

FEDERAL COURT

**IN THE MATTER OF THE *CANADA EVIDENCE ACT*
AND IN THE MATTER OF AN OBJECTION MADE PURSUANT TO
SECTION 39 OF THE *CANADA EVIDENCE ACT***

BETWEEN:

DENIS LOSHAJ

Applicant

-and-

**THE GOVERNOR IN COUNCIL, THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, and THE ATTORNEY GENERAL OF CANADA**

Respondents

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at the Federal Court at 180 Queen Street West, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

January 11, 2024

Issued by: _____
(Registry Officer)

Address of local office:

The Federal Court
180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO:

Shalene-Cutis Micallef
Ontario Regional Office- Department of
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Counsel for the Respondents

APPLICATION

The Applicant makes application for:

- (a) A declaration that the Clerk of the Privy Council has engaged in an abuse of process, in objecting to disclosure of the complete Certified Tribunal Records in Court Files T-1136-22 and T-914-23 through certificates issued pursuant to section 39 of the *Canada Evidence Act* dated December 20, 2023 and communicated to the Applicant on December 27, 2023 (“**certificates**”), because in so doing he has denied the Applicant the ability to challenge the decisions of the Governor in Council to revoke his Canadian citizenship (including on the grounds of abuse of process itself);
- (b) In the event this Court grants the declaration in (a), an order directing the Respondents to disclose unredacted versions of the Certified Tribunal Records forthwith, or in the alternative, orders setting aside the decision to revoke as an abuse of process and staying the revocation proceedings;
- (c) In the alternative, a declaration that section 39 of the *Canada Evidence Act* deprives the Applicant of his rights to life, liberty and/or security of the person in a manner that does not comply with the principles of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms* (“**Charter**”), and is of no force and effect under section 52 of the *Constitution Act, 1982*;
- (d) In the further alternative, a declaration that section 39 of the *Canada Evidence Act* violates the Applicant’s rights to not be deprived of his rights to life, liberty, and/or security of the person except by due process of law under section 1 of the *Canadian Bill of Rights*, and/or his right to a fair hearing in accordance with the principles of fundamental justice under section 2 of the *Canadian Bill of Rights*, and is inoperative to the extent of that violation;
- (e) In the event this Court grants the declarations in (c) and/or (d), an order directing the Respondents to disclose unredacted versions of the Certified Tribunal Records forthwith or on a counsel-only basis, or in the alternative, orders setting aside the decision to revoke and staying the revocation proceedings;
- (f) In the further alternative, a declaration that the certificates violate the Applicant’s rights under section 7 of the *Charter*;
- (g) In the event this Court grants the declaration in (f), an order pursuant to section 24(1) of the *Charter* directing the Respondents to disclose unredacted versions of the Certified Tribunal Records forthwith or on a counsel-only basis, or in the alternative, orders setting aside the decision to revoke and staying the revocation proceedings;

- (h) In the further alternative, a declaration that the certificates violate the Applicant's rights under sections 1 and 2 of the *Canadian Bill of Rights*;
- (i) In the event this Court grants the declaration in (h), an order pursuant to sections 1 and 2 of the *Canadian Bill of Rights* directing the Respondents to disclose unredacted versions of the Certified Tribunal Records forthwith or on a counsel-only basis, or in the alternative, orders setting aside the decision to revoke and staying the revocation proceedings;
- (j) In the further alternative, a declaration that the certificates immunize the decisions challenged in Court Files T-1136-22 and T-914-23 from judicial review in a manner inconsistent with the rule of law;
- (k) In the event this Court grants the declaration in (j), an order pursuant to its plenary powers directing the Respondents disclose the unredacted versions of the Certified Tribunal Records or on a counsel-only basis, or orders setting aside the decision to revoke and staying the revocation proceedings; and
- (l) In the further alternative, this Court should draw the adverse inference from the Respondents' refusal to disclose the evidence shielded by the certificates that there is no evidence to support the decisions challenged in Court Files T-1136-22 and T-914-23, and issue orders setting aside the decisions and staying the revocation proceedings.

The grounds for the Application are:

- (a) The Clerk's objections to disclosure of the complete Certified Tribunal Records under section 39 of the *Canada Evidence Act* are an abuse of process, as they deny the Applicant access to the evidence he requires to prosecute his claim that the proceedings against him are already an abuse of process, and therefore exacerbate the abuse which has already occurred;
- (b) Section 39 of the *Canada Evidence Act* violates the Applicant's rights under section 7 of the *Charter*;
- (c) Section 39 of the *Canada Evidence Act* violates the Applicant's rights under sections 1 and 2 of the *Canadian Bill of Rights*;
- (d) The certificates violate the Applicant's rights under section 7 of the *Charter*;
- (e) The certificates violate the Applicant's rights under sections 1 and 2 of the *Canadian Bill of Rights*; and
- (f) The certificates effectively immunize the decisions challenged in Court Files T-1136-22 and T-914-23 from judicial review in a manner inconsistent with the rule of law.

In support of this motion the Applicant relies on the following facts and evidence:

1. The Applicant has been granted leave and is seeking judicial review for a declaration that the delay in processing the revocation is an abuse of process (T-1136-22), and a second judicial review for certiorari to quash the decision revoking his citizenship (T-914-23). The CTR in relation to T-1136-22 is significantly redacted, and the CTR in relation to T-914-23 is completely redacted. As a result, the Applicant is being prevented from properly prosecuting his applications for judicial review.
2. The underlying facts related to both judicial reviews are as follows. On December 9, 1997, the Applicant arrived in Toronto for the first time on a visitor visa. On May 31, 1999, the Convention Refugee Determination Division (CRDD) made a positive determination, without a hearing, and granted the Applicant refugee status in Canada on grounds that he had a well-founded fear of persecution.
3. On September 11, 2009, the Applicant received a notice letter from Joanne Jesmer, a CBSA Enforcement Officer, detailing the Minister's intention to initiate an application to vacate the Applicant's refugee status on grounds that he had made a misrepresentation in his Personal Information Form (PIF). On October 16, 2009, the Refugee Protection Division (RPD) received an application from the Minister to vacate the Applicant's refugee status. RPD approved the Minister's application on January 10, 2010.
4. After the RPD vacated the Applicant's refugee claim, the Minister delayed three years before seeking a declaration from the Court that the Applicant had obtained citizenship by misrepresentation. The Minister filed their application with the Court in January 2013. The Applicant consented to a judgment that he had made a misrepresentation, and the Court rendered a declaration to that effect in July 2014.
5. While the Applicant consented to the Court's declaration, he always intended to make submissions to the GIC as to why his citizenship should not be revoked in view of his personal circumstances, which he made as soon as he was given the opportunity to do so. However, the GIC nonetheless revoked the Applicant's citizenship. The Applicant sought judicial review of the GIC's decision and the Minister consented to judicial review setting aside the decision in April 2016.
6. In August 2016, the Applicant received a fresh submission from the Minister to the GIC recommending that his citizenship be revoked. The Applicant responded again with his own submissions in October 2016. The redetermination was pending a decision by the GIC from October 2016 until March 2023. As a result, the matter was before the GIC for a decision for well over six years.
7. In submissions dated October 2017, the Applicant relied on the fact that the Federal Court in *Hassouna v. MCI* held that in the citizenship revocation process the principles of fundamental justice require consideration of humanitarian and compassionate circumstances.¹ Indeed, the current version of the *Citizenship Act* requires the Minister to consider these circumstances when determining whether to commence revocation proceedings. The Applicant maintained that it would be unfair to him if he were denied the same opportunity to have these factors considered.

¹ *Hassouna v. Canada (Citizenship and Immigration)*, [2017 FC 473](#)

8. The Applicant has lived in Canada for over twenty years. The Applicant does not have a criminal record in Canada as he has no Canadian conviction. The Applicant has a single conviction in the United States in 1994, but since then there is no evidence that he has participated in any criminal activity in Canada or anywhere else, or that he is a danger to the safety of Canadians. Although he was charged with assaulting his a former spouse in 2008, this was resolved with an acquittal and a peace bond.² The Applicant's only conviction, in a foreign jurisdiction, is now over twenty-eight years old. He understands that there is one outstanding charge against him in the United States which dates from the period between 1990 and 1994. He has retained American counsel who advised him that if he were able to attend in person the charges could be dropped. The Applicant has not reoffended in Canada, and there is no concern for criminal recidivism that would burden the resources of the criminal justice system.

9. The Applicant is an upstanding citizen who has complied with his obligations to his children, ex-partner, mother, and community. The Applicant has extensive family ties in Canada. Three of the Applicant's children are Canadian citizens, including his young son. Mr. Loshaj also has a successful business in Canada. The Applicant is a sole proprietor since 1999 operating under the name "Illyricum Stone Masonry" (now "Illyricum Contracting Ltd" and "Illyricum Construction Ltd", along with his company "Albamex Construction Ltd"), and is a professional stonemason engaging in commercial and residential projects that include but are not limited to the construction of fireplaces/chimneys and retaining walls.

10. The GIC decided to revoke the Applicant's citizenship in March 2023. The GIC's delay in conducting the court-ordered redetermination far exceeded what is reasonable under the circumstances, and has provide no explanation for this unconscionable delay, as a result of which the Applicant has suffered severe prejudice.

11. The Applicant is at risk of being ordered deported for being inadmissible for misrepresentation under section 40(1)(c) of the *IRPA*. If the revocation decision stands, the Applicant may well be forced to leave Canada in a situation where he has nowhere to go, because he reasonably believes himself to be stateless. The Applicant does not have any identification documents to establish his citizenship in Kosovo. Moreover, given that the Applicant left Kosovo before it became a state, he cannot establish a claim to citizenship there. While he has a birth certificate issued in Kosovo, he is still under the understanding that he is not a citizen of Kosovo. As such, the Applicant believes he has no right to reside in Kosovo, or any other country other than Canada.

12. Furthermore, the Applicant also faces a risk to his life if he were forced to return to Kosovo. He is fearful of being persecuted or killed due to a blood feud, arising from his failed marriage to a woman from a prominent family in Kosovo. The Applicant has no close relatives in Kosovo.

13. The Applicant has been unable to travel internationally since mid-2019. The Applicant understood that the GIC could render a decision at any time without notice and that he would only learn after the fact that his citizenship had been revoked (as in 2015, when he only learned of the decision three weeks after it was rendered). The Applicant understands that once his citizenship is revoked, his passport would be cancelled. He has no certainty that he would not lose his citizenship

² The Applicant acknowledges that Canadian immigration authorities in the revocation proceedings have alleged that accusations were made against him in Germany. Other than hearsay correspondence, no direct evidence of any negative criminal history in Europe has been produced. The Applicant firmly denies the allegations.

and passport if he were outside of Canada given that there is no requirement that notice be given before the GIC renders its final decision. Naturally, the Applicant has been afraid to travel under these circumstances, as he could be left stranded outside of Canada without status in Canada, and as such he would be unable to return to Canada. Moreover, because he understood the revocation of citizenship would render him stateless, and because he has no travel document (from any country other than Canada) and would have no way to obtain one, he would not be able to travel anywhere at all.

14. The Applicant has been under severe emotional distress since he received the application to vacate his refugee status in 2009. He has lived with this imminent threat of loss of citizenship for 14 years. This situation has taken an immense emotional toll on him and on his family life. According to the psychological reports of Dr. Williams, the delay in determining the Applicant's status has caused immense psychological uncertainty to the Applicant and his family. The Applicant attests to the fact that the uncertainty of his situation has caused him severe emotional distress.

15. The Applicant has also suffered extensive economic loss due to the precarity of his citizenship. He has been forced to forgo important business opportunities that would have provided him with hundreds of thousands of dollars in profit due to his inability to travel internationally arising from his uncertain status. Since the Applicant's citizenship was revoked, he lost his permanent residence status and reverted to being a foreign national with no right to remain in Canada. He no longer has a right to work in Canada and has also lost his right to healthcare and any other social services.

16. If ordered to leave Canada, the Applicant would thereafter be inadmissible for a further five years. In addition, the Applicant would require authorization to return even for a visit during that time. Thus, the effect of the revocation is the risk of a very lengthy if not permanent separation between him and his family.

Evidence Of Systemic Delay in Case Management Procedures

17. In the case at bar, the Applicant's case was processed by the case management office in Ottawa. There is evidence that there are systemic delays at the case management office that have resulted in chronic delays: humanitarian and compassionate cases where the decision has to be rendered in case management have been allowed to languish for twelve years; danger opinion redeterminations are being delayed beyond four years or longer; decisions made on pre-removal risk assessment (PRRA), where the Case Management Minister's Delegate is the decision maker, have been allowed to languish for ten years or longer; citizenship revocation cases are waiting for more than five years. The chronic problem of systemic delay also infects other aspects of the immigration process: applications for ministerial relief are subject to delays that can exceed ten years in some cases.

18. The CTR in T-1136-22 indicates that there are thirty other cases like that of the applicant whose citizenship revocation is being processed under the old legislation.³ These cases have been pending for many years, at least since the amendments to the Act that came into force in 2015, and the Applicant's case is the only which whose citizenship has been revoked.⁴ The Applicant's case

³ Respondent's Motion Record in T-1136-22, Redacted CTR, p. 61

⁴ The *Citizenship Act* was amended in May 2015 to allow the Minister to revoke citizenship without the intervention of the Federal Court. As such, all of the 30 cases pending were initiated prior to that date. See

was processed and decided by the GIC only after the Court issued the order directing processing of the CTR in T-1136-22.

19. The CTR in T-914-23 is fully redacted and the CTR in T-1136-22 is significantly redacted.

This application will be supported by the following material:

- (a) The affidavit of the Applicant;
- (b) The Motion Record of the Applicant;
- (c) The affidavits of expert witnesses for the Applicant; and
- (d) Such further and other material as counsel may advise and the Court may permit.

The Applicant requests to send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Governor in Council to the Applicant and to the Registry:

The unredacted versions of CTR in T-914-23 in T-1136-22.

January 11, 2024



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Applicant's Responding Record in T-1136-22 and T-914-23, Affidavit of Evgeniya Gubarenko, para. 6 at p. 2 and Exhibit "E", p. 48-51.