Federal Court  Cour fédérale

Date: 20200310

Dockets: T-542-19
T-544-19

Citation: 2020 FC 357

Ottawa, Ontario, March 10, 2020

PRESENT: The Honourable Mr. Justice LeBlanc

Docket: T-542-19

BETWEEN:

NOUR ALI NABOULSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: T-544-19

AND BETWEEN:

KHALED ALI NABOULSI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] The Applicants in these two cases seek reconsideration of the judgment I rendered on December 20, 2019 (*Naboulsi v Canada (Citizenship and Immigration)*, 2019 CF 1651) [Judgment] in which I dismissed their applications for judicial review of the decision of a citizenship officer [Officer] that had denied their applications for Canadian citizenship made under section 5(2) of the *Citizenship Act*, RCS 1985, c C-29 [Act].

[2] They claim, based on rule 397(1)(b) of the *Federal Courts Rules*, SOR/98-106 [Rules], that I overlooked a matter that should have been dealt with. That matter is whether, as a matter of law, the legal doctrine of a "lock-in date" also applies to the applicable law at the time that their citizenship applications were "locked-in".

[3] The Applicants also seek in their motions for reconsideration the certification of what they claim to be serious questions of general importance, namely:

a) Does the legal doctrine of "lock-in date" include the applicable law at the time the application was "locked in"? and,

b) Was a Citizenship officer allowed to request supplementary evidence during the processing of a Citizenship application beyond the requirements of subsection 5(2) of the *Citizenship Act* before the coming-into-force of the *Strengthening Canadian*

Citizenship Act SC 2014 c 22 [SCC Act], which allows a Citizenship officer to request supplementary evidence pursuant to subsection 23.1 of the SCC Act?

[4] A brief overview of the factual background of this case is necessary to better grasp the issues raised by the Applicants in their motion for reconsideration. The Judgment offers the following description of this case's procedural history:

> [6] In 2009, the Applicants applied for Canadian citizenship pursuant to subsection 5(2) of the Act, as the minor children of a Canadian citizen. […].
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> [7] On their application forms, they indicated not having left Canada for more than six months since they became permanent residents of Canada in 2003. Along with their applications, they included copies of their permanent resident cards [PR Cards]. However, these cards had expired in 2008.
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> [8] From September 2010 and onwards, a review of the Global Case Management System Notes [GCMS Notes] shows that the citizenship authorities were concerned with issues regarding the Applicants' residency, notably because their father was under investigation for possible residence fraud.
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> [9] On December 30, 2015, the Applicants' father became the subject of citizenship revocation proceedings on the basis that he had obtained his Canadian citizenship by means of false representation, fraud or by knowingly concealing material circumstances. A few months later, on March 31, 2016, their father's Canadian citizenship was revoked. On the same day, the Applicants' applications for citizenship were denied, as it was considered that the requirement of being the minor child of a Canadian parent was no longer satisfied. According to the decision form on record, the other requirement to a subsection 5(2) application – being a permanent resident – was not assessed.
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> [10] On May 10, 2017, the Act's framework for revoking citizenship on grounds of fraud or misrepresentation, which permitted the Respondent, in most cases, to revoke citizenship without providing the individual concerned with the opportunity to make his or her case before an independent decision-maker, was found to be in violation of subsection 2(e) of the *Canadian Bill of Rights,* SC 1960, c 44 (*Hassouna v Canada (Citizenship and*

Immigration), 2017 FC 473 [*Hassouna*]). This decision benefited to a number of similarly situated individuals, including the Applicants' father, who had received a Notice of Intent to revoke their citizenship and had then challenged the constitutional validity of that framework (see *Hassouna*'s companion case: *Monla v Canada (Citizenship and Immigration)*, 2017 FC 668).

[11] As a result of these two judgments, the father's Canadian citizenship was reinstated effective the date it was first granted and the Applicants requested that their citizenship applications be reconsidered. That request was denied. On June 7, 2018, they were granted leave to judicially review that decision. A few weeks later, on July 31, 2018, the Agreement was reached.

[12] According to the Agreement, the Applicants' citizenship applications, dating back to the fall of 2009, would be reopened upon filing a notice of discontinuance of their pending judicial review proceedings and they would be processed under subsection 5(2) of the Act as if the Applicants were still minors. At the time when the Agreement was concluded, they were both adults. The Applicants acknowledged, however, that the reopening of their citizenship applications under the Agreement was no guarantee that they would be granted.

[13] On August 20, 2018, in the course of the reconsideration of their applications, the Officer contacted the Applicants in order to seek additional evidence. She did so, according to her decision, pursuant to section 23.1 of the Act, which had come into force on August 1, 2014, through the *Strengthening Canadian Citizenship Act*, SC 2014, c 22 [SCC Act]. In particular, she requested a copy of any passports and/or travel documents, valid and expired, covering the period between the time the Applicants became permanent residents and the time they filed their citizenship applications in 2009. The Officer was looking for confirmation that the Applicants "did not leave Canada for 6 months or longer since [then]". She also asked for valid PR Cards, as the ones filed with the applications were expired.

[14] The Applicants first refused to provide the Officer with any of the requested information. According to them, the terms of the Agreement were clear and any demands pursuant to section 23.1 of the Act would contravene both the terms and spirit of the Agreement. They also sought leave from the Court to reopen the proceedings that had been settled by the Agreement as they were of the view that the Officer could not legally require them to provide such further evidence.

> [15] On September 14, 2018, the Court, as per Justice Mosley, denied leave on the ground that the Applicants had no reasonable prospect of success if the settled proceedings were to be resurrected. Justice Mosley found that this request to revive these proceedings was premature and would be moot in the event that their citizenship applications were granted, because the Officer had not yet confirmed her intention to apply the current version of the Act.
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> [16] Approximately two months after her first request for further information, the Officer made another request, again pursuant to section 23.1 of the Act. This time, she sought evidence that the Applicants were currently permanent residents. She also informed them that they would need to contact a Canadian visa office abroad in order for their immigration status to be determined. On November 13, 2018, the Applicants reiterated their position that the Agreement prevented the Officer from making such requests, but did provide the Officer with documentary evidence (landing record, copy of emails correspondence between immigration officials and copy of GCMS Notes) that would demonstrate their status and the fact that they had maintained it throughout the whole period.
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> [17] On January 9, 2019, the Officer expressed concerns with the evidence the Applicants submitted on November 13, 2018. She provided the Applicants with an opportunity to respond to said concerns and to submit evidence regarding their immigration status within 30 days. She informed them that the failure to do so would lead to the assessment of their applications based on the information currently on file, which could result in the denial of said applications.
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> [18] On February 6, 2018, the Applicants, once again, responded by reiterating the terms of the Agreement. They also warned the Officer that due to the unreasonable and abusive delaying of the processing of their applications, they would claim damages against her and those responsible for what they considered an abuse of process.

[5] Regarding the agreement the parties entered into in July 2018 with a view of reopening the Applicants' citizenship applications filed in 2009 pursuant to subsection 5(2) of the Act [Agreement], I concluded that neither the letter nor the spirit of the Agreement were violated by

the Officer. Indeed, I was of the view that the Agreement permitted the Officer to inquire into whether the Applicants were permanent residents of Canada in 2009 and, consequently, request additional evidence pursuant to section 23.1 of the Act, which I found to be applicable to the Applicants' citizenship applications by operation of the transitional provisions of the SCC Act. In reaching that conclusion, I examined the conflicting evidence submitted by the parties' legal representatives who negotiated the Agreement as to their understanding of its terms and made the following finding:

> [51] In my view, the Agreement permitted the Officer to inquire into the issue of the Applicants' permanent residence status at the time their applications were filed. Key to this finding is the Applicants' understanding that the Respondent's proposed terms of what would become the Agreement was "in no way a promise of citizenship but only an offer to reopen the citizenship files received on 2009/11/09". If this had to have any meaning, it meant that the permanent resident status issue, stemming from the fact that the Applicants could only provide expired PR Cards in support of their applications, could be looked at by the Officer as the other subsection 5(2) criterion – that of being the children of a Canadian citizen - was no longer at issue given that their father's citizenship had been reinstated back to the date it was first granted.

[6] As a subsidiary finding [Subsidiary Finding], I had also determined that even if section 23.1 of the Act was not applicable to the Applicants' pending citizenship applications due to the Agreement, it would be contrary to the achievement of the purpose of subsection 5(2) of the Act to consider that a Citizenship officer had no authority to inquire further, before the enactment of section 23.1 of the Act, in order to determine whether an applicant fulfilled the fundamental requirements of the Act for grant of citizenship, when a doubt arose from the information that the applicant had himself or herself provided to the officer:

> [54] In any event, as we will see, the Officer was, in my opinion, entitled to obtain information regarding the requirements that were in force in 2009, even if section 23.1 of the Act was

> found not to apply to the Applicants' pending applications due to the Agreement. As I will explain, it would be contrary to the achievement of the purpose of subsection 5(2) of the Act if a citizenship officer had no authority, before the coming into force of section 23.1 of the Act, to inquire further when a doubt that a citizenship applicant did not fulfil the fundamental requirements for grant of citizenship arose from information provided by that applicant.

[7] The following principles pertaining to motions for reconsideration must be kept in mind. First, the filing of a motion for reconsideration does not provide an alternative method of appeal or an occasion to reargue or relitigate the matter (*Benipal v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1302 at para 8).

[8] Second, the failure of the Court to deal in its reasons with a point pleaded and argued by the parties does not fall within the scope of Rule 397(1)(b). An argument raised by a party does not constitute a matter overlooked or omitted pursuant to the terms of Rule 397(1)(b) (*Balasingam v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 448).

[9] A "matter", as it is to be understood pursuant to Rule 397(1)(b) is related to the remedies sought by the moving party. It is not related to an argument that was raised before the Court (*Lee v Canada (Minister of Citizenship and Immigration)*, 2003 FC 867; *Haque v Canada (Minister of Citizenship and Immigration*), [2000] FCJ No 1141).

[10] The Applicants do not argue that I failed to deal with the remedy they asked, but that I rather failed to address a point they argued. This does not fall within the scope of Rule 397(1)(b). In any case, as it appears from the extracts of the Judgment reproduced above, I am satisfied that

I have considered and dealt with the Applicants' argument regarding the doctrine of the "lock-in date" in the Judgment.

[11] In any case, contrary to what the Applicants are now arguing, "the foundational element" of their judicial review proceedings was not related, per se, to the application of the legal doctrine of the "lock-in date". It was rather related to the Agreement and to whether it had been breached by the Officer when she requested that the Applicants provide additional evidence pursuant to section 23.1 of the Act. As indicated above, I considered this argument and concluded that there had been no such breach.

[12] It became clear at the hearing of the Applicants' motions for reconsideration that they are ultimately seeking to have questions of general importance certified in connection with the Subsidiary Finding I made on the assumption that the application of section 23.1 of the Act was ousted by the Agreement.

[13] As a matter of principle, Rule 397 does not permit judgments to be reopened to certify questions. At the conclusion of the hearing on November 4, 2019, I asked counsel whether they wished to propose any questions for certification, pursuant to section 22.2d) of the Act and to Rule 18(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, which provide that the judge must, before rendering judgment, give the parties with an opportunity to request that a serious question of general importance be certified. Both counsel stated that no serious question of general importance emanated from this case. As a result, they did not request any question to be certified.

[14] The Applicants claim however that the Subsidiary Finding was not obvious to counsel at the conclusion of the hearing of their judicial review applications and that, therefore, they can seek certification of questions of general importance even if the Judgment has been rendered.

[15] According to the Federal Court of Appeal, a serious question of general importance must transcend the immediate interests of the parties to the litigation in which it arose and must be dispositive or determinative of an appeal (*Canada (Citizenship and Immigration) v Qui*, 2017 FCA 84 at para 4; *Kunkel v Canada (Citizenship and Immigration)*, 2009 FCA 347 at para 9; *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 11).

[16] At the hearing of these motions for reconsideration, counsel for the Applicants explained that the Subsidiary Finding is likely to affect the many individuals that are in the Applicants' position as a result of this Court's decisions in *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473 and *Monla v Canada (Citizenship and Immigration)*, 2017 CF 668, which led to their father's Canadian citizenship, and that of other similarly situated individuals being reinstated.

[17] However, the Applicants did not provide any evidence as to the number of these similarly situated individuals who had children with pending citizenship applications at the time their Canadian citizenship was reinstated. There is no evidence either as to the number of these children who had become adults at that time. Also, nothing on record shows the number of the individuals within that group, if any, who had signed agreements similar to the Agreement in

order to have their pending citizenship applications determined as if they were still minors or for whom the application of section 23.1 of the Act could be an issue.

[18] Therefore, I am not in a position to determine whether there are individuals in the exact same situation as the Applicants who may be impacted, as a result by the Subsidiary Finding. In other words, there is no evidence that the proposed certified questions transcend the immediate interests of the parties to this case.

[19] But more importantly, I fail to see how seeking the views of the Federal Court of Appeal on the Subsidiary Finding, through the two proposed certified questions, would be dispositive or determinative of the appeal given the Judgment's central finding that the Agreement did not preclude the application of section 23.1 of the Act. In other words, quashing the Subsidiary Finding would have no impact on this central finding and would, therefore not be dispositive of the appeal. As for the central finding, it ought to have been obvious to counsel at the time the Applicants' judicial review applications were heard since it was one of two possible outcomes on this issue. Having declined, at the hearing, to propose the certification of a question of general importance on this issue, counsel for the Applicant should not be permitted, be it directly or obliquely, to challenge this finding at this late stage of the proceedings.

[20] As the Federal Court of Appeal stated in *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 CAF 145 at para 29, "a serious question of general importance arises from the issues in the case and not from the judge's reasons". Such a statement, "reinforces the rule that questions for certification should be proposed before the judge's reasons are rendered,

meaning that Rule 397 does not allow a party to bring a motion for reconsideration for the purpose of proposing a certified question" (*Raina v Canada (Citizenship and Immigration)*, 2011 FC 318 at para 9). This statement fully applies to the Judgment's central finding.

[21] For all these reasons, I find that Rule 397 prohibits the Court, in the circumstances of this case, from reopening the Judgment in order to certify the two questions the Applicants now consider as serious and of general importance.

[22] The present motions for reconsideration will therefore be dismissed.

ORDER in files T-542-19 and T-544-19

THIS COURT ORDERS that:

1. The motions for reconsideration in file T-542-19 and in file T-544-19 are dismissed;

2. No costs are awarded;

3. These Reasons shall be recorded in both Court files T-542-19 and T-544-19.

"René LeBlanc"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-542-19
STYLE OF CAUSE:	NOUR ALI NABOULSI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	T-544-19
STYLE OF CAUSE:	KHALED ALI NABOULSI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MARCH 2, 2020
REASONS FOR ORDER AND ORDER:	LEBLANC J.
DATED:	MARCH 10, 2020

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