

Federal Court



Cour fédérale

**Date: 20190507**

**Docket: T-1685-18**

**Citation: 2019 FC 590**

**Ottawa, Ontario, May 7, 2019**

**PRESENT: The Honourable Mr. Justice Mosley**

**BETWEEN:**

**ABDELRAHMAN EL SAYED NADA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicant seeks an order of *mandamus* to compel the Minister of Citizenship and Immigration (the Minister) to grant the Applicant Canadian citizenship. The sole issue is whether the Minister is under a public duty to grant the citizenship, or whether the duty is properly suspended pending resolution of an investigation regarding the citizenship of the Applicant's father.

[2] For the reasons below, the application is dismissed. The Minister's decision to suspend the Applicant's citizenship application while investigating his father's citizenship is reasonable. As such, the Minister has no public duty to act and the *mandamus* test is not met.

## II. **Background**

[3] The Applicant, a permanent resident, applied for citizenship as the child of a Canadian citizen on July 11, 2014, under subsection 5(2) of the *Citizenship Act*, RSC 1985, c C-29 (the Act). On January 16, 2015, Citizenship and Immigration Canada, now known as Immigration, Refugee and Citizenship Canada (hereafter, IRCC), suspended the Applicant's citizenship application under section 13.1 of the Act due to concerns with his father's citizenship.

[4] The Applicant's father received Canadian citizenship on February 26, 2002. On October 8, 2003, the Respondent asserts, IRCC received information leading the Department to initiate citizenship revocation proceedings against the father. IRCC alleged that he had failed to disclose all of his absences from Canada in the four years before the date of his citizenship application. It appears that IRCC referred these proceedings to initiate the revocation on November 6, 2003. However, IRCC advised the Applicant's father of its intent to have his citizenship revoked only on August 19, 2015. IRCC has never explained why it waited almost 12 years to advise the Applicant's father of its intent to revoke his citizenship.

[5] The administrative process for revocation of citizenship in place in 2003 was struck down by the Federal Court in 2017: *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473.

A new process has been implemented by IRCC and the Department says that its investigation of the father's citizenship remains in progress.

[6] The Applicant became a permanent resident in 2004. It is not clear from the record when he came to Canada. He did not apply for citizenship until, as noted, July 11, 2014. Since then, despite multiple requests, his application has not been processed and he was not informed that it was suspended in January 2015. This was confirmed by IRCC only on October 5, 2018, after these proceedings had been initiated.

### III. Issue

[7] The parties have proposed questions for the Court's consideration that turn on whether the test for *mandamus* has been met on the facts of this case. I would frame the issue somewhat differently:

Whether the Minister reasonably suspended the Applicant's citizenship application pursuant to section 13.1 of the Act while investigating whether his father's citizenship should be revoked.

### IV. Relevant legislation

[8] The Federal Court has jurisdiction to grant *mandamus* under sections 18, 18.1 and 44 of the *Federal Courts Act*, RSC 1985, c F-7.

[9] The Act has been repeatedly amended since the Applicant's application was submitted. There are complex transitional provisions. The Federal Court has previously confirmed that in a case such as the Applicant's, subsection 5(2) applies as it existed on June 10, 2015, with the

additional requirement of paragraph 5(2)(b) as it existed on June 11, 2015: *GPP v Canada (Minister of Citizenship and Immigration)*, 2018 FC 562 at para 32 [*GPP FC*], aff'd 2019 CAF 71 [*GPP FCA*].

[10] The Federal Court has also confirmed that section 13.1 of the Act, which came into force on August 1, 2014, applies retroactively to applications received but not processed by August 1, 2014, by operation of the transitional provisions contained in the *Strengthening Canadian Citizenship Act*, SC 2014, c 22, section 31: *GPP FC*, above at para 34.

[11] The relevant provisions of the Act, therefore, read as follows:

**Grant of citizenship**

**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 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. [and]

**(b)** the person has, subject to the regulations, no unfulfilled conditions under that Act relating to his or her status as a permanent resident;

**Attribution de la citoyenneté**

**5(2)** Le ministre attribue en outre la citoyenneté, sur demande qui lui est présentée par la personne autorisée par règlement à représenter celui-ci, 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*. [et]

**b)** le mineur a, sous réserve des règlements, satisfait à toute condition rattachée à son statut de résident permanent en vertu de cette loi;

**Suspension of processing**

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

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

**Suspension de la procédure d'examen**

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

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

V. **Legal test**

A. *Mandamus*

[12] The Federal Court of Appeal has listed eight prerequisites to meet before a *mandamus* order can issue: (1) there is a public duty to act; (2) the duty is owed to the Applicant; (3) there is a clear right to performance of that duty; (4) where the duty is discretionary, the discretion is fettered and spent; (5) no other adequate remedy is available to the Applicant; (6) the order sought will be of some practical value or effect; (7) there is no equitable bar to the relief sought;

and (8) the balance of convenience favours issuing the order: *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 at 766–769, 162 NR 177 (FCA) [*Apotex*].

[13] The third factor, a clear right to performance of that duty, has been expanded. It requires the Applicant to have satisfied all conditions precedent giving rise to the duty. It also requires a prior demand for performance of the duty, reasonable time to comply with the demand and a subsequent refusal, either express or implied (such as through unreasonable delay): *Apotex*, above at 767.

#### B. Reasonableness

[14] The Applicant submits, and I agree, that to the extent that the Minister must interpret the *Citizenship Act*, the standard of review for that interpretation is reasonableness. A decision is reasonable if it is justified, transparent, intelligible, and falls within a range of possible, acceptable outcomes defensible in fact and in law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47. Where the individual's interests are high, the Court may apply the reasonableness standard in a more exacting way: *Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132 at para 36.

#### VI. Analysis

[15] In his Memorandum of Fact and Law, the Applicant submitted arguments on all parts of the *mandamus* test. As the only issue between the parties and the sole issue addressed at the hearing is whether there is a public legal duty for the Minister to act, only this factor is discussed.

[16] Respecting the public legal duty to act, the Applicant submits that the word “shall” in *Citizenship Act* section 5(2) imposes a mandatory duty on the Minister to grant citizenship to a minor child: *Interpretation Act*, RSC 1985, c I-21, s 11. As the Applicant has no unfulfilled conditions, the Minister must grant him citizenship.

[17] The Respondent submits that there is no public duty for the Minister to act as the Applicant’s application is validly suspended under section 13.1 of the Act due to the Applicant’s father’s ongoing revocation investigation. The Applicant does not dispute that a valid suspension would preclude an order of *mandamus*; rather, the Applicant argues that the suspension in this case is *ultra vires* and constitutes an abuse of process.

[18] The suspension is *ultra vires*, the Applicant argues, because section 13.1 applies in three instances, none of which apply to him. There is no contention that sections 20 or 22 apply to the Applicant. Further, there is no investigation underway as to whether he should be subject to inadmissibility proceedings or a removal order. He was not included on his father’s application and will not have indirectly misrepresented anything his father is alleged to have misrepresented. A finding that his father misrepresented, then, will not lead to an admissibility hearing for the Applicant.

[19] Thus, the Applicant submits, this case may be distinguished from *Chen v Canada (Citizenship and Immigration)*, 2017 FC 1171 at para 41, which held that it was reasonable to suspend a citizenship application under section 13.1 pending an investigation into an Applicant’s parent’s misrepresentations.

[20] No investigation is required to determine whether he meets the citizenship requirements, the Applicant contends. And on a grammatical and ordinary interpretation, “meets the requirements,” as employed in section 13.1, must be read in the present tense as of the time of his application. At that time, he argues, it was indisputable that he did meet the requirements as his father’s citizenship was still valid. IRCC’s concern, the Applicant submits, is with what might happen in the future, i.e., if his father’s citizenship were to be revoked.

[21] While at first impression it appears odd that IRCC failed to inform the Applicant that his application was suspended until these proceedings were initiated, this Court has held that the Department is not required to give notice in such circumstances: *Niu v Canada (Citizenship and Immigration)*, 2018 FC 520 at para 12 [*Niu*]. And if an application is validly suspended, the Federal Court of Appeal has held that there is no public duty to act: *Canada (Citizenship and Immigration) v Nilam*, 2017 FCA 44 at para 27 [*Nilam FCA*]; see also *Niu*, at para 3.

[22] The Applicant urges the Court to follow the reasoning in *Godinez Ovalle v Canada (Citizenship and Immigration)*, 2015 FC 935 at paras 65–66 [*Godinez Ovalle*], in which it was held that section 13.1 could not be used to suspend a citizenship application while awaiting the outcome of cessation proceedings to determine whether an Applicant met citizenship requirements.

[23] In *Niu*, the Court found that it was unable to read in section 13.1 a restriction that the provision could only apply where the Applicant was under investigation. Moreover, the Court observed that parents’ entitlement to citizenship may be relevant to determining whether an



Applicant “meets the requirements” of the *Citizenship Act: Niu*, above at para 5. The Court’s reasoning in *Niu* was not based on *Chen*, as the Applicant argues. Rather, the Court used *Chen* as an example of one situation that could arise. The analysis of section 13.1 in *Godinez Ovalle* was not necessary for the decision and was therefore *obiter*. As a matter of judicial comity, I see no reason to prefer *Godinez Ovalle* over *Niu*, a later decision.

[24] With respect to whether the suspension is an abuse of process, the Applicant contends that IRCC first received information relating to the alleged misrepresentations in October 2003 and there is no evidence of any further investigation being undertaken. Given the passage of time, he argues that it would be abusive to bring revocation proceedings against his father, who would be limited in his ability to defend himself against the allegations. Whether that is true or not, it is an argument for the father to advance in responding to the investigation of his citizenship. It does not, in my view, support the application for *mandamus* in this matter.

[25] While unreasonable delay can result in the grant of *mandamus*, it is not for the Court to dictate the length of an investigation. This Court accepted in *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473 that an already overburdened revocation system had been exposed to substantial pressure by an extensive fraud investigation in 2009. The volume of cases and the changes in the law may have led to unfortunate delays. But the Applicant has sought *mandamus* in this application to expedite his citizenship application, not his father’s investigation.

[26] In the result, I am satisfied that on the record before me, the Minister reasonably suspended the Applicant's citizenship application pursuant to section 13.1 of the Act while investigating whether the father's citizenship should be revoked. There is no public duty to act that requires an order of *mandamus* and this application will, therefore, be dismissed.

VII. **Certified question**

[27] The parties did not propose certified questions when given an opportunity to do so. They were advised that a question respecting the retroactive application of section 13.1 had been certified in a recent Federal Court decision: *GPP FC*. The question certified by Madam Justice Roussel was as follows (in English translation):

Does section 13.1 of the *Citizenship Act*, R.S.C., 1985, c. C-29, allow the Minister to suspend an application for citizenship made before August 1, 2014, that was not finally disposed of before that day?

[28] The appeal was heard by the Federal Court of Appeal on April 4, 2019. The question was answered affirmatively in reasons delivered from the bench: *GPP FCA*.

[29] I see no reason to certify a question in the present matter.

**JUDGMENT IN T-1685-18**

**THIS COURT'S JUDGMENT is that;**

1. The application for judicial review is dismissed, and
2. No questions are certified.

“Richard G. Mosley”

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Judge

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

**DOCKET:** T-1685-18

**STYLE OF CAUSE:** ABDELRAHMAN EL SAYED NADA V THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 18, 2019

**JUDGMENT AND REASONS:** MOSLEY, J.

**DATED:** MAY 7, 2019

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