

Federal Court



Cour fédérale

Date: 20230718

Docket: T-1138-22

Citation: 2023 FC 983

Ottawa, Ontario, July 18, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

NADER AHMED EZZAT ABDELLATIF

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a Decision by the Minister’s Delegate (“MD”) dated May 13, 2022 (“the Decision”), refusing the Applicant’s application for Canadian citizenship pursuant to section 5(4) of the *Citizenship Act*, RSC 1985, c C-29 [Act].

[2] For the reasons that follow, I am not persuaded the MD committed an error warranting this Court's intervention. Therefore, the application for judicial review will be dismissed.

II. **Background**

[3] The facts in this case are not in dispute.

[4] The Applicant, Mr. Abdellatif, was born in Ottawa, Canada on February 5, 1967. At the time of his birth, his father was the First Secretary of the Arab Republic of Egypt's Embassy in Canada and was considered an accredited foreign representative under the *Foreign Missions and International Organizations Act* S.C. 1991, c. 41.

[5] On April 25, 1968, Mr. Abdellatif's father's appointment at the Embassy of the Arab Republic of Egypt in Canada ended. Shortly thereafter, the Applicant and his family left Canada when he was just two-years old. They have never returned to the country since.

[6] On April 14, 1981, the Canadian Ambassador of Sudan sent a request on behalf of the Applicant's father to Immigration, Refugees and Citizenship Canada (IRCC) inquiring whether his son, the Applicant, could claim Canadian citizenship.

[7] In response, the Applicant was advised that he was not a Canadian citizen and not entitled to a Canadian citizenship certificate because, at the time of his birth in Canada, his father was an accredited foreign representative.

[8] Despite the fact that the Applicant was not a Canadian citizen, he was issued a Canadian passport in error for the first time on June 24, 2003 by the Embassy of Canada in Cairo, Egypt. The passport was valid until June 24, 2008.

[9] On October 5, 2003, the Applicant submitted applications for Canadian citizenship certificates on behalf of his two sons, both of whom were born outside of Canada. The applications were refused on the basis that the Applicant himself was not a Canadian citizen and therefore his sons did not have a claim to citizenship at the time of their births abroad.

[10] Between 2008 and 2018, the Applicant received two additional Canadian passports in error.

[11] On December 10, 2013, the Applicant again submitted applications for Canadian citizenship certificates (proof of citizenship) on behalf of his two sons. On the applications, the Applicant declared that his father was employed by a foreign government at the time of his birth in Canada.

[12] On October 8, 2015, following a request for information, the Office of Protocol within Global Affairs Canada confirmed that the Applicant's father was accredited as First Secretary from 1966 until 1968 with the Embassy of the Arab Republic of Egypt in Canada.

[13] The same day, the Applicant was sent a letter refusing the proof of citizenship applications for his sons on the basis that they were not Canadian citizens. In the refusal letter,

the Applicant was advised that despite the fact that he was born in Canada, he is limited from acquiring Canadian citizenship by virtue of birth on Canadian soil pursuant to subsection 5(3) of the *Citizenship Act* because his father was an accredited foreign representative in Canada of a foreign government at the time of his birth.

[14] On March 7, 2017, the Applicant submitted an Adult Abroad Simplified Renewal Passport Application.

[15] On October 16, 2017, the Applicant was advised that his passport application was refused on the basis that he is not a Canadian citizen. The Applicant was given until October 31, 2017 to provide any additional facts about his citizenship status or corrections to any erroneous information regarding his identity that would cause the Minister to reconsider the refusal of his passport application.

[16] On July 15, 2018, the Applicant's sons received study permits to attend a Canadian university.

[17] On May 20, 2021, the Applicant applied for Canadian citizenship requesting discretionary consideration pursuant to subsection 5(4) of the *Citizenship Act*.

III. **Decision under Review**

[18] On May 13, 2022, the MD refused to grant the Applicant's request for citizenship.

[19] The MD began their analysis by noting that a grant of citizenship under subsection 5(4) of the *Citizenship Act* is a very broad remedial power and one that is purely discretionary.

[20] The MD went on to consider the Applicant's submissions in support of his application for a discretionary grant of citizenship that:

- a) children born in Canada ought to be granted citizenship once the child no longer enjoys diplomatic immunity,
- b) the Applicant lived a substantial part of his adult life believing he was entitled to a Canadian passport and built his career on being an accomplished Canadian-Egyptian executive,
- c) his twin sons are studying at Canadian universities and would no longer benefit from domestic tuition fees, and
- d) he and his wife had plans on settling in Canada after retirement.

[21] The MD considered the Applicant's submission that he is deserving of Canadian citizenship because the Government of Canada issued him a passport on multiple occasions. They rejected the Applicant's submissions, finding that the administrative errors did not amount to conferring citizenship on the Applicant or a legal right to citizenship under the *Act*.

[22] The MD noted that the Applicant left Canada at 2 years old and has never returned since. They also noted several deficiencies in the evidentiary record submitted to support the Applicant's submissions. This included evidence to support that his sons were paying domestic

tuition fees, that the Applicant's career was built on the basis that he held a Canadian passport, or to support his intention to reside in Canada after his retirement.

[23] The MD found that the Applicant was not stateless, had not experienced special or undeserved hardship and had not provided services of exceptional value to Canada warranting a discretionary grant of citizenship.

[24] The MD concluded that the Applicant failed to demonstrate, on balance, that he should be granted discretionary citizenship to alleviate any special and unusual hardship or to reward services of an exceptional value to Canada.

IV. **Issues and Standard of Review**

[25] The sole issue in this matter is whether the decision of the MD was reasonable. The parties submit, and I agree, that in assessing the merits of the MD's decision the presumptive standard of reasonableness applies: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*].

[26] On a reasonableness review, the Court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision": *Vavilov* at para 99.

V. Analysis

[27] The Applicant made extensive submissions about the interpretation of subsection 3(2) of the *Citizenship Act*, which is the provision that provides an exception to the general right of citizenship by birth under paragraph 3(1)(a).

[28] Subsection 3(2) of the *Act* states:

Paragraph (1)(a) does not apply to a person if, at the time of his birth, neither of his parents was a citizen or lawfully admitted to Canada for permanent residence and either of his parents was

(a) a diplomatic or consular officer or other representative or employee in Canada of a foreign government;

L'alinéa (1)a ne s'applique pas à la personne dont, au moment de la naissance, les parents n'avaient qualité ni de citoyens ni de résidents permanents et dont le père ou la mère était :

a) agent diplomatique ou consulaire, représentant à un autre titre ou au service au Canada d'un gouvernement étranger;

[29] Specifically, the Applicant submitted before the MD, and again before this Court, that once children of accredited foreign representatives no longer enjoy diplomatic immunity, the exception in subsection 3(2) ought not to apply. In other words, he submits that a reasonable interpretation of the provision is that he was entitled to Canadian citizenship from the moment his father's employment ended because he no longer enjoyed diplomatic immunity.

[30] The MD considered the Applicant's submissions on subsection 3(2) of the *Act* and rejected them, finding that Citizenship is purely a creation of Federal statute and as a result, Parliament has the exclusive right to set out the statutory criteria for citizenship. The MD noted

there was no evidence before them that Parliament had intended children born in Canada to foreign diplomatic or consular officers to be granted Canadian citizenship automatically once they no longer benefit from the privileges of diplomatic immunity in Canada.

[31] The Applicant submits the Decision is unreasonable because the MD ignored the context and purpose behind subsection 3(2), asserting, again, that the provision was not intended to apply to individuals once they no longer enjoy diplomatic immunity.

[32] However, I agree with the Respondent that the Applicant's argument with respect to the interpretation of subsection 3(2) of the *Citizenship Act* lacks support in the jurisprudence. I note that when asked, the Applicant was unable to point this Court to any jurisprudence that would support such an interpretation.

[33] The language of subsection 3(2) of the *Act* is not ambiguous. It expressly excludes from citizenship by birth those born to a parent who holds diplomatic status at the time of the child's birth in Canada: *Al-Ghamdi v Canada (Foreign Affairs and International Trade)*, 2007 FC 559 at paras 5 and 9 (*Al-Ghamdi*).

[34] There is no dispute as to whether the Applicant's father held diplomatic status at the time of his birth in Canada.

[35] Against that backdrop, the MD considered and rejected the Applicant's submission that subsection 3(2) of the *Citizenship Act* was only intended to apply while the children of accredited

foreign representatives enjoy diplomatic immunity. In so doing, the MD grappled with the Applicant's submissions and evidence, and provided intelligible, transparent, and justified reasons.

[36] The Applicant's submissions on subsection 3(2) of the *Act* amount to a mere disagreement with the MD's conclusions. They fail to reveal an error in the Decision.

[37] It is important to note the substance of this judicial review is the Applicant's request for a *discretionary* grant of citizenship pursuant to subsection 5(4) of the *Act*. It is not a request for judicial review of the several earlier decisions finding the Applicant is not a citizen by virtue of his birth in Canada.

[38] The Applicant and his parents were advised on several occasions, including in writing in 2007, 2015, and 2017, that he was not a Canadian citizen by virtue of his birth on Canadian soil. The Applicant has not challenged those decisions. Instead, he decided to submit a request for a discretionary grant of citizenship.

[39] The focus of this judicial review therefore is not subsection 3(2), but subsection 5(4) of the *Citizenship Act*, pursuant to which the MD refused the Applicant's request for a discretionary grant of citizenship.

[40] Subsection 5(4) of the *Citizenship Act* vests a discretion in the Minister to grant citizenship in special cases:

Special cases

5 (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.

(Emphasis added)

Cas particuliers

5 (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.

(Non souligné dans l'original.)

[41] The Applicant is not stateless nor does he claim to have provided services of an exceptional value to Canadians. The focus of the MD's determination was whether the Applicant demonstrated special or unusual hardship to warrant a discretionary grant of citizenship.

[42] The thrust of the Applicant's argument is that the MD failed to adequately consider or afford sufficient weight to the hardships he and his family would face if his application were refused. He asserts that his future is dependant on the "continuance" of his Canadian citizenship.

[43] I am not persuaded by the Applicant's submissions.

[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.

[45] The Applicant's submission is that he built his career as a "Canadian-Egyptian" executive on the strength of his belief that he was a Canadian citizen because he was issued a Canadian passport. He asserts that the refusal of his application has harmed his reputation, professional opportunities, and "social status". However, the Applicant's position with respect to his reliance on erroneously issued Canadian passports is seriously undermined by the evidentiary record, which indicates that he was advised on several occasions that he was in fact not a Canadian citizen.

[46] The record indicates this information was relayed to him as early as 1981 when the Canadian Ambassador of Sudan sent a request to IRCC on behalf of the Applicant's father, inquiring whether the Applicant could claim Canadian citizenship. The Applicant was advised at that time that he was not a Canadian citizen because at the time of his birth, his father was an accredited foreign representative.

[47] The MD reasonably rejected this very same submission noting that the Applicant left Canada in 1968, when he was two years old, and that he has never returned. The MD also noted that the first time the Applicant received a Canadian passport was in 2003, when he was 36 years old. Finally, the MD considered that the Applicant has never filed his income taxes in Canada, as all Canadian citizens are required to do. This is the factual matrix that bore on the MD's Decision. On the basis of these facts, it was entirely reasonable for the Minister' Delegate to find

the Applicant had failed to demonstrate special or unusual hardship on the basis of his belief that he was a Canadian citizen.

[48] I also agree with the Respondent's submission that the administrative error which resulted in the Applicant being issued a Canadian passport three times does not create citizenship nor does it have any binding effect if the underlying legislative requirements are not met: *Al-Ghamdi* at para 30, *Pavicevic v Canada (Attorney General)*, 2013 FC 997 at para 41.

[49] The Applicant further contends the MD trivialized his submission that his plans to retire in Canada with his wife would be impeded by the refusal of his application, creating special hardship.

[50] I disagree.

[51] In *Hassan v Canada (Citizenship and Immigration)* 2023 FC 717, Mr. Justice Diner described the notion of "special and unusual hardship" under subsection 5(4) of the *Act* as an "exacting one", citing Mr. Justice Russell in *Ayaz v Canada (Citizenship and Immigration)*, 2014 FC 701 at para 50:

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 added)

[52] The MD thoroughly considered the Applicant's submission that without Canadian citizenship he would be forced to retire in Egypt where he submitted, he would be adversely impacted by political instability, lack of retirement care and restrictive human rights. The MD reasonably assessed the Applicant's submissions and evidence, and explained their concerns as follows:

I have reviewed and considered the Applicant's submission regarding his intention to reside in Canada in the future and I give it little weight. The Applicant submits that he would like to retire in Canada, however he does not provide details as to when that would be. I also note that the Applicant was notified in 1981, 2015, and in 2017 that he was not a Canadian citizen, and for the past five years without a Canadian passport the Applicant has had time to make arrangements for his retirement plan knowing that he is not a Canadian citizen. In addition, there are other pathways available to the Applicant and his wife to come to Canada. The Applicant submits that he is an accomplished business Executive, therefore the Applicant may be eligible to apply for permanent residence under one of Canada's economic immigration classes. I also note that the Applicant's sons are studying in Canada and should they wish to apply for permanent residence and become permanent residents of Canada then they may be eligible to

sponsor their parents for permanent resident status under the family class sponsorship program. As a result, I am not satisfied that the Applicant has demonstrated that this submission constitutes special and unusual hardship such that he should be granted discretionary Canadian citizenship.

[53] It was open to the MD to consider that the Applicant was aware for many years that he was not a Canadian citizen and that he has an opportunity to make alternative arrangements for retirement. Further, the Applicant did not dispute the fact that there remain several avenues available to him to pursue status in Canada as an accomplished business executive with two sons enrolled in Canadian universities.

[54] Finally, the Applicant's submission that his sons' Canadian education would be compromised and create special or unusual hardship is unpersuasive. The Applicant submitted to the MD that his sons' ability to study in Canada was dependant on his ability to pay domestic tuition fees. The MD reasonably considered that the Applicant had not produced evidence to corroborate that he is actually paying domestic tuition fees for his sons:

I note that the Applicant's sons were issued study permits in July of 2018 to come to Canada to study in the fall of 2018, which is three years after the Applicant's sons were refused Canadian citizenship certificates and the Applicant was notified that he was not a Canadian citizen. It was also one year after the Applicant was denied a Canadian passport. Therefore, at the time of their university applications the Applicant already knew that he was not a Canadian citizen and, therefore, not eligible to pay domestic tuition fees. In addition, the study permits were not issued to the Applicant's sons on the basis that their father was a Canadian citizen. The Applicant's sons are currently foreign nationals with temporary status in Canada and once they are done their studies in Canada will be required to leave the country or apply to regularize their status in Canada if they wish to stay in Canada. As the Applicant has not demonstrated that he has been paying domestic tuition fees for his adult children nor demonstrated what hardship his children would experience if he were not to be granted

discretionary Canadian citizenship, I am not satisfied that this submission is a basis on which he should (*sic*) the Applicant should be granted discretionary Canadian citizenship.

[55] In other words, the MD found the Applicant had not met his onus of demonstrating that his son's education was dependant on his ability to pay domestic tuition fees, or that a grant of citizenship was warranted to alleviate any special or unusual hardship in this regard. In my view, it was reasonable for the MD to make such findings due to an insufficient evidentiary record.

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

VI. **Conclusion**

[57] For the reasons set out above, I find the MD's highly discretionary decision was justified, transparent and intelligible. It was justified in relation to the relevant factual and legal constraints that bore upon it. It is equally clear that the MD grappled with the evidence in the record.

[58] The parties did not propose a serious question of general importance for certification, and none arises on these facts.

JUDGMENT IN T-1138-22

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.
2. There is no serious question of general importance for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1138-22

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MINISTER OF CITIZENSHIP AND IMMIGRATION

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