Federal Court  Cour fédérale

Date: 20230817

Docket: IMM-10928-22

Citation: 2023 FC 1116

Ottawa, Ontario, August 17, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MANSOORA HABIB

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER

I. Overview

[1] The Applicant, Mansoora Habib, brought a motion asking that her judicial review application be held in abeyance pending this Court's determination in *Jude Upali Gnanapragasam and Al. v. MCI and Al.,* Court File No.: IMM-8432-22 (*Gnanapragasam*). *Gnanapragasam* is scheduled for a full day judicial review hearing on December 12, 2023. The Applicants in *Gnanapragasam* are arguing that sections 40.1 and 46(1)(c.1) of the *Immigration and Refugee Protection* Act, SC 2001, c 27 [*IRPA*], the provisions that provide for the automatic

loss of permanent resident status following a determination that refugee protection had ceased under sections 108(1)(a)(b)(c) or (d) of *IRPA*, violate sections 7, 15, 12 and 2(d) of the *Charter*.

[2] The Applicant, Ms. Habib, lost her permanent resident status as a result of the automatic operation of sections 40.1 and 46(1)(c.1) of *IRPA*, following the Refugee Protection Division's [RPD] determination that her protected person status had ceased under section 108(1)(a) of *IRPA*. She challenged that determination by arguing that the RPD had unreasonably interpreted the application of the cessation provisions to her circumstances. Ms. Habib's judicial review hearing was scheduled to take place this week on August 17, 2023.

[3] On this motion, Ms. Habib asks this Court to not proceed with her judicial review until the constitutional validity of sections 40.1 and 46(1)(c.1) of *IRPA* is determined in *Gnanapragasam*. She argues that it is in the interests of justice to allow her to wait for the outcome in *Gnanapragasam* because of its potential relevance to the arguments she would advance on judicial review. She also asks the Court to hold in abeyance nine other cases, in which the applicants have also lost their permanent resident statuses as a result of the RPD's determination that their refugee protection status had ceased under section 108(1)(a)(b)(c) or (d) of *IRPA*. Ms. Habib's counsel also represents the applicants in these other matters. If the Court agrees to hold the cases in abeyance, the Applicant further requests that these ten cases be consolidated and case managed.

[4] For the reasons set out below, I am of the view that it is in the interest of justice to grant the Applicant's request and hold her case and the nine other cases in abeyance pending this

Court's determination in *Gnanapragasam*. I will not consolidate the ten cases as requested by the applicants' counsel, but order the ten cases proceed as a specially managed proceeding under Rule 384 of the *Federal Courts Rules*, SOR/98-106.

II. Abeyance Request

[5] This Court may stay a proceeding in any cause or matter where "it is in the interest of justice" to do so (Paragraph 50(1)(b) of the *Federal Courts Act*, RSC 1985, c F-7). There is a qualitative distinction between staying a proceeding of another body, thereby prohibiting that body from "exercising the powers granted by Parliament that it normally exercises" and staying the Court's own proceeding (*Mylan Pharmaceuticals ULC v AstraZeneca Canada Inc*, 2011 FCA 312 at para 5).

[6] The request before me is the latter; the applicants are asking the Court to delay its own proceeding. As explained by Justice Stratas in *Mylan*, this type of request is more akin to the Court's jurisdiction to schedule or adjourn a matter. It is a broad, discretionary power, the exercise of which is highly fact-dependent. The usual three-part injunction test from *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] SCR 311. does not need to be met to grant a stay in these circumstances.

[7] The Court may consider a number of relevant factors in determining where the interests of justice lie. These can include, as summarized by Justice McHaffie in *ArcelorMittal Exploitation Minière Canada S.E.N.C. v. Canada (Attorney General)*, 2021 FC 998: "the public interest in having proceedings move fairly and with due dispatch; the general principle of

applying the Rules to secure a just, expeditious and cost-effective determination of a proceeding; the length of the stay being sought; the reason for seeking the stay; the potential for wasting resources; and the prejudice or inconvenience to the parties should the stay be granted or refused" (para 19).

[8] In my view, the potential prejudice to the applicants in refusing the stay is a factor weighing heavily in favour of granting the relief they seek. The loss of permanent resident status is a severe consequence (*Canada (Citizenship and Immigration) v. Galindo Camayo*, 2022 FCA 50 at para 51; *R v. Wong*, 1990 CanLII 56, [1990] 3 SCR 36 at para 72). As a result of the RPD's cessation determination, each of these applicants automatically lost their permanent resident status; it is this automatic loss of permanent residence following a cessation determination that is being challenged for violating the *Charter* in *Gnanapragasam*.

[9] The Minister has not argued any specific prejudice but rightly raises the concern of the delay caused by granting the abeyance and that this delay would run counter to the requirement that matters be decided summarily and expeditiously. This concern has to be balanced, however, against the harm of proceeding and potentially denying the applicants from being able to benefit from a *Charter* determination in *Gnanapragasam.* As noted by Justice Grammond in his decision to grant an abeyance request to those impacted by the *Charter* litigation raised in *Kreishan v. Canada (Citizenship and Immigration),* 2018 FC 481: "while there is a general interest in the expeditious adjudication of refugee claims, this should not override the applicants' Charter rights" (*Ellolo v. Canada (Citizenship and Immigration),* 2019 FC 1530 at para 15).

[10] The Minister also argues that an abeyance may be a waste of time because the applicants may be able to restore their permanent resident statuses by pursuing their judicial review applications as they stand. In other words, the Court may find that the RPD acted unreasonably and send the matter back to be redetermined. While that is certainly true, the real problem is what happens if the applicants lose their judicial review and are left unable to benefit if sections 40.1 and 46(1)(c.1) of *IRPA* are found to not be *Charter*-compliant. The loss of permanent resident status is so significant a harm that it favours taking a prudent approach, and protecting the applicants' ability to potentially benefit from the *Charter* litigation in *Gnanapragasam*.

[11] I acknowledge the Minister's concern that none of these applicants have raised the same *Charter* arguments as *Gnanapragasam* in their judicial review applications as they currently stand. However, I do not find this is a basis to deny the applicants the limited relief they are seeking at this stage. The *Federal Courts Rules* provide that applications can be amended. As the applicants note, they are not in a position to launch complex *Charter* litigation; significant resources have been expended on the litigation in *Gnanapragasam*, pursued on behalf of an individual and a public interest party (the Canadian Council of Refugees) that this Court is set to hear in a few months time.

[12] It is not appropriate at this stage for me to delve deeply into the mechanics as to how the applicants could benefit from the *Charter* litigation in *Gnanapragasam* or the merits of that litigation. There are many unknowns at this stage. I am satisfied that that there is a reasonable possibility that a determination in *Gnanapragasam* could impact the applicants, not on a tangential matter, but rather on a central issue of whether their *Charter* rights were violated in

the loss of their permanent resident statuses that automatically flowed from the RPD's determination that their protected person status had ceased under section 108(1)(a) (b) (c) or (d) of *IRPA*. There is a risk that they would lose a chance to benefit from the *Charter* determination if they proceeded with their applications now (see, for example, as cited in *Ellolo* at para 15: *Lesly v Canada (Citizenship and Immigration),* 2018 FC 272; *Pham v Canada (Citizenship and Immigration),* 2018 FC 1251).

[13] Given the consequences at stake, the limited nature of the delay, and the lack of specific prejudice to the Minister, I exercise my discretion to grant the request to hold these matters in abeyance pending this Court's determination in *Gnanapragasam.*

III. Case Management and Consolidation Request

[14] The applicants ask that their matters be consolidated and case managed. The applicants are at different stages of the application for leave and judicial review process. It is not necessary or appropriate to consolidate these matters. I will, however, order, as was done in the cases dealing with citizenship revocation process (*Monla v. Canada (Citizenship and Immigration),* 2016 FC 1280) and the right of an appeal at the RAD (*Buyu Luemba v. Canada (Immigration, Refugees and Citizenship*), 2018 FC 681) that the matters be specially managed in order to facilitate addressing the subsequent steps following a determination in *Gnanapragasam*.

THIS COURT ORDERS that:

1. The motion requesting the matters be held in abeyance pending this Court's determination in *Gnanapragasam* is granted;

2. Court File Nos.: IMM-10928-22, IMM-4836-23, IMM-3567-23, IMM-3557-23, IMM-2916-23, IMM-2710-23, IMM-13275-22, IMM-12213-22, IMM-10909-22, IMM-5679-22 are held in abeyance pending this Court's determination in *Gnanapragasam*; and

3. Court File Nos.: IMM-10928-22, IMM-4836-23, IMM-3567-23, IMM-3557-23, IMM-2916-23, IMM-2710-23, IMM-13275-22, IMM-12213-22, IMM-10909-22, IMM-5679-22 are ordered to continue as specially managed proceedings under Rule 384 and will be referred to the Chief Justice for the appointment of a case management judge.

"Lobat Sadrehashemi"

Judge