Federal Court  Cour fédérale

Date: 20150924

Docket: T-1014-14

Citation: 2015 FC 1111

BETWEEN:

CARLOTA SEGURA VALVERDE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

JUDGMENT ISSUED SEPTEMBER 15, 2015

O'KEEFE J.

[1] This is an application for an order of *mandamus* regarding the applicant's citizenship application pursuant to subsection 18(1) of the *Federal Courts Act*, RSC, 1985, c F-7.

[2] The applicant seeks a writ of *mandamus*, compelling Citizenship and Immigration Canada (CIC), acting on behalf of the Minister of Citizenship and Immigration, to forthwith

continue processing the applicant's application for Canadian citizenship by removing the hold on her file and completing the checks authorized by the *Citizenship Act*, RSC 1985, c C-29.

I. Background

[3] The applicant is a citizen of Mexico. On May 25, 2003, she arrived in Canada. She claimed refugee protection which was subsequently granted.

[4] On January 27, 2005, the applicant acquired permanent resident status in Canada.

[5] During her residence in Canada, she entered into a common law relationship with a Canadian citizen in 2006 and in 2010, she and her husband had a daughter, who is a Canadian citizen.

[6] In 2010, the applicant renewed her permanent resident status.

[7] In June 2012, the applicant applied for Canadian citizenship.

[8] On December 15, 2012, the cessation provisions under sections 40.1 and 46 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act] came into force. Section 40.1 provides that a foreign national is inadmissible in Canada on a final determination that his or her refugee protection has ceased in accordance with section 108 of the IRPA. Paragraph 46(1)(c.1) provides for a concurrent loss of permanent resident status when there is a

final determination that a permanent resident has ceased to be a Convention refugee or a person in need of protection for any of the reasons set out in paragraphs 108(1)(a) to (d) of the IRPA.

[9] On April 2, 2013, a note was made in the Global Case Management System (GCMS) that the security clearance for the applicant was "passed". On April 3, 2013, a note was made in the GCMS that the criminal clearance for the applicant was "passed" and on April 10, 2013, a note was made in GCMS that the immigration clearance for the applicant was "passed".

[10] On August 15, 2013, the applicant passed her citizenship exam. At that time, she met the residency requirements and had valid RCMP, security and immigration checks. On the same day, CIC referred the applicant to the Canada Border Services Agency (CBSA) for cessation proceedings and put the application on hold. The CIC referred to the fact that the applicant had travelled back to Mexico two times in 2008 and again in 2010.

[11] On September 19, 2013, CBSA filed an application for cessation of the applicant's refugee status with the Refugee Protection Division of the Immigration and Refugee Board (the Board). The cessation hearing was scheduled for January 23, 2014.

[12] On January 26, 2014, the applicant made an on-line access to information and privacy request (ATIP request) pursuant to the *Privacy Act*, RSC 1985, c P-21, for the contents of her permanent resident and citizenship file.

[13] On January 30, 2014, the applicant sent a letter to CIC advising that suspension of her citizenship application pending a cessation application was not permitted by the *Citizenship Act* and requested CIC to continue processing her application.

[14] On February 5, 2014, the CIC incorrectly advised the applicant over the phone that there was no hold on her file.

[15] On March 25, 2014, the applicant made another request to CIC to continue processing her application.

[16] On May 21, 2014, the immigration clearance was updated to "not passed" due to pending proceedings pursuant to subsection 108(2) of the IRPA for cessation.

[17] On August 1, 2014, section 13.1 of the *Citizenship Act* came into force, providing explicit authority for the Minister to suspend processing a citizenship application for as long as is necessary to receive the results of any inquiry that would implicate the applicant's qualification for citizenship. The GCMS was updated subsequently due to this section to formally note that the applicant's citizenship application is suspended pursuant to section 13.1.

II. Decision Under Review

[18] This is an application for an order of *mandamus* regarding the applicant's citizenship application.

III. Issues

[19] The applicant raised the following issues for my review:

1. Did the Minister breach trust by providing the Court with an incomplete record?
2. Has the applicant met the test for an order of *mandamus*?

The applicant informed me at the hearing that the first issue was not being pursued.

[20] The respondent raises one issue: the applicant has not established that the criteria for an order for *mandamus* are met. Processing of the applicant's grant application is suspended under section 13.1 of the *Citizenship Act* pending resolution of doubt about her qualification for citizenship, specifically, the determination of the Board cessation proceeding that directly implicates her permanent resident status.

[21] I would state the issue as the following: has the applicant met the test for an order of *mandamus*?

IV. Applicant's Written Submissions

[22] The applicant sets out the test for an order of *mandamus* under *Dragan v Canada (Minister of Citizenship and Immigration*), 2003 FCT 211 at paragraph 39, [2003] 4 FC 189 [*Dragan*] and submits all the elements are met in the present case.

[23] First, the applicant submits the Minister has a mandatory duty to continue processing her application. Here, the Registrar's inquiries were complete as set out under subsection 11(1) of the *Citizenship Regulations*, SOR/93-246 [the Regulations]. The Registrar has a mandatory duty to then forward the application to a citizenship judge pursuant to subsection 11(5) of the Regulations, as evidenced by the use of the action word "shall" in the statute. All the information in the present case had been collected and the applicant met all the requirements.

[24] The applicant argues the ruling under *Stanizai v Canada (Minister of Citizenship and Immigration)*, 2014 FC 74, [2014] FCJ No 97 [*Stanizai*] applies to the Minister. In the present case, similar to *Stanizai*, the respondent was fully aware of all the information that it now says gives rise to concerns regarding the ongoing validity of the applicant's refugee status from at least 2010. In contrast to *Platonov v Canada (Minister of Citizenship and Immigration)*, 2005 FC 569, [2005] FCJ No 695 [*Platonov*], where in that case, there was an outstanding immigration clearance. The applicant in the present case passed all the clearances. The applicant submits in the present case, it is a circular argument that CIC refuses to allow a citizenship judge to consider the application until an immigration clearance is obtained, but the applicant had an immigration clearance at the relevant time until it was reversed eight months later.

[25] In *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33, [1998] FCJ No 1553 [*Conille*], the Court found that procedural fairness demands that the Registrar inform the applicant that an investigation is ongoing, delaying a decision on the citizenship application. In the present case, the applicant was never advised that her application was on hold and she argues CIC denied that her application was on hold during her correspondence with it. Further, the applicant has never been the subject of an admissibility hearing. Also, none of the prohibitions under sections 20 or 22 of the *Citizenship Act* apply to her.

[26] Second, the applicant submits that she has satisfied the conditions precedent giving rise to the duty. She argues that she has met all requirements for citizenship set out under subsection 5(1) of the *Citizenship Act*. In *Murad v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1089 at paragraph 61, [2013] FCJ No 1182, this Court implied that the right to citizenship vests at the time citizenship should have been granted and what happens thereafter is irrelevant.

[27] The applicant argues that her citizenship should and would have been granted to her within 60 days of referral to the judge had the process not been improperly suspended. In the present case, none of the prohibitions listed under subsection 14(1.1) of the *Citizenship Act* concerning an admissibility hearing of section 17 concerning insufficient information and under section 22 concerning criminal offence apply to the applicant.

[28] Third, the applicant submits there were prior demands for performance of the duty, a reasonable time for the Minister to comply with the demands and the Minister refused to act on the duty. The applicant had requested in letters that CIC continue processing her application on

January 30, 2014 and again on March 25, 2014. CIC was given three weeks to comply but failed to do so. On February 5, 2014, CIC incorrectly advised the applicant that there was no hold on her file.

[29] In the present case, CIC improperly suspended the applicant's application without legislative authority. The applicant argues that the only reason for the hold on her file is the cessation proceedings, which at the time, was not authorized by the legislation. Also, the reversal of her immigration clearance is not a legislated requirement.

[30] Fourth, the applicant submits there is no other adequate remedy available to the applicant and the order sought will be of some practical value or effect. She argues that the harm she will suffer if *mandamus* is not granted is irreparable. Here, CIC refuses to continue processing the application by referring it to a citizenship judge and there is no remedy other than *mandamus* to compel CIC to continue the processing. The cessation provisions, sections 40.1 and 46 of the IRPA, were passed in December 2012. Prior to those changes, the applicant would not have lost her permanent residency even if the Minister were successful in a cessation application. The applicant argues if the cessation application is accepted, then she will lose her permanent resident status and be removed from Canada. She would be separated from her Canadian spouse and her Canadian born child. Therefore, the harm is irreparable.

[31] The applicant argues the cessation hearing is an abuse of process pursuant to *Canada (Minister of Citizenship and Immigration) v Parekh*, 2010 FC 692, [2012] 1 FCR 169. Here, the CBSA moved forward with a cessation application in September 2013 based on information that

had been noted on file since May 2010. In 2010, her travels to Mexico were already examined in detail by a CIC officer who renewed her permanent residence card.

[32] Lastly, the applicant submits there is no equitable bar to the Court's exercise of discretion and the balance of convenience lies with her in issuing an order of *mandamus*.

V. Respondent's Written Submissions

[33] The respondent submits an order of *mandamus* should not be issued because there is a valid basis for suspending the processing of the applicant's citizenship application. For a writ of *mandamus* to issue, an applicant has to demonstrate that officials have been unresponsive, slow or have not dealt with the issue in a reasonable manner (*Tumarkin v Canada (Minister of Citizenship and Immigration*), 2014 FC 915 at paragraphs 17 and 18, [2014] FCJ No 918).

[34] First, the respondent submits the processing of the application was put on hold properly and now, pursuant to section 13.1 of the *Citizenship Act*. This is a clear and lawful basis to suspend the processing of the application. The applicant's proposed processing scheme would entail an unprincipled and disorderly race between the processing of the citizenship application and the determination of the cessation application. This is contrary to law and would put the Minister in the untenable position of having conflicting public legal duties.

[35] Under section 108 of the IRPA, if a Convention refugee voluntarily re-avails herself of the protection of the country from which she claimed refuge, the Board may find that her refugee protection has ceased and she would lose her permanent resident status by operation of paragraph

46(1)(c.1) of the IRPA and also for the purposes of qualification under paragraph 5(1)(c) of the *Citizenship Act*.

[36] Second, the respondent submits there is no public legal duty requiring the Minister to determine the citizenship application until after the Board's determination of the cessation proceedings. The Minister not only has the legal authority to suspend processing, but also the processing time is well within CIC's estimated average timelines.

[37] In most routine cases, inquiries about an applicant's qualifications will be completed within two years. In non-routine cases, completion may take closer to three years. In some cases, processing may be suspended pending the outcome of an investigation or proceeding. Here, the applicant submitted her citizenship application in July 2012, she was interviewed by a CIC officer in August 2013 and then referred for cessation application by the operation of paragraphs 46(1)(c.1) and 108(1)(a) of the IRPA. The applicant's immigration clearance was not positive, in contravention of the applicant's contention. Because the outcome of the inquiries depends on the outcome of the cessation application, the citizenship application has never been placed in queue for referral and is currently suspended pending the Board's determination of the cessation application. Less than 22 months had elapsed when the application for *mandamus* was filed.

[38] The respondent argues in *Platonov*, the Court has found the time for processing a citizenship application is not considered unreasonable where the inquiry is being pursued diligently or the elapsed time is not more than the nature of the process requires. In the case at bar, the timeline for processing the applicant's citizenship application remains within estimated

average timelines. Also, the Minister promptly filed the cessation application in September 2013 after the CIC officer referred the relevant information to the CBSA hearings officer in August 2013.

[39] The respondent relies on *Jaber v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1185 at paragraph 32, 443 FTR 188, [*Jaber*]; *Khan v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1488 at paragraphs 11 and 15, [2012] FCJ No 1586 , [*Khan*], *Tapie v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1048 at paragraphs 9 to 12, [2007] FCJ No 1368, [*Tapie*] and *Seyoboka v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1290 at paragraph 10, [2005] FCJ No 1611 [*Seyoboka*]. It submits this Court has repeatedly recognized in both the citizenship and permanent residence contexts that an applicant's immigration status should be conclusively settled, including by the Board in cessation proceedings, before his or her application can be determined.

[40] Further, the respondent distinguishes the present case from *Stanizai*. In *Stanizai*, the grant application had already been approved by a citizenship judge (at paragraphs 29 and 30); but in this case, the application was not even referred to a citizenship judge, let alone granting an approval. Also, unlike *Stanizai*, there is no lengthy delay following a citizenship judge's decision in the present case. Further, the Court in *Stanizai* did not advert to the inquiry process under the then subsection 11(1) of the Regulations and could not have considered the effect of the newly enacted section 13.1 of the *Citizenship Act*.

[41] Further, the respondent argues that it is possible that the Board could determine that the applicant's refugee protection has not ceased.

[42] Therefore, the respondent submits the legal authority under subsection 11(1) of the Regulations and now subsection 13.1(a) of the *Citizenship Act* nullifies the applicant's contention that the Minister has a public legal duty to continue processing her citizenship application. Accordingly, an order for *mandamus* is not warranted.

VI. Analysis and Decision

A. *Issue 1 – Has the applicant met the test for an order of mandamus?*

[43] Here, I find the applicant has met the test for an order of *mandamus*. In *Dragan* at paragraph 39, Mr. Justice Michael Kelen reiterated the seven elements established by the Federal Court of Appeal for the issuance of a writ of *mandamus*:

> In *Apotex Inc. v. Canada (A.G.)*, [1994] 1 F.C. 742 (C.A.), aff'd [1994] 3 S.C.R. 1100, the Federal Court of Appeal conducted an extensive review of the jurisprudence relating to *mandamus* and outlined the following conditions that need to be satisfied for the Court to issue a writ of *mandamus*:
>
> (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) No other adequate remedy is available to the applicant.
>
> (5) The order sought will be of some practical value or effect.
>
> (6) The Court in the exercise of discretion finds no equitable bar to the relief sought.
>
> (7) On a "balance of convenience" an order in the nature of *mandamus* should issue.

[44] Section 17 of the *Citizenship Act*, which reads as follows, was repealed on July 31, 2014:

17. Where a person has made an application under this Act and the Minister is of the opinion that there is insufficient information to ascertain whether that person meets the requirements of this Act and the regulations with respect to the application, the Minister may suspend the processing of the application for the period, not to exceed six months immediately following the day on which the processing is suspended, required by the Minister to obtain the necessary information.	17. S'il estime ne pas avoir tous les renseignements nécessaires pour lui permettre d'établir si le demandeur remplit les conditions prévues par la présente loi et ses règlements, le ministre peut suspendre la procédure d'examen de la demande pendant la période nécessaire — qui ne peut dépasser six mois suivant la date de la suspension — pour obtenir les renseignements qui manquent.

[45] Subsection 11(1) of the Regulations was repealed on July 31, 2014 and replaced by section 13.1 of the Act on August 1, 2014. These sections read as follows, respectively:

11. (1) On receipt of an application made in accordance with subsection 3(1), 3.1(1), 7(1) or 8(1), the Registrar shall cause to be	11. (1) Sur réception d'une demande visée aux paragraphes 3(1), 3.1(1), 7(1) ou 8(1), le greffier fait entreprendre les enquêtes

commenced the inquiries necessary to determine whether the person in respect of whom the application is made meets the requirements of the Act and these Regulations with respect to the application.

nécessaires pour déterminer si la personne faisant l'objet de la demande remplit les exigences applicables de la Loi et du présent règlement.

(2) If a person who makes an application referred to in subsection 3(1) fails to provide the materials described in subsection 3(4), the citizenship officer to whom the application has been forwarded shall send a notice in writing by mail to the person, at their latest known address, advising that the person is required to provide the materials to that citizenship officer by the date specified in the notice.

(2) Si la personne qui présente une demande visée au paragraphe 3(1) ne fournit pas les documents prévus au paragraphe 3(4), l'agent de la citoyenneté à qui la demande a été transmise lui envoie un avis écrit à sa dernière adresse connue, par courrier, l'informant qu'elle doit lui fournir ces documents dans le délai qui y est précisé.

(3) If a person who makes an application referred to in subsection 3.1(1), 7(1) or 8(1) fails to provide the materials described in subsections 3.1(1), 7(3) or 8(2), as the case may be, the Registrar shall send a notice in writing by mail to the person, at their latest known address, advising that the person is required to provide the materials to the Registrar by the date specified in the notice.

(3) Si la personne qui présente une demande visée aux paragraphes 3.1(1), 7(1) ou 8(1) ne fournit pas les documents prévus aux paragraphes 3.1(1), 7(3) ou 8(2), selon le cas, le greffier lui envoie un avis écrit à sa dernière adresse connue, par courrier, l'informant qu'elle doit lui fournir ces documents dans le délai qui y est précisé.

(4) If a person, other than a person who makes an application referred to in subsection 3.1(1), fails to comply with a notice sent under subsection (2) or (3), the citizenship officer or the

(4) Si la personne qui présente une demande, autre que celle visée au paragraphe 3.1(1), ne se conforme pas à l'avis donné en application des paragraphes (2) ou (3), l'agent de la citoyenneté ou le greffier,

Registrar, as the case may be, shall send a second notice in writing by mail to the person, at their latest known address, advising that the person is required to provide the materials described in subsection 3(4), 7(3) or 8(2), as the case may be, to the Registrar or to the citizenship officer, as the case may be, by the date specified in the notice.

selon le cas, lui envoie un second avis écrit à sa dernière adresse connue, par courrier, l'informant qu'elle doit lui fournir les documents prévus aux paragraphes 3(4), 7(3) ou 8(2), selon le cas, dans le délai qui y est précisé.

(5) After completion of the inquiries commenced under subsection (1), the Registrar shall

(5) Une fois que les enquêtes entreprises en vertu du paragraphe (1) sont terminées, le greffier :

(a) in the case of an application and materials filed in accordance with subsection 3(1), request the citizenship officer to whom the application and materials have been forwarded to refer the application and materials to a citizenship judge for consideration; and

a) dans le cas d'une demande et des documents déposés conformément au paragraphe 3(1), demande à l'agent de la citoyenneté à qui ils ont été transmis d'en saisir le juge de la citoyenneté;

(b) in the case of an application and materials filed under subsection 3.1(1), 7(1) or 8(1), forward the application and materials to a citizenship officer of the citizenship office that the Registrar considers appropriate in the circumstances, and request the citizenship officer to refer the application and materials to a citizenship judge for consideration.

b) dans le cas d'une demande et des documents déposés conformément aux paragraphes 3.1(1), 7(1) ou 8(1), les transmet à l'agent de la citoyenneté du bureau de la citoyenneté qu'il juge compétent en l'espèce et lui demande d'en saisir le juge de la citoyenneté.

…

…

13.1 The Minister may

13.1 Le ministre peut

suspend the processing of an application for as long as is necessary to receive	suspendre, pendant la période nécessaire, la procédure d'examen d'une demande :
(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, whether the applicant should be the subject of an admissibility hearing or a removal order under the *Immigration and Refugee Protection Act* or whether section 20 or 22 applies with respect to the applicant; and	a) dans l'attente de renseignements ou d'éléments de preuve ou des résultats d'une enquête, afin d'établir si le demandeur remplit, à l'égard de la demande, les conditions prévues sous le régime de la présente loi, si celui-ci devrait faire l'objet d'une enquête dans le cadre de la *Loi sur l'immigration et la protection des réfugiés* ou d'une mesure de renvoi au titre de cette loi, ou si les articles 20 ou 22 s'appliquent à l'égard de celui-ci;
(b) in the case of an applicant who is a permanent resident and who is the subject of an admissibility hearing under the *Immigration and Refugee Protection Act*, the determination as to whether a removal order is to be made against the applicant.	b) dans le cas d'un demandeur qui est un résident permanent qui a fait l'objet d'une enquête dans le cadre de la *Loi sur l'immigration et la protection des réfugiés*, dans l'attente de la décision sur la question de savoir si une mesure de renvoi devrait être prise contre celui-ci.

[46] In my view, the main determination for me in the present case is whether or not CIC had the authority to put the applicant's citizenship application on hold on August 15, 2013, when at that time, the applicant had passed her citizenship exam, met the residency requirements and had valid RCMP, security and immigration checks.

[47] The applicant submits that her citizenship should and would have been granted to her within 60 days of referral to the judge, had the process not been improperly suspended. I agree in

part. It is up to the citizenship judge, not me, to make this ruling. The citizenship judge has not yet had the opportunity to make that ruling as the applicant's application was not referred to a citizenship judge but was put on hold. I am of the view that the applicant's application should have been referred to the citizenship judge because none of the prohibitions justifying a hold on her citizenship application apply. She was not subjected to an admissibility hearing under subsection 14(1.1) of the *Citizenship Act*, or submitted insufficient information under section 17 of the *Citizenship Act*, or had issues of criminality under sections 20 and 22 of the *Citizenship Act*.

[48] Paragraph 5(1)(c) of the *Citizenship Act* details the requirement of immigration clearance:

5. (1) The Minister shall grant citizenship to any person who	5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :
…	…
(c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:	c) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :
(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of	(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

a day of residence, and	
(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;	(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

[49] I found Ms. Alexandra Hiles's statements in her affidavit informative. She is the Registrar of Citizenship and Acting Director of Citizenship Program Delivery.

> In some instances, after an "immigration clearance – passed" entry is made in FOSS or GCMS, information comes to light to the effect that a Grant Application applicant is the subject of a pending process under the *IRPA* which may implicate their permanent resident status under the *IRPA*. In these cases, FOSS and/or GCMS records are amended accordingly, and the local CIC citizenship office requests confirmation from the pertinent CIC immigration officer or CBSA officer as to the outcome of the process and any consequential implications for a Grant Application applicant's permanent resident status under the *IRPA*.

[50] In the present case, on August 15, 2013, the CIC officer referred the applicant to CBSA for cessation proceedings and put the application on hold. However, at that time, CIC did not reverse the applicant's immigration clearance. It should also be noted that after the "immigration clearance - passed" entry was made in the GCMS, no new information came to light with respect to the application. All of the information was known to CIC with respect to the return visits to Mexico prior to the date of the entry on April 10, 2013.

[51] With respect to section 17 being the authority for the hold placed on August 15, 2013, no mention is made of section 17 being the basis for the hold, is made in the materials. In any event,

there is a time limit of six months, i.e. the suspension cannot exceed six months. No mention is made of the length of the suspension. As well, I do not believe that section 17 would apply as there was no indication that the Minister was of the opinion that the applicant had provided insufficient information to ascertain whether she met the requirements of the Act.

[52] On August 1, 2014, section 13.1 of the *Citizenship Act* came into force, providing explicit authority for the Minister to suspend processing the citizenship application for as long as is necessary to receive the results of any inquiry that would implicate the applicant's qualification for citizenship. However, on August 15, 2013, section 13.1 of the *Citizenship Act* had not yet come into force. At that time and prior to this amendment, the Minister could only put an application on hold pursuant to the prohibitions listed under the *Citizenship Act*. Here, the applicant did not fall under any of these prohibitions.

[53] Also, in completing the cessation referral, CIC referred to the fact that the applicant had travelled back to Mexico two times in 2008 and again in 2010. This information, however, has been available since the applicant renewed her permanent residency status in 2010. CIC did not pursue cessation proceedings then.

[54] Further, I do not find the respondent's reliance on the cited case law particularly helpful because the factual situations in those cases are different from the present case.

[55] In *Jaber*, this Court examined the effect of cessation proceedings in a permanent resident application. It found an application for cessation of refugee protection must follow its course and

that any prior pending application for permanent residence cannot be decided until a decision is rendered on the issue of the refugee status. In contrast, the applicant in the present case has valid permanent residency status.

[56] In *Khan*, the applicant left the country after the citizenship application was submitted. His permanent residency status expired. Further, he did not satisfy all the pre-conditions such as the residence questionnaire. In contrast, the applicant in the present case has none of these issues.

[57] In *Tapie*, the applicant fraudulently obtained refugee status. He was subjected to inadmissibility proceedings and was found to be inadmissible. Given this circumstance, this Court found the two year delay to reach the decision on his application for permanent residence was not unreasonable. In contrast, the applicant in the present case is not inadmissible and is not subject to an inadmissibility hearing.

[58] In *Seyoboka*, the applicant made some significant additions to his file, rectifying two previous false statements. This Court found the Minister is justified in completing its security check given these additions showing military involvement. The Minister applied to annul the applicant's refugee status. In contrast, the applicant in the present case made no additions to her file to put her clearances in doubt.

[59] I find the present case is similar to *Stanizai*. In *Stanizai*, the applicant met all of the statutory requirements for citizenship and his application was approved by a citizenship judge. The Minister did not appeal the citizenship judge's decision within the relevant prescribed time

period. Subsequent to the citizenship judge's approval, without any new information that arose in the applicant's application, he was referred for cessation proceedings. Accordingly, CIC refused to grant the applicant citizenship status. Madam Justice Anne Mactavish found for the applicant and issued an order of *mandamus* to grant the applicant citizenship status. Although the applicant in *Stanizai* was approved by a citizenship judge, I do not find this fact to be a relevant distinction for the purpose of my analysis.

[60] In the present case, the applicant met all the statutory requirements for citizenship and her application would have been referred to the citizenship judge if not for the hold. Here, the respondent was fully aware of all the information that it now says gives rise to concerns regarding the ongoing validity of the applicant's refugee status from at least 2010. Also, the applicant's immigration clearance was shown as "passed" in the GCMS on August 15, 2013. It is not clear to me if the Minister had concerns or inquiries about the applicant meeting the statutory requirement then, so why did it wait to reverse the applicant's immigration clearance eight months later?

[61] The parties also made submissions with respect to Mr. Justice James Russell's decision in *Godinez Ovalle v Canada (Minister of Citizenship and Immigration)*, 2015 FC 935. I am of the view that this decision does not assist the respondent. In that case, an order for *mandamus* was granted after the respondent suspended the processing of the applicant's citizenship application pursuant to section 13.1 of the Act.

[62] Had the CIC reversed the applicant's immigration clearance on August 15, 2013 pending inquiries, subsection 11(1) of the Regulations would not have been satisfied and accordingly, the Registrar's duty to forward the application to a citizenship judge pursuant to subsection 11(5) of the Regulations would not have been required.

[63] But this was not what happened. In my view, what happened was that CIC put a hold on the applicant's citizenship application without any statutory authority.

[64] The respondent brings up a valid point that there would be a race between the processing of the citizenship application and the determination of the cessation application. This, however, was not the applicant's doing.

[65] In *Conille*, this Court found a delay in the performance of a statutory obligation can be deemed unreasonable if the following is established:

> (a) the delay in question has been longer than the nature of the process required, *prima facie*;
>
> (b) the applicant and his counsel are not responsible for the delay; and,
>
> (c) the authority responsible for the delay has not provided satisfactory justification.

[66] About the first element, I find although the delay has not been longer than the nature of the entire citizenship application process, the hold was placed on the applicant's citizenship application without statutory authorization in August 2013. This has unreasonably delayed the application being referred to a citizenship judge for consideration. As for the second element, the applicant and her counsel are not responsible for the hold and the third element, the justification

for the hold, although now authorized by section 13.1 of the *Citizenship Act*, was not then authorized by statute. Therefore, I find the hold resulted in an unreasonable delay in the performance of CIC's statutory obligation to refer the applicant's file to the citizenship judge for consideration.

[67] Having resolved the above issue, I find the test for a writ of *mandamus* is met in the present case for the following reasons.

[68] First, the Minister has a mandatory duty to continue processing the applicant's application because the hold placed in August 2013 was not authorized by statute.

[69] Second, the applicant has satisfied the conditions precedent giving rise to the duty under subsection 11(5) of the Regulations for the Registrar to forward the application to a citizenship judge.

[70] Third, the applicant had requested CIC to continue processing her application on January 30, 2014 and again on March 25, 2014.

[71] Fourth, I find no other adequate remedy available to the applicant and an order of *mandamus* to compel the Minister to continue processing her application is a practical remedy.

[72] Fifth, I find no equitable bar to the relief sought.

[73] Sixth, I find the "balance of convenience" sides with the applicant and an order in the nature of *mandamus* should issue.

[74] Consequently, for the reasons above, I would allow this application and issue an order of *mandamus* to compel the Minister to continue processing the applicant's citizenship application as set out in the order previously issued in this matter.

[75] The respondent made a preliminary motion for an order granting the respondent leave to file the affidavits of Sunil Sahota and Chen Tan. The applicant opposes the granting of the order. In my view, leave should be and is granted to file these affidavits. The affidavits contain no controversial material.

[76] There shall be no order for costs.

"John A. O'Keefe"

Judge

Ottawa, Ontario
September 24, 2015

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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APPEARANCES:

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