Federal Court  Cour fédérale

Date: 20231030

Docket: T-858-22

Citation: 2023 FC 1437

Ottawa, Ontario, October 30, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MANVIR SINGH SAINI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

JUDGMENT AND REASONS

I. Overview

[1] This application seeks to judicially review a refusal by the Minister of Citizenship and Immigration, dated February 14, 2022, to: (a) "allow the Applicant his right to counsel as understood in law" and (b) "provide the Applicant with disclosure with respect to an interview conducted by the Canadian Security Intelligence Service (CSIS), on behalf of Immigration, Refugees and Citizenship Canada (IRCC), for a security background check in the context of the

Applicant's application for Canadian Citizenship, which was communicated to the Applicant directly by email dated February 14, 2022".

II. **Background Facts**

[2] The Applicant arrived in Canada in February 2010 at the age of 17.

[3] He was recognized as a Convention Refugee on December 10, 2010 as he was added to his mother's refugee claim. He applied for permanent residence status the same day.

[4] Since the end of 2011, he had been interviewed once or twice a year by CSIS Officers at various locations but not at Canada Border Services Agency (CBSA) or IRCC or CSIS headquarters.

[5] In July 2014, he was interviewed by CSIS at CBSA headquarters with respect to his application for permanent residence. Although he was told an interpreter could be provided upon request he was not told he could bring counsel to the interview.

[6] He became a permanent resident in May 2015.

[7] He applied for citizenship on June 19, 2018.

[8] In September 2021, he was informed by CBSA that he was required to attend an interview with them on October 13 and 14, 2021 at CBSA headquarters. Subsequently the interview was rescheduled for November 9 and 10, 2021.

[9] The Applicant was later advised by email that he was permitted to bring counsel to the interview. He replied by email that he would attend with his counsel and that an interpreter would be required.

[10] On November 9, 2021, he and his counsel attended the interview. Two CSIS representatives were present. One of them advised counsel that she could take notes during the interview but she could not keep them as they were to be handed over to the CSIS representatives. The Applicant was advised that neither he, nor his counsel, could access the notes at a later time.

[11] At that time, they were misinformed by the CSIS representative that they were following a publicly available policy governing counsel's notes.

[12] CSIS subsequently advised that there was no public policy but it was an internal CSIS policy requiring notes to be handed over where the interview may contain classified information.

[13] Counsel then objected to the lack of fairness in the process, particularly with respect to Applicant's right to counsel.

[14] Following counsel's objection, the interview was adjourned on November 9, 2021 until the issues raised by counsel could be resolved.

[15] Applicant's counsel made submissions to CSIS on November 23, 2021 concerning the Applicant's right to meaningful counsel and disclosure.

[16] As no response had been received, follow-up requests were made on December 21, 2021 and February 4, 2022.

[17] On February 14, 2022, the Applicant received, from CSIS, via an IRCC official, a notice to appear for an interview with CSIS scheduled for March 1st and March 2nd, 2022.

[18] The Applicant said counsel did not receive the notice but that position was subsequently recanted.

[19] As of April 13, 2022 when an Amended Leave Application was filed, no response had been received from CSIS with respect to counsel's submissions made in November 2021 and no disclosure pertaining to the interview with CSIS had been received.

III. **Matter under Review**

[20] Initially, the Applicant stated in his application for leave that the Ministers (CBSA and IRCC) "have refused the Applicant's application with respect to whether he has right (*sic*) to proper representation and to disclosure, and has found that the Applicant does not have the right

to counsel as understood under law, and that the Applicant does not have the right to any disclosure."

[21] The Respondent states in their factum that the Applicant now agrees that CBSA advised his counsel, in writing, on March 16, 2022, that she could take and retain notes during the CSIS interview. The letter also stated that the interview would address issues relating to security and no further disclosure would be provided "as to do so would compromise the integrity of the security investigation."

IV. **Preliminary Issues**

[22] The Respondent notes the Applicant has failed to address that some of the issues cited in the Application for Leave and Judicial Review have been resolved. For example, the Applicant cited one ground for Judicial Review related to counsel's ability to take and retain notes during a CSIS interview. Counsel for the Respondent wrote to Applicant's counsel informing them that they would be able to take notes (as evidenced in the Respondent's affidavit) but the Applicant has not acknowledged this in their materials.

[23] The Applicant says the exchange was related to litigation privilege and is therefore inadmissible.

[24] The Respondent replies that counsel for the Applicant was advised of the Respondent's position before perfection of the Application Record and it was not part of a settlement offer. In any event, the issue was resolved as agreed by counsel for the Applicant.

[25] The Respondent's position is that the Applicant is impermissibly seeking to judicially review interlocutory matters because the matter being litigated is not a final decision on the Applicant's citizenship application.

[26] I agree. No decision has yet been rendered on the Applicant's Citizenship Application.

[27] By letter dated March 22, 2022, Applicant's counsel responded and acknowledged that the March 16, 2022 letter settled the issue regarding right to counsel and that "it appears *as the only outstanding issue* in relation to his interview *is that of disclosure*." [my emphasis] The Applicant also reiterated the request for additional disclosure.

V. **Issues and Standard of Review**

[28] The parties disagree as to whether there is a reviewable decision before the Court.

[29] The Respondent submits that the Applicant has improperly named the Minister of Public Security and Emergency Preparedness as a party to the litigation given that subsection 5(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* states that the Respondent to an application for leave in the case of a matter under the *Citizenship Act*, is the *Minister of Citizenship and Immigration*.

[30] The Respondent therefore requests that the style of cause be amended *nunc pro tunc* to remove the Minister of Public Security and Emergency Preparedness as a Respondent.

[31] I agree this change is necessary and will so Order.

VI. **Analysis**

[32] Absent exceptional circumstances, the Court should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted. The threshold for exceptionality is high: see *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paras 31–33 [*CB Powell*]; *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at paras 35–36; *Black v Canada (Attorney General)*, 2013 FCA 201 at paras 7–10 [*Black*]; *Dugré v Canada (Attorney General)*, 2021 FCA 8 at paras 37–38 [*Dugré*].

[33] On April 28, 2022, further to a Rule 9 request, the Respondent notified the Registry of this Court that "a decision had not then been made on the Applicant's application for citizenship. As such, no reasons for a decision exist."

[34] In *Herbert v Canada (Attorney General)*, 2022 FCA 11 [*Herbert*] the Federal Court of Appeal [FCA] found the non-availability of interlocutory relief to be "next to absolute" citing *Dugré* at para 37. The FCA underscored the fact that the "very rare" circumstances that would allow a party to bypass the administrative process "require that the consequences of an interlocutory decision be so 'immediate and radical' that they call into question the rule of law": *Dugré* at para 35, quoting *Wilson v Atomic Energy of Canada Limited*, 2015 FCA 17, [2015] 4 F.C.R. 467 at paras 31-33.

VII. **Conclusion**

[35] The Applicant has not established any exceptional circumstances that would justify his application for judicial review of the interlocutory decision.

[36] Considering all of the foregoing and, after reviewing the underlying record, I find there are no exceptional circumstances, as required by *CB Powell*, to justify judicial review.

[37] The "decision" that is the subject of this application for judicial review is indeed an interlocutory decision. As a result, this application for judicial review is premature and will not be considered.

[38] In light of this conclusion, there is no need to address the arguments made by the parties on the merits of the application for judicial review.

[39] The Minister of Public Safety and Emergency Preparedness is removed as a party, effective immediately, *nunc pro tunc.*

JUDGMENT IN T-858-22

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended with immediate effect to reflect the Minister of Citizenship and Immigration as the proper Respondent.
2. This application for judicial review is dismissed.
3. There is no serious question of general importance for certification

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-858-22
STYLE OF CAUSE:	MANVIR SINGH SAINI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	MAY 10, 2023
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	OCTOBER 30, 2023

APPEARANCES:

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David Knapp	FOR THE RESPONDENTS

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