

Federal Court



Cour fédérale

Date: 20201109

Docket: T-1014-19

Citation: 2020 FC 1029

Montréal, Québec, November 9, 2020

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

ALI REZA ONGHAEI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Ali Reza Onghaei, the Applicant, seeks an Order of *Mandamus* ordering the Minister of Citizenship and Immigration (the Minister) to render a decision regarding his Canadian citizenship application, the whole pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[2] For the reasons exposed below, the Application will be dismissed. In brief, Mr. Onghaei has not convinced me that the Minister's decision to suspend his citizenship application during the inquiries of new security concerns is unreasonable or abusive. Consequently, the Minister has no public duty to act, and the *mandamus* test is not met. Mr. Onghaei asked the Court not to disclose the details of the security concerns at play in the suspensions of his citizenship application, and the Minister consented. I am satisfied that this request is justified.

II. Relevant factual background

[3] Mr. Onghaei is a citizen of Iran and St-Kitts and Nevis, and on May 5, 2008, he obtained Canadian permanent resident status.

[4] In November 2013, Mr. Onghaei submitted his application for Canadian citizenship. In 2014, Mr. Onghaei became the subject of an investigation by the Canada Border Services Agency (CBSA), which received notice from Interpol of outstanding criminal charges against him outside of Canada (in Dubai). In February 2014, Mr. Onghaei was informed that there were reasonable grounds to believe that he was inadmissible to Canada pursuant to subsection 36(1) of the *Immigration and Refugee Protection Act* (SC 2001, c 27 [the *Immigration Act*]), and that a report would be prepared regarding such potential inadmissibility, as provided for under subsection 44(1) of the *Immigration Act*.

[5] On August 29, 2014, Mr. Onghaei was informed that the processing of his citizenship application had been suspended under section 13.1 of the *Citizenship Act* (RSC 1985, c C-29 [the *Citizenship Act*]), pending the investigation by the CBSA.

[6] On April 13, 2015, a subsection 44(1) inadmissibility report was submitted, finding that Mr. Onghaei was inadmissible to Canada. The case could initially not move forward with a referral, as permission had not been gleaned to release the details of the warrant. In 2016, permission was finally granted to release the details of the warrant, and Mr. Onghaei was notified and asked to provide his justification as to why a removal order should not be sought.

[7] On June 7, 2016, the file was referred to the Foreign Crime Unit (FCU) within Immigration, Refugees and Citizenship Canada (IRCC), which is distinct from the CBSA, for independent investigation (page 865 of the CTR).

[8] On October 19, 2017, Mr. Onghaei filed his first Application for an Order of *Mandamus* regarding the suspension of his citizenship application (and his sponsorship application for his second wife) (Court File No. IMM-4431-17).

[9] On November 10, 2017, the CBSA informed Mr. Onghaei that no further action would be taken pursuant to the subsection 44(1) inadmissibility report (pages 844 and 866 of the CTR), and on November 17, 2017, Mr. Onghaei discontinued his Application in Court File No. IMM-4431-17.

[10] However, the CBSA's decision to take no further action did not impact the investigation conducted by IRCC's FCU. Mr. Onghaei's citizenship application thus remained suspended pending the conclusion of said FCU investigation (see page 866 of the CTR).

[11] On November 22, 2017, a citizenship officer sent Mr. Onghaei a procedural fairness letter, informing him that, based on the information before her, he might be subject to the prohibition set out in section 22 of the *Citizenship Act*, as the acts committed in Dubai would, if committed in Canada, constitute an indictable offence. Paragraph 22(1)(b.1) of the *Citizenship Act* states that a person shall not be granted citizenship while “the person is charged with, on trial for, subject to or a party to an appeal relating to an offence committed outside Canada that, if committed in Canada, would constitute an indictable offence under any Act of Parliament.” The citizenship officer provided Mr. Onghaei with the opportunity to respond and noted that subsection 22(1.1) of the *Citizenship Act* grants the Minister the possibility to waive the application of paragraph 22(1)(b.1) on compassionate grounds.

[12] On December 20, 2017, Mr. Onghaei challenged the prohibition and, alternatively, requested consideration for a waiver on compassionate grounds.

[13] On May 5, 2018, the citizenship officer concluded, on the balance of probabilities, that Mr. Onghaei could not be granted citizenship or take the oath of citizenship (see page 719 of the CTR), as per paragraph 22(1)(b.1) of the *Citizenship Act*. She referred the file to Case Management Branch for a decision on Mr. Onghaei’s request for a waiver.

[14] On July 6, 2018, Mr. Onghaei filed his second Application for *Mandamus* (Court File No. IMM-3148-18/T-1482-18), again to compel a decision regarding his citizenship application.

[15] On September 20, 2018, Mr. Onghaei's waiver request was refused (page 746 of the CTR), and on October 3, 2018, his citizenship application was refused (pages 754-755 of the CTR). Mr. Onghaei then discontinued his Application for *Mandamus* and, instead, filed an Application for judicial review of the citizenship refusal (Court File No. T-1766-18) (see page 761 of the CTR).

[16] On December 19, 2018, the parties settled the Application for judicial review (Court File No. T-1766-18). The Minister agreed to send the application back for redetermination of both the prohibition and the waiver request by different officers.

[17] On February 18, 2019, IRCC sent Mr. Onghaei a second procedural fairness letter, having again concluded that the prohibition set out at section 22 of the *Citizenship Act* might apply in the circumstances. Mr. Onghaei responded and again, alternatively, requested a waiver. The citizenship officer again concluded that the section 22 prohibition applied, but on June 5, 2019, the Minister's delegate granted Mr. Onghaei's request for a waiver.

[18] On June 20, 2019, presumably unaware that the waiver had been granted, Mr. Onghaei filed the present Application for *Mandamus*.

[19] After the waiver was granted, Mr. Onghaei's citizenship application was returned to the local office for processing. The process of renewing Mr. Onghaei's security clearances (which had expired) was initiated, and he was invited for and passed the citizenship knowledge test.

[20] However, on October 29, 2019, Mr. Onghaei's citizenship application was again suspended under section 13.1 of the *Citizenship Act*, after IRCC was informed by the Canadian Security Intelligence Service (CSIS) that Mr. Onghaei was under review for investigation.

[21] On November 27 and 28, 2019, Mr. Onghaei attended a citizenship security screening interview with CSIS.

[22] On December 20, 2019, CSIS provided a report to IRCC. The report contained information which could potentially impact Mr. Onghaei's eligibility for Canadian citizenship. In his affidavit filed with the Court, Mr. Onghaei challenges the content of the CSIS report, namely as it pertains to the interview.

[23] In February 2020, IRCC conducted a review of the CSIS report and referred the case to the CBSA for further investigation, and in March 2020, operations were impacted by measures related to the COVID-19 pandemic.

[24] In August 2020, CBSA indicated that it was still reviewing the new information to determine if further investigation is warranted and that it was unable to provide a timeline for the conclusion of the review or investigation. Mr. Onghaei's citizenship application therefore remains suspended.

III. Discussion

A. *Test for mandamus*

[25] The parties essentially agree on the test for *mandamus*, as set out by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (CA) [*Apotex*].

[26] All of the conditions must be met in order for the Court to grant the extraordinary remedy of *mandamus*. The conditions set out in *Apotex* are:

- 1) There must be a public legal duty to act.
- 2) The duty must be owed to the applicant.
- 3) There is a clear right to the performance of that duty, in particular:
 - a) the applicant has satisfied all conditions precedent giving rise to the duty;
 - b) there was:
 - (i) a prior demand for performance of the duty;
 - (ii) a reasonable time to comply with the demand unless refused outright; and
 - (iii) a subsequent refusal which can be either expressed or implied, e.g. unreasonable delay.
- 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.
- 8) On a “balance of convenience”, an order in the nature of *mandamus* should issue.

[27] Mr. Onghaei submits that he meets all of the criteria. The Minister disagrees.

B. *First step: the public legal duty to act*

[28] On the first criterion, Mr. Onghaei does not contest that if his citizenship application is lawfully and validly suspended pursuant to section 13.1 of the *Citizenship Act*, there is no public duty for the Minister to act (*Nilam v Canada (Citizenship and Immigration)*, 2017 FCA 44).

[29] However, Mr. Onghaei challenges the validity of the second suspension, particularly in the broader context of his citizenship application, initiated back in 2013, and argues that the suspension is abusive and unreasonable. He also submits that his application has been suspended for longer than is necessary. He argues that there consequently exists a public duty for the Minister to act.

[30] In support of his argument that the suspension is unreasonable and abusive, Mr. Onghaei essentially submits that (1) he provided the information in his citizenship application back in 2013, his activities were therefore known well before 2019, and IRCC should therefore have investigated him earlier on; (2) the CBSA investigated him from 2014 to 2017, but only decided to act on the information he disclosed in 2013 in 2019; (3) the concerns raised by CSIS regarding alleged contradictory statements made to them and to the Ontario Superior Court are irrelevant; (4) CSIS misrepresented the content of its interview with him, particularly in paragraphs 7-10 of its December 2019 report; (5) were the new allegations true, he would have been able to obtain a dismissal of the charges related to the first suspension; (6) he was not cross-examined on his affidavit, and the CSIS officers have submitted no affidavit; so his version of the facts relating to

the CSIS interview must prevail (*Nazir v Canada (Minister of Citizenship and Immigration)*, 2010 FC 553 at para 14); and (7) his citizenship application cannot be suspended indefinitely while the Minister waits to see if he will be charged with a crime.

[31] Mr. Onghaei stresses that the second suspension must be assessed in the broader context and while taking into account the fact that his application for citizenship was filed 7 years ago, and that he was investigated for years already. He questions why these concerns were not raised and investigated before 2019. He thus also argues that the suspension has been in effect for longer than is necessary.

[32] The Minister recognises that, as part of an Application for *Mandamus* pertaining to a citizenship application suspended under section 13.1 of the *Citizenship Act*, the reasonableness of the suspension can be reviewed.

[33] The Minister responds that Mr. Onghaei's citizenship application is validly suspended under section 13.1 of the *Citizenship Act*, and has not been suspended for longer than is necessary, and that there is therefore no duty of the Minister to process the application while the suspension is in effect.

[34] The Minister submits that (1) Mr. Onghaei's application is currently suspended to allow for inquiries as provided for in section 13.1 of the *Citizenship Act*; (2) Mr. Onghaei, although he contests the validity of the information provided by CSIS, has not demonstrated that the suspension is not justified or valid under the circumstances; (3) the information relevant to the

second suspension was not previously known to IRCC; (4) the inquiry is directly pertinent to determining whether Mr. Onghaei is prohibited from obtaining citizenship; (5) the length of the suspension is reasonable; and (6) the application has only been suspended for as long as necessary, particularly in light of the impact of the pandemic on IRCC and CBSA operations and employee access to the physical files.

[35] The Minister concludes, on the first factor, that Mr. Onghaei has not discharged his burden to show that the suspension has remained in effect for a longer time than is necessary and is unreasonable.

[36] Section 13.1 of the *Citizenship Act* was adopted in 2014 and replaced the former section 17, which permitted suspension in more narrow circumstances and only for a period of six months. Section 13.1 gives the Minister the power to suspend the processing of a citizenship 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 [...] or whether section 20 or 22 applies with respect to the applicant.”

[37] The Court can review the reasonableness of the suspension and assess whether the suspension has been in effect for longer than necessary (*Gentile v Canada (Citizenship and Immigration)*, 2020 FC 452 [*Gentile*]; *Niu v Canada (Citizenship and Immigration)*, 2018 FC 520).

[38] Mr. Onghaei, who bears the burden, has not convinced me that the current suspension, ie the second suspension, is unreasonable or that it has been in effect for a longer time than necessary.

[39] My conclusion is based on the fact that (1) Mr. Onghaei has not demonstrated that the laconic information contained in his 2013 citizenship application should have prompted Canadian authorities to investigate him on the subject of the second suspension either before or while they were investigating another matter; (2) he has not demonstrated that the first suspension was unreasonable, as the Interpol warrant is still valid and as the prohibition related to that suspension has been confirmed twice by IRCC; (3) IRCC has not reacted, as he submits, strictly in response to his Applications for *mandamus*: the June 5, 2019 waiver, for example, was finalised and granted prior to the filing of this Application; (4) he has not convinced me that the information related to the second suspension was, or should have been known to IRCC before new security clearances were requested; (5) the fact that the parties disagree on the content of the CSIS report related to Mr. Onghaei's interview does not alleviate the fact that security concerns were raised.

[40] The second suspended has been in effect for about one year now, which, given the nature of the new allegations and the impact of the pandemic measures, does not appear unreasonable, abusive, or longer than necessary.

[41] As Mr. Onghaei has not demonstrated that the suspension is unreasonable or has been in effect for longer than necessary, the Minister has no duty to act, and *mandamus* cannot be ordered.

[42] Finally, relying on the *Gentile* decision, Mr. Onghaei invites the Court to impose a timeline. However, I note that in *Gentile*, the suspension had been lifted; the timeline set out by the Court thus related to the processing of the citizenship application, and the Minister had confirmed said citizenship application would be processed in priority.

[43] The facts here are different as Mr. Onghaei's citizenship application is suspended pending enquiries. The Court has confirmed it is "not for this Court to dictate the length of such an investigation, within reasonable bounds" (*Gentile* at para 20, citing *Zhang v Canada (Citizenship and Immigration)*, 2019 FC 938 at para 38), and I will thus decline the invitation.

[44] Finally, given my reasons, I will not grant costs.

JUDGMENT in T-1014-19

THIS COURT'S JUDGMENT is that:

1. The Application for *Mandamus* is dismissed;
2. No question is certified;
3. No costs are granted.

"Martine St-Louis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1014-19

STYLE OF CAUSE: ALI REZA ONGHAEI AND THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL (QUÉBEC) (BY WAY OF VIDEO
CONFERENCE)

DATE OF HEARING: OCTOBER 29, 2020

JUDGMENT AND REASONS: ST-LOUIS J.

DATED: NOVEMBER 9, 2020

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