Federal Court Cour fédérale

Date: 20240202

Docket: IMM-8322-22

Citation: 2024 FC 173

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, February 2, 2024

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

KUJTIM CANAJ
BRISILDA CANAJ
TEUTA CANAJ
XHESIKA CANAJ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants are seeking judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] to vacate an earlier RPD decision that had granted them refugee status. Relying on section 109 of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [the Act], the RPD concluded that the applicants had obtained refugee status by misrepresentation.

[2] The applicants challenged the RPD's jurisdiction to vacate their refugee protection, given that they had become Canadian citizens before their misrepresentation was discovered. They submit that the Act does not apply to Canadian citizens. They claim that if the Minister wished to revoke their citizenship, he should have brought an application under section 10 of the *Citizenship Act*, RSC 1985, c C-29. The RPD rejected these submissions, relying on the decision by my colleague Justice Simon Fothergill in *Canada (Public Safety and Emergency Preparedness) v Zaric*, 2015 FC 837, [2016] 1 FCR 407 [*Zaric*]. The RPD dealt simultaneously with the objection to jurisdiction and the merits of the application to vacate.

[3] Before this Court, the applicants first submit that the RPD should have ruled on their objection to jurisdiction before hearing the merits of the case. However, an administrative tribunal such as the RPD is in principle master of its own procedure, subject to the Act and the regulations: *Prassad v Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560 at 568, 569. The applicants have not pointed out any statutory or regulatory provision requiring that the RPD rule on their objection to jurisdiction before it hears the merits of the case. The fact that other divisions of the IRB usually proceed in two stages in some types of cases does not mean that the RPD must do the same. Contrary to what the applicants argue, dealing with the issue of jurisdiction together with the merits does not render their objection to jurisdiction ineffective. If the objection is allowed, the RPD will necessarily dismiss the application to vacate. It is true that

proceeding in two stages may result in a more efficient use of judicial resources in certain cases. However, whether this has been achieved in a specific case is not a ground for judicial review.

[4] The applicants then reiterate their submissions challenging the RPD's jurisdiction. In my view, they are entirely devoid of merit. There is nothing in the language of section 109 to suggest that it does not apply to protected persons who have become Canadian citizens: *Zaric* at paragraph 30. Moreover, the applicants have failed to identify any provision of the *Citizenship Act* requiring that the Minister seek to revoke citizenship before seeking to vacate refugee protection.

[5] The applicants submit that stripping Canadian citizens of their permanent resident status makes no sense because, under paragraph 46(1)(a) of the Act, a person loses permanent resident status upon becoming a Canadian citizen. However, section 109 refers to the loss of refugee protection, not permanent resident status. The applicants' submissions regarding section 46 are therefore without merit. As Justice Fothergill points out in *Zaric* at paragraph 31, claimants technically continue to enjoy refugee protection when they become Canadian citizens, and vacating refugee protection therefore remains a live issue.

[6] In addition, the applicants cite a decision of the Immigration Appeal Division out of context to argue that the Act does not apply to Canadian citizens. This submission is directly contradicted by *Zaric*. Although it is true that the Act usually does not apply to Canadian citizens, this is not an absolute rule, as illustrated by sections 18, 117 or 148.

[7] Lastly, the applicants submit that the RPD did not have jurisdiction to summon a Canadian citizen to a hearing, regardless of its jurisdiction to hear the application to vacate refugee protection granted to a person who later becomes a Canadian citizen. I must admit that I find this argument hard to understand. If the RPD has jurisdiction to hear the Minister's application in this case, it goes without saying that it has jurisdiction to summon the applicants to a hearing. These two issues are not independent of each other. The applicants' claim regarding the power to summon them to a hearing is entirely devoid of merit.

[8] In *Zaric*, Justice Fothergill certified a question under paragraph 74(d) of the Act so that the Federal Court of Appeal could consider the matter. However, the appeal was withdrawn, and the Federal Court of Appeal did not decide the issue. In this case, the applicants have proposed two questions for certification. The first is exactly the question that was certified in *Zaric*. The second concerns the RPD's alleged obligation to rule on its jurisdiction before hearing the merits of the case.

[9] In my view, none of these questions should be certified. According to *Canada (Citizenship and Immigration) v Laing*, 2021 FCA 194 at paragraph 11, "[t]o be properly certified, the question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance".

[10] The first question proposed should be reworded to reflect the differences between the submissions of the parties in *Zaric* and those of the applicants in this case. Nevertheless, the applicants have failed to demonstrate how the proposed question, even if rephrased, has any

broad significance or general importance. Although a question was certified in *Zaric*, I note that Justice Fothergill did not state why he was of the opinion that the applicable criteria had been met. I therefore decline to certify this question.

[11] Regarding the second question, it is trite law that administrative tribunals are masters of their own procedure. There is no need to certify a question when the law is well settled: *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paragraph 36.

[12] For these reasons, the application for judicial review will be dismissed, and no question will be certified.

JUDGMENT in IMM-8322-22

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8322-22
STYLE OF CAUSE:	KUJTIM CANAJ, BRISILDA CANAJ, TEUTA CANAJ, XHESIKA CANAJ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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