

Federal Court



Cour fédérale

**Date: 20190715**

**Docket: T-184-18**

**Citation: 2019 FC 938**

**Ottawa, Ontario, July 15, 2019**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**PETER ZHANG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for an order in the nature of mandamus so as to require that the Minister of Citizenship and Immigration [the Minister] render a decision in respect of the Applicant's citizenship application.

## II. Background

[2] The Applicant, Peter Zhang, was born on November 3, 1964 in Tianjin, China. He landed as a permanent resident of Canada under the name Fan Yong Feng, and legally changed his name to Peter Zhang in June 2013.

[3] In December 2014, the Applicant submitted an application for Canadian citizenship. The application was received by Immigration, Refugees and Citizenship Canada [IRCC] on January 23, 2015. IRCC began processing the application in April 2015.

[4] On July 7, 2015, IRCC sent the Applicant a notice to appear and write the citizenship test.

[5] On July 24, 2015, the Applicant's former counsel wrote to IRCC and requested a medical exemption from the writing of the citizenship test, on the basis of a cerebral stroke which prevents the Applicant from being able to read or write, or to understand the citizenship questions contained in a citizenship test. Supporting medical documentation was included with this request. This letter also noted that the Applicant had previously been exempted from the language requirement due to his medical condition (cerebral infarction and sclerencephalia sequelae).

[6] On August 6, 2015, the Applicant asked IRCC to cancel his application. On August 13, 2015, the Applicant asked that IRCC re-instate his application and proceed with his medical exemption request.

[7] On January 13, 2016, IRCC requested updated information regarding the Applicant's travel history. This was subsequently provided.

[8] In a report conducted in April 2016 and provided to IRCC, Dr. Sanjeev Goel assessed the Applicant, and concluded that the Applicant

... is unable to attend to any meetings due to his significant cognitive impairment (memory, planning, attentional deficits), likely mood disorder (attentional deficits) as well as the significant physical deficits (left sided paralysis and expressive and receptive aphasia)

[the Goel Report]

[9] On August 18, 2016, IRCC requested that the Applicant provide his fingerprints, and appear for an interview with a citizenship officer.

[10] On September 1, 2016, the Applicant attended a scheduled knowledge and language interview. Due to the Applicant's medical condition, it was the citizenship officer's opinion that neither should be administered. He was deemed to have failed both, and a Ministerial waiver pursuant to subsection 5(3) of the *Citizenship Act*, RSC 1985, c C-29 was sought [the Waiver Request].

[11] In November 2016, a delegate of the Minister assessed the Waiver Request. The delegate noticed various discrepancies which called into question the validity of the conclusions expressed in the Goel Report.

[12] In December 2016, IRCC requested supplementary evidence from the Applicant regarding his residency requirements, a CRA notice of assessment, and an affidavit identifying his legal guardianship.

[13] On January 6, 2017, the Applicant provided an affidavit by Ms. Yanling Ding, stating that she would act as the Applicant's caregiver and power of attorney.

[14] On January 31, 2017, IRCC requested additional information from the Applicant in order to consider the Waiver Request, including a second request for his fingerprints.

[15] On March 2, 2017, IRCC suspended the processing of the citizenship application pursuant to section 13.1 of the *Citizenship Act*, due to an investigation into possible misrepresentation concerning his "extensive undeclared absences" from Canada, as well as possible criminality due to a domestic assault charge.

[16] In March 2017, the Applicant provided power of attorney documentation, further medical documentation, and a statement that there were no criminal matters pending against him.

[17] On August 31, 2017, the Applicant's former counsel wrote to IRCC, asking to be removed as counsel of record. Around this time, IRCC became aware of fraud and attempted murder allegations against the Applicant in China under his birth name.

[18] On November 30, 2017, the Applicant retained new counsel.

[19] On December 11, 2017, the Applicant sent a letter to IRCC, asking for an update on the Applicant's Waiver Request.

[20] On January 23, 2018, the Applicant filed this application seeking a mandamus order.

[21] On February 9, 2018, IRCC advised that no decision had been made on the citizenship application, and as such no reasons for a decision exist.

[22] On February 15, 2018, IRCC sent the Applicant a third request for his fingerprints. The Applicant provided his fingerprints in March 2018, and passed his criminal clearance.

[23] On March 5, 2018, the citizenship application was referred for assessment for possible misrepresentation and was suspended, to be reviewed in 60 days. IRCC decided not to proceed with the misrepresentation assessment, but referred the application to IRCC's Foreign Criminality Unit [FCU] in Montreal for review of possible foreign criminality.

[24] On April 16, 2018, the Applicant's citizenship application was suspended pursuant to paragraph 13.1(a) of the *Citizenship Act* pending the results of an investigation into foreign criminality.

[25] On June 11, 2018, China's Ministry of Public Security advised CBSA that the Applicant was wanted in China for a beating resulting in death that occurred on February 8, 2012, and that the Applicant fled to Canada on February 15, 2012. They also advised that the Applicant had been detained in 1997 for theft, and again in 2003 for "intentional injury to victim's death".

[26] The Applicant filed a further affidavit with this Court, dated April 24, 2019, denying these allegations and exhibiting a page from his passport showing that he (1) left China for Macau on February 8, 2012, (2) returned to China on February 13, 2012, and (3) left China for Canada on February 15, 2012.

[27] Currently, the citizenship application remains suspended under section 13.1 of the *Citizenship Act* due to an ongoing investigation by the CBSA.

### III. Issues

[28] The issues are:

- (i) Are the Global Case Management System notes admissible?
- (ii) Is the Minister's suspension of the Applicant's citizenship application reasonable?
- (iii) Should an order for mandamus be granted?

IV. Standard of Review

[29] The standard of review for the Minister's suspension of a citizenship application is reasonableness (*Nada v Canada (Citizenship and Immigration)*, 2019 FC 590 at para 14 [*Nada*]).

V. Analysis

A. *Are the Global Case Management System notes admissible?*

[30] At the hearing of this matter, the Applicant raised concerns that the Global Case Management System notes [the GCMS notes] relied upon by the Respondent are not admissible for the truth of their contents.

[31] Without commenting more broadly on the admissibility of GCMS Notes, as outlined recently by the Federal Court of Appeal in *Cabral v Canada (Citizenship and Immigration)*, 2018 FCA 4 at paragraphs 24 to 31, GCMS notes which are clerical in nature are admissible for the truth of their contents under both the business records hearsay exemption and the principled exception to the hearsay rule. The GCMS notes relied upon by the Respondent are clerical in nature, largely detailing the dates upon which correspondence was sent and received. Therefore I will admit this evidence.

B. *Is the Minister's suspension of the Applicant's citizenship application reasonable?*

[32] The Federal Court has jurisdiction to grant mandamus under sections 18, 18.1 and 44 of the *Federal Courts Act*, RSC 1985, c F-7.

[33] There are eight prerequisites which must be met before a mandamus order can issue (*Nada*, above at para 12, citing *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (FCA)):

- (1) there is a public duty to act;
- (2) the duty is owed to the Applicant;
- (3) there is a clear right to performance of that duty;
- (4) where the duty is discretionary, the discretion is fettered and spent;
- (5) no other adequate remedy is available to the Applicant;
- (6) the order sought will be of some practical value or effect;
- (7) there is no equitable bar to the relief sought; and
- (8) the balance of convenience favours issuing the order.

[34] Section 13.1 of the *Citizenship Act* allows the Minister in certain circumstances to suspend the processing of a citizenship application for as long as is necessary:

13.1 The Minister may suspend the processing of an application for as long as is necessary to receive

- (a) any information or evidence or the results of any investigation or inquiry for the purpose of ascertaining whether the applicant meets the requirements under this Act relating to the application, whether the applicant should be the subject of an admissibility hearing or a removal order under the *Immigration and Refugee Protection Act* or whether section 20 or 22 applies with respect to the applicant; and
- (b) in the case of an applicant who is a permanent resident and who is the subject of an admissibility hearing under the *Immigration and Refugee Protection Act*, the determination as to whether a removal order is to be made against the applicant.



[35] When a citizenship application is reasonably suspended under section 13.1 of the *Citizenship Act*, there is no public duty to act and thus a mandamus order is not available (*Canada (Citizenship and Immigration) v Nilam*, 2017 FCA 44 at para 27; *Nada* at para 26).

[36] The Applicant argues that the ongoing suspension of his citizenship application is unreasonable as IRCC has not offered him an opportunity to respond to the allegations, and that the delay in the FCU's investigation since the spring of 2018 falls outside the bounds of what is reasonable under section 13.1 of the *Citizenship Act*.

[37] IRCC became aware of serious criminal allegations against the Applicant in August 2017, and ultimately began investigating the Applicant for foreign criminality. They were advised by Chinese authorities in June 2018 that the Applicant was wanted for, among other things, a beating that resulted in death, and the Chinese authorities asked for help in returning the Applicant to China to face charges.

[38] While it is true that one year has passed since IRCC heard from the Chinese Authorities in June 2018, it is not for this Court to dictate the length of such an investigation, within reasonable bounds.

[39] The Applicant has attempted to refute the allegations against him by putting evidence before this Court of his travels in February 2012. I note that the documents evidence that the Applicant left China on February 8, 2012 – this would not appear to exculpate him from having been possibly involved in a death which occurred on that same date.

[40] I am satisfied that the Minister reasonably suspended the Applicant's citizenship application pursuant to section 13.1 of the *Citizenship Act* while investigating him for foreign criminality, and that the ongoing suspension is not outside the bounds of section 13.1 . Therefore, there is no public duty to act which would be required for an order of mandamus to issue.

[41] Moreover, much of the fault for the delays in processing, prior to the discovery of the criminal allegations, lies at the feet of the Applicant for, among other things, failing to respond to the initial two requests for fingerprints, making errors and omissions in outlining his residency and travel history that raised concerns regarding misrepresentation, and at one point asking IRCC to cancel his citizenship application.

**JUDGMENT in T-184-18**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-184-18

**STYLE OF CAUSE:** PETER ZHANG v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JULY 11, 2019

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MANSON J.

**DATED:** JULY 15, 2019

**APPEARANCES:**

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