Federal Court  Cour fédérale

Date: 20241011

Docket: T-1684-23

Citation: 2024 FC 1624

Ottawa, Ontario, October 11, 2024

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

PETER CALLEYA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review application brought pursuant to s. 22.1(2)(a) of the *Citizenship Act*, RSC 1985, c C-29 [*Citizenship Act*]. The Applicant, Mr. Peter Calleya, is contesting the decision of the Delegate, denying the Applicant discretionary grant of citizenship under section 5(4) of the *Citizenship Act*. The Application was refused on the basis that the Applicant did not satisfy the condition precedent: he is not stateless and he has not experienced special or

unusual hardship or provided services of an exceptional value to Canada which might warrant a discretionary grant of Canadian Citizenship.

[2] For the Reasons that follow, the application must be dismissed.

I. Facts

[3] In 1952, the Applicant's father immigrated to Canada from Malta. Subsequently, in 1962, the Applicant's mother immigrated to Canada also from Malta.

[4] On June 10, 1965, the Applicant was born in Canada. He was a Canadian citizen by birth.

[5] The Applicant's parents were permanent residents of Canada at the time of the move as well as citizens of Malta. On December 6, 1975, the Applicant moved from Canada to Malta with his family.

[6] Sometime during the Applicant's 17th year, he alleges that the Maltese government contacted him to commence the process to decide whether to renounce his Canadian citizenship. It appears that dual citizenship was not allowed in Malta at the time. The record does not reveal how the Maltese citizenship was acquired by the Applicant. At any rate, that does not have any bearing on the outcome of this case.

[7] On September 1, 1983, having reached the age of 18, the Applicant submitted his paperwork to renounce his Canadian citizenship.

[8] On June 7, 1984, the Certificate of Renunciation letter, effective June 5, 1984, was sent to the Applicant.

[9] During the years that follow, the Applicant visited Canada. In 1990, the Applicant came for a visit. The Applicant's last visit to Canada was in 2012. In 2000, Malta changes its laws and now allows for dual citizenship.

[10] On March 5, 2022, the Applicant made an application for a grant of citizenship requesting that his application be given discretionary consideration pursuant to subsection 5(4) of the *Citizenship Act*. The Applicant submitted his application on the basis that he is deserving of Canadian citizenship because he felt forced to renounce his Canadian citizenship while living in Malta. He also submits that he has substantial connection to Canada as he was born here and lived here until the age of 10.

[11] The Minister's Delegate refused to grant the discretionary grant of Canadian citizenship. The decision by the Minister's Delegate not to grant Canadian Citizenship to the Applicant is the decision under review.

II. The Decision Under Review

[12] It is quite evident that the Applicant is not stateless. The Minister's Delegate found the determinative issue to be that the Applicant did not discharge his burden to satisfy that he has experienced special or unusual hardship or provided services of an exceptional value to Canada,

which warrants a discretionary grant of Canadian citizenship, as per section 5(4) of the *Citizenship Act*.

[13] In her decision, the Minister's Delegate reviewed the underlying principles of section 5(4) stating that conferring citizenship to "alleviate cases of statelessness, special and unusual hardship or to reward services of an exceptional value to Canada" constitutes discretionary relief and is considered on a case-by-case basis. Furthermore, the onus is on the applicant to satisfy the Minister's Delegate as to why they meet the criteria and should be the beneficiary of such a discretionary grant (Minister's Delegate Decision, paragraph 17).

[14] The Minister's Delegate considered the Applicant's submissions on duress and connections to Canada and determined that the evidence was insufficient to establish the existence of special and unusual hardship.

[15] The Minister's Delegate looked at three main points when assessing whether to grant the Applicant a discretionary grant of citizenship:

i. The Applicant raised that he was 17 when he signed the papers for renunciation and thus should be characterized as someone with a "disability" under the Act as he could not understand the consequences of his actions since he was a minor. The Minister's Delegate did not agree with the Applicant that he renounced his Canadian citizenship under a disability. The Minister's Delegate took into account the law at the time, the fact that the paperwork was perfected when he reached the age of majority (18 years), and his education. The Minister's Delegate also notes that the Applicant never attempted to reverse the decision.

ii. The Minister's Delegate also determined that the Applicant did not sign the application under duress, stating that a decision had to be made by the time the Applicant was 18 years old, as Malta did not allow dual citizenship at the time, which the Applicant recognized and acknowledged this in his submissions.

iii. The Applicant also submitted that he is deserving of a discretionary grant of Canadian citizenship because he has a connection to Canada. The Minister's Delegate stated that section 5(4) of the *Citizenship Act* does not require her to assess the Applicant's connection to Canada. She noted that the substance of the Applicant's submissions relate to the Applicant's emotional connection to Canada after he left Canada as a 10 year old and that these submissions are minimal since he left Canada 47 years ago. She found that the Applicant has not demonstrated that his connection to Canada is more substantial than his connection to Malta, his habitual residence for the last 47 years. Therefore, she determined that the Applicant's minimal connection to Canada is not a basis on which she should grant discretionary citizenship in order to alleviate any special and unusual hardship.

iv. The Minister's Delegate suggested that the Applicant apply for permanent residence, with the option to resume Canadian citizenship in the future once the requirements are met.

III. Arguments and Analysis

A. *The Minister's Delegate acted reasonably in refusing the Applicant's discretionary grant of citizenship*

(1) Standard of Review

[16] Both parties agree that the standard of review applicable to this issue is reasonableness. The Court concurs. Specifically, our Court has found that a Minister's Delegate's decision denying a grant of citizenship under s. 5(4) of the *Citizenship Act* is to be reviewed on the standard of reasonableness (*Abdellatif v Canada (Citizenship and Immigration)*, 2023 FC 983 at paras 25-26 [*Abdellatif*]; *Grossmann-Hensel v. Canada (Citizenship and Immigration)*, 2022 FC 193 at paras 37-38 [*Grossmann-Hensel*]).

[17] It follows that the burden is on the applicant to show that a decision is unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653

[*Vavilov*] at para 101). A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para 85).

(2) Statutory Framework

[18] The text of subsection 5(4) of the *Citizenship Act* is explicit; it allows for the discretionary grant of citizenship to an individual in special circumstances:

Special cases	**Cas particuliers**
(4) Despite any other provision of this Act, the Minister may, in his or her discretion, grant citizenship to any person to alleviate cases of statelessness or of special and unusual hardship or to reward services of an exceptional value to Canada.	**(4)** Malgré les autres dispositions de la présente loi, le ministre a le pouvoir discrétionnaire d'attribuer la citoyenneté à toute personne afin de remédier à une situation d'apatridie ou à une situation particulière et inhabituelle de détresse ou de récompenser des services exceptionnels rendus au Canada.

[19] The purpose of subsection 5(4) is to provide a residual, highly discretionary, ability to grant citizenship. The high threshold and the broad discretion conferred on the Minister were readily acknowledged by my former colleague, Madam Justice Elliott, in *Abdellatif*, at paragraph 44:

> [44] This Court has held that there is a high threshold for the exercise of discretion under subsection 5(4): *Tabori v Canada (Citizenship and Immigration)*, 2022 FC 1076 at para 29, citing *Chen v Canada (Citizenship and Immigration)*, 2012 FC 874 at para 19. Similarly, the discretion of a delegate under subsection 5(4) is broad and the Court will only interfere when the discretion was unreasonably exercised or there was a refusal to exercise that

discretion: *Tung v Canada (Citizenship and Immigration)*, 2013 FC 1062 at para 9.

[20] As noted by Madam Justice Strickland in *Tabori v. Canada (Citizenship and Immigration)*, 2022 FC 1076 at para 30, "cases determined on the basis of s 5(4) rarely reach this Court (Halepota v Canada, 2018 FC 1196 at para 19). However, the paucity of case law in all likelihood reflects that discretionary grants of citizenship made under that provision are made only in very exceptional cases." In my view, it also reflects the existence of the high threshold for even considering that the discretion should be exercised in any given case. Clearly, subsection 5(4) allows a residual discretion for the Minister to exercise in special circumstances described in the subsection. The discretion is broad, although not unlimited (*Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121).

[21] The circumstances under which the discretion may be exercised speak for themselves. The hardship suffered must be special and unusual, and the reward for services to Canada must be of an exceptional value. Applicants must appreciate the significance of receiving citizenship under this provision and understand that it should not be used to circumvent the normal citizenship process. The discretion conferred on the Minister can only be exercised in cases that fall in a category of "special cases" (*Grossmann-Hensel* at paras 70-71).

[22] The Applicant is not stateless nor does he claim to have provided services of an exceptional value to Canada. The focus of the Minister's Delegate's determination could therefore only be on whether the Applicant demonstrated special or unusual hardship to warrant a discretionary grant of citizenship. For the reasons that follow, the Applicant's submissions

must be dismissed. The Minister's Delegate's decision was reasonable as the Applicant did not establish how renouncing his Canadian citizenship creates special and unusual hardship.

(3) Duress at Common Law

[23] The Applicant raises the issue that he gave up his Canadian citizenship under duress. The Applicant contends that the Minister's Delegate unreasonably found that his renunciation was not under duress, stating that it ignores the fact that the decision was not necessarily voluntary but rather the result of self-preservation. However, the Minister's Delegate need address the Applicant's special and unusual hardship if he or she is to allow a discretionary grant of citizenship. The Applicant tries to equate duress to hardship, which are two different legal concepts.

[24] Duress at common law takes different forms; economic duress, where someone could argue that a contract is not valid, is described as the coercion of a person's will through illegitimate pressure, with one party dominating the will of another at the time that a contract is executed (*Canada v. Bezan Cattle Corporation*, 2021 FC 397 at para 88, citing *Ramdial v Davis*, 2015 ONCA 726, at para 42, see also *McNeil v. Canada (Secretary of State)*, 2000 CanLII 16234 (FC) at para 38). Three elements must be established to vitiate an agreement for duress:

i. The pressure must amount to coercion of the will;

ii. The pressure must be illegitimate; and

iii. The party seeking relief must have taken steps to avoid the act complained of.

[25] These are not insignificant conditions. There must be coercion, and the pressure must be illegitimate. Although the Applicant was advised a decision was to be made before he reached the age of 18, he had reached that age by the time he made his decision. What this Applicant was confronted with was a difficult choice of retaining one of two citizenships. How this choice constitutes coercion, or even more so, how that is illegitimate was never shown. The fact that the Applicant retained the Maltese citizenship throughout the years, including well after dual citizenship became possible in Malta, seems to render a claim of duress difficult to establish.

[26] At any rate, the law clearly states that the Applicant must demonstrate special and unusual hardship. Duress is not special and unusual hardship. It is difficult to see how the type of duress alleged in this case, assuming that it is duress, creates hardship for the Applicant. The Applicant must demonstrate some sort of severe consequence of not having Canadian citizenship such as families who are broken up, lost employment, special abilities wasted, etc. (*Grossmann-Hensel*, *supra* at para 84, quoting from *Naber-Sykes (Re)*, [1986] 3 FC 434, 4 FTR 204). These are only illustrations tending to show what may constitute the kind of hardship that might be considered. In fact, the Applicant never even alluded to hardship being present in the case. Instead, he sought to equate duress to special and unusual hardship. Although it may be contended that duress may be instrumental in generating hardship, these are two separate and distinct concepts. Duress and hardship should not be conflated. Furthermore, the Act requires that hardship of a certain intensity, “special and unusual”, be established. That is what should be established, not that an applicant may have renounced his citizenship without fully appreciating forty years later that perhaps he should have retained it.

[27] While the Applicant raises the issue that he signed the renunciation without having much choice in the matter, the determination of whether that can constitute duress is not necessary to resolve the present case. That is because the Applicant must first and foremost demonstrate, in order to qualify under subsection 5(4), special and unusual hardship resulting from renouncing the Canadian citizenship more than 40 years ago.

(4) Special and Unusual Hardship

[28] The purpose of subsection 5(4) of the *Citizenship Act* is to alleviate cases of particular hardship or statelessness, or to reward services of an exceptional value to Canada. These are evidently cases of an exceptional nature with high threshold to even seek the exercise of discretion. If the Applicant meets none of these criteria, subsection 5(4) has no application. It is not intended to remedy merely the fact that an applicant had to make a choice between Canadian and Maltese citizenship. In our case, what is the special and unusual hardship that resulted from having renounced Canadian citizenship? That is the burden the Applicant had to address.

[29] In *Grossmann-Hensel*, Justice Gleeson notes that the law has not developed much, yet there are indications as to what is required, the level of severity of hardship, to attain the high standard of "special and unusual hardship":

> [84] What constitutes "special and unusual hardship" under subsection 5(4) has not been developed to the same degree as the meaning of "hardship" under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. This was noted by Justice James Russell in *Ayaz v Canada (Citizenship and Immigration)*, 2014 FC 701, where he states:
>
> > [50] The jurisprudence on "special and unusual hardship" under s. 5(4) of the Act is not as well developed as, for example, the jurisprudence on the

> meaning of hardship under s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. While there is no firmly established test for "special and unusual hardship" under s. 5(4) of the Act, in my view, the following remarks by Justice Walsh in *Re Turcan* (T-3202, October 6, 1978, FCTD), as quoted by him in *Naber-Sykes (Re)*, [1986] 3 FC 434, 4 FTR 204 [*Naber-Sykes*] remain valid and serve as a good starting point:
>
> > The question of what constitutes "special and unusual hardship" is of course a subjective one and Citizenship Judges, Judges of this Court, the Minister, or the Governor in Council might well have differing opinions on it. Certainly the mere fact of not having citizenship or of encountering further delays before it can be acquired is not of itself a matter of "special and unusual hardship", but in cases where as a consequence of this delay families will be broken up, employment lost, professional qualifications and special abilities wasted, and the country deprived of desirable and highly qualified citizens, then, upon the refusal of the application because of the necessarily strict interpretation of the residential requirements of the Act when they cannot be complied with due to circumstances beyond the control of the applicant, it would seem to be appropriate for the Judge to recommend to the Minister the intervention of the Governor in Council […]
>
> [emphasis in the decision]

[30] Justice Gleeson goes on to quote again from *Ayaz* in support of the discretion created by legislation to be broad, which makes success on judicial review more difficult to attain:

> [85] Neither the mere absence of citizenship nor the delay in obtaining citizenship will normally be sufficient to establish special and unusual hardship. However, the consequences of a denial of the absence of citizenship or delay in obtaining that

> citizenship are factors that will be relevant in considering special or unforeseen hardship. Where a decision maker considers these factors in the exercise of the broad discretion granted by subsection 5(4), a court will not ordinarily intervene:
>
> > [52] In *Linde v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 739, [2001] FCJ No 1085, which also dealt with absences due to employment obligations, Justice Blanchard reviewed some of the jurisprudence on this question, which emphasized the discretionary nature of the decision. Unless the citizenship judge fails to take into account some relevant factor (see *Khat (Re)*, [1991] FCJ No 949, 49 FTR 252), or acted with bias or improper motive (see *Kalkat*, above; *Akan v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 991 at para 11, 170 FTR 158), there is generally no basis for a court to interfere. With respect to the case before him, Justice Blanchard observed:
> >
> > > [24] I am satisfied that the Citizenship Judge in this case did indeed take into account the relevant factors in the exercise of his discretion pursuant to subsection 15(1) of the Act. The applicant has not shown that the Citizenship Judge ignored any evidence before him, or erred in any way in determining that there was no unusual hardship which would result under subsection 5(4) of the Act...

[31] It is worth noting that the French version of subsection 5(4) speaks of “une situation particulière et inhabituelle de détresse,” which connotes anguish and distress. That would tend to confirm the high severity of the hardship that would open the door to the exercise of discretion.

[32] Thus, the issue before the decision maker is not solely or mainly about whether the person would be a desirable citizen or has valid (even commendable) reasons for not fully

meeting the Act's requirements. Instead, the Court must consider the severe hardship that comes from not having the Canadian citizenship.

[33] In the present case, the Applicant did not provide any evidence to establish that he would suffer "a special and unusual hardship" should the exercise of discretion under subsection 5(4) not be available. The evidence before the Minister's Delegate is in effect that the Applicant is a citizen of Malta and he renounced his Canadian citizenship when Malta did not permit dual citizenship. There is no indication that he will suffer "a special and unusual hardship" by reason of not having the Canadian citizenship. As a matter of fact, we are left in the dark as to why this Applicant wishes to regain that which he has abandoned 40 years ago.

[34] The Applicant contends that he is merely attempting to restore "a valuable privilege he once had that he gave up" (Applicant's Further Memorandum at page 3). However, Justice Gleeson clearly states that the mere fact of not having citizenship is not of itself a matter of "special and unusual hardship" (*Grossmann-Hensel* at para 84, quoting *Ayaz* at para 50). I share that view. If that were to be sufficient, there would be no meaning given to Parliament's requirement that there be shown special and unusual hardship. Indeed, the Applicant appears to have lived a good life in Malta with acquiring good employment, high professional qualifications and having family (siblings) close by in Malta. The Minister's Delegate reasonably found that the discretionary grant of citizenship would not alleviate any special or unusual hardship of the Applicant. It is especially so since the Applicant did not demonstrate any significant connection to Canada such as having lived in Canada after 1975, worked in Canada or studied in Canada. It

follows that the Applicant cannot even rely on connections as a stepping stone to argue some form of hardship.

[35] The statute is clear, the Applicant must demonstrate special and unusual hardship; in this instance, the Applicant is claiming that his hardship flows from the duress which made him sign his renunciation of Canadian citizenship. As pointed out before, the Applicant seeks to equate duress with special and unusual hardship. In fact, at paragraph four of the Applicant's Reply Memorandum, counsel is explicit: "The fact the Applicant was forced to renounce his Canadian citizenship under duress is the unusual hardship." There is nothing to support such a bold proposition. The Court has declined to follow that circular reasoning in the past and this Court cannot accept that argument. That boils down to not having his Canadian citizenship becoming the required hardship. I reiterate that duress and hardship are two different concepts at law.

[36] The Applicant argues that "A foreign national cannot simply move to Canada and start working, studying, or living in the country without the proper status. Had the Applicant attempted to start working, studying, or living in Canada the Applicant's activities would have been contrary to Canadian law and would have also jeopardized his status in Canada" (Applicant's Reply Memorandum at paragraph 15). And so it should be. This is not hardship, and that is certainly not special and unusual hardship. As stated by the Supreme Court of Canada in *Canada (Minister of Employment and Immigration) v. Chiarelli*, 1992 CanLII 87 (SCC), [1992] 1 SCR 711 at p 733, and *Medovarski v. Canada (Minister of Citizenship and Immigration); Esteban v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 SCR 539 at para 46, "The most fundamental principle of immigration law is that non-citizens do not have

an unqualified right to enter or remain in the country." Canadian citizenship is a most precious right which guarantees "the right to enter, remain and leave Canada" (Section 6 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11). It is not to be acquired pursuant to subsection 5(4) as a mere matter of convenience.

[37] Moreover, the Minister's Delegate found that there has been no attempt since the Applicant renounced his Canadian citizenship in 1983 to reverse the decision. Malta has allowed citizens to hold dual citizenship starting in the year 2000. Not only did the Applicant renounce his Canadian citizenship more than 40 years ago, but some 22 years after dual citizenship became possible, the Applicant made an application for a discretionary grant of citizenship. I can only ask, why now? The Applicant waited 22 years to apply to reinstate his Canadian citizenship. That to me confirms the absence of any hardship let alone special and usual hardship. The Applicant fails to demonstrate how he suffered. Indeed, he has not articulated any hardship.

[38] Overall, the Applicant failed to present evidence to demonstrate the special and unusual hardship he would suffer if he were not granted the discretionary grant of citizenship under subsection 5(4) of the Act. The Minister's Delegate reasonably concluded that the Applicant did not discharge the onus to satisfy that he has experienced special and unusual hardship, which could warrant a discretionary grant of Canadian Citizenship.

(5) Applicant's Ties to Canada

[39] The Applicant submits that the Minister's Delegate erred in considering his ties to Canada. However, as noted by the Minister's Delegate, and subsequent case law, an assessment under subsection 5(4) of the Act does not require an assessment of an applicant's connection to Canada (*Hassan v. Canada (Citizenship and Immigration)*, 2023 FC 717 at para 33 and *Tabori v. Canada (Citizenship and Immigration)*, 2022 FC 1076 at para 10). I share that view. It is not that the connection may not be relevant in an attempt to establish special and unusual hardship. It is rather that this is not needed nor does it suffice. Having connections with Canada does not equate with experiencing special and unusual hardship, but it may assist in the demonstration of hardship. Conversely, not having strong ties will not entail that there is an absence of special and unusual hardship.

[40] Even though the Minister's Delegate noted that this factor is not a requirement to a discretionary grant of citizenship pursuant to subsection 5(4) of the Act, she considered the Applicant's submissions regarding his connection to Canada. The Minister's Delegate acknowledged that the Applicant desired a grant of citizenship because he claims to have feelings of connections to Canada. However, the Minister's Delegate pointed out that the Applicant has not lived, worked, or studied in Canada since he was 10 years old – and his habitual place of residence for the last 47 years has been Malta. I would add that if there are ties to Canada, they can be on this record at best tenuous in light of the evidence offered. The decision maker's conclusion is not shown as being unreasonable.

[41] Essentially, the Applicant seeks to have the Court reweigh the evidence considered by the Minister's Delegate in finding that his connections to Canada are minimal. In *Vavilov*, the Supreme Court of Canada clearly outlined that a "reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker"" (*Vavilov* at para 125). Interference into the factual findings of an administrative tribunal is only justified in cases where the decision-maker "has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126). That did not happen here.

[42] The fact that the Applicant disagrees with the manner in which the Minister's Delegate weighed the evidence does not in itself open an avenue for judicial review. I conclude that it was reasonable for the Minister's Delegate to find the Applicant's connection to Canada as minimal, as he spent half his childhood and entire adult life outside of Canada. At any rate, the mere fact that the Applicant may have connections to Canada would not be enough to conclude that there exists any kind of hardship.

IV. Conclusion

[43] Upon considering the submissions of both parties and the record before this Court, I find the Minister's Delegate's decision to refuse the Applicant's request was reasonable. The Applicant has not shown the Minister's Delegate ignored the evidence before them or erred in determining there was no special or unusual hardship that would result under subsection 5(4) of the Act.

[44] The Applicant did not discharge his onus to satisfy the Minister's Delegate why he meets the criteria and should be the beneficiary of such a discretionary grant. The Minister's Delegate's highly discretionary decision bears all of the hallmarks of a reasonable decision: it is transparent, intelligible and justified in light of the legal and factual constraints present in the case. Thus, it was reasonable for the Minister's Delegate to find that the Applicant's circumstances did not amount to special and unusual hardship and did not warrant a discretionary grant. The Minister's Delegate did not ignore or misapprehend any of the evidence, and deference is owed to the decision maker. As the decision was reasonable, the Court's intervention is not warranted.

[45] The parties did not propose a serious question of general importance for certification, pursuant to s. 22.2(d) of the Act, and none arises.

JUDGMENT in T-1684-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no serious question of general importance for certification.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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