

Federal Court



Cour fédérale

Date: 20160223

Docket: T-1570-15

Citation: 2016 FC 1280

Ottawa, Ontario, February 23, 2016

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**MOHAMAD RAAFAT MONLA,
HAMED MOUNLA,
AND RACHID MOUNLA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

ORDER
(As Amended March 29, 2016)

WHEREAS a number of applications for judicial review have been and continue to be filed challenging the constitutionality of the revocation or proposed revocation of Canadian citizenship on grounds of fraud or misrepresentation under the *Citizenship Act*, RSC 1985, c C-29, as amended by the *Strengthening Canadian Citizenship Act*, SC 2014, c 22;

AND WHEREAS the Court has directed that these applications be case-managed as a group [the Group 2 Revocation Judicial Review Applications];

AND WHEREAS the Court issued an Order and Reasons on January 19, 2016, 2016 FC 44, respecting the Group 2 Revocation Judicial Review Applications that provided that a case-management conference was to be scheduled by the Court to set the next steps to be taken and their timing;

AND WHEREAS that case-management conference was held by teleconference on February 5, 2016, and included those counsel listed in Appendix A;

AND WHEREAS all counsel were granted an opportunity to make further submissions in writing to various issues raised in the case-management conference and have now done so;

AND WHEREAS there is no agreement on the scope of the issues to be initially determined by the Court or on the status of applications filed that are not a Lead Case;

AND WHEREAS at the case-management conference, counsel for the Minister, when asked whether the Minister would take no further steps on revocation cases once an applicant has filed an application for judicial review and the application is joined in the Group 2 Revocation Judicial Review Applications, responded that “if they have a case management order then there will not be any further steps [taken];”

AND WHEREAS the applications directed by the Court to be in the Group 2 Revocation Judicial Review Applications as at the date hereof are as listed in Appendix B;

AND WHEREAS it is expected that additional applications for judicial review will be filed with the Court raising issues in common with those already ordered to be included in the Group 2 Revocation Judicial Review Applications, and judicial economy dictates that such applications be directed in the future to be included in the Group 2 Revocation Judicial Review Applications, and be subject to this Order;

THIS COURT ORDERS that:

1. Each of the ten law firms listed on Appendix A and representing one or more applicants in the Group 2 Revocation Judicial Review Applications included in Appendix B, is entitled to select one application for which they are counsel of record [a Lead Case];
2. All other non-Lead Case applications as set out in Appendix B, including any additional applications directed by the Court to be included in the Group 2 Revocation Judicial Review Applications, shall be held in abeyance by the Court, pending the final disposition of the Lead Cases on the common legal issues identified below [Common Legal Issues];
3. The Minister shall take no steps or proceedings under a notice to revoke Canadian citizenship issued under the *Citizenship Act* as amended by the *Strengthening Canadian Citizenship Act* relating to an application for judicial review that is now or in the future

included in the Group 2 Revocation Judicial Review Applications, until notice is provided to the applicant and the Common Legal Issues to be litigated on the basis of the Lead Cases have been finally determined;

4. If the Minister has revoked an applicant's Canadian citizenship under the *Citizenship Act* as amended by the *Strengthening Canadian Citizenship Act*, then, subject to any further Order of the Court, the Minister may request the applicant to return his or her Canadian passport;
5. Provided an application included in the Group 2 Revocation Judicial Review Applications is timely, or leave to extend the time for the application is granted based on a motion for an extension of time made pursuant to Rule 369, leave for judicial review is or will be granted with respect to the Common Legal Issues. The Court reserves its decision on leave with respect to any other issue raised in any application for leave and judicial review, until after the final determination of the Common Legal Issues, and upon further affidavits and submissions received from the parties;
6. The Common Legal Issues to be litigated on the basis of the Lead Cases are the following questions:
 - a. May the Minister issue a new notice of revocation of Canadian citizenship after the coming into force of the *Strengthening Canadian Citizenship Act*, thereby engaging the new revocation procedure or, by virtue of the transitional provisions of the *Strengthening Canadian Citizenship Act*, where the Minister had issued a revocation notice under the former Act (and the applicant requested a referral to

the Federal Court but no such referral was made by the Minister), is the revocation to be determined in accordance with the provisions of the former Act?

- b. Are any of subsections 10(1), 10(3), or 10(4) of the *Citizenship Act* as amended by the *Strengthening Canadian Citizenship Act*, unconstitutional as violating section 7 of the *Canadian Charter of Rights and Freedoms* and/or sections 1(a) and 2(e) of the *Canadian Bill of Rights*, SC 1960, c 44?
 - c. Does section 10 of the *Citizenship Act* as amended by the *Strengthening Canadian Citizenship Act*, subject an individual to cruel and unusual treatment in violation of section 12 of the *Canadian Charter of Rights and Freedoms*?
7. The Common Legal Issues will be determined on the basis of the Lead Cases, according to the following schedule:
- a. On or before March 14, 2016, the ten law firms identified herein on Appendix A may each identify one Lead Case in writing to the Court and to the Minister;
 - b. On or before April 1, 2016, the Minister shall prepare and file a certified tribunal record for each of the Lead Cases;
 - c. Further affidavits, if any, shall be served and filed by each Lead Case applicant on or before April 29, 2016;
 - d. Further affidavits, if any, shall be served and filed by each Lead Case respondent on or before May 27, 2016;

- e. Cross-examinations on affidavits filed by the applicants in the Lead Cases, if any, shall be completed on or before July 8, 2016;
 - f. Cross-examinations on affidavits filed by the respondents in the Lead Cases, if any, shall be completed on or before August 12, 2016;
 - g. Subject to the provisions below, each applicant's memorandum of argument in a Lead Case shall be served and filed on or before September 12, 2016;
 - h. Subject to the provisions below, each respondent's memorandum of argument in a Lead Case shall be served and filed on or before September 30, 2016;
 - i. The transcript of cross-examinations on affidavits, if any, shall be filed on or before September 30, 2016;
 - j. The Court shall order the hearing of the Common Legal Issues to be heard at the Court in Toronto, Ontario, simultaneously in both official languages, on a date no earlier than October 10, 2016, for a duration not exceeding three (3) days before a bilingual judge, with simultaneous translation (French-English) being provided.
8. Applicant's counsel in each Lead Case is permitted to file a memorandum of argument of up to 45 pages in length and counsel may file consolidated memoranda where multiple Lead Cases can be represented;
9. The respondents in the Lead Cases shall file one consolidated memorandum of argument of up to 100 pages in length;

10. A copy of this Order shall be filed in each of the Group 2 Revocation Judicial Review Applications set out in Appendix B, and in each additional Group 2 Revocation Judicial Review Applications subsequently added by the Court, and this Order shall apply to each such application, without further Order of the Court.

"Russel W. Zinn"

Judge

APPENDIX "A"

<p>Waldman and Associates (Toronto)</p> <p><i>For the Applicants in</i></p> <p>T-1570-15 (Monla <i>et al.</i>), T-1571-15 (Barakat <i>et al.</i>), T-1572-15 (Samer Bidewi), T-1573-15 (Ayman Bidewi), T-1584-15 (Hassouna), T-1696-15 (Nada), T-1707-15 (Karim), T-1867-15 (Suman), T-2026-15 (Assran <i>et al.</i>), T-2067-15 (Sidani), T-2092-15 (Rana), T-55-16 (Ashour <i>et al.</i>) and T-56-16 (Abu-Shleeh)</p>	<p>Department of Justice (Toronto), (Vancouver), and (Montreal)</p> <p><i>For the Respondents</i></p>
<p>Matthew Jeffery, Barrister & Solicitor (Toronto)</p> <p><i>For the Applicants in:</i></p> <p>T-6-16 (Tareq Madanat), T-7-16 (Al-Baqeen), T-8-16 (Luai Madanat), and T-9-16 (Firas Madanat)</p>	
<p>Bellissimo Law Group (Toronto)</p> <p><i>For the Applicants in:</i></p> <p>T-97-16 (Najem) and T-152-16 (Stewart)</p>	
<p>Mamann, Sandaluk & Kingwell LLP (Toronto)</p> <p><i>For the Applicants in:</i></p> <p>T- 1963-15 (Yahya <i>et al.</i>), T-2132-15 (Liu) and T-2133-15 (Han)</p>	

<p>Herman & Herman, Barristers and Solicitors (Toronto)</p> <p><i>For the Applicant in:</i></p> <p>T-10-16 (Kinh Vo)</p>	
<p>Green and Spiegel LLP (Toronto)</p> <p><i>For the Applicants in:</i></p> <p>T-50-16 (Raymond Neakpur), T-53-16 (Raymond Neakpur), and T-75-16 (Ashraf)</p>	
<p>Beauchemin Brisson Avocats (Montréal)</p> <p><i>For the Applicant in:</i></p> <p>T-1-16 (Ajjawi)</p>	
<p>Embarkation Law Corporation (Vancouver)</p> <p><i>For the Applicants in:</i></p> <p>T-2002-15 (Dib), T-2105-15 (Setareh Kopahi), T-2106-15 (Aliagha Kopahi), T-22-16 (Lavonne Gucake), T-23-16 (Cherie Gucake), T-24-16 (Roko Gucake), T-25-16 (Kelepi Gucake), T-27-16 (Thomas Gucake), T-28-16 (Francis Gucake), T-29-16 (Falelafaki Gucake), T-30-16 (Seini Gucake), T-31-16 (Bernard Gucake), and T-32-16 (Ratu Gucake)</p>	
<p>Edelmann & Co. (Vancouver)</p> <p><i>For the Applicant in:</i></p> <p>T-2124-15 (Nguyen)</p>	

<p>Gerami Law Professional Corporation (Ottawa)</p> <p><i>For the Applicant in:</i></p> <p>T-203-16 (Sakr)</p>	
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APPENDIX “B”

T-1570-15 (MONLA)

T-1571-15 (BARAKAT)

T-1572-15 (BIDEWI)

T-1573-15 (BIDEWI)

T-1584-15 (HASSOUNA)

T-1696-15 (NADA)

T-1707-15 (KARIM)

T-1867-15 (SUMAN)

T-1963-15 (YAHYA)

T-2002-15 (DIB)

T-2026-15 (ASSRAN)

T-2067-15 (SIDANI)

T-2092-15 (RANA)

T-2105-15 (S. KOPAHI)

T-2106-15 (A. KOPAHI)

T-2124-15 (NGUYEN)

T-2132-15 (LIU)

T-2133-15 (HAN)

T-2154-15 (BANDUKDA)

T-1-16 (AJJAWI)

T-6-16 (MADANAT)

T-7-16 (AL-BAQAEEN)

T-8-16 (L. MADANAT)

T-9-16 (F. MADANAT)

T-10-16 (KINH VO)

T-22-16 (L. GUCAKE)

T-23-16 (C. GUCAKE)

T-24-16 (R. GUCAKE)

T-25-16 (K. GUCAKE)

T-27-16 (T. GUCAKE)

T-28-16 (F. C. GUCAKE)

T-29-16 (F. T. GUCAKE)

T-30-16 (S. GUCAKE)

T-31-16 (B. GUCAKE)

T-32-16 (R. C. GUCAKE)

T-50-16 (NEAKPUR)

T-53-16 (NEAKPUR)

T-55-16 (H. ASHOR)

T-56-16 (ABU SHLEEH)

T-75-16 (ASHRAF)

T-97-16 (NAJEM)

T-152-16 (STEWART)

T-203-16 (SAKR)

T-213-16 (P. PARKHOMENKO)

T-214-16 (O. PARKHOMENKO)

T-215-16 (A. PARKHOMENKO)

T-216-16 (I. PARKHOMENKO)

T-217-16 (E. PARKHOMENKO)

T-218-16 (F. D'SOUZA)

T-219-16 (L. D'SOUZA)

T-229-16 (SHATI)

T-239-16 (HECHME)

T-273-16 (SITU)

T-313-16 (JIANG)

T-318-16 (MARCIAS)