Federal Court  Cour fédérale

Date: 20230609

Docket: T-1640-22

Citation: 2023 FC 826

Vancouver, British Columbia, June 9, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

FEI WEI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Wei obtained Canadian citizenship through a misrepresentation. He now seeks judicial review of the revocation of his citizenship. I am allowing his application because the Minister's delegate engaged in fallacious reasoning when assessing Mr. Wei's submissions regarding his establishment in Canada and the possibility that he would become stateless.

I. Background

[2] Mr. Wei, who was then a citizen of China, came to Canada in 2001 on a study permit. In 2006, he married a Canadian citizen, who then sponsored him for permanent residence. He became a Canadian citizen in 2011.

[3] It was later discovered that the marriage was a marriage of convenience. The woman in question confessed to accepting money for marrying Mr. Wei and sponsoring him for permanent residence. She confirmed that they never lived together and that they only met three times.

[4] The Minister initiated citizenship revocation proceedings pursuant to section 10 of the *Citizenship Act*, RSC 1985, c C-29 [the Act].

[5] In his submissions to the Minister, Mr. Wei conceded the misrepresentation. He expressed remorse and explained that he acted in this manner because he is a gay man and thought this was the only way of avoiding a return to China, where he would be persecuted on account of his sexual orientation. He asserted that he had been in a same-sex relationship in Canada for more than ten years. He also invoked his establishment in Canada, the fact that revoking his citizenship would render him stateless, and would suffer hardship and discrimination if removed to China.

[6] In July 2022, the Minister revoked Mr. Wei's citizenship. In the reasons for the decision, the Minister's delegate gave little weight to Mr. Wei's professed remorse and found that there

was insufficient evidence of Mr. Wei's same-sex relationship. She gave little weight to Mr. Wei's establishment in Canada, mainly because it was the result of obtaining permanent residence and citizenship by misrepresentation. While she recognized that Mr. Wei lost Chinese citizenship upon acquiring Canadian citizenship, she found that Chinese law afforded him a "pathway" to have his Chinese citizenship restored. Lastly, she found that Mr. Wei would not automatically be removed from Canada and that any hardship attendant upon removal could be addressed at a later stage.

[7] Mr. Wei now seeks judicial review of the Minister's decision to revoke his citizenship.

II. Analysis

[8] I am allowing Mr. Wei's application. The decision is unreasonable, because the exercise of the discretion conferred by paragraph 10(3.1)(a) was marred by fallacious reasoning and a failure to meaningfully address Mr. Wei's submissions.

[9] Of course, the starting point of the analysis is that obtaining citizenship through misrepresentation is a very serious matter and that one should normally not be allowed to keep the fruits of one's dishonesty. Nevertheless, subsections 10(3.1) and (3.2) of the Act provide that the Minister must consider "personal circumstances" before revoking a person's citizenship:

10 . . .	**10** […]
(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,	**(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) 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;
. . .	[…]
(3.2) The Minister shall consider any representations received from the person pursuant to paragraph (3.1)(a) before making a decision.	**(3.2)** Le ministre tient compte de toute observation reçue au titre de l'alinéa (3.1)a) avant de rendre sa décision.

[10] In *Xu v Canada (Citizenship and Immigration)*, 2021 FC 1102 [*Xu*], my colleague Justice John Norris carefully reviewed the legislative history of this provision and offered guidelines for its application. He noted the similarities and differences between the "personal circumstances" that the Minister must consider pursuant to paragraph 10(3.1)(a) and the concept of "humanitarian and compassionate considerations" mentioned in the *Immigration and Refugee Protection Act*, SC 2001, c 27. He summarized, at paragraph 62, the range of factors that may be relevant:

> . . . the best interests of any child directly affected by the determination, establishment in Canada, and the impact of an adverse decision on one's physical and mental health and general well-being. Equally, in cases of misrepresentation, both decision makers must consider, among other things, the seriousness of the misrepresentation, the person's complicity in it, evidence that it

> was out of character, any mitigating circumstances, and any expressions of remorse in exercising the equitable discretion conferred on them to relieve a person of the usual consequences of the law.

[11] He then described the balancing process that it at the heart of paragraph 10(3.1)(a), at paragraph 73 of his decision:

> Under the legal framework adopted by Parliament, loss of Canadian citizenship is not automatic upon a finding of misrepresentation. Rather, the decision maker must determine whether this consequence is warranted in all of the circumstances of the case. Central to this determination is whether, in all of the circumstances, revoking a person's citizenship when it has been obtained by misrepresentation is a proportionate response to the misconduct that is necessary to protect the integrity of the immigration and citizenship processes.

[12] In my view, the Minister's delegate's consideration of Mr. Wei's submissions regarding statelessness and establishment was unreasonable, for the reasons that follow. Briefly put, there was no genuine assessment of whether revocation of Mr. Wei's citizenship is a "proportionate response" to his misconduct. This was a result of "clear logical fallacies" in the reasoning of the Minister's delegate: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 104, [2019] 4 SCR 653 [*Vavilov*].

[13] I wish to emphasize at the outset that nothing in these reasons is meant to prescribe the outcome of the reconsideration of Mr. Wei's application. What is needed is a fair consideration of the actual consequences of rendering Mr. Wei stateless or severing his establishment in Canada, instead of generic reasons that could apply to all persons claiming special relief.

A. *Statelessness*

[14] In his submissions to the Minister, Mr. Wei stated that the revocation of his Canadian citizenship would render him stateless. He added that while Chinese law provides a mechanism for the reacquisition of citizenship, it is discretionary and there were reasons to doubt that his application would be accepted. He also made submissions about the practical consequences of statelessness if he were unable to reacquire Chinese citizenship.

[15] In responding to those submissions, the Minister's delegate first referred to the *Convention on the Reduction of Statelessness*, to which Canada is a party. She noted that article 8 of that Convention prevents states from revoking a person's citizenship when this would render the person stateless, except where citizenship was acquired by misrepresentation. With respect, this is irrelevant to Mr. Wei's application. It may well be that Canada has no obligation pursuant to international law not to revoke Mr. Wei's citizenship. Nevertheless, Parliament chose to go beyond Canada's international law obligations by mandating the consideration of statelessness even where the revocation of citizenship for misrepresentation is contemplated. The exception in article 8 applies in any case of citizenship revocation based on misrepresentation. When enacting paragraph 10(3.1)(a) of the Act, Parliament must have been aware of article 8, and it nevertheless directed the Minister to consider the possibility of statelessness in cases of misrepresentation. Thus, the exception in article 8 cannot be used to diminish the Minister's duty to consider statelessness before revoking citizenship. It is a clear logical fallacy to suggest otherwise.

[16] The Minister's delegate then relied on the "pathway" provided by Chinese law for the reacquisition of citizenship as a reason for not granting special relief. However, she did not address Mr. Wei's evidence showing that it was far from certain that he could regain Chinese citizenship pursuant to this mechanism. Nor did she respond to Mr. Wei's submission, based on *Williams v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 126, [2005] 3 FCR 429 [*Williams*], that the possibility of reacquiring citizenship cannot be taken into account if it is discretionary. In addition, there is no consideration at all of Mr. Wei's submissions with respect to the practical consequences of becoming stateless. Rather, the Minister's delegate's reasons read as follows:

> I have considered the totality of the circumstances of your submissions with respect to being a stateless person, and having particular regard to Canada's obligations under the 1961 Convention on the Reduction of Statelessness, which includes the obligation not to deprive a person of their nationality if deprivation would render them stateless unless that nationality was obtained by misrepresentation or fraud. I am not, however, persuaded by your arguments that you are a stateless person on the sole basis that China does not recognize dual nationality. With respect to your submission that revoking your Canadian citizenship will render you stateless, I note that you have not provided evidence to this effect. Moreover, I find that should it be determined that you ceased to be a Chinese national upon acquisition of Canadian citizenship, I find that there is a process available to you to apply to have your Chinese citizenship restored. Given the foregoing, I am not satisfied that this submission warrants special relief in light of the circumstances of your case. [emphasis in original]

[17] I am unable to conclude that such a concatenation of conclusory statements constitutes a reasonable consideration of Mr. Wei's submissions. Some of these statements are clearly inaccurate. For example, Mr. Wei provided evidence about the possibility of becoming stateless if he were unsuccessful in regaining Chinese citizenship. Moreover, the Minister's delegate

appears to equivocate with respect to the fact that Mr. Wei lost Chinese citizenship upon obtaining Canadian citizenship, despite accepting this fact earlier in her reasons.

[18] At best, the reasons may be read as meaning that as long as there is a possibility of regaining Chinese citizenship, no special relief will be granted. This, however, would be based on an implicit interpretation of paragraph 10(3.1)(a) that runs counter to the *Williams* decision of the Federal Court of Appeal. It may be that *Williams* can be distinguished from the present case, but the Minister's delegate does not explain why this would be. Moreover, I am concerned by an interpretation of paragraph 10(3.1)(a) according to which the concrete consequences of statelessness are never considered, simply because it is uncertain whether Mr. Wei will become stateless or not.

[19] Thus, the Minister's delegate's reasons are based in part on a clear logical fallacy and, with respect to the remaining part, they are not responsive to Mr. Wei's submissions. That renders them unreasonable: *Vavilov*, at paragraphs 104 and 127.

B. *Establishment in Canada*

[20] The Minister's delegate's consideration of Mr. Wei's establishment in Canada is also unreasonable. After summarizing Mr. Wei's submissions, the Minister's delegate wrote: "your ability to establish yourself in Canada first as a permanent resident and now as a citizen, is entirely as a result of your misrepresentation."

[21] In *Xu*, the Minister's delegate resorted to the same line of reasoning to disregard submissions regarding establishment. Justice Norris found this to be unreasonable and eloquently described the fallacious nature of the Minister's delegate's reasons, at paragraph 75:

> . . . the decision maker's approach suggests that establishment based on misrepresentation can never be sufficient to warrant special relief since, almost by definition, that establishment was possible only because of the misrepresentation. Such a categorical approach, which pays no regard to the particular circumstances of the case – including why, according to the applicant, she felt compelled to mislead Canadian immigration authorities when she applied for permanent residence – is the antithesis of the equitable discretion meant to be captured by paragraph 10(3.1)(a) of the *Citizenship Act*.

[22] The Minister relies on *Gucake v Canada (Citizenship and Immigration)*, 2022 FC 123 at paragraphs 66–73 [*Gucake*], which reaches the opposite conclusion. The Court in *Gucake*, however, does not appear to consider the language of paragraph 10(3.1)(a) as the Court did in *Xu*. In fact, *Xu* is not mentioned. To the extent that *Gucake* departs from *Xu*, I decline to follow it.

[23] The Minister also argues that in spite of the statements to the effect that establishment was obtained through misrepresentation, the Minister's delegate actually considered Mr. Wei's establishment, balanced it against the seriousness of the misrepresentation and found that special relief was not warranted. However, even if the decision is read in this manner, it is obvious that the conclusion of the Minister's delegate regarding establishment is heavily influenced by the unreasonable finding. It is impossible for me to find that the delegate would have reached the same conclusion had she not made this error.

III. Disposition

[24] For these reasons, the application for judicial review will be granted, the decision revoking Mr. Wei's citizenship will be quashed and the matter will be remitted to a different Minister's delegate for reconsideration.

[25] Counsel for the Minister asked for leave to provide submissions with respect to a certified question after the issuance of this judgment. At the hearing, I granted this request. Therefore, I will set deadlines for the filing of these submissions.

JUDGMENT in T-1640-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. The decision revoking the applicant's citizenship is quashed.
3. The matter is remitted to a different delegate of the Minister for reconsideration.
4. The respondent will have 10 days from the date of this judgment to propose a question for certification, by serving and filing a letter to this effect.
5. The applicant will have 5 days from the date the respondent serves their letter to serve and file a responding letter.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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