Federal Court Cour fédérale

Date: 20220720

Docket: T-6-22

Citation: 2022 FC 1076

Ottawa, Ontario, July 20, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

KRISTOFFER TABORI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of a delegate of the Minister of Citizenship and Immigration Canada [Minister's Delegate or Delegate] refusing the application of Kristoffer Tabori [Applicant] for citizenship pursuant to s 5(4) of the *Citizenship Act*, RSC 1985 c c-29 [Act].

[2] The Applicant is a citizen of the United States. He has been a permanent resident of Canada since February 2002 and is a film actor and director. The Applicant applied for Canadian citizenship on November 15, 2017. By decision dated August 20, 2019, a Citizenship Judge denied the Applicant's application for citizenship because he had not met the physical presence requirement of s 5(1)(c)(i) of the Act.

[3] On March 4, 2020, the Applicant applied for a discretionary grant of citizenship pursuant to s 5(4) of the Act, which provision permits such a grant of citizenship on the basis of statelessness, special and unusual hardship, or to reward services of an exceptional value to Canada:

> **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.

[4] By decision dated March 4, 2021, a Minister's Delegate refused his s 5(4) application. That decision is the subject of the present application for judicial review.

Decision under review

[5] The Minister's Delegate reviewed the factual background to the application and acknowledged the Applicant's submissions that he should be granted discretionary Canadian citizenship on the basis of both special and unusual hardship as well as for providing services of an exceptional value to Canada.

[6] With respect to special and unusual hardship, the Minister's Delegate stated that this assessment varies depending on the facts and context of the case, and while the words "special and unusual hardship" have not been defined in the citizenship context, generally, the guidelines in the immigration context define "unusual and undeserved hardship" as hardship that is not anticipated by the Act or regulations and is "beyond the person's control". While the Minister's Delegate recognized that this definition was not intended to be either exhaustive or restrictive, the Minister's Delegate did not agree with the Applicant that his inability to meet the physical presence requirements in order to be granted citizenship constitutes special and unusual hardship.

[7] The Minister's Delegate noted the Applicant's submission that if his application were denied that it would be extremely difficult, if not impossible, to remain in Canada but stated that there was no further explanation or any reason given why he would not be able to continue to make Canada his home if he is not granted Canadian citizenship. The Minister's Delegate stated that the Applicant had not demonstrated that he was at risk of losing his permanent resident status and found that they could not conclude that the requirement to be physically present in Canada for 730 days with respect to every five-year period was onerous or burdensome such that the Applicant should be granted citizenship in order to avoid being subject to that requirement.

[8] The Minister's Delegate acknowledged the Applicant's submission he should be granted citizenship because he could be at risk of losing this status should he be required to remain outside Canada in order to meet his family obligations, but found that the residency requirement was flexible enough to accommodate such a situation. And, while the Applicant submitted that he had to travel to the Philippines to be with his wife as there were restrictions on her travelling

to Canada, these restrictions were not explained. As to the Applicant's submission that he wished to gain citizenship in order to sponsor his wife for permanent residency in Canada, the Minister's Delegate noted that the Applicant could likely accomplish this as a permanent resident. And, if it was the Applicant's position that his intent was to first live in the United States with his wife so that she might qualify for United States citizenship, then this would be the choice of the Applicant and it was not evident what hardships the Applicant would experience as a result that would warrant granting of Canadian citizenship as a special case. The Minister's Delegate stated that there was a lack of clarity and confusion in respect of the Applicant's submission and concluded that the Applicant had not demonstrated that he should be granted citizenship to relieve special and unusual hardship.

[9] With respect to the Applicant's submission that his work provided exceptional value to Canada, the Minister's Delegate acknowledged the Applicant's submissions that the film community supports his desire to be able to continue to make Canada his home; that the Applicant has devoted much of his career in the film industry in promoting Canadian talent and in supporting the Canadian economy by directing films in Canada or for Canadian-based projects or Canadian-based companies; and that the Applicant had four more ongoing projects he hopes to direct in Canada. The Minister's Delegate found that the Applicant's submissions were lacking in substance as he had not provided sufficient details regarding his work in Canada, such as documentation or evidence to support the budgets of the films he worked on. The Applicant had also not explained how directing films and series that are "Canada based or for a Canadian service company", as submitted by the Applicant, provides services of an exceptional value to Canada. Instead, the Applicant relied on three letters of support from friends in the film industry.

The Minister's Delegate noted the contents of those letters but stated that they did not explain nor provide any detail as to why the Applicant's work is of exceptional value to Canada such that he should be awarded with a special grant of citizenship.

[10] Even though they noted that this factor is not a requirement to discretionarily grant citizenship pursuant to s 5(4) of the Act, the Minister's Delegate considered the Applicant's submissions regarding his connection to Canada, including his election to make Canada his home and him bringing work to Canada as a Canadian director. The Minister's Delegate concluded that it was not a basis on which such citizenship should be granted and that the Applicant had more connections to other countries outside of Canada and conducts most of his work outside Canada.

[11] The Minister's Delegate concluded that the Applicant had not adequately demonstrated how his particular work as a film director is of exceptional value to Canada such that it should have the effect of granting him Canadian citizenship.

Issue and standard of review

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

[13] Applying that standard on judicial 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).

Preliminary matter: admissibility of Applicant's supplementary affidavit sworn May 26, 2022

[14] The Respondent objects to the admissibility of the Applicant's affidavit sworn on May 26, 2022. The Respondent submits that the affidavit consists of conclusions, arguments and non-factual matters as to the merits of the decision under review, and the prior decision of the Citizenship Judge under s 5(1) of the Act, which decision is not the subject of this judicial review. The Respondent submits that there are no exceptional circumstances that would warrant the admission of this affidavit that was not before the Minister's Delegate when they made the decision under review.

[15] Upon review of the affidavit, I find that it is not admissible. Jurisprudence clearly establishes that, as a general rule, the evidentiary record before a Court on judicial review is restricted to the evidentiary record that was before the decision maker. Evidence that was not before the decision maker and that goes to the merits of the matter is, with certain limited exceptions, not admissible. The recognized exceptions to this general rule are an affidavit that: provides general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review, but does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision maker;

brings to the attention of the reviewing Court procedural defects that cannot be found in the evidentiary record of the administrative decision maker so that the Court can fulfill its role of reviewing for procedural unfairness; or, highlights the complete absence of evidence before the administrative decision maker when it made a particular finding (*Namgis First Nation v Canada (Fisheries and Oceans)*, 2019 FCA 149 at paras 4, 7-10; *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright),* 2012 FCA 22 at para 20; see also *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 19-25; and *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45).

[16] The affidavit at issue in this matter largely sets out the Applicant's review of the certified tribunal record [CTR] and his criticism of the calculation of his physical presence in Canada by the Citizenship Judge and various other officials. He states his opinion that the internal process of determining that he was 38 days short in his residency calculation was overly complex and lacking a straightforward method determination. The Applicant also deposes on the preparation of his initial citizenship application as well as his impression of the Citizenship's Judge's impression of him.

[17] However, the decision of the Citizenship Judge denying the Applicant's citizenship application is not the subject of this judicial review. The Applicant's commentary is not relevant and is not admissible.

[18] When appearing before me the Applicant submitted that his affidavit should be admitted because in it he states that until he conducted his review of the CTR he was not aware that it

included information about how he had previously applied for a permanent resident card or that he had not yet applied to renew his current card. Given that the Applicant has not suggested that the decision was procedurally unfair – on this or any other basis – and that he was aware of the status of his permanent residence, I fail to see how the fact that his affidavit contains this statement renders his affidavit admissible.

[19] The affidavit also contains some limited evidence that would go to the merits of the decision made by the Minister's Delegate, such as the challenges the Applicant allegedly faces in meeting the physical presence requirement for a grant of citizenship. It is inadmissible as such.

[20] In short, the Applicant does not assert that the affidavit falls within any of the exceptions to the rule that evidence that was not before the decision maker and that goes to the merits of the matter is not admissible. In my view, the affidavit does not fall within any of these exceptions and is also largely irrelevant. The affidavit is accordingly not admissible.

Analysis

Applicant's position

[21] The Applicant refers to *Ayaz v Canada (Citizenship and Immigration)*, 2014 FC 701 at para 51 [*Ayaz*] as support of the proposition that while there is no firmly established test of "special and unusual hardship" under s 5(4), the Court must consider "whether the effect of applying those requirements strictly and thus denying citizenship would impose some hardship on the applicant or their family beyond the delay in citizenship itself".

[22] The Applicant refers to the Immigration, Refugees and Citizenship Canada [IRCC] website containing the operational instructions and guidelines [Guidelines] with respect to s 5(4) of the Act, which states that:

> Grants under this subsection are only used in very exceptional cases and each case is considered on its own merits. It is important that applicants appreciate the significance of being conferred a grant of citizenship under this provision and that it should not be used as a means of circumventing the normal citizenship process.

[23] The Applicant submits that this "policy" is not authorized by the legislation, does not reasonably follow from the legislation, and that it unduly narrows the legislative exercise of discretion. Further, that the Guidelines to not provide sufficient guidance and lead decision makers astray.

[24] The Applicant submits that the Minister's Delegate found that the Applicant had failed to provide any details of the 24 films and series that he claimed he worked on and had a Canadian connection but that the Delegate disregarded the Applicant's affidavit evidence with these details. He submits that the disregarding of his affidavit is contrary to the principle in *Maldonado v Canada (MEI)*, [1980] 2 FC 302 at para 5, [1979] FCJ No 248 [*Maldonado*]. Further, that he provided fifteen letters of support corroborating his affidavit evidence, but the Minister's Delegate mentioned only three of these letters. The Applicant submits that the failure to refer to this critical evidence in the reasons does not allow the Court to determine whether the Minister's Delegate considered the totality of the evidence and renders the decision unreasonable.

[25] The Applicant further submits that the Minister's Delegate erred when they raised a concern about why the Applicant did not renew his permanent resident card in 2020, as post-

application behaviour is not a relevant consideration in a citizenship application under s 5(4) of the Act. The Applicant further notes that there was no requirement to renew the permanent resident card, as this is merely the document indicating the status of a permanent resident, to be used for travel and accessing services. He submits that if he failed to meet the physical presence obligations to renew his permanent resident card in the past, then this is consistent with the reason he is seeking an exceptional grant of citizenship.

Respondent's position

[26] The Respondent submits that what is a case of special and unusual hardship or a service of an exceptional value to Canada is a question of fact to be determined by the decision maker who is to be afforded deference. Further, the policy regarding discretionary grants of citizenship is consistent with s 5(4) of the Act; discretionary citizenship should not be granted in less than very exceptional cases, or used as a means of circumventing the normal citizenship process (citing *Chen v Canada (Citizenship and Immigration)*, 2012 FC 874 at para 19 [*Chen*]). The Respondent submits that the Minister's Delegate reasonably considered the Applicant's ability to maintain his permanent resident status, since it was relevant to whether citizenship was necessary to alleviate hardship from a failure to meet the physical residence requirement. The Respondent further submits that the Minister's Delegate was reasonably unconvinced that the Applicant could not sponsor his wife as a permanent resident, which would allow him to be physically present more often in Canada, and that it was reasonable for the Minister's Delegate to infer that the circumstances potentially creating hardship were not outside of the Applicant's control.

[27] Regarding services of exceptional value to Canada, the Respondent submits that it was open to the Minister's Delegate to find that the Applicant's evidence lacked sufficient specificity to meet the high threshold for establishing exceptional value. The Respondent submits that the Applicant simply takes issue with the weight attributed to this evidence.

Analysis

[28] In *Grossman-Hensel v Canada (Citizenship and Immigration)*, 2022 FC 193, Justice Gleason addressed special and unusual hardship as set out in s 5(4) of the Act, stating:

> [84] What constitutes "special and unusual hardship" under subsection 5(4) has not been developed to the same degree as the meaning of "hardship" under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. This was noted by Justice James Russell in *Ayaz v Canada (Citizenship and Immigration)*, 2014 FC 701, where he states:
>
> > [50] The jurisprudence on "special and unusual hardship" under s. 5(4) of the *Act* is not as well developed as, for example, the jurisprudence on the meaning of hardship under s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. 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 […]

[85] Neither the mere absence of citizenship nor the delay in obtaining citizenship will normally be sufficient to establish special and unusual hardship. However, the consequences of a denial of the absence of citizenship or delay in obtaining that citizenship are factors that will be relevant in considering special or unforeseen hardship. Where a decision maker considers these factors in the exercise of the broad discretion granted by subsection 5(4), a court will not ordinarily intervene:

> [52] In *Linde v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 739, [2001] FCJ No 1085, which also dealt with absences due to employment obligations, Justice Blanchard reviewed some of the jurisprudence on this question, which emphasized the discretionary nature of the decision. Unless the citizenship judge fails to take into account some relevant factor (see *Khat (Re)*, [1991] FCJ No 949, 49 FTR 252), or acted with bias or improper motive (see *Kalkat*, above; *Akan v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 991 at para 11, 170 FTR 158), there is generally no basis for a court to interfere. With respect to the case before him, Justice Blanchard observed:
>
> > [24] I am satisfied that the Citizenship Judge in this case did indeed take into account the relevant factors in the exercise of his discretion pursuant to subsection 15(1) of the Act. The applicant has not shown that the Citizenship Judge ignored any evidence before him, or erred in any way in determining that there was no unusual

> hardship which would result under subsection 5(4) of the Act... (*Ayaz* at para 52).

[29] This Court has also held that there is a high threshold for the exercise of discretion under s 5(4) and such applications will only succeed in exceptional cases of services to Canada (*Chen* at para 19). Similarly, the discretion of a delegate under s 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).

[30] It is true that cases determined on the basis of s 5(4) rarely reach this Court (*Halepota v Canada*, 2018 FC 1196 at para 19). However, the paucity of case law in all likelihood reflects that discretionary grants of citizenship made under that provision are made only in very exceptional cases.

[31] I do not agree with the Applicant's submission that the statement in the Guidelines – that grants under s 5(4) of the Act are only to be used in very exceptional cases and that the section it should not be used as a means of circumventing the normal citizenship process – contradicts or exceeds the authority or the wording of s 5(4). The wording of s 5(4) is clear and unambiguous and states that it is intended to alleviate cases of statelessness or of "special and unusual hardship" or to reward "services of an exceptional value to Canada". In my view, it is self-evident that s 5(4) is an exception to the usual physical presence requirement for obtaining citizenship. It was not intended to be an alternative immigration scheme.

[32] As I understand the Applicant's submission, he suggests that because he has had difficulty in meeting the physical residency requirement necessary to obtain citizenship in the normal course, then his s 5(4) application, of necessity, "circumvents the normal process" and, therefore, the "policy" or Guidelines unduly narrows the legislative discretion. Further, he submits that because the physical presence requirement has now been clearly defined, this means that s 5(4) must now be more broadly interpreted, as it is the only available "remedy" for applicants such as himself.

[33] This position cannot succeed. While the Applicant relies heavily on the decision of this Court in *Re: Kleifges*, [1978] 1 FC 734 [*Kleifges*] to support that s 5(4) should be given a liberal interpretation, I agree with the Respondent that even a liberal reading of s 5(4) does not support the Applicant's interpretation that discretionary citizenship should be granted in less than very exceptional cases or used as a means of circumventing the normal citizenship process. As noted above, more recent jurisprudence holds that there is a high threshold for the exercise of discretion under s 5(4) and that applicants will only succeed in exceptional cases (*Chen* at para 19). Nor is s 5(4) a "remedy" for those who do not meet the usual physical residence requirement. It is a discretionary decision that only comes into play to alleviate cases of statelessness or of special and unusual hardship or to reward services of an exceptional value to Canada. If none of those criteria is met, s 5(4) has no application. It is not intended to remedy the fact that an applicant is merely short of the number of days needed to meet the physical residence requirement.

[34] What was required of the Minister's Delegate when considering the application under s 5(4) was that they turn their mind to the specific circumstances of the case, consider the evidence before them, and make a reasonable decision. That is, one that is justified in relation to the relevant factual and legal constraints. In my view, the Minister's Delegate did not narrowly interpret s 5(4). Nor did the Minister's Delegate fetter their discretion. This is not a circumstance where the decision is based solely on a guideline and without focus on the underlying law (see *Toussaint v Attorney General,* 2010 FC 810 at para 55).

Special and unusual hardship

[35] With respect to special and unusual hardship, the main premise of the Applicant's submission to the Minister's Delegate was that if he were not granted citizenship he was at risk of losing his permanent residency. This would result in special and unusual hardship.

[36] The Minister's Delegate found that the Applicant had not put forward any evidence or documentation which would allow the Delegate to reasonably find that the Applicant was at risk of losing his permanent resident status. The Applicant does not directly challenge this finding but submits that the Minister's Delegate unreasonably raised a concern about why he did not apply to renew is permanent resident card expired in 2020 when post-application behaviour is not a relevant consideration in a citizenship application under s 5(4). The Applicant submits that the Delegate used this fact to support the finding that the Applicant's risk of losing his permanent residence status was speculative.

[37] In that regard, I note that the Minister's Delegate considered the Applicant's submission that he travels frequently outside Canada for work and to visit his spouse who resides in the Philippines. The Delegate noted it was evident that, since becoming a permanent resident in 2002, the Applicant had not been in compliance with the residence obligations of the *Immigration and Refugee Protection Act* [IRPA] as demonstrated by the fact that his permanent resident card was renewed in 2015 on the basis of a humanitarian and compassionate decision even though the Applicant had not been physically present in Canada for the required minimum of 730 days in the five-year period preceding the date of his January 4, 2014 application. The Delegate went on to note that despite the fact that the Applicant's permanent resident card expired on April 8, 2020, he had not submitted an application to renew his card and, as such, he had not undergone a recent assessment as to whether he is currently in compliance with his obligations under the IRPA. In the context of the Applicant's claim that he is subject to special and unusual hardship because he may be at risk of losing his permanent residence status, the Minister's Delegate found that the physical presence residency requirements were not so onerous that the Applicant should be granted citizenship to avoid being subject to that requirement.

[38] In other words, the Applicant had not met his onus of demonstrating, based on the record before the Minister's Delegate, that the risk of losing his permanent resident status warranted the granting of citizenship in order to alleviate any special and unusual hardship. In my view, it was reasonable for the Minister's Delegate to consider the status of the Applicant's permanent resident card given his submission that his status was at risk and that this risk supported his claim of special and unusual hardship.

[39] The determination of the Minister’s Delegate was that the Applicant failed to demonstrate that he was incapable of meeting the physical presence requirements for citizenship in the future, nor had he established that he would be unable to maintain his permanent residence or that he required something more than permanent residence in order to avoid hardship.

[40] Although not directly challenged by the Applicant, I note that his affidavit filed in support of his application under s 5(4) states: “The demands of my work make the required physical day count in Canada challenging to achieve” but does not explain in any greater detail what the Applicant anticipates in terms of time away from Canada in the coming years. Nor does the Applicant allege that he will be unable to meet the physical presence requirement – only that this would be “challenging”. The Applicant does not explain the reference to “restrictions” on his wife’s travel to Canada. The Applicant states that he “genuinely believed [he] had made the day count based on [his] calculations” – this was not an assertion that the day count would be impossible to achieve in the future. Given the lack of specificity in this evidence, the Minister’s Delegate was justified in finding that there was insufficient evidence of special and unusual hardship due to the Applicant’s work and family obligations. And, impliedly, nor had the Applicant demonstrated that the ability to meet the physical presence requirements was beyond his control.

[41] I agree with the Respondent that this is not a situation where the Applicant would suffer consequences tantamount to a family breakdown, lost employment, or wasted professional qualifications if he were not granted citizenship. In addition to not establishing that he would be at risk of losing his permanent resident status, he did not explain how his family or work would

be negatively affected without citizenship given that he has been able to direct and produce films for over 20 years as a permanent resident. Nor did he demonstrate that denying citizenship would impose hardship beyond delay in citizenship itself.

[42] In my view, this matter is similar to the circumstances in *Ayaz*, where the applicant worked outside Canada. This Court held:

> [54] I do not doubt that the Applicant had legitimate and even noble reasons for being abroad. There is every indication that he is industrious, entrepreneurial, and devoted to his family. What he has not demonstrated, however, is that he or his family will face some hardship beyond the delay in acquiring citizenship that was ignored by the Citizenship Judge, such that the matter should be returned for redetermination. It appears he is still a permanent resident of Canada (there is no indication otherwise), and he attests that he is engaged in business here both on his own behalf and as a marketing manager for another company. He has not indicated that he is prevented from practising his profession or otherwise participating in Canadian society. It is true that, in order to meet the residency requirements for citizenship in the future, he may have to curtail his travels outside of the country more than he otherwise would if he were already a citizen, but there is no evidence before me that this imposes special or unusual hardship in his current circumstances.

[43] As established by the jurisprudence, neither the mere absence of citizenship nor the delay in obtaining citizenship will normally be sufficient to establish special and unusual hardship. Here, the Applicant had applied for citizenship in the normal course but was 38 days short of the residency requirement. He did not satisfy the Minister's Delegate that he would not be able to meet the requirement in the future. Nor did he demonstrate that, in his circumstances, the absence of citizenship amounted to special or unusual hardship because of a risk to his permanent resident status as he asserted, or that the consequences of a denial or delay in obtaining that citizenship rose to the level of special or unforeseen hardship. Accordingly, the

Minister's Delegate reasonably declined to exercise their discretion to grant citizenship to the Applicant on the basis of special and unusual hardship.

Services of exceptional value to Canada

[44] The Applicant submits that the Minister's Delegate unreasonably found that he had not provided any details regarding the 24 films and series that he claims to have been involved with and which have a Canadian connection, other than to list the films and series titles. The Applicant submits that the Minister's Delegate disregarded his affidavit even though there was no evidence that contradicts it. He refers to the fifteen letters of support that he provided with his s 5(4) application and submits that these are directly relevant to one of the central questions before the Minister's Delegate, being whether the Applicant performed services of an exceptional value to Canada.

[45] In addressing this submission, the starting point is the Delegate's reasons. The Minister's Delegate states that the Applicant submitted that: he had devoted much of his professional life to supporting Canadian talent and he has supported the Canadian economy by directing films in Canada; since 2004 he had directed over 24 films and series that were either "Canadian based or for a Canadian service company"; he had worked hard to develop relationships with local artists and craftspeople and that it was important for him to use "Canadian talent" in the productions he was directing, and; he wanted to continue to do his work in Canada and had four major projects in development which he hoped to be able to direct in Canada.

[46] The Minister's Delegate noted that to support his submission the Applicant had provided a printout from the internet which lists films and series he has directed as well as a list of awards he has won. The Applicant also provided letters of support from persons he had worked with advocating for his Canadian citizenship.

[47] Having considered this, the Minister's Delegate found that the Applicant had not satisfied them, on a balance of probabilities, why the Applicant should be granted citizenship on the basis of having provided services of exceptional value to Canada. The Minister's Delegate found that the Applicant's submissions lacked substance as he had not provided any details of the 24 films and series he claimed to have a Canadian connection, other than to list the films and series titles. Further, while he attested in his affidavit that his film's budgets range from between $1.2 and $2.5 million and that they generate jobs for Canadians, he provided no documentation or evidence to support this. Nor had he explained how directing films and series that are "Canada based or for a Canadian service company" provides services of an exceptional value to Canada.

[48] Instead, the Applicant relied on three letters of support from friends in the film industry: a letter from Carmen Bonnici, the Applicant's partner at Pacific Artists Management which states that "his contributions to the Canadian film and television community is indisputable" and that "his creative input and value to Canada will continue for a long time to come"; a letter from Stephen Miller, a Canadian and American screenwriter, novelist, and actor based in Vancouver, stating that denying the Applicant Canadian citizenship will hurt his career as well as the career of Mr. Miller and many others because series will not be produced, and that granting the Applicant citizenship will "enhance Canadian culture for many years to come"; and, a letter from

David Pelletier, a Director of Photography, Canadian citizen and resident of Vancouver, which endorses the Applicant's citizenship application because he is "the most skillful, and committed directors [sic] for whom [he has] ever worked" who has "a unique vision, and great talent to spare". The Minister's Delegate stated that these letters did not explain nor provide any detail as to why the Applicant's work is of exceptional value to Canada such that he should be awarded with a special grant of citizenship.

[49] I note that the Applicant's affidavit, which he says was disregarded by the Delegate, adds little to what is set out in the Delegate's reasons. To support his claimed 24 films or television series that were "Canadian based or for a Canadian service company", he attached a lengthy printout from the IMDb website. As the Delegate notes, this printout is comprised of a list of TV series and other work attributed to or having been contributed to, in one form or another, by the Applicant. As the Minister's Delegate found, while his affidavit refers to film budgets between $1.2 and $2.5 million, no specifics or supporting documentation is provided.

[50] The Applicant, however, submits that this detail was provided in his affidavit. The affidavit states:

> 8. The film's budgets range between 1.2 to 2.5 million. These films generate jobs for Canadians. For example, on a typical lower budget film, we would expect to hire at least 80 to 100 crew members covering pre-production, shooting, and post production, 25-30 actors and approximately 200 to 300 local extras are employed. There are also fees paid for the use of various required story locations, daily parking facilities, and a base camp location. On a 15-day shooting schedule, multiple sites will often be needed per day, so that adds 30 to 40 location fees for the shooting duration.

[51] I am not persuaded that the Minister's Delegate disregarded this evidence. Reference was made to the affidavit and the Minster's Delegate found that while the Applicant attested that his films' budgets range between $1.2 and $2.5 million and that they generate jobs for Canadians, he provided no documentation or evidence to support this. There is no error in this finding. The only document attached as an exhibit to the affidavit is the listing of TV series and films described by the Minister's Delegate.

[52] Nor am I persuaded that the Minister's Delegate was questioning the credibility or veracity of the Applicant's evidence. Rather, the Minister's Delegate found that the evidence was "lacking in substance" and had few details. The Minister's Delegate found the Applicant's evidence to be insufficient to support his application for a grant of citizenship based on services of an exceptional value to Canada. Because this conclusion did not engage the Applicant's credibility, it did not engage or offend the principle in *Maldonado* relied upon by the Applicant, that the Applicant's evidence is presumed to be true. The Delegate's concerns were about the sufficiency, and not the credibility, of the Applicant's evidence. The Applicant simply failed to meet his onus of providing sufficient evidence to establish services of exceptional value to Canada.

[53] Further, on my reading of the decision and the CTR, the purpose of the supporting documentation which the Minister's Delegate noted as lacking – such as details of the Applicant's films and their budgets – would not have been to corroborate the Applicant's evidence, contrary to what the Applicant suggests. Rather, that documentation would have served to demonstrate why the Applicant's work was significant enough to be considered

"services of exceptional value to Canada". The Applicant spoke only generally about the projects he worked on, he did not provide specifics for any of these projects or any documentary evidence to support the claimed financial contribution to the industry or that any such contribution was a direct result of his role. Nor did he explain what was meant by directing films and series for "Canada based or for a Canadian service company" or how this provides services of an exceptional value to Canada.

[54] It is true that the Minister's Delegate referred to only three of the 15 letters of support submitted by the Applicant. The Applicant submits that all of these letters speak to the authors' knowledge of the Applicant's contributions to the Canadian film industry and "while they vary in degree of personal awareness of Canadian business connections, they corroborate the statements made by the Applicant in his affidavit".

[55] The letters of support clearly indicate that the Applicant is viewed by the writers of those letters as highly talented and that in their view his creative work is valued and contributes to the Canadian film community and industry. The letters that were not mentioned by the Delegate are similar in substance to the three letters that were specially addressed and which the Delegate found were not sufficient – in the absence of any other documentary evidence of his contributions – to demonstrate that the Applicant had provided services of exceptional value to Canada. I note that all of these letters were from colleagues, people who have worked with the Applicant in one capacity or another. None of the letters are, for example, from Canadian film industry associations, government entities or others having a broader perspective that could perhaps have explained how the Applicant provided "services of an exceptional value to

Canada”, hereby warranting a discretionary reward of Canadian citizenship (see *Mitha, Re,* [1979] 3 ACWS 731, 1979 CarswellNat 1041 at paras 60-63, 126; *Kleifges* at p 189; *M.H. (re)*, 1996 CanLII 11920 (FC), 120 FTR 72).

[56] I am not persuaded that the Officer erred in finding that a discretionary grant of citizenship was not warranted on the basis of services of an exceptional value to Canada.

Conclusion

[57] In conclusion, the Minister’s Delegate’s highly discretionary decision was justified, transparent and intelligible, and justified in relation to the relevant factual and legal constraints that bore upon it. As the decision was reasonable, the Court’s intervention is not warranted.

[58] The parties did not propose a serious question of general importance for certification, pursuant to s 22.2(d) of the Act, and none arises.

JUDGMENT IN T-6-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs: and
3. No question is certified.

"Cecily Y. Strickland"

Judge

<u>**FEDERAL COURT**</u>

<u>**SOLICITORS OF RECORD**</u>

DOCKET:	T-6-22
STYLE OF CAUSE:	KRISTOFFER TABORI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
DATE OF HEARING:	JULY 14, 2022
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	JULY 20, 2022

<u>**APPEARANCES**</u>**:**

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