Canada without a valid PRC. In the same vein, the Applicants submit that the Minister is arguing a false premise: namely that permanent resident status somehow expires, lapses or is in limbo under section 31.

[40] As described above, section 31(2)(b) presumes the legal existence of a fact that a person outside Canada who does not present a valid PRC no longer maintains a permanent resident status, with the obvious caveat under the legislation that ultimate loss of status awaits a final determination. By section 31(2)(b), the status is not in limbo, it is legally and factually presumed to have been lost for the purposes of the IRPA, unless otherwise finally determined.

[41] The application of section 31(2)(b) in turn relates to whether, as a fact based upon the circumstances of the case where the Applicants refuse to comply with a reasonable request, it can be concluded that they did not present a valid PRC. This also raises the issue of whether the Officer had initiated the process that could lead to a final determination of the Applicants' permanent resident status.

[42] It is the Court's view that for the reasons described above the factual circumstances should be determined constructively with the view to achieving the purpose of the provisions regarding permanent resident status. When information provided by the Applicants in their application is (1) indicative of the conclusion that they had not met the residency requirements, and when (2) the Applicants have unilateral control over whether to respond to a request that (3)

may affect their legal status of being presumed, or not, to be a permanent resident and therefore eligible for Canadian citizenship, both of which are privileges, the refusal to respond to the Officer's reasonable request should be "constructively" determined as a fact that the Applicants did not present a valid PRC.

[43] The term "constructive" for the purpose of finding a constructive fact is defined in *The Law Dictionary, Featuring Black's Law Dictionary, 2nd Ed* (online), as follows:

> That which Is established by the mind of the law in Its act of construing facts, conduct, circumstances, or instruments; that which has not the character assigned to it in its own essential nature, but acquires such character in consequence of the way in which it is regarded by a rule or policy of law; hence, inferred, implied, made out by legal interpretation.
>
> [Emphasis added]

[44] Examples are constructive dismissal, constructive possession, constructive crimes etc. In this instance the Court's finding is of a constructive factual conclusion that the Applicants could not present a valid PRC to the Officer.

[45] It is also obvious that the Court finds that this constructive factual determination that the Applicant was presumed not to have permanent resident status at the time of applying for Canadian citizenship was in response to the request of the Officer. This constitutes the first step in the possible process that would lead to a final determination of the Applicants' status.

[46] Accordingly, at the time the Applicants applied for Canadian citizenship, they were presumed not to be permanent residents. They therefore did not meet the requirements of section

5(2) of the Act, which incorporates the definition of “permanent resident” and related presumptions from the IRPA, until the presumption was set aside by a final determination process.

[47] This interpretation of the IRPA provisions is consistent with the underlying principle expressed above that the Applicants should not benefit by the reasonable delay required to make the final determination as to their permanent resident status concerning their eligibility for acquiring Canadian citizenship. Otherwise, the Applicants’ arguments would render the final determination process of no utility by allowing the Applicants to become permanent residents, despite the presumption that it has been lost before finally determining whether they possess the necessary permanent resident status required for Canadian citizenship.

(3) The extrinsic evidence regarding section 46(1)(b) of the IRPA demonstrates that Parliament’s intention with respect to the meaning of “permanent resident” in the *Citizenship Act* would not apply to a person whose permanent resident status was subject to being finally determined

[48] Section 46(1)(b) is one of various provisions enacted by Parliament intended to protect and assist permanent residents who are living and travelling outside of Canada. These include provisions providing permanent residents with a PRC to create a legal presumption that they have permanent resident status. As seen above, the provision also works with other provisions intended to aid immigration officers when determining, in a presumptive fashion, the permanent residency status of persons situated outside of Canada based on the validity of a PRC. The Court concludes that this is to facilitate consideration of their permanent resident status in accordance with the IRPA.

[49] More specifically, the intention of Parliament in enacting section 46(1)(b) was to state that any determination made abroad of a person's permanent resident status would be subject to a final determination, including appeal rights. Again as mentioned, this was to allow for various mitigating factors to be considered that would permit renewal of permanent resident status despite breach of the residency requirements, the most important being the consideration of humanitarian factors.

[50] The Court's conclusion regarding the intention underlying section 46(1)(b) is supported by the extrinsic evidence introduced by the Applicants. This evidence consists of the Hansard transcript of the proceedings of the Parliamentary committee that discussed sections 31 and 46(1)(b) of the IRPA (House of Commons, Standing Committee on Citizenship and Immigration, *Evidence*, 37th Parl, 1st Sess, Meeting No 3 (13 March 2001) at 10:20), the relevant excerpts of which are set out below with the Court's emphasis:

> Ms. Joan Atkinson: Okay.
>
> I should point out on status documents that this provision in subclause 31(1) provides the authority to issue status documents to permanent residents. … This will provide permanent residents with a document that will permit them to be able to travel more easily in and out of Canada.
>
> …
>
> The Chair: Is this travel document, or the new card, going to make it easier for those people who have yet to become citizens to go abroad and come back into their own adopted country?
>
> Ms. Joan Atkinson: The short answer is yes. … A permanent resident card, when they become a permanent resident, does not limit their travel outside of Canada. And for any permanent resident, this card will certainly facilitate their return, because it will be a much better document to show to airlines or other transportation companies to prove that they are permanent residents and have the right to enter Canada.

…

Now, it's not an absolute requirement that a permanent resident have the card. The card indicates their status, but it is not the absolute and final proof of their status. And that's an important distinction, because there have been concerns raised about what happens when the card expires, if the permanent resident loses their status, and so on. That is not the case. The card is indicative of their status. It will be necessary for permanent residents when they travel outside of Canada in order to get back into Canada to show to an airline company. But even if they don't have the document, subclause 31(3) of this provision allows us to issue a permanent resident facilitation document to allow them to get back to Canada if they're outside of Canada and they don't have the card or their card has expired.

Either they comply with the residency obligations so they're definitely still a permanent resident – [or] we have made a determination that, on humanitarian and compassionate grounds, they're still a permanent resident – or they were physically present in Canada at least once in the last year. We will give them the facilitation document to allow them to get back to Canada, even if the card has expired.

So if the card has expired, it doesn't mean you've lost your status.

…

Ms. Joan Atkinson: Yes, and to deal with some of those concerns, we think we have a better process outlined, if you will, in Bill C-11.

I pointed out before that permanent residents have a right to enter Canada if they're still permanent residents. I didn't point out right at the beginning that we have a definition of "permanent resident". A "permanent resident" is a permanent resident until such time as a final determination on his or her status is made under clause 46 of the act. For example, for an individual who is been outside Canada and the card has expired, that person applies to a visa office overseas for a facilitation document to get back to Canada. The visa officer can decide whether the person meets the residency obligation, there are humanitarian and compassionate considerations, or the person has been in Canada at least once in the last year, regardless of whether the residency obligation is met. The officer will then give a facilitation document to allow the person to get back to Canada. A final determination on loss of

> status is not made until after the person has filed an appeal and that appeal has been heard and determined.
>
> We think the changes we've made to Bill C-11 provide ample protection for permanent residents to assure them that they can get back to Canada, that they have the right to enter Canada, that they have the right to have their case heard, and that they have the right to an appeal to an initial determination made on their status. A final decision is not made until after their appeals have been exhausted.

[51] Contrary to the Applicants' arguments, the Court finds that the foregoing extrinsic evidence of Parliament's intent describes the import of section 46(1)(b) to be in relation to section 31 of the IRPA. It is intended to have procedural effect only. It ensures a proper and exhaustive vetting of the permanent resident status of a non-resident who has presumptively lost that status to ensure the status is lost only after a final determination.

[52] The evidence confirms that permanent resident status should not immediately be lost upon the expiration of an applicant's PRC because Canada is a society based on the Rule of Law. Ms. Atkinson speaks to the anticipated situation of a visa officer deciding whether the person meets the residency obligations or not. At the same time, she recognizes that benefits as valuable as permanent resident status should not be taken away from persons outside of Canada without an appropriate full determination. As a compassionate society, she describes other factors to be considered when deciding whether the loss of status based on residency should be rectified or mitigated in its impact, if appropriate to do so.

[53] Overall, there is nothing in the extrinsic evidence which hints at allowing persons whose status is being investigated, where a presumption may reasonably arise that they no longer

possesses permanent resident status and that question still requires a final determination, to gain the status of a Canadian citizen before the final determination on residency can be made.

[54] On the basis of the extrinsic evidence outlining the intention of Parliament in adopting these provisions, the Court concludes that section 46(1)(b) was not intended to affect the presumption under section 31 of the IRPA that the Applicants had lost their permanent resident status for failure to present a PRC until such time as their status was finally determined.

(4) Minors are not exempted from the residency requirements

[55] The Applicants contend that "Parliament chose not to include a residency requirement in the Citizenship Act as a prerequisite for minors like the Applicant[s] to obtain [c]itizenship". They claim that the Respondent is retroactively reading in requirements that Parliament chose not to include.

[56] The Applicants appear to be ignoring the full extent of what is meant by residency requirements that pertain to a citizenship application. It is acknowledged that the applicable version of the Act at the time of the Applicants' application did not impose residency requirements on minors under section 5(1)(c)(i) and (ii), such as was required of adult applicants. At the time these matters arose, adult applicants were required to demonstrate a physical presence in Canada for four of the six years preceding the date of their citizenship applications and a physical presence of at least 183 days during each of the four years (of which subparagraph (ii) still has application under paragraph 5(d), except that only three of four years of physical presence is now required).

[57] Yet, the residency requirements in the IRPA applied to the minor Applicants (and continue to do so) as conditions to citizenship applications. Indeed, the Applicants acknowledged during the hearing the obvious fact that section 5(2) of the Act requires minors to be permanent residents to obtain citizenship.

[58] Moreover, the intention of Parliament intending to impose residency requirements on minors is specifically addressed in section 28 of the IRPA, particularly subparagraph 28(2)(a)(ii). It provides that "a permanent resident [i.e., the children] complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent" (emphasis added). As the children were accompanying their mother outside of Canada, who was not a Canadian citizen, they do not meet the residency requirements of the IRPA.

[59] Although it requires interpreting both the IRPA and the Act together, and acknowledging that the residency requirement imposed on minors is only that they be physically present in Canada for two years in each five-year period, it remains that they must meet these requirements.

[60] Moreover, the Court remains of the view that the principle underlying requiring a physical presence in Canada for citizenship is the same for both adults and children. That purpose it to undergo a manner of inculcation process to absorb Canadian values and how Canadians are expected to conduct themselves. These values are probably best expressed by the rights and obligations protected and imposed by the *Canadian Charter of Rights and Freedoms*.

[61] The inculcation of Canadian values has been described as the process of being "Canadianized". It was best expressed by Justice Muldoon in the matter of *Pourghasemi, Re* (1993), 62 FTR 122 at para 6 (TD), as follows:

> So those who would throw in their lot with Canadians by becoming citizens must first throw in their lot with Canadians by residing among Canadians, in Canada, during three of the preceding four years, in order to Canadianize themselves. It is not something one can do while abroad, for Canadian life and society exist only in Canada and nowhere else.

[62] In essence, the intention of the residency requirements, however applied under the Act, is that permanent residents, even with some degree of exception for minors living outside Canada as long as they are accompanying their Canadian citizen parents, will undergo a process of Canadianization.

C. *The Minister acted reasonably in treating the Applicants' applications for Canadian citizenship as abandoned pursuant to section 13.2(1)(a)(ii) of the Citizenship Act*

[63] The principal debate as to whether the Minister acted reasonably was based upon the Applicants' argument that by their interpretation of the Act and IRPA, it was clear that they had not lost their permanent resident status and therefore any request for information by the Minister was unreasonable. The Respondent joined issue with the Applicants in this debate, when in the Court's view, it should have been unnecessary to do so.

[64] Because there appears to be a view that the Minister must respond to refusals to provide information based upon interpretations of the application of Canadian immigration and

citizenship statutes to persons refusing to provide the information, the Court wishes to disabuse any applicant in the future from taking such a similar tack.

[65] It is the Court's view that the effective administration of the IRPA and Act requires applicants seeking privileges under these statutes to understand that they are required to strictly comply with an officer's requests for information or directives, unless obviously unreasonable to comply. Any failure to comply with such requests, with the matter ultimately being brought before this Court, should result in an automatic award of costs unless the Court can somehow see some merit in the refusal, even if not upheld.

[66] In this matter, the Officer is acting pursuant to section 23.1 of the Act. It empowers the Minister to require an applicant to provide any additional information or evidence relevant to his or her application. Thereafter, and pursuant to section 13.2(1)(a)(i) of the Act, the Minister may treat an application as abandoned if the applicant fails without reasonable excuse to provide the additional information or evidence requested.

[67] The meaning attributed to "relevant" is significant. The Merriam-Webster online dictionary includes the following pertinent definitions of "relevant":

- having significant and demonstrable bearing on the matter at hand;
- affording evidence tending to prove or disprove the matter at issue or under discussion.

[68] However, considering that the Minister's authority to obtain documentary information is with respect to a privilege being sought and not a right, the Court concludes that the dictionary

definition of “relevant” is too narrow for the proper administration of the Act. Particularly, deference is owed to officers administering immigration and citizenship statutes based on their daily work experience that requires them to obtain information from applicants on an ongoing basis. A broader interpretation of the term “relevant” is appropriate in the context of the privileges being sought and the duties and obligations of officers administering these Acts.

[69] In searching for a more appropriate definition of “relevant”, the Court considers the principles applying in the Federal and Canadian civil litigation courts to be better suited for the purpose of these statutes. This conclusion is supported by the logic that the obligation on persons to produce relevant information when seeking privileges provided by Canadian immigration and citizenship laws should not be less comprehensive than that imposed on parties in adversarial contexts that normally encroach on rights of privacy to control information in their possession.

[70] The definition of “relevant” as pertains to documents and information in civil litigation was described by Justice Nadon in the matter of *Apotex Inc v Canada*, 2005 FCA 217 at para 15:

> [15] As the issue before the learned Prothonotary was one of relevancy, I should indicate that the correct approach to that issue at the stage of discovery was enunciated by this Court in *Everest & Jennings Canadian Ltd. v. Invacare Corp.*, [1984] 1 F.C. 856, where Urie J.A., writing for the Court at page 2 of the decision, stated:
>
> [...] The correct test of relevancy for purposes of discovery was, in our opinion, propounded by McEachern C.J. in the case of *Boxer and Boxer Holdings Ltd. v. Reesor, et al. (1983)*, 43 B.C.L.R. 352 (B.C.S.C.) When, at page 359, he said:
>
> It seems to me that the clear right of the plaintiffs to have access to documents which may fairly lead them to a train of inquiry which may directly or indirectly advance their case or damage the defendant's case particularly on the crucial question of one party's

> version of the agreement being more probably correct than the other, entitles the plaintiffs to succeed on some parts of this application.
>
> [Emphasis added]

[71] Applying Justice Nadon's definition of relevance to section 23.1 of the Act would mean that applicants seeking privileges under Canadian immigration and citizenship statutory provisions must provide all relevant documents and information that may fairly lead them [the Officer] to a train of inquiry which may [not would] directly or indirectly advance the inquiry. Any reasonable excuse justifying a refusal must be formulated in recognition that very little in the way of information may be held back as not relevant.

[72] Nevertheless, in this matter the Officer does not require a more liberal definition of relevance to obtain additional information or evidence that is pertinent to the Applicants' applications. The Officer's direction and inquiry are set out at paragraph 13 to 15 of the Respondent's memorandum, as follows:

> 13. On February 16, 2017, the Officer sent counsel for the Applicant, a Request for Documentary Evidence of Residence in Canada (form CIT 0520). The Officer requested additional documents in relation to the Applicant and her sister's citizenship application, specifically: photocopies of all passports for the relevant period and updated Permanent Resident Cards.
>
> 14. The Applicant and her sister were also asked for documentary proof, additional information and supporting documents that the Applicant and her sister had maintained their permanent resident status. They were instructed, if they were outside Canada, to attend at the nearest Canadian Embassy for determination of their permanent residence status.
>
> 15. On March 16, 2017, counsel for the Applicant submitted to IRCC: partial submissions of the requested documents, and

> translated copies of their passports. Counsel submitted that the Applicants remained permanent residents, without complying with the request to show proof of a valid permanent resident status.
>
> [Emphasis added]

[73] The Applicants' more fulsome description of their replies is found at paragraph 20 of Tala Saab's memorandum, as follows:

> 20. […] The Applicant's Representative wrote to the Citizenship Officer stating that the *Citizenship Act* only requires that the Applicant be a permanent resident who has not lost this status – and that the Applicant had not lost her status pursuant to the *Immigration and Refugee Protection Act*. The Applicant's Representative further wrote that she was not aware of any legal requirement that the Applicant submit an application for a Permanent Resident travel document in order to be granted Canadian Citizenship. The Applicant's Representative asked that the Citizenship Officer provide the legal justification for this request. The Applicant's Representative requested that the Officer continue to process the citizenship application in accordance with the *Citizenship Act* and applicable regulations.
>
> [Emphasis added]

[74] To establish a reasonable excuse not to fully respond to an Officer's demand for relevant information, the Applicants would have had to demonstrate either that the evidence requested would not even possibly be relevant to the application, or provide reasons which prevented them from furnishing the material requested. Few justifications come to mind, being limited mostly to not having knowledge of the information, or it not being in the possession and control of the Applicants.

[75] In only the most exceptional and obvious circumstances should a reasonable excuse to refuse a request for relevant information be in the form of a legal argument regarding the

outcome of a status, or other decision pertaining to an applicant's immigration or citizenship status for which the information is being obtained. None come to mind, except some form of privilege.

[76] Particularly, the Applicants should not be allowed to reverse the onus on them by asking the Officer to justify why the information sought is relevant. The reasonable right of an applicant is to provide submissions on why the information sought is not relevant − a task normally of very high order if not obvious − or if in anticipation of the threat of a declaration of abandonment, provide reasonable excuse for refusing to provide the information requested in the circumstances.

[77] No apparent prejudice should normally arise by providing the requested information, inasmuch as applicants can challenge any decision that negatively affects them based upon information provided under protest that may have contributed to the decision.

[78] In this matter, there is no question of the relevance of the materials sought by the Officer. No obvious reasonable excuse has been offered by the Applicants to refuse to provide the information requested that could not have been made at the final determination of their permanent resident status. The Decisions treating the Applicants' applications as abandoned were entirely reasonable.

VIII. Conclusion

[79] In light of the absence of a reasonable excuse to justify not providing the requested relevant information to the Officer, in addition to the Court's rejection of the Applicants' justification to refuse a request claiming that they were permanent residents at the time of their applications for citizenship, there is no need for the Court to comment on their *mandamus* applications.

[80] For the reasons provided, the two applications are dismissed. Despite the Applicants requesting costs on a solicitor-and-client basis, the Respondent did not seek costs, as it would have been entitled to, and none will be ordered in the circumstances.

[81] No questions were proposed for certification on appeal and none are certified.

JUDGMENT in T-1169-17 and T-1170-17

THIS COURT'S JUDGMENT is that the applications are dismissed without costs and no questions are certified for appeal

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1169-17
STYLE OF CAUSE:	SAMA SAAB (by her Litigation Guardian, SAMER SAAB) v. MCI TALA SAAB (by her Litigation Guardian, SAMER SAAB) v. MCI
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 24, 2018
JUDGMENT AND REASONS:	ANNIS J.
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