Federal Court Cour fédérale

Date: 20241101

Docket: T-2695-23

Citation: 2024 FC 1744

Ottawa, Ontario, November 1, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ANASTACIO BARADAS ONATE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Anastacio Baradas Onate [Mr. Onate], formerly known as Primo Carandang Aldover, seeks judicial review of the March 2, 2023, decision to revoke his citizenship pursuant to subsection 10(1) of the *Citizenship Act*, RSC 1985, c C-29 [the Act]. The decision-maker, the Minister's Delegate, found that Mr. Onate obtained his Canadian citizenship by misrepresentation or fraud or by knowingly concealing material circumstances as described in section 10.2 of the Act.

[2] Mr. Onate argues that the Minister's Delegate's decision is not reasonable as the decision failed to consider his personal circumstances, in particular the best interests of his Canadian-born minor children. He also argues that the Minister's Delegate erred by not convening an oral hearing, thereby breaching procedural fairness.

[3] For the reasons that follow, the Application for Judicial Review is dismissed. The Minister's Delegate was not required to convene an oral hearing: Mr. Onate admitted to his several misrepresentations and his credibility was not the issue. The Minister's Delegate reasonably concluded that Mr. Onate had obtained his citizenship as a result of his misrepresentation. The Minister's Delegate applied the statutory provisions to the undisputed facts and considered Mr. Onate's submissions, including about his current personal circumstances. The Minister's Delegate reasonably concluded that Mr. Onate's submissions, which focussed on the impact of his removal from Canada, were premature. In addition, there was no evidence provided to the Minister's Delegate—other than the assertion by Counsel for Mr. Onate that there were close family ties—that Mr. Onate drove his children to sports activities and provided financial support.

I. Background

[4] Mr. Onate is a citizen of the Philippines. In October 2002, Mr. Onate obtained a temporary visitor visa to travel to Canada under the identity Primo Carandang Aldover. He entered Canada in November 2002 as Primo Carandang Aldover and claimed refugee protection in 2003.

[5] His claim for refugee protection under the name Primo Carandang Aldover was refused in March 2004. His application for leave and for judicial review of the decision refusing refugee protection was denied in June 2004.

[6] On October 25, 2004, Mr. Onate, under the name Primo Carandang Aldover, filed an Application for Permanent Residence in Canada pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] on humanitarian and compassionate [H&C] grounds. On June 27, 2007, his H&C application was refused.

[7] Mr. Onate then filed an Application for Pre-Removal Risk Assessment (PRRA) under the name Primo Carandang Aldover. His PRRA was refused on December 6, 2007.

[8] A Direction to Report for removal from Canada was issued to Mr. Onate in February 2008 and he departed on March 6, 2008, under the name Primo Carandang Aldover.

[9] On February 27, 2008, Mr. Onate's son was born in Canada.

[10] One month after departing Canada, on April 8, 2008, Mr. Onate, using his current name, married a Canadian citizen, Josefina Tan, in the Philippines.

[11] On August 11, 2008, Ms. Tan submitted an application to sponsor her spouse "Anastacio Baradas Onate" for permanent residence in Canada.

[12] On February 8, 2009, Mr. Onate became a permanent resident of Canada under the Family Class category.

[13] In October 2009, Mr. Onate's twin sons were born in Canada. It is not clear from the record whether Ms. Tan or another woman is the mother of the children. On February 28, 2013, Mr. Onate submitted an Application for Canadian Citizenship and he became a citizen on April 10, 2014.

[14] On July 9, 2015, the Canada Border Service Agency [CBSA] shared information with Immigration, Refugees and Citizenship Canada [IRCC] indicating that Mr. Onate was known under two identities, specifically, Primo Carandang Aldover born June 9,1959, and Anastacio Baradas Onate born April 15, 1952. The Royal Canadian Mounted Police confirmed that the fingerprints from Mr. Onate's 2003 refugee application under the Primo Carandang Aldover name matched fingerprints taken in 2015 by the Toronto Police Services following an assault charge for Anastacio Baradas Onate. In addition, a photo comparison by the Ontario Ministry of Transportation in December 2015, using photos on record for both Primo Carandang Aldover and Anastacio Baradas Onate, revealed they were the same person. IRCC then reviewed Mr. Onate's immigration history.

[15] On November 2, 2016, IRCC issued a Notice of Intent to Revoke Citizenship to Mr. Onate. The Notice was subsequently cancelled due to this Court's decision in *Hassouna v Canada*, 2017 FC 473, which led to amendments to the Act.

[16] Amended citizenship revocation provisions came into force on January 24, 2018, in *An Act to amend the Citizenship Act and to make consequential amendments to another Act*, SC 2017, c 14.

[17] On March 9, 2018, IRCC sent an amended Request for Information Letter to Mr. Onate. On March 16, 2018, Mr. Onate provided his submissions.

[18] On December 23, 2019, IRCC sent a Notification Letter to Mr. Onate stating IRCC's view that he may have obtained his citizenship by false representations or fraud or by knowingly concealing material circumstances. The letter set out Mr. Onate's immigration history under both names, noted the submissions he had provided and invited him to provide any additional submissions within 60 days. Mr. Onate provided submissions on February 10, 2020, and elected to have the Minister of Immigration, Refugees and Citizenship Canada render the decision (rather than the Federal Court).

[19] On July 27, 2022, IRCC again invited Mr. Onate to provide any additional submissions given the passage of time. Mr. Onate provided his submissions on September 22, 2022.

II. The Decision of the Minister's Delegate

[20] The Minister's Delegate's written decision with reasons was rendered on March 2, 2023.

[21] The Minister's Delegate was satisfied on a balance of probabilities that Mr. Onate obtained Canadian citizenship by false representation or fraud or by knowingly concealing

material circumstances. Mr. Onate's Canadian citizenship was revoked pursuant to subsection 10(1) of the Act for circumstances described in section 10.2 of the Act. As a result, Mr. Onate became a foreign national subject to the provisions of the IRPA and the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[22] In the Reasons for the Decision, the Minister's Delegate set out the background of Mr. Onate's immigration history in Canada under his two different identities, as described above with some additional details.

[23] The Minister's Delegate noted that in Mr. Onate's refugee claim, under the name Primo Carandang Aldover, he stated he was born on June 9, 1959, was married in the Philippines and had four children in the Philippines and two in Canada. In Mr. Onate's application pursuant to section 25 of the IRPA, in 2004, he stated that he had four children. In Mr. Onate's PRRA application, he stated he had six children in the Philippines and two children in Canada.

[24] The Minister's Delegate noted that following Mr. Onate's marriage to a Canadian citizen, in his spousal sponsorship application he stated that he was born in 1952; he was never married; he had never used any other names; he lived and worked in the Philippines from 1970-2008; he did not have any children; and, he had never previously sought refugee protection or another type of visa for Canada.

[25] The Minister's Delegate also noted that in Mr. Onate's application for Canadian citizenship, he was asked to list any other names used or aliases, and responded "NA". He also attested that all the information in that application was true.

[26] The Minister's Delegate found that due to Mr. Onate's failure to disclose his previous immigration history and his use of an alternative identity, key decision-makers were prevented from accurately assessing his eligibility for both his permanent residence and subsequently, his Canadian citizenship. The Minister's Delegate noted that if the information had been disclosed, Mr. Onate's application for permanent residence would likely have been refused; and that because paragraph 5(1)(c) of the Act requires permanent residents to satisfy the Minister that they have been lawfully admitted to Canada, his Canadian citizenship application would also likely have been refused.

[27] The Minister's Delegate considered Mr. Onate's submissions regarding his personal circumstances, including his submission that he made an innocent mistake because he thought that his identity was "erased" once his refugee claim and other applications were refused, and that his citizenship should not be revoked due to his current circumstances and humanitarian and compassionate considerations.

[28] The Minister's Delegate rejected the submission that Mr. Onate made an innocent mistake, noting that he repeatedly stated on his spousal sponsorship and permanent resident application that he had never used any other names and he failed to answer truthfully that he had been removed from Canada. The Minister's Delegate found that these failures to reveal his

identity prevented decision-makers from verifying his background, which is essential to their role, and would have affected the determination of his permanent resident application.

[29] The Minister's Delegate considered Mr. Onate's submission that he is now remorseful for his actions, but found that he had failed to avail himself of the many opportunities to be truthful with Canadian authorities throughout his various immigration proceedings. The Minister's Delegate noted that Mr. Onate's misrepresentations were carried out over a long period of time and his deceptions were large—contrary to Mr. Onate's submission that these were minor or insignificant and would not have impacted his applications. The Minister's Delegate noted that Mr. Onate did not come forward at any time to tell the truth until he received the notice that IRCC was initiating revocation proceedings. The Minister's Delegate concluded that there was little evidence of remorse and that Mr. Onate's submissions were insufficient to justify special relief against revocation of his citizenship.

[30] The Minister's Delegate explained that in the citizenship context, personal circumstances are considered and that Mr. Onate's submissions regarding "humanitarian and compassionate considerations" would be considered in this context. The Minister's Delegate noted that Mr. Onate had spent several years in Canada, but this establishment was entirely a result of his misrepresentation.

[31] The Minister's Delegate acknowledged Mr. Onate's submission that he had family ties in Canada and that his three Canadian children would suffer if he were removed. The Minister's

Delegate noted that these arguments were premature because revocation of citizenship is distinct from removal and could be addressed if and when removal proceedings were launched.

[32] With respect to Mr. Onate's submission that he would suffer hardship upon his return to the Philippines, the Minister's Delegate again noted that revocation of citizenship is distinct from removal from Canada and consideration of hardship was premature and also speculative. The Minister's Delegate noted that Mr. Onate was now a foreign national and that he was not prevented from attempting to regularize his status in Canada.

III. The Statutory Provisions

[33] The following provisions of the Act are relevant:

Revocation by Minister — fraud, false representation, etc.	**Révocation par le ministre — fraude, fausse déclaration, etc.**
10 (1) Subject to subsection 10.1(1), the Minister may revoke a person's citizenship or renunciation of citizenship if the Minister is satisfied on a balance of probabilities that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.	**10 (1)** Sous réserve du paragraphe 10.1(1), le ministre peut révoquer la citoyenneté d'une personne ou sa répudiation lorsqu'il est convaincu, selon la prépondérance des probabilités, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

(2) [Repealed, 2017, c. 14, s. 3]

(2) [Abrogé, 2017, ch. 14, art. 3]

Notice

(3) Before a person's citizenship or renunciation of citizenship may be revoked, the Minister shall provide the person with a written notice that

(a) advises the person of his or her right to make written representations;

(b) specifies the form and manner in which the representations must be made;

(c) sets out the specific grounds and reasons, including reference to materials, on which the Minister is relying to make his or her decision; and

(d) advises the person that the case will be referred to the Court unless the person requests that the case be decided by the Minister.

Avis

(3) Avant que la citoyenneté d'une personne ou sa répudiation ne puisse être révoquée, le ministre lui envoie un avis écrit dans lequel :

a) il l'informe qu'elle peut présenter des observations écrites;

b) il précise les modalités de présentation des observations;

c) il expose les motifs et les justifications, notamment les éléments de preuve, sur lesquels il fonde sa décision;

d) il l'informe que, sauf si elle lui demande de trancher l'affaire, celle-ci sera renvoyée à la Cour.

Representations and request for decision by Minister

(3.1) The person may, within 60 days after the day on which the notice is sent, or within any extended time that the Minister may allow for special reasons,

(a) make written representations with respect to the matters set out in the notice, including any

Observations et demande que l'affaire soit tranchée par le ministre

(3.1) Dans les soixante jours suivant la date d'envoi de l'avis, ce délai pouvant toutefois être prorogé par le ministre pour motifs valables, la personne peu

a) présenter des observations écrites sur ce dont il est question dans l'avis, notamment toute

considerations respecting his or her personal circumstances — such as the best interests of a child directly affected — that warrant special relief in light of all the circumstances of the case and whether the decision will render the person stateless; and

considération liée à sa situation personnelle — tel l'intérêt supérieur d'un enfant directement touché — justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales ainsi que le fait que la décision la rendrait apatride, le cas échéant;

(b) request that the case be decided by the Minister.

b) demander que l'affaire soit tranchée par le ministre.

Consideration of representations

Obligation de tenir compte des observations

(3.2) The Minister shall consider any representations received from the person pursuant to paragraph (3.1)(a) before making a decision.

(3.2) Le ministre tient compte de toute observation reçue au titre de l'alinéa (3.1)a) avant de rendre sa décision.

Hearing

Audience

(4) A hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required.

(4) Une audience peut être tenue si le ministre l'estime nécessaire compte tenu des facteurs réglementaires.

Referral to Court

Renvoi à la Cour

(4.1) The Minister shall refer the case to the Court under subsection 10.1(1) unless

(4.1) Le ministre renvoie l'affaire à la Cour au titre du paragraphe 10.1(1) sauf si, selon le cas :

(a) the person has made written representations under paragraph (3.1)(a) and the Minister is satisfied

a) la personne a présenté des observations écrites en vertu de l'alinéa (3.1)a) et le ministre est convaincu que :

(i) on a balance of probabilities that the person has not obtained, retained, renounced or resumed his or her citizenship by false

(i) soit, selon la prépondérance des probabilités, l'acquisition, la conservation ou la répudiation de la citoyenneté de la

representation or fraud or by knowingly concealing material circumstances, or

personne ou sa réintégration dans celle-ci n’est pas intervenue par fraude ou au moyen d’une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels,

(ii) that considerations respecting the person’s personal circumstances warrant special relief in light of all the circumstances of the case; or

(ii) soit des considérations liées à sa situation personnelle justifient, vu les autres circonstances de l’affaire, la prise de mesures spéciales;

(b) the person has made a request under paragraph (3.1)(b).

b) la personne a fait une demande en vertu de l’alinéa (3.1)b).

Notice of decision

Communication de la décision

(5) The Minister shall provide his or her decision to the person in writing

(5) Le ministre communique sa décision par écrit à la personne.

Revocation for fraud — declaration of Court

Révocation pour fraude — déclaration de la Cour

10.1 (1) Unless a person makes a request under paragraph 10(3.1)(b), the person’s citizenship or renunciation of citizenship may be revoked only if the Minister seeks a declaration, in an action that the Minister commences, that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances and the Court makes such a declaration.

10.1 (1) Sauf si une personne fait une demande en vertu de l’alinéa 10(3.1)b), la citoyenneté de la personne ou sa répudiation ne peuvent être révoquées que si, à la demande du ministre, la Cour déclare, dans une action intentée par celui-ci, que l’acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d’une fausse déclaration ou de la

dissimulation intentionnelle de faits essentiels.

(2) [Repealed, 2017, c. 14, s. 4]

(2) [Abrogé, 2017, ch. 14, art. 4]

Effect of declaration

(3) A declaration made under subsection (1) has the effect of revoking a person's citizenship or renunciation of citizenship.

Effet de la déclaration

(3) La déclaration visée au paragraphe (1) a pour effet de révoquer la citoyenneté de la personne ou la répudiation de la citoyenneté de celle-ci.

Proof

(4) For the purposes of subsection (1), if the Minister seeks a declaration that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in sections 34, 35, 35.1 or 37 of the *Immigration and Refugee Protection Act*, the Minister need prove only that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.

Preuve

(4) Pour l'application du paragraphe (1), il suffit au ministre — qui demande à la Cour de déclarer que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels concernant des faits visés à l'un des articles 34, 35, 35.1 et 37 de la Loi sur l'immigration et la protection des réfugiés — de prouver que celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

Presumption

10.2 For the purposes of subsections 10(1) and 10.1(1), a person has obtained or resumed his or her citizenship by false representation or

Présomption

10.2 Pour l'application des paragraphes 10(1) et 10.1(1), a acquis la citoyenneté ou a été réintégrée dans celle-ci par fraude ou au moyen d'une

fraud or by knowingly concealing material circumstances if the person became a permanent resident, within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, by false representation or fraud or by knowingly concealing material circumstances and, because of having acquired that status, the person subsequently obtained or resumed citizenship.	fausse déclaration ou de la dissimulation intentionnelle de faits essentiels la personne ayant acquis la citoyenneté ou ayant été réintégrée dans celle-ci après être devenue un résident permanent, au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés, par l'un de ces trois moyens.

IV. The Standard of Review

[34] Reasonableness is the presumptive standard of review for administrative decisions, subject to specific exceptions "only where required by a clear indication of legislative intent or by the rule of law" *(Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]). Reasonableness remains the standard of review for decisions to revoke citizenship pursuant to the Act (*Tran v Canada (Citizenship and Immigration)*, 2020 FC 215 at para 24; *Xu v Canada (Citizenship and Immigration)*, 2021 FC 1102 at para 34 [*Xu*]).

[35] Whether the decision is reasonable is reviewed in accordance with the principles set out in *Vavilov.* 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 paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91). And a decision should not be set aside unless it

contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[36] Where allegations of a breach of procedural fairness are made, the Court must determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances. The Court must ask “with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

V. The Applicant’s Submissions

[37] Mr. Onate made several submissions in his written material that are based on provisions of the IRPA that do not apply to citizenship revocation proceedings pursuant to the Act. He also mistakenly argued that subsection 10(1) of the Act, which was amended post-*Hassouna*, was still inoperative and therefore could not be used as a basis to revoke his citizenship.

[38] In his written submissions, which he continues to rely on, Mr. Onate argued that the Minister’s Delegate erred by not convening an oral hearing in accordance with subsection 10(4) of the Act, which gives the Minister discretion, based on considering prescribed factors, to hold a hearing if he or she is “of the opinion that a hearing is required”. Pursuant to section 7.2 of the *Citizenship Regulations*, SOR 93-246 [Regulations], the prescribed factors include where there is a serious issue of the person’s credibility.

[39] Mr. Onate again argues that he made an innocent mistake and not a serious misrepresentation. He claims that he used the other identity in 2002 to escape his persecutors in the Philippines.

[40] Mr. Onate also argues that the decision is not reasonable because the Minister's Delegate did not consider his personal circumstances, including his age, the length of time he has spent in Canada before he acquired his citizenship, his ties to Canada and the other negative impacts of revocation. He submits that the Minister's Delegate's conclusion—that his submissions on hardship and the impact on his three minor Canadian-born children were premature—overlooks the requirement that the best interests of children be considered as part of the personal circumstances that must be taken into account in decisions to revoke citizenship.

VI. The Respondent's Submissions

[41] The Respondent submits that there was no reason for the Minister's Delegate to convene an oral hearing. The Respondent notes that it does not appear that Mr. Onate provided a personal affidavit to the Minister's Delegate; he did not put his own credibility directly in issue before the Minister's Delegate. Mr. Onate acknowledged his misrepresentation. The underlying facts are not disputed and the decision is not based on any findings of credibility.

[42] With respect to Mr. Onate's submission that he made an innocent mistake because he believed he had "erased" his previous identity following the refusal of his various immigration proceedings under his previous identity, the Respondent submits that ignorance of the law is not an excuse and his asserted belief is not objectively reasonable.

[43] The Respondent notes that, contrary to Mr. Onate's submission, section 22 of the IRPA does not apply to the revocation of citizenship pursuant to the Act.

[44] The Respondent submits that the Minister's Delegate did not err in finding that Mr. Onate's submissions about hardship and the best interests of his children were premature. The Respondent notes the distinction between revocation proceedings and removal proceedings. The Respondent also notes that the Minister's Delegate was not required to conduct an analysis of the best interests of the children as would be required in the context of an application pursuant to section 25 of the IRPA. The Minister's Delegate did not err in focussing on considerations relevant to the impact of revocation of citizenship, which does not automatically result in removal from Canada.

VII. The Minister's Delegate Did Not Breach Procedural Fairness and the Decision is Reasonable

[45] The Minister's Delegate did not breach the duty of procedural fairness owed to Mr. Onate. Mr. Onate was provided with the information that the Minister relied on and was given several opportunities to provide submissions and he did so. The procedure set out in sections 10 and 10.1 was followed. The Minister's Delegate was not required to convene an oral hearing. Mr. Onate's credibility was not the issue, despite his history of misrepresentation. He repeatedly admitted his misrepresentations. Mr. Onate did not provide any personal affidavit to the Minister's Delegate, but only submissions from his representative that relayed information on his behalf. The Minister's Delegate's decision is not based on any negative credibility finding,

but rather on facts that are not in dispute and on the assessment of the relevant considerations pursuant to section 10 of the Act.

[46] The Minister's Delegate did not err by failing to fully consider Mr. Onate's personal circumstances. The Minister's Delegate considered the very limited submissions provided and was not required to speculate on other possible considerations not in evidence.

[47] The Minister's Delegate reasonably found that Mr. Onate's time spent in Canada and any establishment as a result were due to his misrepresentations that underpinned his spousal sponsorship and Canadian citizenship, noting that his previous time in Canada under a different identity resulted in his removal.

[48] As Justice Gascon noted in *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 48:

> …it is trite law that persons ought not to benefit from their circumvention of immigration laws and their wanton duplicity in their immigration applications. This Court has often stated that "applicants cannot and should not be 'rewarded' for accumulating time in Canada, when in fact, they have no legal right to do so" (*Tartchinska v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 373 (FC) at para 22).

[49] In citizenship revocation proceedings, where the applicant has been found to have obtained citizenship by false representation, fraud, or by knowingly concealing material circumstances, this Court has discounted the establishment factor where the applicant has not taken responsibility for their actions. For example, in *Gucake v Canada (Citizenship and Immigration*), 2022 FC 123 at para 72, Justice Elliot noted:

> I note that the Applicant first denied having any criminal convictions in December, 1999 when applying for a Temporary Resident Visa. For approximately 19 years, the Applicant enjoyed the benefits of their misrepresentation. It was reasonable for the Delegate to take that into consideration and find that the Applicant's rehabilitation was deserving of little weight as the Applicant failed to come forward and take responsibility for their acts until they received the Notification Letter in 2019.

[50] In *Tan v Canada (Citizenship and Immigration)*, 2024 FC 600 at para 121, Justice St-Louis made similar comments:

> In regards to Ms. Tan's establishment, the Minister's Delegate first recognized positive factors, but did, subsequently, note that Ms. Tan's ability to establish herself was a direct result of her decision to enter into a marriage of convenience scheme. The finding that "establishment under illegal circumstances should not be rewarded" has already been recognised as reasonable by the Court (*Gucake v Canada (Citizenship and Immigration)*, 2022 FC 123 [*Gucake*] at paras 70-71, citing *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082) and I find no error in the Minister's Delegate's assessment in that regard.

[51] Although there could be exceptional circumstances in some cases which could overcome the fact that any establishment in Canada was built on misrepresentation, none exist in the present case. The Minister's Delegate was not required to engage with or assess the explanation suggested by Mr. Onate that he relied on a false identity to seek refugee protection in Canada to avoid his persecutors. His refugee claim and subsequent applications were all refused as was leave for judicial review. In addition, many of Mr. Onate's misrepresentations stemmed from his false answers on his spousal sponsorship, permanent resident application and citizenship application, all under his current identity.

[52] The Minister's Delegate did not err in finding that several of Mr. Onate's submissions on his personal circumstances were premature given the distinction between citizenship revocation and other proceedings, such as removal from Canada.

[53] As noted by Justice Norris in *Xu,* at paras 63-64:

> [63] […] In contrast, while a decision to revoke Canadian citizenship results in the loss of the right to remain in Canada guaranteed by subsection 6(1) of the Charter, it does not entail that the person must leave Canada. It is not an inadmissibility finding, let alone a removal order. The person concerned does not need to leave Canada to comply with the decision. As the Senior Analyst points out, a legally enforceable obligation to leave Canada will arise, if at all, only as a result of separate removal-related proceedings, should such proceedings take place. The respondent endorses this view, emphasizing that citizenship revocation by the Minister does not automatically trigger removal proceedings.
>
> [64] In short, the nature of the question that must be decided by each decision maker determines what is relevant to their respective determinations. Foreign hardship is relevant to the determination the IAD must make under paragraph 67(1)(c) of the IRPA because the appeal concerns a removal order. It is irrelevant to the determination the Minister must make under paragraph 10(3.1)(a) of the *Citizenship Act* because, even if citizenship is revoked, it does not entail removal from Canada.

[54] The Minister's Delegate did not err by not engaging in a full analysis of the best interests of the three minor children. While subsection 10(3.1) of the Act permits the individual subject to revocation to provide submissions "respecting his or her personal circumstances — such as the best interest of any child directly affected…" and subsection 10(3.2) requires the decision-maker to consider those submissions, this requirement differs in magnitude from applications made pursuant to section 25 of the IRPA. Section 25 of the IRPA provides that an exemption may be granted from the requirements of that act where justified on humanitarian and compassionate

considerations, including the best interests of any child affected [H&C application]. There is a significant amount of jurisprudence regarding H&C applications including the importance of considering the best interest of any child affected, but also noting that this important factor does not trump other factors and that this relief is exceptional. This is not an H&C application; the context differs. In citizenship revocation proceedings, the Minister's Delegate considers "personal circumstances" in the context of the impact of the revocation of citizenship, and this may include consideration of the best interest of the children affected by that revocation of citizenship. The Minister's Delegate reasonably noted that it was premature to consider the impact of removal from Canada, as this is not currently at issue.

[55] In *Lewis v Minister of Public Safety*, 2017 FCA 130, the Federal Court of Appeal held that the requirements to conduct a "full blown" analysis of the best interests of a child, in accordance with the principles set out in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, applied in the context of an application pursuant to section 25 of the IRPA, and not to removal proceedings. Justice Gleason explained at para 72:

> [72] The majority opinion in *Kanthasamy* turns in large part on the fact that section 25 of the IRPA explicitly requires an H&C officer to consider the affected children's best interests. Writing for the majority at paragraph 40 of *Kanthasamy*, Justice Abella noted:
>
> > Where, as here, the legislation specifically directs that the best interest of a child who is "directly affected" be considered, those interests are a singularly significant focus and perspective [...].

[56] Justice Gleason found at para 74:

> [74] In light of the foregoing, I disagree with Mr. Lewis and the intervener that *Kanthasamy* requires that a full-blown best interest of the child analysis be undertaken before a child's parent(s) may

> be removed from Canada or that such children's best interests must outweigh other considerations in the analysis. In my view, the holding in *Kanthasamy* applies only to H&C decisions made under section 25 of the IRPA and, even there, does not mandate that the affected children's best interests must necessarily be the priority consideration.

[57] While subsection 10(3.2) of the Act requires the decision-maker to consider personal circumstances "such as the best interests of a child directly affected", this is one of several considerations. Moreover, there was no evidence submitted by Mr. Onate regarding the best interests of his three minor children, who may be impacted by the revocation of his citizenship, apart from a passing reference in the submissions of Counsel for Mr. Onate that there were strong family ties, that Mr. Onate drove the children to soccer practice, and that the children's mother was not financially stable to support the children. The Minister's Delegate was not required to consider other speculative impacts on the children that were not in evidence or apparent on the record.

[58] As the Minister's Delegate reasonably found, the impact on the children and hardship that may result from removal could be considered in the context of removal proceedings, if that occurs, or in the context of other applications that Mr. Onate could pursue to seek to regularize his status. In these other contexts, Mr. Onate would be expected to provide evidence of the impact of his lack of status in Canada or his removal on his minor children.

[59] In conclusion, the Minister's Delegate's decision is reasonable. The decision reflects a rational chain of analysis which is clear and transparent and the outcome is justified by the facts and the law.

JUDGMENT in file T-2695-23

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.

2. No costs are ordered.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2695-23
STYLE OF CAUSE:	ANASTACIO BARADAS ONATE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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