

Federal Court



Cour fédérale

Date: 20200427

Docket: T-983-19

Citation: 2020 FC 555

Ottawa, Ontario, April 27, 2020

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

S.R.

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, SR, a citizen of Iran, became a permanent resident of Canada after arriving in the 1990s with his parents. About 20 years later, he applied for Canadian citizenship. While his application was pending, a panel of the Immigration Division found SR to be inadmissible to Canada on security grounds and issued a removal order against him.

[2] SR sought judicial review of the ID's decision and the Federal Court granted him leave. Shortly thereafter, the officer who was seized with SR's citizenship application sent him a letter explaining that he was ineligible for citizenship while subject to a removal order (pursuant to s 5(1)(f) of the *Citizenship Act*, RSC 1985, c C-29; (Act), see Annex for all provisions cited).

[3] In response, counsel for SR informed the officer of the pending judicial review and asked the officer to hold SR's application in abeyance until the Federal Court rendered a decision. The officer refused. The officer pointed out that a citizenship application could be suspended only when awaiting the results of an investigation into an applicant's eligibility for citizenship, which did not apply to SR (citing s 13.1 of the Act).

[4] SR now seeks judicial review of the officer's refusal to suspend consideration of his citizenship application. He argues that the officer had a discretion to delay processing of the application and that the decision not to do so was unfair given the status of his challenge to the removal order. He asks me to quash the officer's decision and order another officer to reconsider his request.

[5] I can find no basis for overturning the officer's decision. The officer's discretion was circumscribed by the provisions of the *Citizenship Act*, which did not allow him to suspend SR's application pending judicial review of a removal order. I will, therefore, dismiss this application for judicial review. I note that SR can now reapply for citizenship since the removal order against him was quashed by Justice Elizabeth Walker in August 2019 (2019 FC 1118).

[6] The sole issue is whether the officer erred in refusing to hold SR's citizenship application in abeyance until the Federal Court ruled on his application for judicial review of the removal order.

II. Did the officer err in refusing to hold SR's citizenship application in abeyance?

[7] SR argues that the officer had a discretion to adjourn consideration of SR's citizenship application in order to ensure a fair process (*Prasad v Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560). That discretion exists, according to SR, even if it is not explicitly recognized in a statute or regulation.

[8] I agree with SR that the officer may have a discretion to adjourn a proceeding in certain circumstances. However, that discretion is limited by the statutory framework within which the officer is acting.

[9] Here, the *Citizenship Act* states the general proposition that citizenship cannot be granted to a person who is subject to a removal order (s 5(1)(f)). Further, a removal order remains in effect until it is finally overturned by a tribunal or court (s 2(2)(c)). SR was under a removal order at the time his citizenship application was under consideration. The fact that the removal order was being challenged in this Court did not have any effect on the validity of the order. Those two statutory realities could not be altered by the citizenship officer.

[10] SR asked the officer to hold his application in abeyance until the Federal Court had ruled on his application for judicial review. The officer consulted the *Citizenship Act* and noted that his

sole power to suspend consideration of an application for citizenship derived from s 13.1, which provides that an application may be suspended for as long as necessary to receive the results of an investigation or inquiry into the applicant's eligibility, or other related issues.

[11] In my view, the officer correctly concluded that he had no authority to suspend or hold in abeyance an application for citizenship except in the circumstances described in s 13.1.

[12] The applicant appropriately cites *Prassad* for the proposition that administrative decision-makers have a discretion to grant adjournments to ensure fairness. But *Prassad* itself recognizes limits on that discretion.

[13] In *Prassad*, the Supreme Court of Canada accepted the general proposition that administrative decision-makers are “masters in their own house” in the “absence of specific rules laid down by statute or regulation” (para 16). Within those parameters, adjournments are within the discretion of decision-makers. In addition, the Court stated that a decision-maker is not required to adjourn an inquiry to await the outcome of another proceeding (para 23). If that were so, it would amount to the creation of an automatic stay not contemplated by the legislative scheme (para 24).

[14] Here, the officer was constrained by the applicable provisions of the *Citizenship Act*. SR was the subject of a removal order that was considered valid until overturned. A person in those circumstances cannot be granted citizenship. An officer cannot suspend consideration of a

citizenship application unless it is necessary to allow an investigation to be completed. In effect, SR was asking the officer for a stay, which the officer had no authority to grant.

[15] Accordingly, the officer did not err in refusing to hold SR's application in abeyance pending the outcome of his application for judicial review.

III. Conclusion and Disposition

[16] The officer correctly denied SR's request to hold his application for citizenship in abeyance. The officer had no authority to grant that request. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance to be certified, and none is stated.

JUDGMENT IN T-983-19

THIS COURT'S JUDGMENT is that the application for judicial review is denied, and no question of general importance is stated.

"James W. O'Reilly"

Judge

Annex

Citizenship Act, RSC 1985, c C-29

Interpretation

2 (2) For the purposes of this Act,

...

(c) a person against whom a removal order has been made remains under that order

(i) unless all rights of review by or appeal to the Immigration Appeal Division of the Immigration and Refugee Board, the Federal Court of Appeal and the Supreme Court of Canada have been exhausted with respect to the order and the final result of those reviews or appeals is that the order has no force or effect, or

(ii) until the order has been executed.

Grant of citizenship

5 (1) The Minister shall grant citizenship to any person who

(a) makes application for citizenship;

...

Loi sur la citoyenneté (LRC (1985), ch C-29)

Interprétation

2 (2) Pour l'application de la présente loi :

[...]

c) une mesure de renvoi reste en vigueur jusqu'à, selon le cas :

(i) son annulation après épuisement des voies de recours devant la section d'appel de l'immigration de la Commission de l'immigration et du statut de réfugié, la Cour d'appel fédérale et la Cour suprême du Canada,

(ii) son exécution.

Attribution de la citoyenneté

5 (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

a) en fait la demande;

[...]

(f) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.

f) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20.

Suspension of processing

Suspension de la procédure d'examen

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

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

(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; and

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;

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-983-19

STYLE OF CAUSE: S.R. v THE MINISTER OF CITIZENSHIP AND
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DATE OF HEARING: FEBRUARY 26, 2020

JUDGMENT AND REASONS O'REILLY J.

DATED: APRIL 27, 2020

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