

Federal Court



Cour fédérale

Date: 20231023

Docket: T-2705-22

Citation: 2023 FC 1402

Ottawa, Ontario, October 23, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

ZAHRA SALIMI TAMAGHEH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background and decision under review

[1] The applicant, Zahra Salimi Tamagheh, is seeking judicial review of a Citizenship Officer's [Officer] decision to not defer making a decision on her citizenship application, but rather to proceed with processing and eventually refusing her application under paragraphs 5(1)(c) and 5(1)(f) of the *Citizenship Act*, RSC 1985, c C-29 [Act].

[2] In November 2017, Ms. Salimi Tamagheh applied for Canadian citizenship under subsection 5(1) of the Act. There were delays in the processing of her application and in the end, her application was deemed abandoned in November 2018 because Immigration, Refugees and Citizenship Canada [IRCC] was under the impression that Ms. Salimi Tamagheh had not complied with the multiple requests to submit imprints of her fingerprints for background verification. After various exchange of correspondence, it was discovered that Ms. Salimi Tamagheh had indeed submitted her fingerprints as she had been requested to do, however simply that the IRCC was not aware the Royal Canadian Mounted Police had not completed their verification process; Ms. Salimi Tamagheh's citizenship application was therefore reopened in March 2019.

[3] However, in May 2019, IRCC suspended the further review of Ms. Salimi Tamagheh's citizenship application pursuant to section 13.1 of the Act due to an ongoing investigation flagged by the Canada Border Services Agency; later that month, the Minister of Citizenship and Immigration [Minister] filed a cessation application with the Refugee Protection Division [RPD] in respect of Ms. Salimi Tamagheh. The application was allowed by the RPD about two years later, in May 2022 [RPD decision], on the grounds of voluntary reavilment (paragraph 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]), eventually resulting in the loss of Ms. Salimi Tamagheh's permanent resident status under paragraph 46(1)(c.1) of the IRPA, and leading to Ms. Salimi Tamagheh becoming inadmissible to Canada by operation of subsection 40.1(2) of the IRPA; judicial review of the RPD decision was sought in June 2022.

[4] Meanwhile, Ms. Salimi Tamagheh was reported under subsection 40.1(1) of the IRPA, and on August 30, 2022, the Minister's delegate issued a removal order against her; Ms. Salimi Tamagheh's loss of permanent residency and the issuance of the removal order meant Ms. Salimi Tamagheh was now ineligible for Canadian citizenship pursuant to 5(1)(c) and 5(1)(f) of the Act. At that point, two things happened: first, on September 27, 2022, Ms. Salimi Tamagheh's spouse – who had applied to sponsor her – was advised by IRCC that he had met the requirements for eligibility as a sponsor; I take it the spousal application is moving forward. In addition, on October 26, 2022, having been duly notified, IRCC issued a procedural fairness letter to Ms. Salimi Tamagheh, providing her with the opportunity to respond to the information it had received regarding the issuance of the removal order against her.

[5] On November 24, 2022, Ms. Salimi Tamagheh responded to the procedural fairness letter; she did not deny that she was subject to a removal order and thus not eligible for citizenship under paragraph 5(1)(c) of the Act, however given that the processing of her citizenship application had already been suspended pending the Minister's cessation application before the RPD, Ms. Salimi Tamagheh argued in favour of the Officer continuing the suspension pursuant to section 13.1 of the Act on the grounds that if she is eventually successful on her judicial review application of the RPD decision, the removal order issued against her would be rendered moot. Alternatively, she requested a suspension pending the determination of her sponsorship application.

[6] On November 29, 2022, and without addressing Ms. Salimi Tamagheh's request for the suspension of the processing of her citizenship application, the Officer refused Ms. Salimi

Tamagheh's citizenship application, citing the fact that she had not adequately responded to the procedural fairness letter, and that as she was under a removal order, she was not eligible for citizenship. It is this decision by the Officer which is the subject matter of the present application for judicial review.

II. Issue and standard of review

[7] This application for judicial review raises one issue: is the Officer's decision reasonable? Also the parties agree that the appropriate standard of review is the presumptive reasonableness standard. The reasonableness standard is the starting point for a court's review of an administrative decision, and none of the exceptions rebutting this presumption apply in this case (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25 and 33; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at para 39).

III. Analysis

[8] The thrust of both parties' submissions before me centered on whether section 13.1 of the Act permitted the Officer to continue with the further suspension of the processing of Ms. Salimi Tamagheh's citizenship application pending the determination of her application for judicial review of the RPD decision or, alternatively, pending the determination of Ms. Salimi Tamagheh's spousal application. Clearly, with the issuance of their decision, the Officer did not acquiesce to Ms. Salimi Tamagheh's request for a suspension, however no reasons were given by the Officer for not doing so; the reference by the Officer in their decision to Ms. Salimi Tamagheh's November 24, 2022, letter was limited to the fact that it did not adequately respond

to the procedural fairness letter regarding the subject of the removal order. Clearly, the Officer read the November 24, 2022, letter, but also clearly omitted to engage with the central issue raised in that letter, being the request for a suspension of the processing of Ms. Salimi Tamagheh's citizenship application. The Minister now tries to add meat to the bone by arguing that the Officer was within their right not to have granted the suspension. According to Ms. Salimi Tamagheh, that is a debatable issue; from my perspective it is also beside the point.

[9] Before me, the Minister was forced to concede the obvious, that the Officer's decision was completely devoid of any reference to the request for a suspension of Ms. Salimi Tamagheh's citizenship application, however argues that there is a distinction to be made between whether the Officer had the discretion as opposed to the jurisdiction to allow the suspension. From my perspective, that is a distinction without a difference in this context. Ms. Salimi Tamagheh's request for a suspension of her citizenship application was front and center in her letter of November 29, 2022. As we have again, just recently, been reminded by the Supreme Court, "when an administrative decision maker is required by the legislative scheme or the duty of procedural fairness to provide reasons for its decision, the reasons 'are the primary mechanism by which administrative decision makers show that their decisions are reasonable'" (*Mason* at para 59, citing *Vavilov* at para 81). In other words, reasonableness review begins with the decision, and where there has been no engagement with the central issues raised by the claimant, this is often an indication of a reviewable error.

[10] Asking the Court now simply to assess whether section 13.1 of the Act allows for a further suspension by the Officer in this case is putting the cart before the horse. For the Court to

be able to assess the reasonableness of that decision, it must first have the reasons of the Officer for not adhering to Ms. Salimi Tamagheh's request, regardless of whether the Officer had the discretion or jurisdiction to do so. It is not enough for the Minister before me to try and justify the Officer's decision; the decision must contain the justification, otherwise a proper review of the decision cannot take place (*Vavilov* at para 86; *Mason* at para 59). To be clear, I am not granting the present judicial review because the Officer should have allowed the adjournment, but only because the Officer provided no reasons for not doing so, although such an adjournment was specifically requested by Ms. Salimi Tamagheh. The Officer's decision not to suspend the processing of the citizenship application may well have been justifiable, however it is not for the Minister to make the case for the Officer. It is for the Officer to engage and address the issue, so that Ms. Salimi Tamagheh may know the reason why her request for suspension was not granted, and so that the Court be able to address those reasons as part of its oversight role.

JUDGMENT in T-2705-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision dated November 29, 2022, is set aside and this matter is returned for redetermination by a different citizenship officer.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2705-22

STYLE OF CAUSE: ZAHRA SALIMI TAMAGHEH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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JUDGMENT AND REASONS: PAMEL J.

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