Federal Court  Cour fédérale

Date: 20161114

Docket: T-484-16

Citation: 2016 FC 1264

Ottawa, Ontario, November 14, 2016

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

YAZEED ESNAN

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

ORDER AND REASONS

[1] The present motion for stay made by Mr. Yazeed Esnan [applicant] was argued concurrently with the stay motion presented by Ms. Nesreen Al Madani, the applicant's mother, in file T-482-16: *Al Madani v Canada (Minister of Immigration, Refugees and Citizenship)*, 2016 FC 1263.

[2] For all the reasons that follow, the present motion is dismissed. In addition to the evidence, submissions and case law referred to by the parties, the Court has taken judicial notice of the decision rendered by the Court on November 7, 2016 in *British Columbia Civil Liberties Association et al v Minister of Citizenship and Immigration et al*, 2016 FC 1223, [2016] FCJ No 1217 [*British Columbia Civil Liberties Association*], refusing to issue an interlocutory Order staying the operation of subsection 10(1) of the *Citizenship Act*, RSC 1985, c C-29 as amended [amended Citizenship Act], pending the resolution of the constitutionality and validity of that provision in *Monla v Canada (Citizenship and Immigration)*, Court File T-1570-15 [*Monla* Stay Order] and the cases being jointly case managed with it [the Group 2 Revocation Judicial Review Applications].

[3] The facts leading to the underlining judicial review application – which is included in the Group 2 Revocation Judicial Review Applications – and the actions taken by the Minister of Immigration, Refugees and Citizenship (formerly the Minister of Citizenship and Immigration) [Minister] to revoke the Canadian citizenship of the applicant and to ask the return of the applicant's Canadian passport are not challenged.

[4] The applicant was born in Jordan in 1995. He arrived in Canada with his family. The applicant is of Palestinian descent and at the time of his landing in Toronto, he was holding a Jordanian passport. On September 6, 2000, the applicant and the other declared family members became permanent residents of Canada.

[5] On January 5, 2004, the applicant's father, Mr. Nedal Esnan, signed his application for Canadian citizenship. The relevant residence period for his application was September 6, 2000 (the date he was granted permanent resident status) to January 4, 2004 (the day before the father signed his application). The applicant's father himself declared in his own application for Canadian citizenship that he was absent from Canada for 45 days during the four years immediately preceding the date of his application and that he was present in Canada for 1171 days.

[6] On January 20, 2005, the applicant and other family members became Canadian citizens.

[7] After obtaining their citizenship, the parents of the applicant decided to go to Qatar, and informed Canada Revenue Agency that the family would not be residing in Canada from May, 1 2006, providing as a new contact address, a postal box in Doha, Qatar. Be that as it may, on September 3, 2013, the applicant's father bought a residence in Bedford, Nova Scotia, where the applicant and his sister Rayah – who are currently studying at Dalhousie University – are apparently living. That being said, the applicant's parents are abroad with his younger brother.

[8] On October 14, 2011, copies of evidence collected by the Royal Canadian Mounted Police [RCMP] during its investigation against an immigration consultant and his firm were received by Citizenship and Immigration Canada [CIC] and reviewed by analysts. The immigration consultant's clients would use the consultant's services to misrepresent their residence in Canada in order to obtain Canadian citizenship. A client folder for the applicant's father and his immediate family was found in the office of the immigration consultant's firm and

seized by the RCMP. Blank applications for Canadian citizenship for the applicant's father and himself bearing the applicant's father signature were found in the seized client folder. The firm did not complete section 12 on either the applicant's father or the applicant's application for Canadian citizenship, which requires the name, address and signature of the individual, firm or organization that assisted in the completion of the application.

[9] Under the former subsection 10(1) of the *Citizenship Act*, RSC 1985, c C-29 [former Citizenship Act], one's citizenship could be revoked by order of the Governor in Council where it is was satisfied that citizenship had been obtained "by false representations or fraud or by knowingly concealing material circumstances". The decision of the Governor in Council was based upon a report from the Minister. The person concerned had the right to request that the matter be referred to the Federal Court to determine whether he or she had obtained Canadian citizenship by false representation or fraud or knowingly concealing material circumstances. On August 28, 2012, a Notice of Intent to Revoke Citizenship [revocation notice] for the applicant's father and mother, as well as himself, was issued on behalf of the Minister (we do not know whether the two other children also received a revocation notice).

[10] The *Strengthening Canadian Citizenship Act*, SC 2014, c 22, came into force on May 28, 2015 and provides a new revocation of citizenship process. Subsection 10(1) of the amended Citizenship Act currently provides that the Minister may revoke the Canadian citizenship of a person if it was "obtained, retained, renounced or resumed […] by false representation or fraud or by knowingly concealing material circumstances." It is only when an exceptional circumstance specified in the amended Citizenship Act applies that the Minister is now required

to refer the matter to the Federal Court for a declaration. However, before the Minister can revoke the citizenship of the person concerned, he must issue a notice that specifies "the person's right to make written representations" and "the grounds upon which the Minister is relying to make his or her decision". A hearing may be held if the Minister is satisfied that it is necessary. On July 31, 2015, a new revocation notice for the applicant was issued on behalf of the Minister.

[11] On October 2, 2015, written submissions were made by counsel on behalf of the applicant (and his parents). Counsel explained that the applicant was 9 years old when he obtained Canadian citizenship and that his father applied for Canadian citizenship on his behalf: "[…] mental intent to misrepresent oneself is an element that is required in order to revoke that person's Canadian citizenship, and […] due to the fact that [the applicant] was unaware of the application […] and due to his age at the time of said application, [the applicant] lacked the intent to misrepresent himself with respect to his application for Canadian citizenship". Also included was an excerpt written by the applicant himself where he stated that he was third year student at Dalhousie University, and that it was his desire to work for the Government of Canada upon the completion of his studies: "If my Canadian citizenship was to be revoked, my opportunities in my education and career will be greatly prejudiced." Furthermore, the applicant's counsel argued that while the applicant was originally served with a revocation notice under the previous Canadian citizenship revocation model on September 11, 2012 and that he requested that his case be referred to the Federal Court, "rather than referring the case to the Court, the Minister waited three years and then opted for the administrative process as per the actual law. The option chosen by the Minister has aggravated the prejudice done to [the applicant] as the delay to secure the Canadian citizenship has been increased to ten years".

[12] On February 23, 2016, the delegate of the Minister of Citizenship and Immigration revoked the applicant's citizenship because it was obtained by false representation or fraud or by knowingly concealing material circumstances [impugned decision].

[13] The delegate found in this regard:

> On their applications for Canadian citizenship, Mr. Esnan and Yazeed Esnan declared their home address to be 303-11 Amin Street, Bedford, Nova Scotia from June 2003 to the date upon which they were filed with CIC. However, a Field Operations Support System (FOSS) search for this address revealed that six (6) individuals unrelated to Mr. Esnan and Yazeed Esnan declared to be residing at this address during the same period of time that they declared to be residing there. Mr. Esnan and Yazeed Esnan declared 301-1160 Bedford HWY, Bedford, Nova Scotia as their mailing address. However, this address is listed as the registered address of CCG. Mr. Esnan and Yazeed Esnan declared that their home telephone number was 902-832-1911 and that their work telephone number was 902-832-1915. A Google search conducted on July 16, 2012 indicated that these telephone numbers belonged to CCG. As such, the contact information declared by Mr. Esnan and Yazeed Esnan on their applications for Canadian citizenship appears to be that of CCG and not their own. Furthermore, section 12 of Mr. Esnan's and Yazeed Esnan's applications does not identify that CCG assisted them with the completion of their applications.
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> A LinkedIn search conducted on July 8, 2015 for Mr. Esnan under the name of Nedal Sinan lists his employer as Al Hamed Development & Construction in Abu Dhabi, United Arab Emirates from September 2000 to January 2004, the relevant residence period for his application for Canadian citizenship. This employer is a local construction company in the United Arab Emirates. It does not appear to have a commercial presence in Canada, nor does it appear to employ anyone to work remotely in Canada.
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> As part of Yazeed Esnan's written submissions, Mr. Barchichat provided copies of Royal Bank of Canada (RBC) Visa credit card statements detailing transactions for the period of July 31, 2104 to August 7, 2015, inclusive. However, the matter at hand does not concern Yazeed Esnan's residence in Canada in the recent past. Yazeed Esnan obtained Canadian citizenship directly as a result of his father, Mr. Esnan, obtaining Canadian citizenship. Due to the

fact that the approval of his application for Canadian citizenship was contingent on his father being granted Canadian citizenship, the matter at hand pertains to whether or not Mr. Esnan obtained Canadian citizenship on the basis of false representation or fraud or by knowingly concealing material circumstances. I note that all of these transactions took place outside of the relevant residence period for Mr. Esnan's application for Canadian citizenship and, as such, they do not alleviate my concerns that he failed to disclose all of his absences from Canada on his application for Canadian citizenship.

Mr. Barchichat also provided a letter dated December 10, 2013 from an attorney to Mr. Esnan detailing the purchase of a home in Bedford, Nova Scotia, along with the Agreement of Purchase and Sale for that home, 120 Southgate Drive, Unit 409, Bedford, Nova Scotial, B4A 0B1, dated September 3, 2013 and signed by Mr. Esnan. However, I note that this transaction took place outside of the relevant residence period for Mr. Esnan's application for Canadian citizenship and, as such, it does not alleviate my concerns that he failed to disclose all of his absences from Canada on his application for Canadian citizenship.

[…]

I note that it was not Yazeed Esnan who completed his application for Canadian citizenship, but rather it was his father, Mr. Nedal Esnan, who completed it. Yazeed Esnan was granted Canadian citizenship based upon the fact that his father had become a Canadian citizen as per subsection 5(2) of the *Citizenship Act*. Due to the fact that it was not possible for Yazeed Esnan to become a Canadian citizen without his father first becoming a Canadian citizenship, his father's intentional misrepresentation on his application for Canadian citizenship therefore extended to his application for Canadian citizenship, meaning that Yazeed Esnan acquired Canadian citizenship on the basis of Mr. Esnan's false representation or fraud or knowing concealment of material circumstances.

[…]

[…] On May 29, 2015, provisions of the *Strengthening Canadian Citizenship Act* came into force which introduced a new decision-making model for the revocation of Canadian citizenship. As the Minister had not filed a Statement of Claim in the Federal Court as of May 29, 2015, the transitional provisions in the *Citizenship Act* provide that the notice Yazeed Esnan received on September 11, 2012 is cancelled and that the Minister may provide him a notice

under subsection 10(3) and proceed with his case under the new Canadian citizenship revocation process, and said notice was signed on July 31, 2015. I note that there is no discretion afforded to the Minister in the aforementioned transitional provisions; if a Federal Court proceeding was not pending prior to the coming into force of the new decision-making model for the revocation of Canadian citizenship, the Notice of Intent to Revoke Citizenship that had previously been served is cancelled by operation of law. The Minister, in this instance, chose to proceed with a new Notice of Intent to Revoke Citizenship under the new Canadian citizenship revocation model, and this Notice of Intent to Revoke Citizenship was signed and sent to Yazeed Esnan without delay.

It is true that the length of the prohibition against being granted Canadian citizenship or taking the oath of citizenship as a result of revocation of Canadian citizenship has been increased to ten (10) years; however, this was an intentional change made to the *Citizenship Act* by the Government of Canada and its impact on Yazeed Esnan is a direct consequence of his father's misrepresentation on his application for Canadian citizenship. It is unclear how Yazeed Esnan career course and future goals would not be possible as stated by Mr. Barchichat, as Yazeed Esnan's has failed to demonstrate the prejudice that he would suffer as a result of the revocation of his Canadian citizenship. I note that Yazeed Esnan would become a permanent resident of Canada should his Canadian citizenship be revoked and he would therefore be permitted to continue to reside in Canada. I also note that to date, he has enjoyed the privileges of Canadian citizenship.

On a balance of probabilities, I am satisfied that Mr. Esnan misrepresented himself on his application for Canadian citizenship by failing to disclose all his absences from Canada during the relevant residence period of September 6, 2000 to January 4, 2004 and by failing to declare receiving assistance from CCG in the completion of his and Yazeed Esnan's applications. As such, the citizenship judge and citizenship officer who reviewed his application did not have accurate information before them when they made their assessments about whether or not Mr. Esnan met the residence requirement for a grant of Canadian citizenship as outlined in paragraph 5(1)(c) of the *Citizenship Act* when his application for Canadian citizenship was approved by the citizenship judge on December 14, 2004 and when Canadian citizenship was granted to him by the citizenship officer on December 15, 2004.

Mr. Esnan signed an application for Canadian citizenship on behalf of his son, Yazeed Esnan, on January 5, 2004 and he became a

> Canadian citizen of January 20, 2005. While I have taken into consideration the submissions provided on Yazeed Esnan's behalf by Mr. Barchichat, I am of the opinion that they do not mitigate the fact that he obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances directly as a result of the misrepresentation of his father.

[14] In the underlying application for leave and judicial review which was served and filed on March 23, 2016, the applicant challenges the legality of the impugned decision on the grounds that subsections 10(3) and (4) of the amended Citizenship Act, as amended by the *Strengthening Canadian Citizenship Act*, violate section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, enacted as Schedule B to the *Canada Act 1982* (UK) 1982, c 11 [*Canadian Charter of Rights and Freedoms*]; that the Notice of Intent to Revoke Citizenship, dated July 31, 2015 is null and void because it violates section 2(e) of the *Canadian Bill of Rights*, SC 1960, c 44, and the transitional provisions in the *Strengthening Canadian Citizenship Act*; and that the respondent has otherwise abused the process due to the delays that have elapsed.

[15] It is important to note at this point that two months prior to the serving and filing of the herein application for leave and judicial review of the impugned decision, by Order dated January 19, 2016 [*Monla* Stay Order], the Court enjoined the Minister from taking any steps or proceedings under the notice to revoke citizenship in eight specific applications for leave and judicial review until they are finally determined. In so doing, Justice Zinn dismissed the Minister's motions to strike these applications on the ground that they were premature and that the applicants had to avail themselves of the opportunity under the amended Citizenship Act to make submissions to the Minister as to whether any revocation ought to happen: *Monla v*

Canada (Citizenship and Immigration), 2016 FC 44, [2016] FCJ No 58 at paragraphs 57 to 83 [*Monla*].

[16] That being said, Justice Zinn was satisfied that the applicants in *Monla* met the tri-partite test for the issuance of a stay: (1) that an issue that is neither frivolous or vexatious has been raised; (2) that irreparable harm will occur to the applicant in the interim period between the date of the motion and the disposition of the application if the stay is denied; and (3) that the balance of convenience rests with the applicant (*Manitoba (Attorney General) v Metropolitan Stores (MTS) Ltd*, [1987] 1 SCR 110; *Toth v Canada (Minister of Employment and Immigration)* (1988), 1988 CanLII 1420 (FCA), 86 NR 302 (FCA); and *RJR – MacDonald Inc v Canada*, 1994 CanLII 117, [1994] 1 SCR 311).

[17] Justice Zinn notes in *Monla* at paragraphs 85 to 88:

> [85] The previous conclusion that the applications are not bereft of any possibility of success is sufficient to establish that at least one serious issue has been raised. These include: whether the transition provisions dictate that the revocation notices are a nullity; whether the notices should be quashed as an abuse of process; and whether the revocation procedure under the Amended Act violates the *Charter*, the *Bill of Rights*, and general administrative law principles.
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> [86] In all but one of the applications, the Minister commenced revocation proceedings under the Former Act but chose not to refer the matter to the Federal Court for decision. Those applications allege that, in light of the Minister's failure to proceed with his applications under the Former Act, his new notices are a nullity and further constitute an abuse of process. In the remaining application, T-1696-15 (NADA), the notice is accepted as validly issued according to the terms of the Amended Act but it is asserted that the Minister has engaged in an abuse of process in delaying serving it for more than a decade.

> [87] I agree with the applicants that subjecting them to the process under the Amended Act prior to the determination of the validity of the notices subjects them to a process which may be found to be invalid and unconstitutional. I also agree that there is an air of reality to the allegations that the proceedings constitute an abuse of process. Lastly, I accept that requiring the applicants to participate in a process which requires that they disclose their case by responding to the new notices may well prejudice them if it is later determined that they ought to have been before the Federal Court in an action where the Minister bears the burden of proof. I accept that each of these real possibilities creates the likelihood that the failure to stay the revocation proceedings pending the disposition of the judicial review applications will constitute irreparable harm.
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> [88] I am also satisfied that the balance of convenience does not rest with the Minister. He had every opportunity to initiate proceedings many years ago to strip these applicants of their citizenship but chose or failed to do so. He cannot reasonably now say that he and Canada will be prejudiced by the delay that will be caused in granting the stay when he himself has been responsible for years and years of delay in taking steps to advance these proceedings.

[18] Whereas the Court directed that these application be case managed as a group [Group 2 Revocation Judicial Review Applications], and that it was expected that additional applications for judicial review would be filed, following a case management conference held February 5, 2016, with respect to the Group 2 Revocation Judicial Review Applications, on February 23, 2016, the Court issued an Order that effectively enjoined the Minister from taking any steps to act on any future notices to revoke citizenship provided the affected person brought an application for judicial review of that decision [Case Management Order].

[19] Paragraph 3 of the Case Management Order provides as follows:

> 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 have been litigated on the basis of the Lead Cases have been finally determined.

[20] The Court has set out three questions that are to be addressed by the Court for the Group 2 Revocation Judicial Review Applications on the basis of the identified eight lead cases, which are to be argued at a three day hearing scheduled to commence in Toronto on November 15, 2016:

(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*?

(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*?

[21] On March 24, 2016, Justice Zinn who is case managing the Group 2 Revocation Judicial Review Applications, directed that the underlining judicial review application be added to the group.

[22] Coincidently, the impugned decision revoking the Canadian citizenship of the applicant was made on the same day that the Court made the Case Management Order, which is February 23, 2016. Where an applicant's citizenship has been revoked prior to the filing of an application to review the revocation decision, the Court in paragraph 4 of the Case Management Order had directed that the Minister may continue the process and require that the applicant return his or her Canadian passport, unless prevented by further Order following a motion by the applicant:

> 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.

[23] Indeed, by letter dated August 24, 2016, the Minister requested the applicant to return his Canadian passport, stating notably that "[i]f no information is received from [the applicant] by September 9, 2016, this letter shall serve as the final notice of the Minister's decision to revoke the passport".

[24] On September 7, 2016, the applicant's counsel sent a request to the Minister for an extension of delay until September 30, 2016.

[25] On September 9, 2016, applicant's counsel wrote to Justice Zinn seeking the Court's directions regarding this matter "allowing the applicant to keep his citizenship and passport until a final decision is rendered on [the Case Management Order] regarding the lead cases".

[26] On September 14, 2016, the following directions were made by Justice Zinn:

> The Court has considered Applicant's counsel's letter dated September 9, 2016. It appears that the Applicant's citizenship was revoked on February 23 2016.
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> The Court's Order dated February 23, 2016, in T-1570-15 provides that where notice to revoke citizenship has issued then the Minister will take no steps thereunder once the matter is before the Court and included in the Group 2 case-managed files, which conditions appear to have been met on March 29, 2016 The Order further provides that where the citizenship has been revoked then the Minister may, subject to further Court Order, request the return of the Canadian passport. It appears that the Applicant's citizenship was revoked on the same day that the Order issued.
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> The Minister is to advise the Court and Applicant's counsel within one week whether the circumstances as outlined above are accurate and whether the Minister continues to seek the return of the passport. If so, then the Applicant will be required to bring a motion, presumably under Rule 369, seeking a stay of the decision to revoke and seeking return the passport.

[27] On September 20, 2016, respondent's counsel wrote to the Court confirming:

> This letter is in response to the order of the Honourable Justice Zinn on September 14, 2016. The Respondent confirms that the Applicant's citizenship has been revoked and that the Passport Program may request the return of the Canadian passport issued to the Applicant.

> The Respondent would also like to inform the Court that the Passport Program intends to continue with the revocation of the passport issued to the Applicant. If the Applicant wishes to file a motion regarding the Passport Program's decision, he must file a separate Application for judicial review against this decision.

[28] In the herein motion made pursuant to section 18.2 of the *Federal Courts Act*, RSC 1985, c F-7, as amended, the applicant seeks an order of the Court staying any step or proceeding taken by the respondent under the amended Citizenship Act and the *Canadian Passport Order*, SI/81-86, as the result of the impugned decision made on February 23, 2016 to revoke the Canadian citizenship of the applicant. The Court heard the submissions of counsel in Montréal, Quebec on November 1, 2016.

[29] I am not satisfied that the applicant meets all three conditions of the test to obtain a stay or the issuance of an interlocutory injunction.

[30] Firstly, the constitutional issues raised by the applicant in his notice of application for leave and judicial review – which are neither frivolous nor vexatious – meet the low threshold of a serious issue (see *Monla* at paragraphs 85 to 87). At the date of the present Order, there has not been any further Order of the Court pursuant to paragraph 4 of the Case Management Order. The present application for leave and judicial review is being held in abeyance pending the final disposition of the Lead Cases on the common legal issues identified by Justice Zinn in the Case Management Order.

[31] Secondly, I am not satisfied that the applicant would suffer irreparable harm if the stay or the interlocutory injunction sought by the applicant were refused by the Court.

[32] The applicant wrongly assumes that he cannot travel outside of Canada for fear of not being able to come back and complete his studies. He explains in his affidavit that in February 2016 he purchased a plane ticket to go to Cancun, Mexico, but decided to cancel it since he does not have a permanent residency card. Moreover, has being Palestinian origin carrying a Jordanian passport, traveling will become significantly more difficult as more countries require entry visas. He feels that he is held "hostage", and that if for any reason, he has to leave Canada, he will not permitted to came back by the Canadian authorities. Moreover, his plans for post-graduate studies overseas will have to be revisited if his request for stay of proceeding is not granted.

[33] Paragraph 46(2)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] provides:

(2) A person becomes a permanent resident if he or she ceases to be a citizen under	(2) Devient résident permanent quiconque perd la citoyenneté :
[…]	[…]
(b) subsection 10(1) of the *Citizenship Act*, other than in the circumstances set out in section 10.2 of that Act; or	b) soit au titre du paragraphe 10(1) de la *Loi sur la citoyenneté*, sauf s'il est visé à l'article 10.2 de cette loi;
[…]	[…]

[34] Section 10.2 of amended Citizenship Act read as follows:

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 fraud	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

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.

[35] Since the applicant's misrepresentations were made by the applicant's father in his application for citizenship, the effect of the revocation of his citizenship is that the applicant has become a permanent resident by the operation of the law. This latter status of permanent resident is effective at the date of revocation of his citizenship that is on February 23, 2016 and not at the date that his father signed his application for citizenship as submitted by the applicant's counsel. The applicant will therefore be able to leave and return to Canada, pursue his studies at Dalhousie University and see his parents and other family members who live abroad. As a Canadian permanent resident, the applicant is able to ask and obtain a Canadian permanent resident card that will allow him to return to Canada, if he respects his residency obligation, should he decide to travel abroad temporarily or to pursue post-graduate studies overseas. The applicant, like all other Jordanian citizens, will also be able to use a Jordanian passport to travel abroad. I accept that the present situation may be stressful, but I fail to see how this can amount to irreparable harm. The applicant has known since February 2016 that his citizenship was revoked and the Canadian passport issued in his name could not also be revoked. He was aware that he had become a Canadian permanent resident. Therefore, he had plenty of time to seek and

to obtain a Canadian permanent resident card. Moreover, the inconveniences alleged by the applicant who needs to comply with a residency obligation of 730 days in Canada with respect to every five year period under section 28 of the IRPA in his affidavit do not constitute irreparable harm.

[36] Thirdly, the balance of convenience is in favour of the Minister. The applicant has chosen, through counsel, to make comprehensive written representations on the grounds of revocation mentioned in the second revocation notice. In addition to the argument of aggravated prejudice caused by the delay, numerous submissions were made on the merit. It turned out that the Minister's delegate did not accept those arguments or found this evidence not conclusive (notably because it was outside the relevant residency period). In particular, while the Minister's delegate took into consideration the submissions provided by counsel on behalf of the applicant, it remains that he obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances directly as a result of the misrepresentation of his father. Moreover, the applicant chose to wait until the impugned decision was made to challenge the constitutionality of section 10 of the amended Citizenship Act and illegality of the new revocation process, and this, despite the fact that, in *Monla*, the Court had already dismissed the respondent's motions to dismiss the applications seeking a prohibition writ on grounds of prematurity.

[37] The applicant argues that the Case Management Order of February 23, 2016, is unfair and discriminatory because it establishes a distinction between applications in the nature of a writ of prohibition made upon receipt of a revocation notice and applications in the nature of a writ of

certiorari where people have responded to the revocation notice and whose citizenship has subsequently been revoked. The applicant claims that having a stay of proceedings for people who filed a judicial review to challenge the decision to revoke their citizenship will put all applicants at an equal level. However, I agree with the respondent that there is significant difference, from a legal point of view, between individuals who have raised the issues of *Monla* upon receipt of the revocation notice and those who, like the applicant, have only raised these issues after they filed a judicial review of the decision to revoke their citizenship. Indeed, in cases of individuals who have filed a writ of prohibition to challenge the revocation notice to revoke issued under the new legislation, no decision has yet been rendered by the Minister on the issue of whether they have obtained citizenship through false representations. These individuals asked and obtained a stay from the Court which defers the revocation process until the validity of the new legislative scheme is determined. On the other hand, despite the fact that the issue of delays was raised, the applicant availed himself of the opportunity to provide evidence and submissions to contest the allegations in the revocation notice that the applicant had obtained citizenship by fraud. The Minister's delegate reviewed the applicant's submissions and found, on a balance of probabilities, that the applicant's citizenship has been obtained as a result of significant misrepresentations as to the applicant's presence in Canada in the four year period preceding the filing of his application for citizenship.

[38] Moreover, I agree with the respondent that the applicant is in effect seeking to suspend the operation of the law. Today, the applicant essentially relies on the constitutional arguments made in *Monla*. In his stay motion, the applicant does not submit any additional argument to show that the Minister's delegate committed a reviewable error when he found that the applicant

had obtained his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances as a result of the misrepresentation of the applicant's father. When the applicant ceased to be a Canadian citizen he lost the right to hold a Canadian passport. When a person has been advised by the Minister that a passport in their possession is required to be returned to the Minister, the person shall return it without delay. Allowing people to retain the privileges associated with Canadian citizenship when it has been determined that they obtained their citizenship by fraud would seriously under mind the public interest. Indeed, the remedy the applicant is asking for would amount to suspend the law entirely and would negate the general public interest in the continued application of the law. Likewise, on November 7, 2016, the Court refused in *British Columbia Civil Liberties* to stay the operation of subsection 10(1) of the amended Citizenship Act on an interlocutory basis pending the resolution of the constitutionality and validity of that provision.

ORDER

THIS COURT ORDERS that that the stay motion be dismissed.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-484-16
STYLE OF CAUSE:	YAZEED ESNAN v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA
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