Federal Court  Cour fédérale

Date: 20240418

Docket: T-1232-22

Citation: 2024 FC 600

Estérel, Quebec, April 18, 2024

PRESENT: Madam Justice St-Louis

BETWEEN:

NAN TAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2002, the Applicant, Ms. Nan Tan, arrived in Canada as a temporary resident to study. In 2004, she married a Canadian citizen, and in 2005, sponsored by her husband, she was granted Canadian permanent resident status. In 2009, Ms. Tan was granted Canadian citizenship.

[2] Ms. Tan and her Canadian sponsor divorced; Ms. Tan subsequently remarried, and two children were born from that second marriage.

[3] In 2011, the Canada Border Services Agency [CBSA] commenced an investigation into a fraudulent marriage scheme and identified Ms. Tan as having entered into a fraudulent marriage, in 2004. In April 2011, Ms. Tan's Canadian sponsor, i.e., her first husband, provided a statutory declaration whereby confirming he had been paid to marry Ms. Tan, their marriage was fraudulent, he had no contact with Ms. Tan after the staged wedding, and he had never resided with her.

[4] In 2015, Immigration, Refuges and Citizenship Canada [IRCC] initiated Ms. Tan's citizenship revocation procedure under the then newly adopted citizenship revocation provisions of the *Citizenship Act*, RSC 1985, c C-29 [*Citizenship Act*], as amended by the *Strengthening Canadian Citizenship Act*, SC 2014, c 22 [*Strengthening Canadian Citizenship Act*]. In 2015, IRCC thus sent Ms. Tan a *Notice of Intent to Revoke Citizenship*.

[5] In the written representations she presented to IRCC in response to this notice, Ms. Tan denied any allegations made by her first husband, who was her Canadian sponsor. She stated that their marriage was not a marriage of convenience and that she did not pay him to marry her. Additionally, through her counsel, Ms. Tan submitted *inter alia* that "… the citizenship revocation regime set out in the *Citizenship Act*, as amended by Bill C-24, and which came into force on May 28, 2015, is unconstitutional and therefore illegal" (Certified Tribunal Record [CTR] at 464).

[6] The constitutionality of these, then new, citizenship revocation provisions were challenged, and IRCC suspended Ms. Tan's citizenship revocation procedure pending the Court's decision on the constitutional challenge.

[7] In May 2017, Madam Justice Jocelyne Gagné (now Associate Chief Justice Gagné) invalidated the impugned provisions, having found that subsections 10(1), 10(3) and 10(4) of the *Citizenship Act*, as amended by the *Strengthening Canadian Citizenship Act* violated paragraph 2(e) of the *Canadian Bill of Rights*, SC 1960, c 44 [*Bill of Rights*] in a way that could not be avoided by interpretation, as they deprived the applicants of the right to a fair hearing in accordance with the principles of fundamental justice. However, Associate Chief Justice Gagné found the impugned provisions did not violate sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 [*Charter*] (*Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473 [*Hassouna*]).

[8] Following the Court's decision in *Hassouna*, IRCC cancelled the initial *Notice of Intent to Revoke Citizenship* sent to Ms. Tan in 2015.

[9] In January 2018, new citizenship revocation provisions came into force under the *Act to amend the Citizenship Act and to make consequential amendments to another Act*, SC 2017, c. 14 (Bill C-6). These provisions are found at sections 10 to 10.7 of the *Citizenship Act*, although only section 10 is at play in this proceeding as Ms. Tan elected to have the Minister of Citizenship and

Immigration [Minister] decide her case, as detailed below. The pertinent provisions are reproduced in Annex.

[10] In 2018, once the new citizenship revocation provisions of the *Citizenship Act* were in force, IRCC sent *Request for Information* letters to Ms. Tan, the latest on April 24, 2018 (CTR at 294). This letter advised Ms. Tan that IRCC had information indicating that she may have obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. IRCC offered Ms. Tan the opportunity to make written representations, before citizenship revocation proceedings commenced, to ensure all relevant information related to her personal circumstances were considered. On May 24, 2018, Ms. Tan, through her counsel, submitted written representations. She did not raise any constitutional issues regarding the new citizenship revocation provisions.

[11] On October 30, 2019, IRCC sent Ms. Tan a *Notification Letter Concerning Your Canadian Citizenship* pursuant to subsection 10(3) of the *Citizenship Act*. It advised Ms. Tan that a new revocation process was being initiated. IRCC summarized the information contained in Ms. Tan's file which, it asserted, demonstrated that she may have obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, and outlined the results of the investigation and verification that were conducted. IRCC indicated to Ms. Tan that, on a balance of probabilities, it appeared she may have misrepresented herself during her application for permanent residence by entering into a marriage of convenience in order to be sponsored under the family class so to fraudulently obtain permanent residence status and, ultimately, Canadian citizenship. IRCC noted that Ms. Tan had denied all allegations raised

against her in her 2015 written representations and it went on the assess Ms. Tan's latest written representations. IRCC, on behalf of the Minister, was satisfied that the personal circumstances described did not amount to the type of compelling circumstances that would warrant not commencing citizenship revocation proceedings. IRCC offered Ms. Tan the opportunity to make written representations and to provide documentary evidence.

[12] With the notification letter of October 30, 2019, IRCC attached a blank *Request to Have Your Case Decided by the Minister of Immigration, Refugees and Citizenship Canada* form to be completed by Ms. Tan, if she so choose, failing which, IRCC indicated, the matter would be referred to the Federal Court for a decision.

[13] On January 24, 2020, Ms. Tan, through her counsel, submitted written representations along with numerous documents in support of her case. Ms. Tan requested that the Minister decide her case, rather than having the matter referred to the Federal Court, and she attached the signed form to this effect. She requested the Minister to hold a hearing so that she could provide oral testimony. She relied on the Court's decision in *Hassouna* and on paragraph 2(e) of the *Bill of Rights* to assert that a hearing was required as credibility was a central issue for both the determination of whether a fraud was committed and in regards to assessing her personal circumstances.

[14] Through her counsel, Ms. Tan submitted that her citizenship should not be revoked considering her personal circumstances, noting that guidance should be drawn from the jurisprudence related to the assessment of humanitarian and compassionate grounds. Counsel

outlined that Ms. Tan was, in essence, scammed into the marriage with her Canadian sponsor and that she expressed strong remorse as evidenced by her statement, unsworn, attached to the written representations. Under a heading titled humanitarian and compassionate factors, she outlined that (1) it would be in her children's best interests for her to retain her Canadian citizenship; (2) she is strongly established in Canada and has community support; (3) losing Canadian citizenship would cripple her ability to support her family; (4) she would become stateless if she lost Canadian citizenship, which would breach sections 7 and 11 of the *Charter*; and (5) she would face hardship upon return to China. Ms. Tan again submitted a personal statement and documentary evidence. She did not raise any constitutional issue regarding the new citizenship revocation provisions, neither did her counsel.

[15] Ultimately, on May 30, 2022, a senior analyst –IRCC-Case Management Branch, acting as an authorized delegate of the Minister [the Minister's Delegate], revoked Ms. Tan's Canadian citizenship under subsection 10(1) of the *Citizenship Act*, in circumstances described in section 10.2 of the *Citizenship Act*. The Minister's Delegate was satisfied, on a balance of probabilities, that Ms. Tan had obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. The Minister's Delegate considered Ms. Tan's personal circumstances, but found they did not warrant special relief in light of all the circumstances of the case.

[16] The Minister's Delegate's decision [the Decision] to revoke Ms. Tan's citizenship is the subject of this application for judicial review.

[17] Ms. Tan served a Notice of Constitutional Question prior to the hearing of this application for judicial review questioning the constitutional validity of sections 10 and 10.1 of the *Citizenship Act*.

[18] In support of her application for judicial review, Ms. Tan did not submit her own affidavit. She submitted the affidavit of Ms. Lina Zhang, secretary at the Law Office of Matthew Jeffery, who introduced four exhibits.

[19] Before the Court, Ms. Tan argues essentially that (1) the *Citizenship Act* as amended violates paragraph 2(e) of the *Bill of Rights*; (2) the *Citizenship Act* as amended breaches section 7 of the *Charter*; (3) the Decision is unreasonable; and (4) costs should be awarded in her favour.

[20] Ms. Tan thus asks the Court for a declaration that sections 10 and 10.1 of the *Citizenship Act* are invalid, *ultra vires*, and of no force and effect. She also asks the Court for an order quashing the Decision and remitting the matter back for a re-determination by a different decision maker. Ms. Tan submits questions for the Court to certify.

[21] The Respondent essentially submits that (1) Ms. Tan's arguments pertaining to the lawfulness of the citizenship revocation scheme are premised on a misunderstanding of the statutory regime; (2) the citizenship revocation scheme meets the requirements set out by the Court, the *Charter* and the *Bill of Rights*; (3) in particular, the citizenship revocation scheme does not engage section 7 of the *Charter*; (4) the Decision is reasonable; and (5) no special reasons warranting an award of costs have been raised.

[22] I noted, after having heard the application, that the constitutional issue had not been raised before the Minister's Delegate nor addressed in the Decision, and that neither party had raised this as part of the application for judicial review. I wrote to the parties, noting the prevailing case law requiring, as a general rule, that an issue to be raised first before the administrative decision maker, and not on judicial review, highlighted Mr. Justice Denis Gascon's words in *Benito v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1628 at paragraphs 55 to 57 [*Benito*], and asked the parties for additional written submissions.

[23] Both parties filed additional written submissions. They disagreed as to whether the issue had been raised before the Minister's Delegate or not. However, they agreed, between them, that the Minister's Delegate does not have jurisdiction to decide on the constitutional issue and that, as a result, the general rule outlined by Justice Gascon in *Benito* did not apply. They relied heavily on *Gwala v Canada (Minister of Citizenship and Immigration)* (CA), 1999 CanLII 9349 (FCA), [1999] 3 FC 404 [*Gwala FCA*]; *Gwala v Canada (Minister of Citizenship and Immigration*) (TD), 1998 CanLII 9069 (FC), [1998] 4 FC 43 [*Gwala FC*].

[24] Under this application, I must thus consider (1) the constitutional issue, particularly in regards to (a) whether the constitutional issue was raised before the Minister's Delegate; and if I find it was not, whether it would be appropriate for the Court to consider it on judicial review; and (b) in any event, whether the impugned provisions of the *Citizenship Act* are contrary to section 7 of the *Charter* and to paragraph 2(e) of the *Bill of Rights*; (2) alternatively, whether the decision has been shown to be unreasonable under the applicable standard of review; and (3) whether costs should be awarded.

[25] For the reasons that follow, I will dismiss Ms. Tan's application for judicial review.

[26] First, I am satisfied that the constitutional issue currently before this Court was not raised before the Minister's Delegate. Second, according to the general rule stated by the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*] and most recently confirmed again by the Federal Court of Appeal in *Goodman v Canada (Public Safety and Emergency preparedness*), 2022 FCA 21 [*Goodman*], I find the constitutional issue should have been first raised before the Minister's Delegate and that it would be inappropriate for the Court to consider the constitutional issue on judicial review. Third, in any event, I find that section 10 of the *Citizenship Act*, which is the only one at play in this proceeding, does not breach paragraph 2(e) of the *Bill of Rights* or section 7 of the *Charter*. Fourth, Ms. Tan has not shown the Decision is unreasonable. Finally, no special reasons warrant the award of costs and none will be awarded.

II. Issues

[27] Before the Court, Ms. Tan raises the following questions:

1. What is the standard of review?
2. Does the *Citizenship Act*, as amended, violate paragraph 2(e) of the *Bill of Rights*?
3. Does the *Citizenship Act*, as amended, breach section 7 of the *Charter*?
4. Is the Decision unreasonable?
5. Should costs be awarded to Ms. Tan?

[28] I will reformulate these issues to consider first the constitutional issue, second whether the Decision has been shown to be unreasonable, and third whether costs should be awarded.

III. The Constitutional Issue

[29] In regards to the constitutional issue, I will examine (A) whether the issue was raised before the Minister's Delegate, and if not, whether it is appropriate for the Court to consider it on judicial review (*Alberta Teachers*); and (B) in any event, whether section 10 of the *Citizenship Act* breaches paragraph 2(e) of the *Bill of Rights* or section 7 of the *Charter*.

A. *Preliminary issue; was the constitutional issue raised before the Minister's Delegate? If not, it is appropriate for the Court to consider it on judicial review?*

[30] As noted by my colleague, Mr. Justice Denis Gascon in *Benito* at paragraph 55:

> [55] … the general rule is that new issues, which could have been raised before the administrative decision-maker, should not be considered on judicial review (*Alberta Teachers* at paras 22-26; *Forest Ethics* at paras 37-47; *Watto 2* at para 10). This is notably the case for *Charter* issues and constitutional issues (*Forest Ethics* at paras 37, 46).

[31] Ms. Tan asserts first that the constitutional arguments were before the Minister's Delegate as (1) she had raised the *Charter* and related issues in her 2015 written representations; (2) the Minister's Delegate took into consideration the 2015 representations in the Decision; and (3) in her January 2020 written representations, Ms. Tan referred to the *Bill of Rights* when requesting a hearing and to the *Charter* when discussing she would be rendered stateless.

[32] Ms. Tan adds that the Court should exercise its discretion to decide the constitutional issue. She stresses that the decision in *Benito*, and the other decisions cited by Justice Gascon, are all distinguishable; she suggests the Court looks to *Hassouna* for guidance.

[33] The Respondent first asserts that the constitutional arguments raised in this application were not raised before the Minister's Delegate.

[34] The Respondent submits that the general rule outlined by Justice Gascon in *Benito* suffers an exception and, essentially, that it does not apply when the decision maker is not competent to adjudicate the constitutional issue. The Respondent relies on *Gwala FCA* and *Gwala FC*; *Raman v Canada (Minister of Citizenship and Immigration)* (CA), 1999 CanLII 8287 (FCA), [1999] 4 FC 140 at para 14; *Charalampis v Canada (Citizenship and Immigration*), 2009 FC 1002 at para 41; and *Lee v Canada (Minister of Citizenship and Immigration)* (FC), 2008 FC 614 at paras 64-65.

[35] The Respondent adds that the constitutional issue in this case *could not* in fact have been raised before the Minister's Delegate precisely because the Minister is not a court of competent jurisdiction to consider such an issue. The Respondent relies on the same decisions for this proposition.

[36] Ms. Tan agrees with the Respondent's proposition in this regard. I disagree with the parties.

[37] First, I am satisfied that the constitutional issue that is before this Court was not raised before the Minister's Delegate. Ms. Tan did raise a constitutional issue back in 2015, but it pertained to a legislative scheme that was abrogated in 2017. Ms. Tan has not challenged the current *Citizenship Act*'s revocation provisions in her post-2018 written representations to the Minister's Delegate. In the Decision, the Minister's Delegate refers to the 2015 written representations to emphasize Ms. Tan's response to the allegations levelled against her. The fact that the 2015 written representations are in the record are of no relevance since the legislative provisions challenged at that time have been invalidated. Finally, I am convinced Ms. Tan's references to the *Bill or Rights* and to the *Charter* in her 2020 written representations cannot be construed as a constitutional challenge of the current *Citizenship Act's* revocation provisions of the *Citizenship Act*.

[38] Second, I am satisfied that it would be inappropriate for the Court to consider the constitutional arguments raised for the first time on judicial review.

[39] I note that the decisions relied upon by the Respondent do not precisely relate to the issue I raised, which is whether the Court may, on judicial review, consider an issue that was not raised before the administrative decision maker, as set out by the Supreme Court of Canada in *Alberta Teachers*.

[40] In *Gwala FC*, the Court did not discuss this particular issue; it had to determine whether or not it had the jurisdiction, on judicial review – rather than by way of an action – to consider a constitutional issue. In *Gwala FC*, relying on *Tétreault-Gadoury v Canada (Employment and*

Immigration Commission), 1991 CanLII 12 (SCC), [1991] 2 SCR 22, the Court found it had jurisdiction to entertain a constitutional issue, on judicial review, only if the administrative decision maker held jurisdiction to consider a constitutional issue. If the administrative decision maker did not hold jurisdiction, the constitutional challenge had to proceed by way of action. It is in that context that the Court, in *Gwala FC*, examined the extent, or limit, of the senior immigration officer's jurisdiction. This is detailed by Mr. Justice Muldoon in the decision he issued a few months after *Gwala FC* was issued, i.e., *Raza v Canada (Minister of Citizenship and Immigration)* (TD), 1998 CanLII 9119 (FC), [1999] 2 FC 185 [*Raza*]. Ultimately, in *Gwala FCA*, the Federal Court of Appeal confirmed that the Court, on judicial review, has the jurisdiction to decide a constitutional challenge even if the administrative decision maker does not have jurisdiction to decide questions of law.

[41] I have seen nothing, in the decisions relied upon by the Respondent, that addresses the Court's discretion to consider an issue raised for the first time on judicial review.

[42] In contrast, in the very first paragraph of its decision in *Alberta Teachers*, the Supreme Court of Canada noted that the appeal provided the Court with:

> [1] … an opportunity … to address the question of how a court may give adequate deference to a tribunal when a party raises an issue before the court on judicial review, which was never raised before the tribunal and where, as a consequence, the tribunal provided no express reasons with respect to the disposition of that issue.

[43] This, I think, better accords with the situation and concerns raised in this proceeding.

[44] In *Alberta Teachers*, the decision under review was rendered by an adjudicator delegated by the Information and Privacy Commissioner [Commissioner]. The Supreme Court of Canada found that, although the issue had not been raised before the Commissioner or the adjudicator, it had been implicitly decided by both the Commissioner and the adjudicator, and that there was no evidentiary inadequacy or prejudice to the parties. In the present proceeding, the issue was neither presented to, nor decided by the Minister's Delegate, whether explicitly or implicitly.

[45] In *Alberta Teachers*, the Supreme Court of Canada stated that the applicant was indeed entitled to seek judicial review, but did not have a right to require the Court to consider the issue raised for the first time on judicial review. At paragraph 22 of its decision, the Supreme Court of Canada states that "[j]ust as a court has discretion to refuse to undertake judicial review where, for example, there is an adequate alternative remedy, it also has a discretion not to consider an issue raised for the first time on judicial review where it would be inappropriate to do so". The Court adds that generally, its discretion will not be exercised in favour of an applicant on judicial review where the issue could have been, but was not raised before the tribunal. The Supreme Court added, at paragraph 26, that "[m]oreover, raising an issue for the first time on judicial review may unfairly prejudice the opposing party and may deny the court the adequate evidentiary record required to consider the issue".

[46] I am satisfied that the case law cited by the Respondent does not apply to the issue I raised. In addition, I am not convinced that the conclusions of the Court in *Gwala FCA* and in *Raza* are helpful, in any event, to determine whether the Minister's Delegate, who is not an immigration officer, has jurisdiction to consider the constitutional issue.

[47] I acknowledge the Federal Court of Appeal's discussion on the administrative tribunal's powers in *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245 [*Forest Ethics*]. Mr. Justice David Stratas particularly outlined at paragraphs 46 and 47 that:

> [46] The Supreme Court has strongly endorsed the need for constitutional issues to be placed first before an administrative decision-maker who can hear them: *Okwuobi v. Lester B. Pearson School Board; Casimir v. Quebec (Attorney General); Zorrilla v. Quebec (Attorney General)*, 2005 SCC 16, [2005] 1 S.C.R. 257 [*Okwuobi*] at paragraphs 38-40 …
>
> [47] This rule can be relaxed in cases of urgency: *Okwuobi*, *supra* at paragraphs 51-53. And a direct challenge in Court to the constitutionality of legislation is possible as long as the challenge is not "circumventing the administrative process" or tantamount to a collateral attack on an administrator's power to decide the issue (outside the circumstances where prohibition is permitted): *Okwuobi*, *supra* at paragraph 54.

[48] I note that the Federal Court of Appeal did not mention *Gwala FCA* and that, ultimately, Justice Stratas exercised his discretion against entertaining the constitutional issues for the first time on judicial review (*Forest Ethics* at para 56).

[49] The more recent decision of the Federal Court of Appeal in *Goodman* is particularly helpful and on point, as it confirms the general rule set out in *Alberta Teachers*. Mr. Justice Richard Boivin stated quite clearly at paragraph 4 that:

> [4] The issues with respect to section 2(e) of the Bill of Rights should not have been considered by the Federal Court as they were barred from judicial review. Indeed, *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, counsels us against accepting issues on judicial review that were not raised before the administrative decision-maker. Therefore, the section 2(e) issues had to be raised before the administrative decision-maker (*Okwuobi v. Lester B. Pearson School Board; Casimir v. Quebec (Attorney General)*; *Zorrilla v. Quebec (Attorney General)*, 2005 SCC 16,

> [2005] 1 S.C.R. 257; *Landau v. Canada (Attorney General)*, 2022 FCA 12, 466 D.L.R. (4th) 550) who is the merits decider under this legislative regime.

[50] I note that *Goodman* was decided in the context of a constitutional challenge against section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 whereby the decision maker is the Minister or his delegate, just as it is the case under section 10 of the *Citizenship Act*. In that context, the Federal Court of Appeal confirmed unequivocally that the constitutional issue should have been raised first before the decision maker.

[51] The Federal Court of Appeal again did not discuss, or mention, *Gwala FCA* and it did not limit the general rule set out in *Alberta Teachers* or make it dependent on the administrative decision maker's, which in *Goodman* was the Minister or his delegate's, power to consider the constitutional issue.

[52] I note as well that in *Benito* and in *Watto v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1024, our Court was reviewing decisions rendered by the "Immigration Consultants of Canada Regulatory Council". There is no indication as to whether this council has jurisdiction to address constitutional issues, whether it is a court of competent jurisdiction or any indication that this was taken into consideration. Again, in those cases, our Court did not mention *Gwala FCA* and it applied the general rule set out in *Alberta Teachers* as the Federal Court of Appeal did in *Goodman*.

[53] Likewise in *Obazughanmwen v Canada (Public Safety and Emergency Preparedness*), 2021 FC 683 at paragraph 61, Mr. Justice Henry Brown expressed concern that the record may

be inadequate as the *Charter* arguments were new issues on judicial review and had not been raised before the CBSA officer or the minister's delegate.

[54] In light of the circumstances and of the binding decisions of the Supreme Court of Canada and of the Federal Court of Appeal, I find it is not appropriate for this Court to consider the constitutional issue as it was raised for the first time on judicial review.

[55] In case I am wrong, I will nonetheless examine the constitutional arguments raised by Ms. Tan.

B. *The Constitutional Arguments*

(1) Standard of Review

[56] Both parties assert that the constitutional issues should be reviewed under the correctness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). However, and as detailed above, the constitutional issues have not been put to the Minister's Delegate and have not been addressed in the Decision. Consequently, there is nothing to "review" and no standard can thus apply.

(2) The Citizenship Revocation Provisions of the *Citizenship Act*

[57] In her Notice of Application and in her Memorandum of Facts and Law, Ms. Tan challenges section 10 of the *Citizenship Act*. In her Notice of Constitutional Question, she

confirms her submissions to be that sections 10 and 10.1 of the *Citizenship Act* are invalid because they are contrary to section 7 of the *Charter* and to paragraph 2(e) of the *Bill of Rights*.

[58] Section 10 is titled *Revocation by Minister — fraud, false representation, etc.* and section 10.1 is titled *Revocation for fraud — declaration of Court.*

[59] As previously mentioned, Ms. Tan elected to have the final determination made by the Minister or his delegate. There is therefore no evidentiary record on the effect of a decision under section 10.1 of the *Citizenship Act*. Justice Stratas clearly stressed the importance for the court to have the proper evidentiary record in *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 72 at paras 81-82 (see also *Mackay v Manitoba*, [1989] 2 SCR 357, 1989 CanLII 26 (SCC) at 361-362). As section 10.1 of the *Citizenship Act* was not in play in the underlying factual matrix and there is thus no evidentiary record of the effect of its application, the issue of the lawfulness of that section does not arise in this matter. I will therefore decline Ms. Tan's invitation to consider the validity of section 10.1 and will refer to it only when it is necessary to assess whether the arguments raised against section 10 can succeed.

[60] It is useful to summarize the relevant provisions of the *Citizenship Act*. The text of these provisions is reproduced in Annex to these reasons.

[61] Under section 10 of the *Citizenship Act*, the Minister may revoke a person's citizenship if the Minister is satisfied, on a balance of probabilities, that the person has obtained his or her

citizenship by false representation or fraud or by knowingly concealing material circumstances (subsection 10(1) of the *Citizenship Act*).

[62] Before citizenship may be revoked, the Minister shall provide the person with a written notice that (a) advises the person of his or her right to make written representations; (b) specifies the manner in which the representations must be made; (c) sets out the specific grounds and reasons, including reference to materials, on which the Minister is relying; and (d) advises the person that the case will be referred to the Court unless the person requests that the case be decided by the Minister (subsection 10(3) of the *Citizenship Act*).

[63] Subsection 10(3.1) of the *Citizenship Act* provides that the person may:

…	[…]
(a) make written representations with respect to the matters set out in the notice, including any considerations respecting his or her personal circumstances — such as the best interests of a child directly affected — that warrant special relief in light of all the circumstances of the case and whether the decision will render the person stateless; and	**a)** présenter des observations écrites sur ce dont il est question dans l'avis, notamment toute considération liée à sa situation personnelle — tel l'intérêt supérieur d'un enfant directement touché — justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales ainsi que le fait que la décision la rendrait apatride, le cas échéant;
(b) request that the case be decided by the Minister.	**b)** demander que l'affaire soit tranchée par le ministre.

[64] The *Citizenship Act* also states that the Minister shall consider any representations received from the person before making a decision (subsection 10(3.2)), and that a hearing may

be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required (subsection 10(4) of the *Citizenship Act* and section 7.2 of the *Citizenship Regulations*, SOR/93-246 [*Citizenship Regulations*]).

[65] Subsection 10(4.1) of the *Citizenship Act* clearly states that the Minister shall refer the case to the Court unless (a**)** the person has made written representations and either the Minister is satisfied on a balance of probabilities that the person has not obtained his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, or that considerations respecting the person's personal circumstances warrant special relief in light of all the circumstances of the case; or (b) the person requested the decision to be made by the Minister.

[66] Section 10.1 of the *Citizenship Act* addresses the default process according to which the Minister must seek, by way of an action, a declaration from the Court that the person has obtained his or her citizenship by false representation or fraud or by knowingly concealing material circumstances. The declaration made by the Court has the effect of revoking a person's citizenship (subsection 10.1(3) of the *Citizenship Act*).

[67] As previously outlined, in this case, Ms. Tan elected to have the Minister decide her case. Section 10.1 is therefore not in play, there is no evidentiary record as related to its application.

(3) Argument Related to Equitable Consideration

[68] As the Respondent outlines, Ms. Tan's arguments on the constitutionality of the citizenship revocation scheme are mainly premised on there being a mutually exclusive choice between having personal circumstances considered by the Minister or having the Federal Court be the decision maker on whether or not citizenship was obtained by false representation or fraud or by knowingly concealing material circumstances. However, Ms. Tan's premise is, in my view, incorrect.

[69] More precisely, in this regard, Ms. Tan asserts that (1) in the case of a determination by the Federal Court, it does not provide for an assessment of what she refers to as humanitarian and compassionate grounds (para 34 of the Applicant's Memorandum of Fact and Law); (2) the incentive for asking that the Minister decide the case is that the Minister has equitable jurisdiction whereas the Federal Court does not (para 40 of the Applicant's Memorandum of Fact and Law); (3) where the decision is by the Minister, the Minister has discretion to consider mitigating circumstances / humanitarian and compassionate grounds, but no such discretion is given to the Federal Court, which simply has to establish as a factual matter that there was fraud for revocation to occur (para 42 of the Applicant's Memorandum of Fact and Law); (4) in the context of a determination by the Federal Court as to whether citizenship should be revoked, the failure of the government to explicitly include such a jurisdiction under the current version of the *Citizenship Act* renders the Act *ultra vires*, and the relevant provisions should therefore be struck down by the Court (para 44 of the Applicant's Memorandum of Fact and Law); (5) the procedure adopted by the Minister is woefully inadequate because it does not meet these requirements -

notably the right to consideration on humanitarian and compassionate grounds (para 53 of the Applicant's Memorandum of Fact and Law).

[70] However, per the clear language of the statute, and contrary to Ms. Tan's assertions, an assessment as to whether personal circumstances warrant special relief is available in all citizenship revocations, whether decided by the Court or by the Minister. A decision is required, from the Minister, in all cases where a person makes written representations seeking special relief. Notably, subsection 10(4.1) of the *Citizenship Act* clearly provides that the Minister will defer the case to the Court unless the person has made written representations under paragraph (3.1)(a) and the Minister is satisfied that considerations respecting the person's personal circumstances warrant special relief in light of all the circumstances of the case.

[71] Hence, it could not be clearer that the Minister is tasked with considering whether personal circumstances presented by the person warrant special relief before deferring the case to the Court, and that the Minister will not defer to the Court if special relief is warranted.

[72] So, a simple reading of the relevant provision confirms that the assessment of whether personal circumstances militate against the revocation of citizenship is available even in the cases where the person has not elected for the Minister to make the revocation decision. If the Minister determines that the personal circumstances warrant special relief, the matter is concluded and the person retains their citizenship. Otherwise, on the person's election, the matter of whether or not to revoke citizenship is decided by the Minister under subsection 10(1) or by

the Court under section 10.1. Ms. Tan's incorrect premise, repeated throughout her arguments, understandably weakens her constitutional challenge.

(4) The Challenge under Paragraph 2(e) of the *Bill of Rights*

[73] Paragraph 2(e) of the *Bill of Rights* provides that:

Construction of law	**Interprétation de la législation**
2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to	**2** Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la *Déclaration canadienne des droits*, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme
…	[…]
(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations	**e)** privant une personne du droit à une audition impartiale de sa cause, selon les principes de justice fondamentale, pour la définition de ses droits et obligations;

[74] In *Hassouna*, Associate Chief Justice Gagné found the revocation provisions were unlawful as she found the four basic conditions of C*anadian National Railway Company v Western Canadian Coal Corporation*, 2007 FC 371 [*Canadian National Railway Company*] at paragraph 22 had been met. These four conditions are:

> 1. the applicant must be a "person" within the meaning of paragraph 2(e);
>
> 2. the arbitration process must constitute a "hearing […] for the determination of [the applicant's] rights and obligations";
>
> 3. the arbitration process must be found to violate "the principles of fundamental justice"; and
>
> 4. the alleged defect in the arbitration process must arise as a result of a "law of Canada" which has not been expressly declared to operate notwithstanding the *Canadian Bill of Rights*.

[75] Both parties agree that the first, second and fourth conditions set out in *Canadian National Railway Company*, above, are met. I agree. The first condition is met since Ms. Tan, the Applicant, is a person. The second condition is also met as it was found in *Hassouna* that the citizenship revocation process constitutes a hearing for the determination of the Applicant's rights and obligations. I agree with the reasons set out by Associate Chief Justice Gagné's at paragraphs 72 to 79 of her decision in *Hassouna*. Finally, the fourth condition is also met as the citizenship revocation regime has as its legal source the *Citizenship Act* – a federally enacted statute – and does not expressly declare that it operates notwithstanding the *Bill of Rights* (*Hassouna* at para 125).

[76] The only remaining issue pertains to the third condition, hence whether or not the process violates the principles of fundamental justice. In regards to this condition, and as Associate Chief Justice Gagné outlined, at paragraph 91 of *Hassouna*:

> [91] In order for the revocation process to be procedurally fair, the Applicants ought to be entitled to: (1) an oral hearing before a Court, or before an independent administrative tribunal, where there is a serious issue of credibility; (2) a fair opportunity to state the case and know the case to be met; and (3) the right to an impartial and independent decision-maker. …

[77] Associate Chief Justice Gagné found that none of these were guaranteed under the *Citizenship Act*'s 2015 revocation provisions. She also stated that the principles of fundamental justice required a discretionary review of all the circumstances of a case, including the consideration of humanitarian and compassionate grounds, the consideration of personal interests, or equitable discretion, whichever expression is preferred (*Hassouna* at paras 116-124).

[78] Ms. Tan submits that the new citizenship revocation process does not meet the requirements of fundamental justice under paragraph 2(e) of the *Bill of Rights* because (a) in the case of a determination by the Minister, it does not provide for an impartial decision maker; (b) in the case of a determination by the Federal Court, it does not provide for an assessment of humanitarian and compassionate grounds; (c) it does not provide for a right to documentary disclosure; and (d) it does not provide for the right to an oral hearing in all cases.

(a) *Impartial decision maker*

[79] Ms. Tan submits that the structure under the new revocation process lacks judicial independence and impartiality when the decision maker is in fact the Minister himself or a

delegate. She concedes that both the Minister or the Federal Court can act as the decision maker, but notes that the incentive to asking the Minister to decide the case is that the Minister has equitable jurisdiction whereas the Federal Court does not. She adds that, in many cases, the Minister is both initiating and adjudicating the revocation process, clearly serving a judicial function.

[80] As I discussed earlier, Ms. Tan's premise that, in essence, personal circumstances are not considered when the case is to be deferred to the Court is incorrect. The Minister or his delegate is tasked with considering personal circumstances and equitable relief in both processes. The incentive suggested by Ms. Tan is thus unsubstantiated; a person can have his or her personal circumstances assessed and have access to the process of the Federal Court.

[81] Ms. Tan has not convinced me that the current structure under the *Citizenship Act*, where a process is available before the Federal Court, lacks judicial independence and impartiality; on the contrary, I am satisfied that Associate Chief Justice Gagné's concerns were addressed (*Hassouna* at paras 99-102).

(b) *In the case of a determination by the Federal Court, it does not provide for an assessment of humanitarian and compassionate grounds*

[82] Second, Ms. Tan argued that fundamental justice requires a consideration of equitable or humanitarian and compassionate grounds in citizenship revocation cases. Again, she adds that this is only available when the person has elected the Minister to make the final determination and that it is thus absent from the process before the Federal Court.

[83] The validity of section 10.1 of the *Citizenship Act* is not before the Court, as mentioned earlier. In addition, I have already outlined that Ms. Tan's premise is incorrect. Although only the Minister has the jurisdiction to consider personal circumstances, said jurisdiction – exercised when personal circumstances are raised – applies whether a person chooses the Minister or the Court as the final decision maker (see paragraph 10(3.1)(a)).

(c) *Right to full documentary disclosure*

[84] Ms. Tan cites Justice Sean Harrington in *B135 v Canada (Minister of Citizenship and Immigration)*, 2013 FC 871 at paragraph 26 "…if the Minister chooses to disclose evidence, that disclosure must be complete" and stresses that, on the facts of this case, the Minister is disclosing only "the most relevant" exculpatory information. She submits that this is in violation of the obligation of disclosure, which deprives the applicant from knowing the case against himself.

[85] The Respondent submits that Ms. Tan's arguments regarding the lack of disclosure fail to acknowledge that she had already received disclosure in August 2015 when citizenship revocation proceedings against her commenced under the previous regime, in accordance with the former subsection 10(3). Hence, the Respondent opines that the disclosure included the Minister's statement for the basis of the misrepresentation accusation (same as it is now) and supporting evidence, including the statutory declaration of her former "husband" and from the CBSA officer who took the statement from the former "husband". The Respondent further refers to the post-*Hassouna Request for Information Letter* sent to Ms. Tan in February 2018 which specifically references the August 2015 correspondence.

[86] It was held in *Hassouna* that it is insufficient to provide a written notice which only includes the "grounds on which the Minister is relying to make his or her decision" (*Hassouna* at para 97). However, Associate Chief Justice Gagné noted importantly at paragraph 96 that:

> [96] … Under the previous regime, applicants had the opportunity to request that their matter be referred to the Federal Court for adjudication. At this stage, applicants were entitled to full disclosure and production of all relevant documents within the party's possession. Since there is no judicial proceeding available under the amended Act, access to full disclosure is no longer available, and there is no general disclosure requirement placed on the government.

[87] The current legislative regime provides the person the default option that their matter be referred to the Federal Court for adjudication. This alleviates the concerns raised in *Hassouna*. If the person does not elect for the Minister to make the decision, the default path of citizenship revocation is through an action initiated in the Court, and as in any action, the trial process will include disclosure and discovery, as Associate Chief Justice Gagné aptly outlined.

[88] Furthermore, as the Respondent highlights, Ms. Tan has not demonstrated that the disclosure she received did not allow her to know the case to meet and, in the event that a person was contesting the allegation that they obtained citizenship by misrepresentation, that the regime unlawfully restricts disclosure. Ms. Tan has not provided any evidence to demonstrate that the disclosure obligation in the current regime is insufficient. Given the disclosure she was provided, her knowledge of the case against her, and her concession in her January 20, 2020 written submissions that she obtained her status through her duplicity, it is unclear what disclosure was lacking and what prejudice was allegedly suffered as a result.

(d) *Oral hearing*

[89] Subsection 10(4) of the *Citizenship Act* provides that "[a] hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required". Section 7.2 of the *Citizenship Regulations* states that "[a] hearing may be held under subsection 10(4) of the Act on the basis of any of the following factors: (a) the existence of evidence that raises a serious issue of the person's credibility; (b) the person's inability to provide written submissions".

[90] *Hassouna* does not require an oral hearing in all circumstances of citizenship revocation, but rather only in those involving serious issues of credibility. Central to Associate Chief Justice Gagné's finding in *Hassouna* in regards to the oral hearing was the inclusion of a provision that stated that the government did not have to personally serve the notice referred nor obtain confirmation that the notice was actually received by the affected individual (*Hassouna* at paras 92-95). The parties have not identified any such provision in this scheme and I have found none.

[91] Furthermore, I agree with the Respondent that the Minister's Delegate's finding on personal circumstances is not premised on Ms. Tan's credibility in this case. Ms. Tan has not demonstrated why the lack of a hearing by the Minister in her case is unfair or why it renders the entire revocation regime unlawful.

(5) The Challenge Under Section 7 of the *Charter*

[92] Section 7 of the *Charter* provides that:

Life, liberty and security of person	Vie, liberté et sécurité
7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	7 Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[93] Ms. Tan submits that the citizenship revocation process engages section 7 of the *Charter* because the Applicant's liberty and security of the person is affected.

[94] She asserts that the revocation provisions of the *Citizenship Act* are contrary to fundamental justice because they fail to meet appropriate procedural safeguards including the right to an oral hearing, the right to full disclosure, and the right to an independent and impartial decision maker. I have already examined these concerns above.

[95] Ms. Tan submits that the revocation of citizenship clearly restricts an individual's liberty interest. She adds that it removes their mobility and voting rights, which are inherent aspects of liberty. She also states that if the revocation results in statelessness, it causes in the inability to leave Canada while if it is accompanied by a loss of permanent residence, it results in the loss of the ability to work, access social services, study, or otherwise live legally in Canada, all of which are major impacts on life, liberty, and security. Ms. Tan adds that revocation engages the security of the person as well because of the serious and prolonged psychological suffering it may impose

on individuals, such as herself. Other impacts on the security of the person includes the possibility of being deported and banished or exiled from Canada, the stigmatization that comes with being stripped of one's status as a Canadian, as well as a multitude of ways revocation will disrupt the affected person's life, family and children, and the attendant stress and anxiety.

[96] Ms. Tan also submits that notwithstanding the decision of the Court in *Hassouna,* any finding that a law is not in compliance with paragraph 2(e) of the *Bill of Rights* will, as a general rule, result in that law not being in compliance with section 7 of the *Charter* and the revocation engages section 7 (*Taylor v Canada (Minister of Citizenship and Immigration*), 2006 FC 1053 at para 232; *Lavoie v Canada*, 2002 SCC 23). She asserts that the *Citizenship Act* establishes a discretionary regime that lacks basic procedural protections for persons at risk of revocation, which is not consistent with fundamental justice. She adds that the *Citizenship Act* is not consistent with the requirements of fundamental justice under section 7 of the *Charter* for the same reasons it is not in compliance with paragraph 2(e) of the *Bill of Rights*. She refers to (1) an impartial decision maker; (2) the unavailability of humanitarian and compassionate jurisdiction; (3) the right to documentary disclosure; and (4) an oral hearing as requirements of fundamental justice. Ms. Tan asserts that any process whereby citizenship is taken away must be even more robust than comparable processes for lesser statuses such as permanent residence or refugee status, and it is currently not.

[97] The Respondent asserts that the citizenship revocation process does not engage section 7 of the *Charter* nor violate the principles of fundamental justice. He asserts that the 2017 decision of the Court in *Hassouna* expressly holds that section 7 of the *Charter* is not engaged by the

citizenship revocation regime. The Respondent stresses that Associate Chief Justice Gagné reached this conclusion after analyzing the prior jurisprudence, including many of the earlier cases cited by Ms. Tan in her memorandum before this Court concerning section 7 of the *Charter*. The Respondent adds that, aside from relying on dated jurisprudence and simply disagreeing with *Hassouna*, Ms. Tan fails to demonstrate how section 7 is engaged, and fails to argue how section 7 is violated. Moreover, the Respondent argues that Ms. Tan's argument that paragraph 2(e) of the *Bill of Rights* is simply the predecessor of section 7 of the *Charter* and mirrors section 7 of the *Charter* in its intent and its content, has been rejected by the Federal Court of Appeal (*Goodman* at para 6).

[98] First, I note, as the Respondent pointed out, that the decision of the Federal Court of Appeal in *Goodman* does not support Ms. Tan's position that paragraph 2(e) of the *Bill of Rights* mirrors section 7 of the *Charter* in its intent and its content.

[99] In *Goodman*, the Federal Court of Appeal approved the Federal Court's determination that paragraph 2(e) of the *Bill of Rights* only encompasses the principles of fundamental justice tied to a fair hearing whereas section 7 of the *Charter* encompasses both substantive and procedural fairness principles tied to "life, liberty and security of the person" (*Goodman* at para 6). The Federal Court of Appeal also accepted the Federal Court's finding that the rights under paragraph 2(e) of the *Bill of Rights* are narrower than the rights guaranteed under section 7 of the *Charter*. Ms. Tan's argument to the contrary is therefore not supported by the binding case law and cannot succeed.

[100] As Associate Chief Justice Gagné outlined in *Hassouna*, at paragraphs 128 to 130, the onus is on Ms. Tan to demonstrate the violation of constitutional rights (*Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at para 30). In turn, to demonstrate a violation of section 7 of the *Charter*, Ms. Tan had to establish that: (1) the impugned provisions interfere with, or deprive her of her life, liberty or security of her person; and that (2) the deprivation in question is not in accordance with the principles of fundamental justice (*Carter v Canada (Attorney General)*, 2015 SCC 5 at para 55 [*Carter*]). Associate Chief Justice Gagné outlined that liberty protects "the right to make fundamental personal choices free from state intervention" (*Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 54), while security of the person encompasses "a notion of personal autonomy involving… control over one's bodily integrity free from state interference" (*Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519, 107 DLR (4th) 342 at 587-88) and it is engaged by any state action that causes physical or serious psychological suffering (*New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46, 216 NBR (2d) 25 at para 58; *Carter* at para 64).

[101] Associate Chief Justice Gagné concluded that the revocation of citizenship provisions for fraud or misrepresentations did not infringe the right to liberty and security of the applicants and of persons in their position, and that the revocation provisions were not inconsistent with section 7 of the *Charter*. She held that revoking a person's citizenship by reason of fraud or misrepresentation did not, *per se*, interfere with, or violate that person's right to liberty or security of the person, and that section 7 of the *Charter* was thus not engaged. She found there was therefore no need to engage on the second part of section 7.

[102] Ms. Tan has not convinced me that section 7 of the *Charter* is engaged; on the contrary, I agree with Associate Chief Justice Gagné's reasoning and conclusion as set out at paragraphs 148 to 161 of her decision in *Hassouna.*

IV. The Decision Has Not Been Shown to be Unreasonable

A. *The Decision*

[103] As previously mentioned, the Minister's Delegate was satisfied, on a balance of probabilities, that Ms. Tan obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. The Minister's Delegate revoked Ms. Tan's Canadian citizenship and cancelled Ms. Tan's citizenship certificate.

[104] In the Decision, the Minister's Delegate first detailed the factual background and the results from the CBSA investigation into Ms. Tan's marriage, and then addressed the issues.

[105] In regards to the request for a hearing formulated by Ms. Tan in her January 2020 written representations, the Minister's Delegate referred to subsection 10(4) of the *Citizenship Act* and cited the two factors listed in section 7.2 of the *Citizenship Regulations* hence, (a) the existence of evidence that raises a serious issue of the person's credibility; and (b) the person's inability to provide written submissions. The Minister's Delegate opined that a hearing was not required.

[106] The Minister's Delegate outlined the five elements Ms. Tan raised in her written representations as her personal circumstances.

[107] In the analysis, the Minister's Delegate first explained that Ms. Tan's citizenship was being revoked essentially because the information on file demonstrated that Ms. Tan misrepresented key aspects of her application for permanent residence by not disclosing she entered into a marriage of convenience for the sole purpose of obtaining immigration status in Canada and that she entered into a non-genuine marriage with her sponsor who admitted to CBSA investigators that he was paid a sum of money to marry and to sponsor Ms. Tan. The Minister's Delegate outlined that Ms. Tan's failure to disclose this fact prevented the decision maker from accurately assessing her eligibility for permanent resident status, and that her permanent resident application would likely not have been approved if it had been known that her marriage was non-genuine, since entering into a relationship primarily for immigration purposes is prohibited.

[108] The Minister's Delegate then gave consideration to Ms. Tan's personal circumstances, noting this term, rather than the term humanitarian and compassionate considerations, as the one used in the citizenship context under paragraph 10(3.1)(a) of the *Citizenship Act*:

- **Remorse**: the Minister's Delegate noted that Ms. Tan had multiple opportunities to be candid with Canadian authorities, that the misrepresentations were carried out over a long period of time and were large deceptions and that Ms. Tan had not come forward prior to receiving notice. The Minister's Delegate found Ms. Tan's previous actions showed little evidence of remorse, and found it was insufficient to warrant special relief, and not revoke her citizenship, in light of the circumstances of her case.

- **Best interests of her children:** the Minister's Delegate noted that Ms. Tan had provided copies of her children's birth certificate, of a marriage certificate, of an

application for a divorce dated September 2018 and of a certificate of attendance to a Mandatory Information Program dated February 19, 2019. The Minister's Delegate noted that no document or evidence had been provided to support Ms. Tan's submissions that she is the children's sole caregiver, that her husband refuses to assist, that her divorce has been concluded, or that she is not welcomed back in China by her husband or her parents. The Minister's Delegate also noted that Ms. Tan's submissions relating to the best interests of the children dealt primarily with the impact that Ms. Tan's possible removal from Canada would have on the children; the Minister's Delegate determined that this issue would be more properly addressed in a subsequent removal proceeding should such a proceeding take place. Ultimately, as Ms. Tan had provided insufficient evidence she is the child's sole caregiver, and as her submissions related to the best interests of the children dealt primarily with the impact of her removal, the Minister's Delegate found Ms. Tan's submission was not a basis which warranted special relief in light of the circumstances of the case;

- **Statelessness:** the Minister's Delegate was not persuaded Ms. Tan would be a stateless person on the sole basis that China does not recognize dual nationality, noting Ms. Tan had not provided evidence to this effect. Moreover, the Minister's Delegate found it appeared there was a process available to Ms. Tan to apply to have her Chinese citizenship restored. The Minister's Delegate was not satisfied that this submission warranted special relief in light of the circumstances of the case.

- **Establishment in Canada:** the Minister's Delegate considered the mitigating circumstances Ms. Tan outlined were present at the time she engaged in her marriage to a Canadian and applied for permanent residence, but did not agree they were a basis

on which relief from revocation was warranted. The Minister's Delegate acknowledged Ms. Tan had lived in Canada for a significant period of time, had established herself, raised a family and grew financial assets and considered them positive factors. However, the Minister's Delegate noted that Ms. Tan's establishment in Canada may not have been attained had she not been granted permanent residence status and subsequently Canadian citizenship on the basis of fraud. The Minister's Delegate noted that while Ms. Tan was a temporary resident, she had the opportunity to apply for permanent residence. The Minister's Delegate added that if Ms. Tan's situation in China was as dire as she had submitted in her personal statement dated January 29, 2020, she could have applied for permanent residence on humanitarian and compassionate grounds from within Canada. The Minister's Delegate noted that despite having multiple pathways available to her to potentially make permanent her status in Canada, Ms. Tan instead made the deliberate decision to deceive immigration authorities by engaging in a marriage of convenience scheme in order to acquire permanent resident status. Subsequently, the Minister's Delegate noted Ms. Tan had multiple opportunities to advise IRCC of the situation and chose not to. As such, the Minister's Delegate found Ms. Tan's actions to circumvent Canada's immigration laws were a negative factor bearing considerable weight. He concluded that Ms. Tan's establishment in Canada was insufficient to warrant special relief in light of the Canadian public interest to uphold and maintain the integrity of Canada's immigration and citizenship program.

[109] The Minister's Delegate was satisfied, on a balance of probabilities, that Ms. Tan obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances.

B. *The Standard of Review*

[110] Reasonableness is now the presumptive standard of review for administrative decisions, subject to specific exceptions (*Vavilov*). There is no basis for derogating from this presumption here (*Xu v Canada (Citizenship and Immigration)*, 2021 FC 1102 at para 34 [*Xu*]). The Decision is to be reviewed by this Court on the standard of reasonableness.

[111] When the reasonableness standard of review applies, the burden is "on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). The Court's focus must be "on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83) to determine whether the decision is "based on an internally coherent and rational chain of analysis and [...] is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). It is not for the Court to substitute its preferred outcome (*Vavilov* at para 96).

[112] When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125).

C. *The Parties' Position*

[113] Ms. Tan submits that the Minister's Delegate essentially disregarded all of her personal circumstances either because they deserved "little weight", the documentation was "insufficient", or they were irrelevant on the basis that loss of citizenship did not necessarily result in removal from Canada. Ms. Tan submits that all of these conclusions are clearly unreasonable.

[114] Ms. Tan also asserts that the Minister's Delegate set up an impossible burden for the consideration of personal circumstances in that every factor she put forward was individually considered insufficient to excuse the fraud in the process of obtaining citizenship. Ms. Tan asserts that the purpose of the equitable assessment was to consider factors other than the fraud to decide whether, based on these, Ms. Tan should be allowed to keep her citizenship. Ms. Tan submits that the proper analysis was a balancing of the fraud against the humanitarian factors and that it defeated the purpose of a humanitarian assessment, to disregard the relevant factors on the basis that there had been misrepresentation. Ms. Tan argues that, while the relevant law is in this case the *Citizenship Act* and not subsection 25(1) of the *Immigration and Refugee Protection Act*, the same principles apply and it was unreasonable for the Minister's Delegate to completely disregard her 20 years of establishment in Canada entirely on the basis that there had been a single misrepresentation, however serious (*Mitchell v Canada (Citizenship and Immigration)*, 2019 FC 190 at paras 22-23).

[115] Ms. Tan cites Justice John Norris in *Xu* which, she says, found that the Minister's Delegate had erred by discounting the humanitarian factors in that applicant's case (*Xu* at

para 74), and that the findings of the Court in *Xu* are entirely applicable to the case at bar. It is thus Ms. Tan's view that the Court should quash the Decision for the same reasons. Ms. Tan adds that, notwithstanding the contrary finding of Justice Norris in *Xu*, it was an error for the Minister's Delegate not to consider the effect of removal to China when assessing the humanitarian factors in the case.

[116] Ms. Tan submits that the Minister's Delegate's findings individually were erroneous because the Minister's Delegate unreasonably ignored her evidence in her statement and documentation, and instead found the evidence to be insufficient to prove key aspects of her case, including that she was a divorced single mother solely responsible for the care of her two Canadian children, and that loss of Canadian citizenship would render her stateless. Ms. Tan asserts that, on the one hand, the Minister's Delegate disregarded her uncontradicted evidence in her statement, and, on the other hand, ignored or misconstrued her documentary evidence. She asserts that it was both unreasonable and unfair for the Minister's Delegate to reject her request for a hearing in her case.

[117] The Respondent submits that Ms. Tan's arguments concerning the Decision's reasonableness amount to disagreements with the weight given to the factors considered under personal circumstances. He adds that the jurisprudence from this Court confirms that the Minister's Delegate was entitled to consider Ms. Tan's establishment in light of her longstanding and admitted misrepresentation and establishes that potential hardships of removal on an applicant and their family are not the proper subjects of the personal circumstances consideration

under the citizenship revocation regime. The Respondent asserts that the Decision is both coherent and rational given the law and evidence.

D. *Discussion*

[118] Ms. Tan has not shown the Decision to be unreasonable.

[119] First, I do not see in the Decision an individual assessment of each factor weighed against the fraud in the process of obtaining citizenship, as Ms. Tan asserts. Upon reading the Decision, it is clear the Minister's Delegate rather assessed each factor raised by Ms. Tan to determine if it warranted special relief, per the language of the statute.

[120] In regards to the remorse Ms. Tan ultimately indicated she felt sorry in her May 24, 2018 written representations, i.e., years after the initial citizenship revocation procedure was commenced. The Minister's Delegate did note that her misrepresentations were carried over a long period and were large in order to highlight the fact that Ms. Tan had multiple opportunities to come forward and be candid with the Canadian authorities, before notice was given to her, but failed to do so. In regards to the best interests of the children and the allegation from Ms. Tan that she would become stateless, I have found no mention of the fraud or misrepresentations in the Minister's Delegate's assessment of these two factors, and no indication that these factors were individually weighed against the fraud as Ms. Tan asserts.

[121] In regards to Ms. Tan's establishment, the Minister's Delegate first recognized positive factors, but did, subsequently, note that Ms. Tan's ability to establish herself was a direct result

of her decision to enter into a marriage of convenience scheme. The finding that "establishment under illegal circumstances should not be rewarded" has already been recognised as reasonable by the Court (*Gucake v Canada (Citizenship and Immigration*), 2022 FC 123 [*Gucake*] at paras 70-71, citing *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082) and I find no error in the Minister's Delegate's assessment in that regard.

[122] The Minister's Delegate outlined the evidence Ms. Tan adduced and explained how, in regards to some factors, it was insufficient. Ms. Tan has not pointed to evidence that would have been ignored, and I am satisfied the Minister's Delegate's conclusions are reasonable in light of the record.

[123] I find Ms. Tan's argument amounts to a disagreement with how the evidence was weighed, but fails to demonstrate how the Minister's Delegate erred. It is not for the Court to modify the weight given by the Minister's Delegate to the circumstances raised. On judicial review, the Court is not permitted to re-weigh the evidence or substitute its own assessment to the administrative decision maker's assessment (*Canada (Canadian Human Rights Commission v Canada (Attorney General)*, 2018 SCC 31 at para 55).

[124] Ms. Tan relies heavily on the Court's decision in *Xu* to argue that the Decision is unreasonable. However, as noted by the Respondent, the delegate in *Xu* had considerable evidence about the dire circumstances that had led to the misrepresentation. Those circumstances were very different from the ones described by Ms. Tan. In *Xu*, the applicant's family had threatened her with extreme violence after she had told them that she had entered into a same-sex

relationship; country condition evidence confirmed the societal stigma in the applicant's country of origin, and it was found the minister's delegate had failed to properly weigh those mitigating circumstances.

[125] In regards to the Minister's Delegate's conclusions that issues related to the impact of Ms. Tan's removal would be more properly addressed in a subsequent removal proceeding, the Court, in *Xu* and in *Gucake*, has already decided it is reasonable to conclude the personal circumstances assessment provided in section 10 of the *Citizenship Act* does not extend to assessing the impact of removal from Canada. I agree with my colleagues' conclusion on this matter; the scope of personal circumstances referred to in paragraph 10(3.1)(a) of the *Citizenship Act* does not extend to assessing the impact of removal from Canada. I find no error in the Decision.

[126] Finally, Ms. Tan's argument that the principles of fundamental justice and paragraph 2(e) of the *Bill of Rights* require a review of humanitarian and compassionate circumstances has been rejected by the Federal Court of Appeal in *Goodman* at paras 5-7; see *Goodman v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1569 at 17-34.

[127] Ms. Tan has not shown the Minister's Delegate's conclusion, that the relevant personal circumstances she raised did not warrant special relief from citizenship revocation, is unreasonable.

V. Questions for Certification

[128] Ms. Tan seeks certification of the following questions:

1. Is the citizenship revocation process set out in sections 10 and 10.1 to 10.7 of the *Citizenship Act* contrary to s. 7 of the *Canadian Charter of Rights and Freedoms*?
2. If the answer to Question 1 is affirmative, are sections 10 and 10.1 – 10.7 of the *Citizenship Act* saved by section 1 of the Charter?
3. Is the citizenship revocation process set out in sections 10 and 10.1-10.7 of the *Citizenship Act* contrary to s. 2(e) of the *Canadian Bill of Rights*?
4. Does an assessment of personal circumstances / humanitarian and compassionate grounds entail an assessment of potential foreign hardship?
5. Does an assessment of personal circumstances entail a consideration of establishment that cannot be discounted solely on the basis of the underlying fraud?

[129] Relying on the Federal Court of Appeal's decision in *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168, Ms. Tan submits that three factors must be met for a question to be certified: (1) the issues must transcend the interests of the immediate parties to the litigation; (2) the issues must be of broad significance or general application; and (3) the issues raised must be ones which could be determinative of the appeal.

[130] With regard to the first and second factor, Ms. Tan submits that the question of whether the revocation provisions of the *Citizenship Act* are contrary to the *Bill of Rights* or the *Charter* clearly transcends the interests of the immediate parties and has a broad significance or general application to any Canadian citizen who faces potential revocation of their citizenship status. The issues of whether foreign hardship and establishment should be considered also transcend the interests of the parties and are of broad significance or general application. It is further submitted

that the issue is one which can be determinative of the appeal because if the Court finds that the revocation process was unconstitutional, or that the decision maker's decision was unreasonable based on the foreign hardship or establishment analysis, then the officer's decision should necessarily be overturned. It is therefore submitted that the above questions should be certified for consideration by the Federal Court of Appeal.

[131] The Respondent opposes Ms. Tan's proposed questions. As far as the first two questions contemplate section 7 of the *Charter*, the Respondent asserts that this Court and the Federal Court of Appeal have rejected her arguments about *Charter* engagement and the interchangeability of the *Charter* and the *Bill of Rights* in this context. The Respondent adds that, given that these are settled points of law, these questions are not suitable for certification. Regarding the third question, and equally applicable to the first two questions, the Respondent argues that sections 10.1-10.7 of the *Citizenship Act* are not at issue in this judicial review as those sections apply to revocation actions before this Court.

[132] The Respondent adds that the fourth question is not an appropriate question for certification for the reasons given by Justice E. Susan Elliott in *Gucake*. The Respondent also asserts that the final question is already answered by the jurisprudence, which instructs that decision makers must weigh the misconduct against the personal circumstances raised by the Applicant (*Xu*), and that this is therefore not an appropriate question for certification.

[133] I agree with the Respondent.

[134] The Respondent proposes the following question for certification:

> Does section 10 of the *Citizenship Act*, by which citizenship that was obtained by "false representation or fraud or by knowingly concealing material circumstances" may be revoked, violate paragraph 2(e) of the *Canadian Bill of Rights*?

[135] Ms. Tan agrees that it is an appropriate question for certification.

[136] I am satisfied that the conditions for certification are met and will thus certify the question proposed by the Respondent.

VI. Conclusion

[137] For the reasons already outlined, the application for judicial review will be dismissed. No costs will be awarded.

JUDGMENT in T-1232-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. The following question is certified:

   > Does section 10 of the *Citizenship Act*, by which citizenship that was obtained by "false representation or fraud or by knowingly concealing material circumstances" may be revoked, violate paragraph 2(e) of the *Canadian Bill of Rights*?

3. No costs are awarded.

"Martine St-Louis"

Juge

ANNEX

I reproduce here relevant excerpts of the *Citizenship Act*, RSC 1985, c C-29:

Citizenship Act, RSC 1985, c C-29,
Loi sur la citoyenneté, LRC 1985, c C-29

Loss of Citizenship	**Perte de la citoyenneté**
Revocation by Minister — fraud, false representation, etc.	**Révocation par le ministre — fraude, fausse déclaration, etc.**
10 (1) Subject to subsection 10.1(1), the Minister may revoke a person's citizenship or renunciation of citizenship if the Minister is satisfied on a balance of probabilities that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.	**10 (1)** Sous réserve du paragraphe 10.1(1), le ministre peut révoquer la citoyenneté d'une personne ou sa répudiation lorsqu'il est convaincu, selon la prépondérance des probabilités, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.
…	[…]
Notice	**Avis**
(3) Before a person's citizenship or renunciation of citizenship may be revoked, the Minister shall provide the person with a written notice that	**(3)** Avant que la citoyenneté d'une personne ou sa répudiation ne puisse être révoquée, le ministre lui envoie un avis écrit dans lequel :
(a) advises the person of his or her right to make written representations;	**a)** il l'informe qu'elle peut présenter des observations écrites;
(b) specifies the form and manner in which the representations must be made;	**b)** il précise les modalités de présentation des observations;
(c) sets out the specific grounds and reasons, including reference to materials, on which the Minister is relying to make his or her decision; and	**c)** il expose les motifs et les justifications, notamment les éléments de preuve, sur lesquels il fonde sa décision;

(d) advises the person that the case will be referred to the Court unless the person requests that the case be decided by the Minister.

d) il l'informe que, sauf si elle lui demande de trancher l'affaire, celle-ci sera renvoyée à la Cour.

Representations and request for decision by Minister

(3.1) The person may, within 60 days after the day on which the notice is sent, or within any extended time that the Minister may allow for special reasons,

(a) make written representations with respect to the matters set out in the notice, including any considerations respecting his or her personal circumstances — such as the best interests of a child directly affected — that warrant special relief in light of all the circumstances of the case and whether the decision will render the person stateless; and

(b) request that the case be decided by the Minister.

Observations et demande que l'affaire soit tranchée par le ministre

(3.1) Dans les soixante jours suivant la date d'envoi de l'avis, ce délai pouvant toutefois être prorogé par le ministre pour motifs valables, la personne peut :

a) présenter des observations écrites sur ce dont il est question dans l'avis, notamment toute considération liée à sa situation personnelle — tel l'intérêt supérieur d'un enfant directement touché — justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales ainsi que le fait que la décision la rendrait apatride, le cas échéant;

b) demander que l'affaire soit tranchée par le ministre.

Consideration of representations

(3.2) The Minister shall consider any representations received from the person pursuant to paragraph (3.1)(a) before making a decision.

Obligation de tenir compte des observations

(3.2) Le ministre tient compte de toute observation reçue au titre de l'alinéa (3.1)a) avant de rendre sa décision.

Hearing

(4) A hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required.

Audience

(4) Une audience peut être tenue si le ministre l'estime nécessaire compte tenu des facteurs réglementaires.

Referral to Court

(4.1) The Minister shall refer the case to the Court under subsection 10.1(1) unless

Renvoi à la Cour

(4.1) Le ministre renvoie l'affaire à la Cour au titre du paragraphe 10.1(1) sauf si, selon le cas :

(a) the person has made written representations under paragraph (3.1)(a) and the Minister is satisfied

(i) on a balance of probabilities that the person has not obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, or

(ii) that considerations respecting the person's personal circumstances warrant special relief in light of all the circumstances of the case; or

(b) the person has made a request under paragraph (3.1)(b).

Notice of decision

(5) The Minister shall provide his or her decision to the person in writing.

Revocation for fraud – declaration of Court

10.1 (1) Unless a person makes a request under paragraph 10(3.1)(b), the person's citizenship or renunciation of citizenship may be revoked only if the Minister seeks a declaration, in an action that the Minister commences, that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances and the Court makes such a declaration.

(2) [Repealed, 2017, c. 14, s. 4]

Effect of declaration

(3) A declaration made under subsection (1) has the effect of revoking a person's citizenship or renunciation of citizenship.

a) la personne a présenté des observations écrites en vertu de l'alinéa (3.1)a) et le ministre est convaincu que :

(i) soit, selon la prépondérance des probabilités, l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci n'est pas intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels,

(ii) soit des considérations liées à sa situation personnelle justifient, vu les autres circonstances de l'affaire, la prise de mesures spéciales;

b) la personne a fait une demande en vertu de l'alinéa (3.1)b).

Communication de la décision

(5) Le ministre communique sa décision par écrit à la personne.

Révocation pour fraude – déclaration de la Cour

10.1 (1) Sauf si une personne fait une demande en vertu de l'alinéa 10(3.1)b), la citoyenneté de la personne ou sa répudiation ne peuvent être révoquées que si, à la demande du ministre, la Cour déclare, dans une action intentée par celui-ci, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

(2) [Abrogé, 2017, ch. 14, art. 4]

Effet de la déclaration

(3) La déclaration visée au paragraphe (1) a pour effet de révoquer la citoyenneté de la

personne ou la répudiation de la citoyenneté de celle-ci.

Proof

(4) For the purposes of subsection (1), if the Minister seeks a declaration that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in sections 34, 35, 35.1 or 37 of the *Immigration and Refugee Protection Act*, the Minister need prove only that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.

Preuve

(4) Pour l'application du paragraphe (1), il suffit au ministre — qui demande à la Cour de déclarer que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels concernant des faits visés à l'un des articles 34, 35, 35.1 et 37 de la *Loi sur l'immigration et la protection des réfugiés* — de prouver que celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

Presumption

10.2 For the purposes of subsections 10(1) and 10.1(1), a person has obtained or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances if the person became a permanent resident, within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, by false representation or fraud or by knowingly concealing material circumstances and, because of having acquired that status, the person subsequently obtained or resumed citizenship.

Présomption

10.2 Pour l'application des paragraphes 10(1) et 10.1(1), a acquis la citoyenneté ou a été réintégrée dans celle-ci par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels la personne ayant acquis la citoyenneté ou ayant été réintégrée dans celle-ci après être devenue un résident permanent, au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*, par l'un de ces trois moyens.

10.3 [Repealed, 2017, c. 14, s. 5]

10.3 [Abrogé, 2017, ch. 14, art. 5]

10.4 [Repealed, 2017, c. 14, s. 5]

10.4 [Abrogé, 2017, ch. 14, art. 5]

Inadmissibility

10.5 (1) On the request of the Minister of Public Safety and Emergency Preparedness, the Minister shall — in the originating document that commences an action under subsection 10.1(1) on the basis that the

Interdiction de territoire

10.5 (1) À la requête du ministre de la Sécurité publique et de la Protection civile, le ministre demande, dans l'acte introductif d'instance de l'action intentée en vertu du paragraphe 10.1(1) au motif que

person obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in section 34, 35 or 37 of the Immigration and Refugee Protection Act other than a fact that is also described in paragraph 36(1)(a) or (b) or (2)(a) or (b) of that Act — seek a declaration that the person who is the subject of the action is inadmissible on security grounds, on grounds of violating human or international rights or on grounds of organized criminality under, respectively, subsection 34(1), paragraph 35(1)(a) or (b) or subsection 37(1) of the Immigration and Refugee Protection Act.

l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels liée à l'un ou l'autre des faits énoncés aux articles 34, 35 ou 37 de la Loi sur l'immigration et la protection des réfugiés sauf ceux énoncés aux alinéas 36(1)a) ou b) ou (2)a) ou b) de cette loi, que la personne soit déclarée interdite de territoire pour raison de sécurité, pour atteinte aux droits humains ou internationaux ou pour criminalité organisée au titre, respectivement, du paragraphe 34(1), des alinéas 35(1)a) ou b) ou du paragraphe 37(1) de cette loi.

Party

(2) When a declaration is sought under subsection (1), the Minister of Public Safety and Emergency Preparedness becomes a party to the action commenced under subsection 10.1(1).

Partie à l'action

(2) Dès lors que le ministre fait la demande visée au paragraphe (1), le ministre de la Sécurité publique et de la Protection civile devient partie à l'action intentée au titre du paragraphe 10.1(1).

Removal order

(3) A declaration that the person is inadmissible on one of the grounds referred to in subsection (1) is a removal order against the person under the Immigration and Refugee Protection Act that comes into force when it is made, without the necessity of holding or continuing an examination or an admissibility hearing under that Act. The removal order is a deportation order as provided for in regulations made under that Act.

Mesure de renvoi

(3) La déclaration portant interdiction de territoire constitue une mesure de renvoi contre l'intéressé aux termes de la Loi sur l'immigration et la protection des réfugiés qui prend effet dès qu'elle est faite, sans qu'il soit nécessaire de procéder au contrôle ou à l'enquête prévus par cette loi. La mesure de renvoi constitue une mesure d'expulsion au sens des règlements pris en vertu de la même loi.

Procedure

(4) If a declaration is sought under subsection (1), the Court shall first hear and decide all matters related to the declaration sought under subsection 10.1(1). If the Court denies the declaration sought under

Procédure

(4) Lorsque la déclaration visée au paragraphe (1) est demandée, la Cour entend et tranche d'abord toute question relative à la déclaration demandée au titre du paragraphe 10.1(1). Le rejet par la Cour de la déclaration

subsection 10.1(1), it shall also deny the declaration sought under subsection (1).

demandée au titre du paragraphe 10.1(1) vaut rejet de la déclaration visée au titre du paragraphe (1).

Evidence

(5) If a declaration sought under subsection (1) is not denied under subsection (4), the Court

(a) shall assess the facts — whether acts or omissions — alleged in support of the declaration on the basis of reasonable grounds to believe that they have occurred, are occurring or may occur;

(b) shall take into account the evidence already admitted by it and consider as conclusive any finding of fact already made by it in support of the declaration sought under subsection 10.1(1); and

(c) with respect to any additional evidence, is not bound by any legal or technical rules of evidence and may receive and base its decision on any evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.

Preuve

(5) Si elle n'a pas rejeté, en application du paragraphe (4), la demande faite au titre du paragraphe (1), la Cour :

a) apprécie les faits — actes ou omissions — qui sont allégués au soutien de la demande en fonction de l'existence de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir;

b) prend en compte les éléments de preuve qu'elle a déjà admis au soutien de la demande faite au titre du paragraphe 10.1(1) et est liée par toute décision qu'elle a déjà prise sur une question de fait s'y rapportant;

c) n'est pas liée, à l'égard des éléments de preuve supplémentaires, par les règles juridiques ou techniques de présentation de la preuve et peut recevoir les éléments de preuve déjà traités dans le cadre de l'instance qu'elle juge crédibles ou dignes de foi en l'occurrence et fonder sa décision sur eux.

Single judgement

(6) The Court shall issue a single judgment in respect of the declarations sought under subsections (1) and 10.1(1).

Jugement unique

(6) La Cour rend un seul jugement statuant sur les demandes faites au titre des paragraphes (1) et 10.1(1).

No appeal from interlocutory judgement

10.6 Despite paragraph 27(1)(c) of the Federal Courts Act, no appeal may be made from an interlocutory judgment made with respect to a declaration referred to in subsection 10.1(1) or 10.5(1).

Jugements interlocutoires sans appel

10.6 Malgré l'alinéa 27(1)c) de la Loi sur les Cours fédérales, les jugements interlocutoires relatifs à une déclaration visée aux paragraphes 10.1(1) ou 10.5(1) ne sont pas susceptibles d'appel.

No appeal unless question stated

10.7 An appeal to the Federal Court of Appeal may be made from a judgment

Questions aux fins d'appel

10.7 Le jugement rendu au titre des articles 10.1 ou 10.5 n'est susceptible d'appel devant

under section 10.1 or 10.5 only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question.

…

la Cour d’appel fédérale que si le juge certifie que l’affaire soulève une question grave de portée générale et énonce celle-ci.

[…]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1232-22
STYLE OF CAUSE:	NAN TAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JULY 11, 2023
JUDGMENT AND REASONS:	ST-LOUIS J.
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APPEARANCES:

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