

Federal Court



Cour fédérale

Date: 20190911

Docket: IMM-1051-19

Citation: 2019 FC 1168

Vancouver, British Columbia, September 11, 2019

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Applicant

and

MAHMOUD SHARAFALDIN

Respondent

JUDGMENT AND REASONS

(Delivered from the bench at Vancouver, British Columbia, on September 11, 2019)

[1] The Minister seeks judicial review of the decision of the Refugee Protection Division [RPD] to postpone Mr. Sharafaldin's cessation hearing. I am dismissing this application given the exceptional circumstances of this case.

[2] Section 13.1 of the *Citizenship Act*, RSC 1985, c C-29, provides that an application for citizenship may be suspended while awaiting the results of an investigation that could affect the

applicant's entitlement to citizenship. In *Canada (Citizenship and Immigration) v Nilam*, 2017 FCA 44, [2018] 2 FCR 511, the Federal Court of Appeal stated that section 13.1 covers situations where the Minister has initiated cessation proceedings under section 108(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. This means that when an applicant for citizenship is subject to an application for cessation, the application for cessation must proceed first. The result, of course, is that the person concerned loses the entitlement to citizenship if their refugee status is terminated.

[3] It follows logically that the RPD cannot systematically delay cessation hearings in order to await the results of a citizenship application. This would effectively circumvent Parliament's intention.

[4] This case, however, is exceptional. Mr. Sharafaldin's application for citizenship has been pending for twenty years. In a separate court file, he has applied for *mandamus* to require the Minister to make a decision on that application. Leave has been granted and the hearing date has been set for December 2, 2019. It is in the interest of justice to allow that application to proceed. The judge hearing that application will be in a much better position than the RPD to assess Mr. Sharafaldin's arguments with respect to abuse of process. If the judge finds that the Minister validly relied on section 13.1, then the Minister will be able to apply to the RPD to set a date for the cessation hearing.

[5] I would also observe that it is only in the course of the *mandamus* application, and subsequent to the RPD's decision to postpone the cessation hearing, that the Minister revealed

that Mr. Sharafaldin's citizenship application was suspended pursuant to section 13.1. In *Niu v Canada (Citizenship and Immigration)*, 2018 FC 520 at paragraph 12, I expressed the view that the Minister should disclose that information upon request. Given the Minister's failure to do so, the RPD did not know whether section 13.1 applied and whether *Nilam* controlled the outcome. Thus, the RPD's decision to postpone was reasonable. I should add that considerable deference should be shown to interlocutory decisions such as the decision challenged.

JUDGMENT in IMM-1051-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question is certified.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1051-19

STYLE OF CAUSE: THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS v MAHMOUD
SHARAFALDIN

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: SEPTEMBER 11, 2019

JUDGMENT AND REASONS: GRAMMOND J.

DATED: SEPTEMBER 11, 2019

APPEARANCES:

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