Federal Court Cour fédérale

Date: 20220504

Docket: T-874-20

Citation: 2022 FC 640

Ottawa, Ontario, May 4, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

IMRAN RAHIM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a June 25, 2020, decision by Citizenship Supervisor Miggiani [Supervisor Miggiani] finding that, due to misrepresentation, the Applicant is prohibited from taking the oath of citizenship, and prohibited from being granted citizenship and taking the oath of citizenship for a period of five years, pursuant to paragraphs 22(1)(e.12) and (e.2) of the *Citizenship Act*, RSC 1985, c C-29.

[2] For the reasons that follow, I find the decision under review to be reasonable and to have been made fairly. Accordingly, the application will be dismissed.

Background

[3] The Applicant, Imran Rahim, is a citizen of Pakistan. He arrived in Canada as a permanent resident on November 15, 2001.

[4] In 2009, the Applicant applied for Canadian citizenship. This application was refused on October 2, 2014, because he did not meet the residence requirements.

[5] The Applicant made a second application for citizenship, the subject underlying this Application for Judicial Review, on July 15, 2015. Pursuant to subparagraph 5(1)(c)(i) of the *Citizenship Act*, as it read on that date, in order to be eligible for citizenship, the Applicant was required to have been physically present in Canada for at least 1,460 days between July 15, 2009, and July 15, 2015 [the Relevant Period]. In his initial application, the Applicant declared that he was in Canada for 1,666 days during the Relevant Period.

[6] As part of his application, the Applicant provided copies of three Pakistani passports. The Applicant attended a citizenship interview and was sent a Residence Questionnaire. On the questionnaire, the Applicant now indicated that he had been physically present in Canada for 1,614 days during the Relevant Period.

[7] On September 30, 2016, the Applicant's submissions were reviewed by an officer. The officer found evidence that contradicted the information provided by the Applicant, indicating that he may be prohibited from being granted Canadian citizenship due to misrepresentation.

[8] On October 27, 2016, Citizenship Supervisor Singh [Supervisor Singh] sent the Applicant a procedural fairness letter [the First PFL] outlining the allegation of misrepresentation. The Applicant provided submissions in response, and it was determined that the Applicant had not misrepresented himself in the manner suspected in the citizenship process. On January 31, 2018, the officer granted the application for citizenship, but this was not immediately communicated to the Applicant.

[9] On February 8, 2018, before the Applicant was informed that his application had been granted, Supervisor Singh entered a note into the Applicant's file that he had received new information from the Case Processing Centre in Sydney that the Applicant may hold multiple passports that had not been declared. Supervisor Singh requested that the citizenship application be returned to his attention for review.

[10] The application was assigned to an officer to assess this new information. On March 21, 2018, the officer wrote a report outlining allegations of misrepresentation. She concluded that the Applicant had provided misleading statements and referred the matter to a supervisor:

> I am satisfied that the client was absent from Canada for substantially longer periods of time than declared on the application. In support of the absences declared on his application, the client provided misleading statements regarding his travel, family and employment. I am also satisfied that the client has

> deliberately concealed at least two additional passports that were valid during his relevant period.
>
> I have considered all circumstances surrounding this matter, and I am satisfied, on the balance of probabilities, that the applicant misrepresented material circumstances related to a relevant matter which has induced an error in the administration of the Act. Namely, had the applicant's actual absence from Canada been known, his application would have been processed in a different manner. This case is referred to the supervisor for consideration.

[11] By letter dated January 18, 2019, the Applicant asked that his application for citizenship be withdrawn. Included with this letter was a Request for Withdrawal of Citizenship Application executed by the Applicant in which he wrote as the reason for the withdrawal request:

> I originally submitted my application in July 2015. The processing time has far exceeded the prescribed processing time.

[12] Given one of the issues raised by the Applicant, it is of note that immediately above his signature is the following statement:

> I understand that IRCC will make a determination on whether this request will be accepted, postponed or denied.
>
> I understand that if my request to withdraw my application is accepted, there will be no further processing of my application and my application will be closed. I understand that if my request to withdraw my application is accepted, a citizenship officer and/or citizenship judge will not make a decision nor provide reasons, nor consider whether or not to waive or recommend that certain requirements be waived under the *Citizenship Act*. I understand that if I wish to reapply for citizenship, I will have to submit a new application and fees.
>
> I understand that if my request to withdraw my application is accepted, the application processing fee will not be refunded if processing has begun. I understand that I will be entitled to a refund of the Right of Citizenship fee, if it was paid.

> I understand that my request to withdraw my application may be denied or may be postponed if I am currently under investigation for misrepresentation on my citizenship application (pursuant to paragraph 22(1)(e.1) of the *Citizenship Act*) or if I have been issued a procedural fairness letter indicating that my citizenship application might be refused for misrepresentation (pursuant to paragraph 22(1)(e.1) of the *Citizenship Act*.
>
> I understand that if there is anything in this form that I do not understand, I may choose to consult with a person who is referred to in subsections 21.1(2) to (4) of the *Citizenship Act* (i.e. a lawyer, a notary or a member of the IRCC) before signing this form.
>
> I have read the above statement, understand its implications, and wish to submit my request to voluntarily request the withdrawal of my citizenship application.
>
> [emphasis added]

[13] The Applicant did not receive a response or a confirmation of receipt until the decision was made that he had made misrepresentations and would not be permitted to take the oath of citizenship.

[14] On January 22, 2020, Supervisor Miggiani sent the Applicant a procedural fairness letter [the Second PFL] setting out the allegations against the Applicant and giving him an opportunity to respond. This was the first communication to the Applicant regarding the investigation.

[15] The following concerns were raised in the Second PFL:

- The Applicant had declared several trips that did not appear to be consistent with travel to and from Canada/North America.

- The Applicant appeared to have picked up his passports in Pakistan on dates on which he claimed to have been in Canada.

- The Applicant was issued visas in Pakistan during periods in which he claimed to have not travelled to Pakistan. It was unclear why the Applicant would not apply in Canada, as he had previously applied for visas from within Canada. The Applicant's history of visa applications suggested that he applied for visas in whatever country he was currently in.

- The Applicant appeared to have two additional passports that he did not declare on his citizenship application and that he used for travel.

- The Applicant's declared returns to Canada were inconsistent with information from the Canada Border Services Agency.

- While the Applicant provided several flight bookings, there was evidence that he frequently changed travel plans and had not boarded several of his flights. When changing these bookings, in some instances it appeared that the Applicant had changed the passport used from one of his declared passports to one of his undeclared passports.

- The website of the Applicant's family business in Pakistan listed him as Managing Director and CEO, and had done so between 2012 and 2016. He was also listed as the

Managing Director of the company "on several members directories such as the Management Association of Pakistan."

- There were photographs of the Applicant on social media of him in Pakistan, including at a conference in Karachi in April 2014, when the Applicant claimed to have been in Canada.

- There was evidence that the Applicant was not separated from his wife, contrary to what he claimed in his application. The Applicant's wife did not live in Canada.

- The evidence suggested that the Applicant had stronger ties to Pakistan than he declared in his application, and that he returned to Pakistan despite saying he left for fear of being kidnapped and had never returned.

- An anonymous fraud tip had been received on July 24, 2018, alleging that:

    - the Applicant had been residing and working full time in Pakistan;

    - the Applicant only visited Canada occasionally;

    - the Applicant's cousin uses the Applicant's bank and credit cards and pays his bills to simulate his presence in Canada; and

- the Applicant is married, and his family does not visit Canada.

[16] The Second PFL indicates that while the anonymous tip would normally not be given significant weight on its own, "the information contained therein appears to be corroborated by other information on file and therefore has some weight."

[17] Overall, Supervisor Miggiani indicated that the evidence suggested that the Applicant had misrepresented himself in the citizenship process. The Applicant was given an opportunity to respond to the allegations in the Second PFL.

[18] With respect to the Applicant's request to withdraw his citizenship application, Supervisor Miggiani informed the Applicant that it was the policy of Immigration, Refugees and Citizenship Canada [IRCC] to deny or postpone withdrawal requests if an applicant is under investigation for misrepresentation.

[19] The documents relied on by Supervisor Miggiani in drafting the Second PFL were included as enclosures to it. Notably however, the anonymous tip was not included.

[20] The Applicant provided a response to the Second PFL, which was received on April 21, 2020, after the Applicant had been granted an extension of time. The Applicant, through his counsel, denied the allegations in the Second PFL but stated that "due to the particularity and unsourced nature of the allegations" he felt that "not all the accusations can be addressed with

enough particularity in the time provided to fully refute them." The Applicant therefore conceded that his application would be refused.

The Decision

[21] On June 25, 2020, Supervisor Miggiani issued a decision, finding that the Applicant is prohibited from being granted citizenship or taking the oath of citizenship due to misrepresentation.

[22] There are two documents in the record purporting to be the decision. The first is a 9-page document in the form of a letter dated June 25, 2021, addressed to the Applicant c/o his lawyer, with no subject line, from Supervisor Miggiani [the Summary Letter]. The second is a 27-page document in the form of a letter dated June 25, 2021, with 136 numbered paragraphs similar in format to a court judgment, addressed to the Applicant c/o his lawyer, having the subject line "Reasons and Decision" [the Reasons and Decision].

[23] The Applicant claims to have only received one of these documents; however, which is unclear. In his affidavit at paragraph 18, the Applicant states that the only document he received is "a decision letter from Citizenship Supervisor, L. Miggiani, with the subject line: Reasons and Decision" which he attaches as Exhibit D. The document attached at Exhibit D is the first 22 pages of the Reasons and Decision. He then attests that he only received the document attached at Exhibit E as part of the disclosure on this Application. The document attached at Exhibit E is the Summary Letter.

[24] However, the Applicant has also filed an affidavit of Bao Linh Duong, a student-at-law with the Applicant's counsel. Ms. Duong says that she was asked by Applicant's counsel to "review our file on this matter to ascertain certain time lines." Her evidence contradicts that of the Applicant. She attests that "only the refusal letter dated June 25, 2020 attached as Exhibit 'A' was received by our office and the client," while "[t]he document entitled 'Reasons and Decision' attached as Exhibit 'B' was only received by our firm and the client after the leave application was filed." Exhibit A is the Summary Letter, and Exhibit B is the first 22 pages of the Reasons and Decision.

[25] No issue was raised that only the first 22 of the 27 page Reasons and Decision were attached to these affidavits, and I am satisfied this was a clerical oversight when the documents were put together.

[26] The Notice of Application for Leave and Judicial Review, filed by the Applicant on August 5, 2020, twice indicates that while the Applicant has received the decision, he has not received the written reasons.

The Summary Letter

[27] The Summary Letter sets out the history of the Applicant's file. It then indicates that the concerns with his application include, but are not limited to the following:

> - You held two additional passports [FT9151891 (ppt 891) and FT9151892 (ppt 892)], which were valid during the relevant period, and were issued to you outside of Canada

> during undeclared absences. These passports were not disclosed on your citizenship application.
>
> - You likely used these passports to travel during the relevant period.
> - You were issued visas outside of Canada during undeclared absences.
> - Your declared travel is inconsistent with other evidence before me such as the US Customs and Border Protection Arrival and Departure Information Report (CBP report) and the Canada Border Services Agency (CBSA) Integrated Customs Enforcement System Report (ICES).
> - A number of your declared returns to Canada could not be verified.
> - Open source research indicates you visited Pakistan for work during undeclared absences.
> - The supporting documents you provided (apart from specific credit card statements and cell phone records) are not reliable evidence of your physical presence in Canada.

[28] The Summary Letter then summarizes the Applicant's known whereabouts during the Relevant Period based on the evidence and calculates that the Applicant was likely physically present in Canada for at most 1,047 days. The Summary Letter notes that this is below not only the requirement for citizenship, but also the requirement for permanent residence:

> In addition, you also likely fail to meet the requirement to be physically present in Canada as a permanent resident for 183 days in each of the four calendar years that are fully or partially in the six years immediately before the date of your application.

[29] The Summary Letter indicates that the Applicant's submissions were considered but, on the balance of probabilities, they do not overcome the allegations. The Summary Letter notes that the Applicant conceded in his submissions that his application would be refused:

> I also note that you state in your April 21, 2020 submission that you did not have sufficient time to adequately respond to my January 29, 2020 letter. However, on February 25, 2020, a letter from your representative was received in which a 30 day extension from February 18, 2020 was requested in order to prepare a response. Said request for an extension was granted to you (i.e. until March 18, 2020). In your April 21, 2020 submission, you did not request an additional extension of time. Instead you conceded that your application would be refused. As such, a decision has been rendered based on the evidence before me.

[30] Supervisor Miggiani found that the Applicant had made material misrepresentations on his application. He was therefore found to be ineligible to take the oath of citizenship, and prohibited from being granted citizenship or taking the oath of citizenship for the next five years.

[31] With respect to the Applicant's request to withdraw his application, Supervisor Miggiani denied the request, because the Applicant was found to be prohibited from doing so due to misrepresentation.

The Reasons and Decision

[32] The Reasons and Decision is significantly more detailed than the Summary Letter. While the Summary Letter sets out the file history, allegations, findings, and consequences, the Reasons and Decisions analyzes the evidence and comes to conclusions.

[33] The structure of the Reasons and Decision closely mirrors that in the Second PFL, addressing each of the concerns in the same order. Aside from the consideration of the

Applicant's submissions in response to the Second PFL, the analysis is largely the same as that in the Second PFL, with several paragraphs copied verbatim.

[34] Generally, Supervisor Miggiani did not accept the Applicant's submissions explaining the discrepancies. The following points regarding the Applicant's submissions are relevant.

[35] Supervisor Miggiani acknowledged that the Applicant took exception to the allegation that he did not disclose his work for the business in Pakistan. The Applicant submitted that he disclosed his work, discussed it with the citizenship judge on his previous application, and noted that the Canadian company was formed to support its Pakistani parent. However, Supervisor Miggiani noted that "the crux of the concern lies in the fact that the Applicant was likely present in Pakistan for business during the relevant period, and this was not declared." Supervisor Miggiani found that the photographs and other evidence indicated that the Applicant was in Pakistan.

[36] With respect to the fraud tip, Supervisor Miggiani acknowledged the Applicant's submission that, in order for such a tip to be considered, it must be clearly signed and the author identified, and that it was improper to not disclose the fraud tip to him. Supervisor Miggiani indicated that "while a copy of the tip document itself was not provided to the Applicant, its contents, as outlined in paragraph [119] of these reasons, were fully disclosed in the [Second] PFL." Supervisor Miggiani then stated that the decision is not based on the tip:

> This decision is not based on the anonymous tip. Rather, the crux of the decision lies in the revised calculation of the Applicant's physical presence in Canada, which will be outlined in detail in these reasons. The contents of the tip simply reiterate the fact that,

> on a balance of probabilities, the Applicant was likely not in Canada for the time periods he declared.

[37] The final pages of the Reasons and Decision are very similar to the Summary Letter. They summarize the Applicant's known whereabouts during the Relevant Period and calculate that the Applicant was likely physically present in Canada for at most 1,047 days, less than the requirement for citizenship. The Reasons and Decision indicates that this is also below the requirement for permanent residence.

[38] The Reasons and Decision closes by finding that the Applicant has made material misrepresentations on his application and is therefore ineligible to take the oath of citizenship, and is prohibited from being granted citizenship or taking the oath of citizenship for the next five years.

[39] Finally, the Reasons and Decision refuses the Applicant's request to withdraw his application, as he has been found to be prohibited due to misrepresentation.

Issues

[40] The following are addressed by the Applicant in his Supplementary Memorandum:

1. What is the appropriate standard of review?

2. Was there a breach of procedural fairness as a result of not disclosing the new material that led to the investigation and/or the fraud tip?

3. Was there a breach of procedural fairness because of the production of multiple decision letters, one of which was not disclosed until this Application?

4. Did Supervisor Miggiani act *ultra vires* in making an assessment of the Applicant's entitlement to permanent residency?

5. Was there a breach of procedural fairness because new allegations were put forward in the final decision that were not present in the second procedural fairness letter?

6. Does the conduct of Supervisor Miggiani raise a reasonable apprehension of bias?

7. Was the finding of misrepresentation unreasonable?

Analysis

Additional Issues

[41] In addition to these principal issues, two additional issues were raised at the hearing. The first relates to the proper respondent in this Application. The Minister responsible for the *Citizenship Act* is the Minister of Citizenship and Immigration, not the Minister of Immigration,

Refugees and Citizenship as was named by the Applicant. An Order will issue correcting this with immediate effect.

[42] The second issue was raised without notice by the Applicant at the commencement of the hearing. The issue raised was whether the Respondent erred in applying the provisions of paragraph 5(1)(c) of the *Citizenship Act* in force at the time the Applicant applied for citizenship on July 15, 2015, rather than the provisions of paragraph 5(1)(c) of the *Citizenship Act* that came into force on October 11, 2017, a date prior to the date of decision rendered by the Respondent on June 25, 2020.

[43] Paragraph 5(1)(c) prescribes the minimum residence requirements that a citizenship applicant must meet. After the Applicant submitted his application, the residency requirement was reduced from 1,460 days in the six years immediately preceding the citizenship application to 1,095 days in the five years immediately preceding the application. The Applicant seeks to benefit from this lower requirement.

[44] Notwithstanding the lateness of this new issue, the Court granted leave to the parties to file written submissions on this new issue.

[45] The residency requirement in paragraph 5(1)(c) was reduced by *An Act to amend the Citizenship Act*, SC 2017, c 14 [the Amending Act]. Section 14 of the transitional provisions of the Amending Act provides that the version of paragraph 5(1)(c) of the *Citizenship Act* in force on the day before the amended provision came into force (i.e. October 11, 2017), applies to a

person whose application for citizenship was made on or after June 11, 2015, but before October 11, 2017, and has not been finally decided before October 11, 2017. As the Respondent notes, this is specifically the case of the Applicant: His application was made on July 15, 2015, he was found to have met the residency requirement by decision on January 31, 2018, and the application was finally disposed of on June 25, 2020.

[46] Despite this, the Applicant maintains that Supervisor Miggiani was obligated to consider the Applicant's qualifications under the current version of the *Citizenship Act*. The Applicant submits that, at common law, in an application for status in Canada, any change in the law relating to that status applies to the application where that status has not been granted prior to the date the new law comes into effect.

[47] Whether such a rule exists at common law is immaterial. Any common law presumption must yield to clear statutory language. Section 14 of the Amending Act is unequivocal that the previous residency requirement applies to pending citizenship applications made between June 11, 2015, and the coming into force of the new provisions.

[48] As a result, the Officer correctly applied the version of the *Citizenship Act* that was in force when assessing the Applicant's application for citizenship. The Applicant was required to have been physically present in Canada for at least 1,460 days during the six years immediately before the date of his application.

1. What is the Standard of Review?

[49] The standard of review is reasonableness, save and except the issues raised relating to procedural fairness. As set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at paragraph 85, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker." A decision will be unreasonable where it fails to reveal a rational chain of analysis or where it exhibits clear logical fallacies (see *Vavilov* at paras 103-104) or where the decision maker "has fundamentally misapprehended or failed to account for the evidence before it." (*Vavilov* at para 126). Decision makers are also constrained by statutory and common law principles, and a decision may be unreasonable where there is an unjustified departure from binding precedent (see *Vavilov* at para 112).

[50] Issues of procedural fairness are reviewed on a higher standard. Justice Pentney in *Kambasaya v Canada (Minister of Citizenship and Immigration)*, 2022 FC 31, at paragraph 19, explains this standard of review:

> Questions of procedural fairness require an approach resembling the correctness standard of review that inquires "whether the procedure was fair having regard to all of the circumstances" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]*; Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107). As noted in *Canadian Pacific* at paragraph 56, "the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond", and at paragraph 54, "[a] reviewing court… asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed".

2. Was there a breach of procedural fairness as a result of not disclosing the new material that led to the investigation and/or the fraud tip?

[51] The Applicant submits that he was not given full disclosure of all of the concerns with his application prior to the finding of misrepresentation, nor an opportunity to respond to them. The Applicant submits that the Respondent used undisclosed information as a basis to revoke the approval of his grant of citizenship and to commence further investigations.

[52] As noted below, this also forms one of the bases for the allegation that there was bias shown by Supervisor Miggiani.

[53] The Applicant notes that the Second PFL refers to "new information" received by the Respondent on February 8, 2018 [the New Information]. It also refers to a fraud tip (also referred to by the Applicant as the poison pen letter) received on July 24, 2018. The Applicant submits that "the Respondent has still not disclosed anything about the New Information, nor the source of the Poison Pen."

[54] The Applicant notes that this lack of disclosure is particularly important, as the record shows that his application for citizenship was approved, only to be recalled after the New Information came to light. The Applicant first heard about the New Information and the fraud tip in the Second PFL.

[55] The Applicant says that the only reference in the Certified Tribunal Record to the New Information is a note by Supervisor Singh dated February 8, 2018 stating:

> **Do not schedule for ceremony** information received from PRC-Sydney that applicant may have multiple passports, all of which were not declared to IRCC in the course of his application for citizenship. File to be returned to IRCC Scarborough and the attention of DS for a review.

[56] The Applicant notes that there is no evidence of any correspondence to Supervisor Singh nor is the source of this information in the record.

[57] The Applicant submits that the fraud tip has never been disclosed to him. He notes that the only reference to the fraud tip's contents is at page 212 of the Certified Tribunal Record, which reads as follows:

> Tip received by the Domestic Network (photo received with application uploaded in GCMS and can be seen at Documents>ID Supporting Documents>Tip Photo: Sent: July 24, 2018 6:06 PM To: Citizenship Fraud Tips / Fraude de citoyenneté (IRCC) <IRCC.CitizenshipFraudTips-Fraudedecitoyennete.IRCC@cic.gc.ca> Subject: ONCE again misrepresentation and immigration fraud. This is too [*sic*] report that Mr Imran Rahim is a resident of Karachi Pakistan living and working full time on Kayaban e tanzeem.karach. He is the CEO and owner of Phoenix security company. He only visits Toronto occasionally and owns an apartment on Lakeshore, which is managed by his cousin Rosheen Rahim (lives on shepherd and bayview). She uses his cards and pays his bills to show him living in Toronto. He is married with children, (photo attached.) His family never visits here as he has not declared himself married according to my info. In the pic are Mr Rahim, his wife and two girls. His Facebook status shows he lives in Toronto.

[58] The Applicant submits that the Respondent was obligated to disclose the New Information and the fraud tip, particularly where they drove the decision-making process. The

Applicant cites *Enache v Canada (Minister of Citizenship and Immigration)*, 2019 FC 182 and *Patel v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1389. In both cases it was found that it was fundamentally unfair for the decision maker to consider the contents of a poison pen letter and not disclose the letter to the applicant.

[59] I agree with the Respondent that the source of the tip was anonymous and therefore there was no source to disclose. I also agree that all the relevant information in the fraud tip was included in the Second PFL, and therefore the Applicant had full opportunity to respond.

[60] This Court has held that a decision maker does not have to share the actual document in question to comply with the requirements of procedural fairness (see *D'Souza v Canada (Minister of Citizenship and Immigration)*, 2008 FC 57 at para 14; *Wang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 812 at para 13).

[61] I agree with the Respondent's submission that the Reasons and Decision make it clear that the fraud tip was not given significant weight and that there is nothing to suggest that the decision was based on the tip. The Respondent also notes that the fraud tip was provided months after the Applicant's file was recalled for investigation and so it is clear that it did not instigate the investigation.

[62] With respect to the New Information, I agree with the Respondent that it was disclosed and detailed to the Applicant in the Second PFL. The Second PFL explains that when applying for renewal of his permanent residence card on December 7, 2017, the Applicant himself

disclosed the existence of passports that had not been disclosed in the citizenship application. As the Respondent notes, this information cannot be said to be new to the Applicant, as he himself provided it.

[63] Moreover, the Second PFL enclosed several documents that formed the basis of the concerns expressed therein, including his Integrated Customs Enforcement System report, a sample flight to Munich time difference, Pakistan passport issuance information from the Pakistani government, an April 6, 2018, letter from the Applicant to IRCC enclosing scans of the photo pages from the undisclosed passports, a United States Customs and Border Protection report, information regarding United States customs preclearance, social media and open source information printouts, United States visa fee information, flight information printouts, and a revised physical presence calculation that shows the source used when an absence from Canada was found.

[64] For these reasons, I find no breach of procedural fairness as a result of not disclosing the new material that led to the investigation and/or the fraud tip.

3. Was there a breach of procedural fairness because of the production of multiple decision letters, one of which was not disclosed until this Application?

[65] The Applicant submits that the production of multiple decision letters is a breach of procedural fairness. He submits that he has the right to understand the basis of the decision and that reasons should be in writing, clear, precise, and understandable. The Applicant submits that

sufficient reasons are required in order to prepare submissions for judicial review. The Applicant further submits that, but for this Application, he would have not received the complete and accurate reasons for the rejection of his citizenship application.

[66] The Applicant submits that the Certified Tribunal Record is not accurate, which "constitutes an error on its face, and hence is an error of law on the basis of incorrectness".

[67] The Respondent submits that both the Summary Letter, and the Reasons and Decision constitute the reasons for the decision. The Respondent submits that the Applicant was sent the more detailed Reasons and Decision, but received both documents as part of his disclosure on this Application. The Respondent submits that this enabled the Applicant to respond to the case to be met.

[68] As is noted above, the affidavit evidence submitted by the Applicant in this matter is contradictory as to which of the two documents were initially sent to and received by the Applicant. The Applicant says it is the Reasons and Decision; the student-at-law says it is the Summary Letter.

[69] In the circumstances, the evidence of the Applicant himself as to which document he received is preferred over that of the student-at-law, whose evidence is based only on her review of the firm's file.

[70] It is also noted that this appears to accord with the documents included in the Applicant's Record. In his Application for Leave and for Judicial Review the Applicant asserts:

> The decision was made on June 25, 2020 and the Applicant was notified of the decision on July 7, 2020. The decision did not contain the written reasons of the Officer. [emphasis in original]

The Index to the Applicant's Application Record lists two documents at Tab 2: "Decision of the Respondent, June 25th, 2020; and Written Reasons given on October 21st, 2020." The document described as the "Decision of the Respondent, June 25th, 2020" is the Reasons and Decision, whereas the document described as "Written Reasons given on October 21st, 2020" is the Summary Letter.

[71] Accordingly, the document providing the most detail as to the reasons for the decision was disclosed to the Applicant when he was informed of the decision. As is noted earlier, the Reasons and Decisions is significantly more detailed than the Summary Letter. The Summary Letter sets out the file history, allegations, findings, and consequences, whereas the Reasons and Decision actually analyzes the evidence and comes to conclusions. It is that document that details how the decision was reached.

[72] I am unable to find that the Applicant was in any way prejudiced or adversely affected by having received only the Reasons and Decision, as the Summary Letter added nothing that was not already known.

[73] For these reasons, I find that there was no breach of procedural fairness because of the production of two decision documents, even if one of them was not disclosed until the commencement of this Application.

4. Did Supervisor Miggiani act ultra vires *in making an assessment of the Applicant's entitlement to permanent residency?*

[74] The Applicant submits that Supervisor Miggiani found in the decision that the Applicant failed to meet the physical presence requirements to be a permanent resident. The Applicant submits that the issue of his permanent residence was not before the decision maker, it was *ultra vires*, and the assessment of his eligibility is akin to judging a matter before it is heard. The Applicant submits that this is both an error in law and a breach of his right to procedural fairness, as he has been denied an impartial decision maker and the right to be heard.

[75] The Applicant submits that these comments should be "struck" so as to prevent him from suffering prejudice in future applications for citizenship and residency.

[76] The Respondent submits that no determination was made regarding the Applicant's permanent resident status and the comments were merely observations.

[77] While the comments regarding permanent residence were unnecessary, it was not an error to make them.

[78] The comments on the Applicant's permanent resident eligibility are not binding on future decision makers. In any future determination of permanent resident status, the decision maker would be obligated to make their own assessment of the evidence and for the applicable time period, which would not be the same as the Relevant Period for the Applicant's citizenship application. It would be an error for a decision maker to simply rely on the findings in his citizenship application. If this did occur, the Applicant's recourse would be a judicial review of the permanent residence decision.

5. Was there a breach of procedural fairness because new allegations were put forward in the final decision that were not present in the second procedural fairness letter?

[79] The Applicant submits that the Summary Letter, and Reasons and Decision both contain new allegations that were not previously disclosed. The Applicant cites for example that the Respondent never disclosed the "open source research" referenced in the Second PFL. The Applicant submits that the decision maker relied on photographs from employee social media accounts, indicating that they showed that he was in Pakistan. The Applicant submits that the sources of these photographs were never disclosed, nor on what basis they "clearly" place him in Pakistan.

[80] The Respondent submits that the open source information was disclosed to the Applicant. The screenshots of the open source material referenced in the Second PFL were provided with the letter, and the letter gave a summary of the relevance of these documents. The Respondent

submits that the Applicant therefore had the same information that was before the decision maker and had an opportunity to address any concerns.

[81] The Applicant has not persuaded me that he was denied procedural fairness as he alleges.

[82] The Second PFL lists a number of enclosures, including "Social media and open source information printouts." These printouts can be seen in the Certified Tribunal Record. Contrary to the Applicant's submissions, looking at the images one can determine their source. The account names and profile pictures of the users posting the images are visible on the social media images. Some of the social media posts include URLs. The screenshots of various webpages, including those on the Internet Archive, also include URLs.

[83] The information provided to the Applicant was sufficient to allow him to respond to the allegations. There is commentary alongside the images indicating why they are relevant. For example, one image notes that the lectern in the image says that the event depicted took place at the Karachi Marriot. Furthermore, as noted by the Respondent, the Second PFL clearly outlines why these images are of concern.

[84] Having reviewed the Summary Letter, Reasons and Decision, and the Second PFL, I am satisfied that there were no material allegations that did not first appear in the Second PFL.

6. Does the conduct of Supervisor Miggiani raise a reasonable apprehension of bias?

[85] The Applicant submits that the conduct of Supervisor Miggiani in his handling of the Applicant's file raises a reasonable apprehension of bias. In his submissions, he raises the following alleged examples of bias:

> a. The tone of correspondence issued by the Respondent to the Applicant;
>
> b. The failure of the Respondent to ever (let alone in a timely or complete manner) disclose the source and content of the New Information to the Applicant or this court;
>
> c. The failure and refusal of the Respondent to disclose the source and content of the "Poison Pen" to the Applicant in a timely or complete manner;
>
> d. The failure of the Respondent to inform the Respondent that his citizenship had been granted and then revoked, and as a result, the failure to give any reasons for this;
>
> e. The failure of the Respondent to disclose the information contained in the New Information and Poison Pill [*sic*] and the conduct of further investigation thereon for over 18 months without ever disclosing the existence of such information to the Applicant and notwithstanding the Applicant's request for status updates;
>
> f. The failure of the Respondent to respond on [*sic*] the Applicant's request for withdrawal of his citizenship application to allow him to refile in a timely manner;
>
> g. The clear evidence of communication between agencies of the Respondent without disclosure of the nature and content of such communication in the record produced pursuant to the Production Order and without evidence of redaction;
>
> h. The clear coordination of the Respondent agencies in not processing the Applicant's application for permanent residence card for renewal [*sic*] without any communication to the Respondent, re [the] same, despite numerous status requests;
>
> i. The *ultra vires* and highly inappropriate and prejudicial assertions made by the Respondent in the decision about the

Applicant's qualification for renewal of his permanent resident card;

j. The issuing of a different form of Reasons and Decision on the record than that contained in the Refusal Letter delivered to the Applicant; and

k. The failure to include the Reasons and Decision when issuing the Refusal Letter to the Applicant notwithstanding the Reasons being on their face addressed to the Applicant.

[86] The Respondent made no direct submissions on this issue in his memorandum, but did address this in oral submissions, asserting that none of these alleged bases established anything close to bias. The reason this was not addressed in writing is that the issue of bias was first directly raised by the Applicant in his Supplementary Memorandum of Argument and the Respondent did not file a further memorandum in response.

[87] However, the Respondent did provide written submissions that respond to two of the matters raised above, items d and f.

[88] In response to item d, the assertion that the Applicant's grant of citizenship had been revoked without reasons provided, the Respondent asserts that the grant of citizenship was never revoked. Rather, after being granted, but before his oath, an investigation was conducted and he was found to be prohibited from taking the oath due to misrepresentation. Swearing the oath is a fundamental requirement for citizenship, and the Applicant cannot become a citizen until the oath is taken.

[89] In response to item f, the failure to permit the Applicant to withdraw his application, the Respondent notes that the Second PFL clearly states that his request to withdraw had been put in abeyance in accordance with IRCC procedures. The Respondent submits that this Court has held that it would be absurd to allow an applicant to withdraw an application during an investigation, as this would allow them to circumvent the consequences of a misrepresentation finding (see *D'Almeida v Canada (Minister of Citizenship and Immigration)*, 2018 FC 870 at paras 40 & 45). I would add that the application form executed by the Applicant clearly states that a withdrawal request will be suspended if an investigation is underway.

[90] In my view, allegations d and f do not support, let alone establish an allegation of bias.

[91] Allegation a, the "tone" of the correspondence, is devoid of any merit. The Applicant pointed to no portion of the correspondence that he claims illustrates this alleged objectionable tone. Having reviewed all correspondence in the certified tribunal record, I find it professional, thorough, and unobjectionable.

[92] Allegation b, the alleged failure to disclose the source and content of the New Information, is discussed above under issue 2. The allegation is devoid of merit.

[93] Allegation c, the failure to disclose the source and content of the fraud tip to the Applicant in a timely or complete manner, is also devoid of merit. The Second PFL discloses that IRCC on July 24, 2018 "received an anonymous tip". The source of the tip was anonymous and therefore there was no source to disclose. Moreover, the Second PFL in four bullet

comments accurately outlines the content of that tip. I further rely on comments made under issue 2, above.

[94] Allegation e, the alleged failure to disclose the information in the New Information or tip to the Applicant prior to the Second PFL despite his requests for updates on his application, is devoid of merit. There is no obligation on the Respondent to disclose any information until it has reviewed it and determined what, if anything, it discloses. Once the Respondent had analyzed the information and reached the view that it may establish misrepresentation, it issued the Second PFL. That procedure is unobjectionable.

[95] Allegation g, the alleged failure to produce communications between agencies of the Respondent in the certified tribunal record, is devoid of merit. The letter accompanying the record's delivery to the Court states:

> This is in response to an order granting leave pursuant to Rule 15 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*. Please find enclosed a copy of the documents requested which I certify as a true copy of the original tribunal record pursuant to Rule 17 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*. Note that some information was redacted under the common law privilege / public interest privilege. The redactions can be found at pages 214, 218, 2103-2105, 2107

The Applicant made no suggestion that this record was incomplete and did not request additional disclosure prior to filing his Supplementary Memorandum on December 23, 2021. In any event, the information from CPC-Sydney, the office handling the renewal of his permanent resident status, was provided to the Applicant with the Second PFL.

[96] Allegation h, “the clear coordination of the Respondent agencies in not processing the Applicant’s application for permanent residence card for renewal [*sic*] without any communication to the Respondent” is devoid of merit. There is no evidence before this Court of this alleged “clear coordination.” In any event, if there was such, it is the Court’s view that it would be understandable and appropriate given the subsequent findings of misrepresentation.

[97] Allegation i, the reference to the Applicant’s permanent resident status is discussed above under issue 4. It is devoid of merit.

[98] Allegation j, the issuance of two forms of reasons is without merit. They are substantially the same and no prejudice was caused to the Applicant. In any event, as I have found, the Applicant first received the more comprehensive written decision.

[99] Allegation k, the failure to include the Reasons and Decision when issuing the refusal letter is without merit, as I have found that that document was provided to the Applicant, as he himself attests.

7. Is the finding of misrepresentation unreasonable?

[100] The Applicant submits that there was no evidence in the Certified Tribunal Record that suggests he did not disclose all of his passports. He says that while his travel records may not have been perfect, there was no deliberate attempt to avoid disclosure, and there is no evidence of any deliberate omission or misrepresentation.

[101] The decision is reasonable. The decision maker conducted a detailed analysis of the information before him prior to reaching the conclusion that the Applicant had misrepresented the evidence submitted with his citizenship application and afterwards. The Applicant failed to disclose that he held two other Pakistani passports and used them to travel. This type of omission strongly suggests an intent to deceive. I do not accept the submission of counsel that the Applicant could not have intended this because he would know the information he provided with his permanent residence application renewal would be shared.

[102] As the Respondent notes, despite asserting there was no misrepresentation, the Applicant is not disputing that he did not meet his residence requirement. His grant of his citizenship based on his time in Canada was made based on incomplete and false assertions by him. They were misrepresentations.

Conclusion

[103] For these reasons, this Application will be dismissed. The decision is reasonable and justified, and the procedure followed in making it was fair.

[104] The Applicant posed no question for certification at the hearing; however, in his written submission on the new issue raised as to which version of the *Citizenship Act* applied to the facts here, he now proposes as a question which of the versions of the *Citizenship Act* have application. I agree with the Respondent that, as found earlier, paragraph 5(1)(c) of the *Citizenship Act* at the time of the Applicant's citizenship application is the applicable provision,

as provided for in section 14 of the transitional provisions contained in the Amending Act.

Accordingly, there is no question of general importance. No question will be certified.

JUDGMENT IN T-874-20

THIS COURT'S JUDGMENT is that style of cause is amended with immediate effect to name as the Respondent the Minister of Citizenship and Immigration in place of the Minister of Citizenship and Immigration, Refugees and Citizenship, this Application is dismissed, and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-874-20
STYLE OF CAUSE:	IMRAN RAHIM v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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