

Federal Court



Cour fédérale

**Date: 20140221**

**Docket: T-247-13**

**Citation: 2014 FC 156**

**Ottawa, Ontario, February 21, 2014**

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

**BETWEEN:**

**WASIM B.H. ALSAYEGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application for judicial review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 of a decision rendered by a Citizenship Officer (the Officer), dated December 5, 2012, terminating Mr. Wasim B.H. Alsayegh's (Mr. Alsayegh) citizenship application on the basis that a removal order was issued against him on December 4, 2012.

## II. Facts

[2] Mr. Alsayegh is a stateless Palestinian who became a permanent resident of Canada in December 2005. He completed his university studies at McGill University and started his professional career in Canada. In July 2009, he submitted his citizenship application.

[3] In March 2010, he left Canada for an internship with Google in the United Arab Emirates [UAE]. In December 2010, Mr. Alsayegh completed and submitted a Residence Questionnaire to Citizenship and Immigration Canada [CIC].

[4] On October 5, 2012, Mr. Alsayegh attended a citizenship hearing presided over by Renée Giroux (the Citizenship judge). The Citizenship judge noted that Mr. Alsayegh met all his residency obligations both under the *Citizenship Act*, RSC 1985, c C-29 [*Citizenship Act* or the *Act*] and the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and informed him that he would receive notice to take his citizenship oath prior to the end of the year.

[5] Mr. Alsayegh returned to the UAE to continue his internship. He was scheduled to take his citizenship oath on December 7, 2012.

[6] On December 4, 2012, Mr. Alsayegh landed at Trudeau International Airport in Montreal. He was referred to secondary examination where a Canada Border Services Agency Officer (CBSA Officer) examined his present and old passports and concluded that Mr. Alsayegh did not meet the

residency obligations for the period extending between December 5, 2007 and December 4, 2012 for maintaining his Canadian permanent resident status.

[7] Mr. Alsayegh told the CBSA Officer that he had evidence in his possession which demonstrated that he had in fact accumulated more than the 730 days of physical presence required by the *IRPA*. However, the Officer refused to consider his documents.

[8] The CBSA Officer asked Mr. Alsayegh to complete a form entitled “Loss of permanent residency, Humanitarian and compassionate considerations” but Mr. Alsayegh refused to do so fearing that it would amount to an admission that he had lost his permanent resident status.

[9] The CBSA Officer then issued a report pursuant to subsection 44(1) of the *IRPA* and a removal order against Mr. Alsayegh. The Officer also issued a “CIT ALERTE” to the Citizenship office in Montreal to inform them that a loss of residence had occurred in Mr. Alsayegh’s file and that he was scheduled to take his oath of citizenship on December 7, 2012.

[10] On December 13, 2012, Mr. Alsayegh received the decision under review which terminated his citizenship application pursuant to paragraph 5(1)(f) of the *Citizenship Act* on grounds that a removal order had been issued against him on December 4, 2012.

[11] On December 20, 2012, Mr. Alsayegh filed a Notice of Appeal of the Removal Order to the Immigration and Refugee Board of Canada, Immigration Appeal Division. This appeal is still pending.

### **III. Legislation**

[12] The applicable provisions of the *Citizenship Act* and the *IRPA*, cited above, are reproduced in an appendix to this decision.

### **IV. Issues and standard of review**

[13] The following issues are raised in this application for judicial review:

- 1) *Did the Citizenship Officer err when he terminated Mr. Alsayegh's citizenship application?*
- 2) *Was the Citizenship Officer under a duty to consider making a recommendation under subsection 5(4) of the Citizenship Act?*

[14] The Court agrees with both parties that the standard of review in this case should be reasonableness, as it involves the application of the law to the facts before the Officer (see *Dunsmuir v New-Brunswick*, 2008 SCC 9 at para 53 [*Dunsmuir*]). Accordingly, this Court must verify whether the decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (see *Dunsmuir* at para 47).

### **V. Positions of the parties**

#### **A. Applicant's position**

### **Termination of Mr. Alsayegh's citizenship application**

[15] Mr. Alsayegh submits that the Officer acted beyond his authority when he terminated his application after receiving the alert which incorrectly stated that he had lost his permanent resident status (see *Hadaydoun v Canada (Minister of Citizenship and Immigration)*, 2012 FC 995 [*Hadaydoun*] and *Obi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 573 [*Obi*]). Mr. Alsayegh refers to sections 46 and 49 of the *IRPA*. Section 46 states that a permanent resident loses his status when a removal order comes into force. Section 49 states that a removal order comes into force after there has been a final decision rendered on appeal, if an appeal has been made. Since Mr. Alsayegh has filed an appeal, he argues that he has not lost his permanent resident status yet.

[16] Mr. Alsayegh claims that the Officer exceeded his jurisdiction because he was never empowered to approve or deny citizenship applications on the merits and refers to CIC's Operational Bulletin 031 (Bulletin 031) which states that refusal letters pursuant to subsection 5(1) of the *Citizenship Act* should not be sent by officers, instead applicants must be referred to a citizenship judge. He argues that his application was refused pursuant to paragraph 5(1)(f) of the *Citizenship Act* by an Officer and the decision contains no indication that his application was referred to a citizenship judge as called for by Bulletin 031.

[17] Mr. Alsayegh underlines the fact that the Respondent has failed to file a supporting affidavit from the Officer and this has an impact on the adequacy of his submissions.

[18] Mr. Alsayegh acknowledges that the Minister cannot grant citizenship to an applicant that is subject to a removal order because of paragraph 5(1)(f) of the *Citizenship Act*. However he submits that this restriction does not empower citizenship officers to terminate an application. He asserts that section 5 of the *Act* should be interpreted consistently with the rest of the statutory scheme and with the *IRPA* and consequently argues that allowing citizenship officers to terminate such applications when a removal order is issued, without first referring to a citizenship judge, would allow CBSA to render decisions on citizenship applications, a matter clearly outside their jurisdiction.

#### **Recommendation under subsection 5(4) of the *Citizenship Act***

[19] Mr. Alsayegh underlines that no consideration was given to the special and unusual hardship that he would suffer and refers to subsection 5(4) of the *Act*. He submits that it is a mandatory requirement that the citizenship decision-maker evaluate whether such a recommendation is warranted. He also claims that this section was held to apply to all provisions of the *Citizenship Act* (see *Frankowski v Canada (Minister of Citizenship and Immigration)*, (2000) 187 FTR 92) which do not themselves contain the words “notwithstanding anything in this act”.

[20] Mr. Alsayegh also relies on Bulletin 031 which directs officers to first evaluate whether an applicant qualifies for recommending a discretionary grant pursuant to subsection 5(4). He argues that because the decision at issue was a final decision on his citizenship application, due consideration should have been given as to whether a discretionary grant of citizenship could be recommended (see *Lee (Re)*, (1997) 138 FTR 158).

[21] Mr. Alsayegh submits that should he lose his current employment in the UAE, he would suffer significant hardship because he is stateless, of Christian faith, in a region that is predominantly Muslim, and his wife is Syrian.

## **B. Respondent's position**

### **Termination of Mr. Alsayegh's citizenship application**

[22] The Respondent submits that subsection 5(1) of the *Act* requires that applicants fulfill their obligations imposed by the *IRPA*. However, citizenship judges do not have the authority to make determinations under that act. Therefore, whether a citizenship applicant has fulfilled his obligations under the *IRPA* is evaluated by verifying that the competent authorities have not terminated his permanent residence or issued a removal order. The Respondent asserts that a situation could arise where an applicant ceased to comply with the *IRPA* after a citizenship judge has rendered a positive decision.

[23] The Respondent submits that a violation of one of the provisions of the *IRPA*, by an applicant, is sanctioned by a loss of permanent residence or by a removal order and that subsection 5(1) of the *Citizenship Act* does not in such situations allow the Minister to schedule the applicant to take his or her oath. The Respondent also underlines that the Minister retains a residual authority to refuse citizenship even after a citizenship judge has issued a decision in the applicant's favour (see *Khalil v Canada (Secretary of State)*, [1999] 4 FC 661).

[24] The Respondent argues that since Mr. Alsayegh is under a removal order, the Minister is precluded from allowing him to take the oath of citizenship and it is for that reason that the Officer terminated his application. The Respondent alleges that the Officer's decision was not taken based on the email received from the CBSA officer indicating that the applicant had lost his permanent residence, but rather on the removal order.

[25] The Respondent acknowledges that the *Citizenship Act* does not explicitly grant a citizenship officer the power to terminate or close files. However, he claims that appropriate action had to be taken since it was clear that Mr. Alsayegh could not take the oath of citizenship. In this case, according to the Respondent, it was reasonable to close the file and terminate the processing of Mr. Alsayegh's application. The removal order rendered against him benefits from a presumption of validity and the possibility that it will be reversed is purely speculative.

[26] The Respondent submits that the Officer was entitled to rely on the existence of the removal order and need not consider the merits of Mr. Alsayegh's appeal. It was reasonable to terminate his application, rather than leaving it active, on grounds of administrative efficiency.

[27] The Respondent dismisses Mr. Alsayegh's argument to the effect that the file should have been referred to a citizenship judge. He claims that although a citizenship judge will initially evaluate whether an applicant meets the requirements of subsection 5(1), it is the Minister who remains ultimately responsible for conferring citizenship. The Respondent submits that it was self-evident that Mr. Alsayegh no longer met the requirements of subsection 5(1) and consequently, there was no valid reason for the Minister to refer the question back to a citizenship judge.



[28] The Respondent submits that since a Citizenship judge must approve or refuse an application within the sixty-day timeframe, the legislative scheme does not foresee citizenship judges remaining seized of an application beyond that period. The Respondent argues that there is no statutory authority for a citizenship judge to render a second decision on an application and in this case the judge's timeframe for rendering a decision had already expired, therefore it was inappropriate to refer the Applicant's situation back.

[29] The Respondent also argues that a citizenship judge would not have had the authority to defer refusing the application until a final decision of the Immigration Appeal Division [IAD] in view of the requirement to render his decision within sixty days of the referral of an application. The Respondent submits that the exception found in subsection 14(1.1) does not apply in this case because the applicant was not awaiting an admissibility hearing. The Respondent relies on two decisions of the Federal Court that established that when individuals are subject to a removal order without having undergone an admissibility hearing, their applications must be rejected (see *Hadaydoun*, cited above and *Richi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 212).

[30] The Respondent acknowledges that although in *Obi*, cited above, a deferral was allowed, the Federal Court clarified the issue in *Hadaydoun* and submits that an applicant subject to a removal order issued outside the context of an admissibility hearing cannot benefit from subsection 14(1.1) of the *Act*, even if he has appealed the removal order (see *Hadaydoun* at paras 25 to 28).

[31] Subsection 2(2) of the *Citizenship Act* clearly states that the issuance of a removal order pursuant to subsection 44(2) of the *IRPA* results in the rejection of a citizenship application without delay according to the Respondent. He submits that the citizenship judge had already exercised her statutory authority by the time the Officer was confronted with Mr. Alsayegh's change of circumstances and it was therefore open to the Officer to implement appropriate measures to respond to these new facts.

**Recommendation under subsection 5(4) of the *Citizenship Act***

[32] The Respondent refutes Mr. Alsayegh's claim and submits that only the Governor in Council has the authority to direct the Minister to grant citizenship pursuant to subsection 5(4). The Minister has no authority to do so unless directed by the Governor in Council. The Respondent claims that the *Citizenship Act* does not impose a duty to consider making a recommendation analogous to that of subsection 15(1). The Respondent relies on *Huy v Canada (Minister of Citizenship and Immigration)*, 2012 FC 755 at paras 19 to 22 [*Huy*] to argue that a Citizenship Officer has no obligation to consider making a recommendation under subsection 5(4) when refusing citizenship.

[33] The Respondent also submits that the Officer was not well placed to examine whether a recommendation under subsection 5(4) would be appropriate. He adds that it was Mr. Alsayegh's burden to show that his personal circumstances justify making such a recommendation and relies on *Maharatnam v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 405 at para 5 and *Saqer v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1392 at para 20.

[34] The Respondent argues that the Applicant had the right to raise issues relevant to subsection 5(4) considerations during his initial citizenship application. The Citizenship Officer did not need to comb through Mr. Alsayegh's file in search of evidence of hardship, especially since he was under a removal order for failure to meet his permanent residency obligations.

[35] Finally, the Respondent alleges that re-applying for citizenship is the appropriate remedy even in cases where a removal order has been quashed on appeal (see *Hadaydoun* at para 30). Mr. Alsayegh will then be able to present arguments to justify an application of subsection 5 (4) when filing a new citizenship application.

## **VI. Analysis**

### ***1) Did the Citizenship Officer err when he terminated Mr. Alsayegh's citizenship application?***

[36] The Court agrees with Mr. Alsayegh that he has not lost his permanent resident status yet because the removal order that was rendered against him has not come into force. Therefore, the Officer's decision could not have been made pursuant to paragraph 5 (1)(c) of the *Citizenship Act* (see *Hadaydoun*, cited above, at para 19). However, the Officer's decision was based on paragraph 5(1)(f). That paragraph reads as follows:

“5. (1) The Minister shall grant citizenship to any person who

[...]

(f) is not under a removal order and is not subject of a declaration by the Governor in Council made pursuant to section 20”.

[37] In *Hadaydoun*, the Court examined the terms “under a removal order” used in paragraph 5(1)(f) and concluded that pursuant to paragraph 2(2)(c) of the *Citizenship Act*, an applicant remains under a removal order unless a final determination has been made and the result of it is to quash the removal order (see paragraph 23 of the decision). In other words, “[f]rom the time that a removal order is issued and for the period during which the removal order is under judicial review or appeal, the person is ineligible for citizenship under paragraph 5(1)(f) of the *Act*” (see paragraph 23 of the decision).

[38] In *Hadaydoun*, the removal order was issued against the applicant before his hearing in front of a citizenship judge. It was determined that the judge did not have jurisdiction to postpone the hearing until the appeal of the removal order was completed, because there exists no provision for delay or adjournment or extension of time to come to a determination on the application, once it is referred to the judge (see paragraph 24). However, in the present case a citizenship judge had already approved Mr. Alsayegh’s application. The issue is therefore whether a citizenship officer could terminate or close a file which had already been approved.

[39] Mr. Alsayegh submits that this is equivalent to Officers rendering decisions on citizenship applications, a matter clearly outside their jurisdiction. The Court agrees. The Respondent acknowledged in his memorandum that the *Citizenship Act* does not explicitly grant a citizenship officer the power to terminate or close files. However, the Respondent asserts that this was nonetheless the appropriate action given that the applicant is under a removal order and is therefore ineligible for citizenship. The Respondent argues that there is no statutory authority for a judge to

render a second decision on an application and that the judge's sixty-day timeframe to render a decision has already expired.

[40] The Court is not convinced by the Respondent's argument based on the sixty-day timeframe. The citizenship judge had sixty days to render a decision on Mr. Alsayegh's citizenship application and did so. Therefore, if the matter was remitted back to a citizenship judge for a second decision, based on the alleged "new facts", this delay would not be an issue.

[41] The Court acknowledges that even if the matter had been referred to a citizenship judge, the judge may have had to render a new decision on Mr. Alsayegh's citizenship, because he is currently under a removal order. However, the Officer would not have exceeded his jurisdiction.

[42] It was unreasonable for the Officer to close Mr. Alsayegh's file, especially in the particular circumstances of this case. Less than two months earlier, a citizenship judge had determined that Mr. Alsayegh was eligible. There remained only one formality to be completed and that was Mr. Alsayegh taking his oath. The Court finds that it was not open to the Officer to close Mr. Alsayegh's file, which, in practice, set aside the judge's decision as the Officer is clearly not empowered to take such action and reverse decisions taken by Citizenship judges under the *Citizenship Act*.

- 2) ***Was the Citizenship Officer under a duty to consider making a recommendation under subsection 5(4) of the Citizenship Act?***

[43] The Court notes that the Respondent asserts that the Officer was not well placed to examine whether a recommendation under subsection 5(4) would be appropriate, but argues that the Officer was nonetheless well placed to close the file, notwithstanding the particular circumstances of the case.

[44] The Court finds that the case of *Huy*, cited above, is distinguishable because it involved the application for citizenship by a person adopted by a Canadian citizen, which is governed by section 5.1. The Court, in *Huy*, concluded that since it was not an application to be considered by a citizenship judge, the obligation under subsection 15(1) did not apply (see paragraph 21).

[45] The *Huy* case is therefore different from the case at bar. Mr. Alsayegh's application was considered by a citizenship judge, who did not need to consider subsection 5(4) at the time since he met all the requirements to be granted his Canadian citizenship. Subsection 5(4) comes into play when the judge is unable to approve an application under subsection 14(2) (see section 15 of the *Citizenship Act* and *Huy*, cited above, at para 20). The citizenship judge approved Mr. Alsayegh's application. Therefore, the Court rejects the Respondent's position that it was incumbent on the Applicant to raise the issues relevant to subsection 5(4) considerations during his initial citizenship application.

[46] The Respondent claims that it was Mr. Alsayegh's burden to justify such a recommendation. The Court finds that this was impossible in the present case, the Officer having closed the file without affording Mr. Alsayegh the opportunity to make any representations. Furthermore, Bulletin 031 states that Officers and agents need to decide whether an individual should be invited to submit

a subsection 5(4) application by evaluating the particular circumstances of the individual's case. The documentary evidence does not suggest that the Officer evaluated Mr. Alsayegh's particular circumstances and he was never invited to make such an application. The relevant part of Bulletin 031 reads as follows:

“When deciding whether an individual should be invited to submit a 5(4) application, officers and agents should use their own judgment based on their experience and expertise and make a determination by relying on their evaluation of the particular circumstances of the individual's case” (see page 3 of Bulletin 031 in the Applicant's record, page 1396).

[47] As to the Respondent's submission that the *Citizenship Act* does not impose a duty, on a Citizenship Officer, to consider making a recommendation analogous to that of subsection 15(1), the Court considers that by omitting to refer the file back to a citizenship judge and instead proceeding to close the file, the Respondent prevented Mr. Alsayegh from having a judge determine whether or not to recommend an exercise of discretion under subsection 5(4) of the *Act*. It is, in this Court's view, unreasonable for the Respondent to justify his failure to comply with the procedures in Bulletin 031 by stating that there exists no analogous duty.

[48] The Court agrees with Mr. Alsayegh that the Officer's decision to terminate his application without giving any consideration to a recommendation for a discretionary grant of citizenship pursuant to subsection 5(4) is unreasonable and does not fall within the range of possible, acceptable outcomes, defensible in respect of the facts and the law.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

- 1) This application for judicial review is allowed; and
- 2) The impugned decision rendered by the Citizenship Officer is set aside and the file is referred back to render a decision taking into account these reasons for judgment.

"André F.J. Scott"

---

Judge



**APPENDIX*****The Citizenship Act, RSC 1985, c C-29***

2.

(2) For the purposes of this Act,

...

(c) a person against whom a removal order has been made remains under that order

(i) unless all rights of review by or appeal to the Immigration Appeal Division of the Immigration and Refugee Board, the Federal Court of Appeal and the Supreme Court of Canada have been exhausted with respect to the order and the final result of those reviews or appeals is that the order has no force or effect, or

(ii) until the order has been executed.

5. (1) The Minister shall grant citizenship to any person who

...

(c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:

(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of

2.

(2) Pour l'application de la présente loi :

[...]

c) une mesure de renvoi reste en vigueur jusqu'à, selon le cas :

(i) son annulation après épuisement des voies de recours devant la section d'appel de l'immigration de la Commission de l'immigration et du statut de réfugié, la Cour d'appel fédérale et la Cour suprême du Canada,

(ii) son exécution.

5. (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

[...]

c) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :

(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

residence, and	
(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;	(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;
...	[...]
(f) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.	f) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20.
...	[...]
(4) In order to alleviate cases of special and unusual hardship or to reward services of an exceptional value to Canada, and notwithstanding any other provision of this Act, the Governor in Council may, in his discretion, direct the Minister to grant citizenship to any person and, where such a direction is made, the Minister shall forthwith grant citizenship to the person named in the direction.	(4) Afin de remédier à une situation particulière et inhabituelle de détresse ou de récompenser des services exceptionnels rendus au Canada, le gouverneur en conseil a le pouvoir discrétionnaire, malgré les autres dispositions de la présente loi, d'ordonner au ministre d'attribuer la citoyenneté à toute personne qu'il désigne; le ministre procède alors sans délai à l'attribution.
14. (1) An application for	14. (1) Dans les soixante jours de sa saisine, le juge de la citoyenneté statue sur la conformité— avec les dispositions applicables en l'espèce de la présente loi et de ses règlements —des demandes déposées en vue de :
(a) a grant of citizenship under subsection 5(1) or (5),	a) l'attribution de la citoyenneté, au titre des paragraphes 5(1) ou (5);
(b) [Repealed, 2008, c. 14, s. 10]	b) [Abrogé, 2008, ch. 14, art. 10]
(c) a renunciation of citizenship under subsection 9(1), or	c) la répudiation de la citoyenneté, au titre du paragraphe 9(1);
(d) a resumption of citizenship under subsection 11(1)	d) la réintégration dans la citoyenneté, au titre du paragraphe 11(1)

shall be considered by a citizenship judge who shall, within sixty days of the day the application was referred to the judge, determine whether or not the person who made the application meets the requirements of this Act and the regulations with respect to the application.

(1.1) Where an applicant is a permanent resident who is the subject of an admissibility hearing under the Immigration and Refugee Protection Act, the citizenship judge may not make a determination under subsection (1) until there has been a final determination whether, for the purposes of that Act, a removal order shall be made against that applicant.

15. (1) Where a citizenship judge is unable to approve an application under subsection 14(2), the judge shall, before deciding not to approve it, consider whether or not to recommend an exercise of discretion under subsection 5(3) or (4) or subsection 9(2) as the circumstances may require.

(1.1) Le juge de la citoyenneté ne peut toutefois statuer sur la demande émanant d'un résident permanent qui fait l'objet d'une enquête dans le cadre de la Loi sur l'immigration et la protection des réfugiés tant qu'il n'a pas été décidé en dernier ressort si une mesure de renvoi devrait être prise contre lui.

15. (1) Avant de rendre une décision de rejet, le juge de la citoyenneté examine s'il y a lieu de recommander l'exercice du pouvoir discrétionnaire prévu aux paragraphes 5(3) ou (4) ou 9(2), selon le cas.

***Immigration and Refugee Protection Act, SC 2001, c 27***

44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.

(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28

44. (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

(2) S'il estime le rapport bien fondé, le ministre peut déléguer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors

and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.

prendre une mesure de renvoi.

46. (1) A person loses permanent resident status

46. (1) Emportent perte du statut de résident permanent les faits suivants :

(a) when they become a Canadian citizen;

a) l'obtention de la citoyenneté canadienne;

(b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;

b) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;

(c) when a removal order made against them comes into force;

c) la prise d'effet de la mesure de renvoi;

(c.1) on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d); or

(c.1) la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile;

(d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination to vacate a decision to allow their application for protection.

d) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou celle d'accorder la demande de protection.

49. (1) A removal order comes into force on the latest of the following dates:

49. (1) La mesure de renvoi non susceptible d'appel prend effet immédiatement; celle susceptible d'appel prend effet à l'expiration du délai d'appel, s'il n'est pas formé, ou quand est rendue la décision qui a pour résultat le maintien définitif de la mesure.

(a) the day the removal order is made, if there is no right to appeal;

(b) the day the appeal period expires, if there is a right to appeal and no appeal is made; and

(c) the day of the final determination of the appeal, if an appeal is made.

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

**DOCKET:** T-247-13

**STYLE OF CAUSE:** WASIM B.H. ALSAYEGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JANUARY 29, 2014

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

**DATED:** FEBRUARY 21, 2014

**APPEARANCES:**

Me Geneviève Hénault FOR THE APPLICANT  
Me Lisa Middlemiss

Me Thomas Cormie FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

GOMBERG DALFEN FOR THE APPLICANT  
Barristers and Solicitors  
Montréal, Quebec

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Ottawa, Ontario