

CANADA / JUDGMENT

M.A. v. Canada (Citizenship and Immigration)

2026 FC 405

COURT

Federal Court

DECIDED

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Ottawa, Ontario, March 26, 2026

PRESENT: Mr. Justice McHaffie

BETWEEN:

M.A.

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The applicants, a mother [M] and daughter [A] whose identities are protected through an anonymity order, are permanent residents of Canada who have not lived in Canada since August 2017. When they applied for Canadian citizenship in October 2017, they satisfied both the physical presence requirement for citizenship eligibility under subparagraph 5(1)(c)(i) of the Citizenship Act, RSC 1985, c C-29, and the ongoing residency obligation imposed on all Canadian permanent residents by section 28 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. However, by the time their citizenship applications were examined in February 2021, they no longer complied with the section 28 residency obligation.

[2] Despite this non-compliance with the residency obligation, no determination has been made that the applicants have lost their status as permanent residents, since they have steadfastly refused to take any step that might trigger an examination of that status by an immigration officer. Such a step might include applying to renew their permanent residence cards (which expired in September 2019), applying for a permanent resident travel document, or seeking to enter Canada. The applicants believe they had valid reasons for leaving and remaining outside the country, particularly A's physical and mental health conditions and the COVID-19 pandemic. However, they do not wish to apply for a permanent residence card renewal or a travel document, because it might result in a loss of permanent residence.

[3] This situation appears to have left citizenship officers at Immigration, Refugees and Citizenship Canada [IRCC] in a bit of a quandary. They were of the view that they could not decide whether the applicants were eligible for citizenship, since determinations regarding permanent resident status are matters for an immigration officer. However, no immigration officer has reviewed the applicants' permanent resident status, since they refuse to apply for new permanent residence cards or travel documents, despite requests from IRCC to provide such documents.

[4] The result is that processing of the applicants' citizenship applications has been lengthy and somewhat convoluted, involving various exchanges between the applicants and IRCC, decisions on behalf of the Minister, and a successful application for judicial review in this Court: *MA v Canada (Citizenship and Immigration)*, 2023 FC 1205. It culminated in three IRCC decisions in the summer of 2024: (i) a decision by a citizenship officer [the Officer] dated June 10, 2024, treating M's citizenship application as abandoned, and refusing A's application in consequence; (ii) a decision by a delegate of the Minister [the Delegate] dated June 11, 2024, refusing to grant the applicants citizenship on the basis of "special and unusual hardship" under subsection 5(4) of the Citizenship Act; and (iii) a decision by the

Delegate dated July 9, 2024, declining to reconsider the June 11, 2024, decision under subsection 5(4).

- [5] The latter two decisions are the subject of these applications for judicial review, which were heard together. Notably, these applications do not seek judicial review of the first decision pertaining to abandonment, although the applicants raise arguments with respect to it.
- [6] The applicants contend that the Delegate's decisions under subsection 5(4) of the Citizenship Act should be set aside. They argue the Delegate perpetuated breaches of procedural fairness, fettered her discretion, and misinterpreted relevant provisions of the Citizenship Act.
- [7] For the reasons set out below, I conclude that the applicants have not established that the Delegate's decisions were either unfair or unreasonable.
- [8] The applicants' central procedural fairness argument is that the decisions should be set aside, and ultimately that they should be granted citizenship, because of the delay in processing their applications. Although the applicants did not cast this as an argument of abuse of process by administrative delay, this is in essence what they are arguing, as mere delay cannot otherwise result in the remedies they are seeking. The applicants, however, have not established an abuse of process as they have not shown that they suffered significant prejudice within the meaning of the abuse of process analysis, regardless of whether the processing delay was inordinate or not.
- [9] As for the merits of the decisions, the Delegate reasonably concluded that neither the processing delays nor the applicants' situation demonstrated special and unusual hardship justifying a discretionary grant of citizenship, and that the other Citizenship Act provisions cited by the applicants, subsections 5(3) and (3.1), had no application. Contrary to the applicants' arguments, there was no obligation on the Delegate in the context of the subsection 5(4) applications to justify the delays in processing the applicants' citizenship applications. Rather, the obligation was on the applicants to satisfy the Delegate that their case met the exacting standard of "special and unusual hardship." The Delegate reasonably considered the processing delays and A's condition, needs, and best interests, and found that the applicants had not shown special and unusual hardship. Despite the applicants' arguments, I find there is no reason to interfere with this conclusion. Nor did the Delegate misinterpret or fetter her discretion under any of the cited provisions of the Citizenship Act.
- [10] The applications for judicial review are therefore dismissed.

II. Issues and Standard of Review [11] The applicants' arguments on these applications for judicial review raise the following two central issues:

Did the Delegate comply with the duty of procedural fairness?

Are the Delegate's decisions reasonable on their merits?

- [12] The first of these issues relates to the fairness of the process leading to the decisions. On such issues, the Court applies a standard akin to that of correctness, assessing whether the process was fair having regard to all the circumstances: *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56.
- [13] The second issue relates to the merits of the decisions themselves. In reviewing such issues, the Court applies the reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. When applying this standard, the Court will only interfere with a decision if the party challenging it shows it is unreasonable, i.e., that it is internally incoherent, or fails to show the requisite characteristics of intelligibility, transparency, and justification in relation to the facts and law: *Vavilov* at paras 15, 85, 99–101, 105–107, 125–128, 136.

III. Analysis A. The statutory framework [14] The issues and arguments in this case raise several interrelated provisions of the Citizenship Act and the IRPA. I have reproduced the complete text of these provisions in Annex “A,” but will briefly discuss the most salient provisions before turning to the specific context of these applications.

- (1) Eligibility for citizenship under the Citizenship Act [15] Section 5 of the Citizenship Act is the primary provision addressing grants of Canadian citizenship (sections 5.1 and 5.2, which address cases of adoption, are not relevant in this matter). M applied for citizenship under subsection 5(1), which requires the Minister to grant citizenship to any applicant that meets the defined eligibility requirements. In particular, paragraph 5(1)(c) requires an applicant for citizenship to be a permanent resident within the definition of subsection 2(1) of the IRPA; to have no unfulfilled conditions under the IRPA relating to their status as a permanent resident; and to have been physically present in Canada for the equivalent of three years (1,095 days) in the five years before the application.
- [16] M’s daughter, A, applied for citizenship under subsection 5(2) of the Citizenship Act. That subsection requires the Minister to grant citizenship to a permanent resident who is the minor child of a citizen, if an authorized person makes an application on their behalf and the child has no unfulfilled conditions under the IRPA relating to their status as a permanent resident. Since subsection 5(2) of the Citizenship Act relates to minor children of citizens, A’s application for citizenship was effectively dependent on M’s application.
- [17] Section 5 of the Citizenship Act also contains two relevant subsections that grant the Minister discretion to address particular cases, namely subsections 5(3) and (4). Under subsection 5(3), the Minister has discretion to waive certain identified requirements on compassionate grounds. In respect of adults with no mental disability, this discretion is limited to the requirements contained in paragraph 5(1)(d) [adequate knowledge of one of Canada’s official languages] and paragraph 5(1)(e) [adequate knowledge of Canada and the responsibilities and privileges of citizenship]. In respect of minors, additional requirements may be waived, including the physical presence requirement in paragraph 5(1)(c).

Subsection 5(4) permits the Minister to grant citizenship in certain special cases, notably “to alleviate cases [...] of special and unusual hardship.”

- [18] In addition to these discretionary provisions, subsection 5(3.1) imposes on the Minister an obligation to “take into consideration the measures that are reasonable to accommodate the needs” of an applicant for citizenship who is a disabled person.
- [19] Subsections 5(3), (3.1), and (4) are central to a number of the applicants’ reasonableness arguments. I will address their meaning, scope, and application further below in that context.
- [20] Also relevant to the procedural history in this matter are sections 13.2 and 23.1 of the Citizenship Act, which relate to the processing of citizenship applications. Section 23.1 states that the Minister may require an applicant to provide “any additional information or evidence relevant to his or her application.” Subsection 13.2(1) provides that the Minister may treat an application as abandoned if the applicant fails, “without reasonable excuse,” to provide the additional information or evidence requested under section 23.1. Subsection 13.2(2) in turn provides that if the Minister treats an application as abandoned, “no further action is to be taken with respect to it.”
- (2) Permanent residence and the residency obligation in the IRPA [21] As set out above, subsections 5(1) and (2) of the Citizenship Act invoke provisions of the IRPA. In particular, paragraph 5(1)(c) and subsection 5(2) require an applicant for citizenship to be a permanent resident within the meaning of subsection 2(1) of the IRPA. The definition of “permanent resident” in subsection 2(1) in turn makes several other provisions relevant, notably sections 46, 28, and 41 of the IRPA.
- [22] Subsection 2(1) of the IRPA defines “permanent resident” as “a person who has acquired permanent resident status and has not subsequently lost that status under section 46.”
- [23] Section 46 of the IRPA sets out a number of circumstances in which a person loses permanent resident status. These include, notably, “a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28”: IRPA, s 46(1)(b).
- [24] The “residency obligation under section 28” referred to in section 46 is a requirement placed on every permanent resident with respect to ongoing residence in Canada. In the general case, the residency obligation requires a permanent resident to be physically present in Canada for a total of at least 730 days in each five-year period, and in particular the five-year period immediately before an examination: IRPA, ss 28(2)(a)(i), (b)(ii). There are other ways of satisfying the 730-day requirement, but they are not relevant in this matter.

[25] Section 28 includes a discretionary provision, allowing an officer to conclude that humanitarian and compassionate [H&C] considerations justify the retention of permanent resident status despite a breach of the residency obligation: IRPA, s 28(2)(c); *Saab v Canada* (Citizenship and Immigration), 2018 FC 653 at para 32. Such decisions are subject to appeal to the Immigration Appeal Division: IRPA, s 63(4).

[26] By operation of the definition of “permanent resident” and section 46 of the IRPA, a person does not automatically cease to be a permanent resident if they fail to comply with the residency obligation. It is only upon final determination of a decision regarding failure to comply—which may consider H&C factors justifying the non-compliance—that a person loses their permanent residence. At the same time, paragraph 41(b) of the IRPA provides that failing to comply with section 28 renders a permanent resident inadmissible.

[27] With these provisions in mind, I turn to the particular situation of the applicants and their applications for citizenship.

B. The factual context (1) The citizenship applications [28] The applicants are citizens of Spain. They first came to Canada in 2010 as temporary residents, becoming permanent residents on August 18, 2014. In August 2017, the applicants relocated to Europe, where M’s husband (A’s father) had a new professional assignment.

[29] The applicants, together with M’s two other daughters, applied for Canadian citizenship in applications signed on October 18, 2017, and received by IRCC in early November. As noted above, M applied as an adult permanent resident under subsection 5(1) of the Citizenship Act, while the daughters applied as minor children of M under subsection 5(2).

[30] With their applications, the applicants provided a physical presence calculation showing 1,248.5 days of physical presence in Canada for the five years between October 18, 2012, and October 18, 2017. On April 10, 2018, a citizenship officer interviewed M and administered the citizenship test, which she passed. However, the officer identified concerns regarding the family’s residence and some undeclared absences. The applicants submitted a further physical presence calculation and supporting evidence in May 2018, confirming that M met the requirement under subparagraph 5(1)(c)(i) of the Citizenship Act to be physically present in Canada for at least 1,095 days during the five years immediately before the date of her application.

[31] An entry in the Global Case Management System [GCMS] indicates that in July 2019, the file was “in queue to be assessed by a level 2 officer,” with the residency to be assessed. The following day, IRCC identified the case as “non-routine,” with indications that IRCC was waiting for information from a partner, that the case had been referred for supplementary verification, and that processing was expected to be outside the usual 12-month processing standard. Further GCMS entries indicate that the file was assigned for processing in May 2020 and again in September 2020. However, it does not appear to have been substantively reviewed again until February 2021. In the interim, the applicants’ permanent resident cards expired in September 2019.

- [32] In February 2021, IRCC sent M a Request for Supplementary Evidence under section 23.1 of the Citizenship Act, asking that she provide a valid permanent resident card. IRCC advised that if she did not have one and resided outside Canada, she could apply for a permanent resident travel document at a Canadian Embassy.
- [33] The applicants responded through counsel, submitting that IRCC's request for a permanent resident card was unfounded in law, since the applicants were permanent residents and that evidence of a valid permanent resident card was not a requirement for eligibility for citizenship. The applicants also noted that they had not spent 730 days physically present in Canada in the prior five years—as required by section 28 of the IRPA—for reasons said to be beyond their control, namely M's husband's professional assignment, the delayed processing of their citizenship applications, and the COVID-19 pandemic. They also raised the husband's work assignment, and the need for the rest of the family to move with him, as a relevant H&C factor. The applicants therefore contended that it would “go against procedural fairness” not to finalize their citizenship applications, and that it would constitute bad faith to evaluate their residency obligations.
- [34] In May 2021, M's other two daughters withdrew their citizenship applications in order to facilitate applications for study permits to study in Canada. The applicants, M and A, maintained their applications.
- [35] On July 2, 2021, IRCC issued a Final Notice – Request for Supplementary Evidence, reiterating its request for a valid permanent resident card or permanent resident travel document. Owing to a miscommunication, that request was resent on October 5, 2021: see MA at paras 14–17. In response, the applicants reiterated their submission that a valid permanent resident card was not required; that they remained permanent residents (citing subsection 2(1) and section 46 of the IRPA); that they met all eligibility criteria when they applied for citizenship; and that their non-compliance with the residency obligation was due to the delayed processing of their citizenship applications. They also again raised H&C factors, citing the Minister's discretion under subsection 5(3) of the Citizenship Act, and further invoked the Minister's discretion to alleviate cases of special and unusual hardship under subsection 5(4).
- (2) The first notice of abandonment and judicial review application [36] On September 26, 2022, a citizenship officer at IRCC issued a notice advising M that her application had been deemed abandoned pursuant to subsection 13.2(1) of the Citizenship Act. The officer concluded that M had failed, without reasonable excuse, to provide additional information or evidence that had been requested. The notice indicated that the explanations provided had been reviewed by IRCC and were “deemed unacceptable by a citizenship official.” Since M's application was deemed abandoned and A therefore did not have a parent who was a Canadian citizen, A's application was also refused. Although the applicants had raised subsection 5(4), no decision was made with respect to this aspect of their submissions.

- [37] The applicants sought judicial review of the September 26, 2022, notice of abandonment. As alluded to above, Justice Gagné granted that application in a decision dated September 7, 2023. She concluded it was unreasonable to treat the citizenship applications as abandoned in light of the applicants' invocation of subsection 5(4): MA at para 42. Justice Gagné found that the evidence demonstrated that the applicants were actively pursuing their application, that they had raised H&C considerations, and that there was "sufficient information on file for the decision to be referred to a final determination of permanent resident status": MA at para 44. However, she did not accept the applicants' characterization of the request for a permanent resident card or travel document as a "trap" or an attempt to "sabotage" their application: MA at para 37. Justice Gagné remitted the applicants' file "for a new determination by a different officer": MA at para 55.
- (3) Subsequent processing of the applications [38] In the wake of Justice Gagné's decision, IRCC transferred the applicants' file to its Case Management Branch, which assigned two individuals to handle the different aspects of the file. The applications for citizenship under subsections 5(1) and (2) of the Citizenship Act were assigned to a Senior Analyst from Citizenship and Passport Cases Division [the Officer]. The request for discretionary consideration under subsection 5(4) of the Citizenship Act was referred to a Senior Decision-Maker with authority to make such decisions [the Delegate].
- [39] I pause here to address the applicants' argument that the Minister breached Justice Gagné's order by assigning their file to two different officers. They argue that remitting their file for a new determination by "a different officer" means a single officer was to address all aspects of their file.
- [40] This argument is without merit. There is nothing in Justice Gagné's decision or order that indicates that by adopting the usual language of remitting the matter to be determined by "a different officer" she intended to require the determination under subsections 5(1) and (2) and the determination under subsection 5(4) to be made by the same individual. To the contrary, Justice Gagné expressly recognized that citizenship officers who make determinations in respect of eligibility under subsections 5(1) and (2) do not necessarily have jurisdiction to render a decision under subsection 5(4): MA at para 42. If Justice Gagné had intended that all aspects of the file had to be assessed by the same individual despite the division of authority within IRCC, she would no doubt have indicated this at some point in her reasons. She did not do so. To the contrary, it is clear that the purpose and meaning of Justice Gagné's order that the matter be decided by "a different officer" was that it was not to be re-decided by the officer who had made the earlier decision, not that all aspects of the file necessarily needed to be decided by the same individual.
- [41] I also note that the applicants were aware that two decision makers were involved well before the decisions were made. As set out below, the applicants received separate correspondence from each of the Delegate and the Officer, the former expressly addressing subsection 5(4), the latter expressly addressing the redetermination of the prior decisions under subsections 5(1) and (2). The applicants responded to each communication without

any indication that they considered it inappropriate for two individuals to be addressing the different aspects of their file.

- (a) Processing of the applications under subsections 5(1) and (2) [42] Based on internal communications appearing in the certified tribunal record, there was uncertainty within IRCC as to how the question of the applicants' status as permanent residents and their residency obligation could or should be determined. There was a recognition that a citizenship officer could not make a determination under section 46 of the IRPA as to whether an individual had lost their permanent resident status. Yet there was also some question as to whether an immigration officer could conduct that evaluation in the absence of an application for a permanent resident card or travel document. At one point, the Officer obtained internal legal advice indicating that the file could be referred to an immigration officer for evaluation even though there was no open application for a permanent resident card or travel document, but that a citizenship officer could also ask that an applicant complete an application for such a document.
- [43] It appears the Officer did attempt to refer the matter to an immigration officer. However, she received a response that a citizenship officer could make a determination on compliance with the section 28 residency obligation of a citizenship applicant based on the facts before them, even though this would not have the effect of terminating the applicant's permanent resident status.
- [44] Ultimately, the Officer pursued the same approach that had been taken previously. On January 25, 2024, she issued Requests for Supplementary Evidence pursuant to section 23.1 of the Citizenship Act, asking the applicants to provide valid permanent resident cards or travel documents, or any other documentary proof that they continued to meet the requirements for maintaining permanent residence while outside Canada.
- [45] In their response to this request, the applicants maintained their prior position that they were still permanent residents, and that they were not required to provide a permanent resident card or travel document. They further took the position that IRCC's request ran contrary to Justice Gagné's decision. The applicants confirmed that they had chosen not to apply for a valid permanent resident card or travel document since such an application would trigger a review of the residency obligation and could jeopardize their permanent resident status. However, they reiterated their request that their applications be finalized, either under subsection 5(2) [sic] of the Citizenship Act or as a discretionary matter under subsections 5(3), (3.1), and (4).
- [46] Again, pursuing the same approach IRCC had taken before, the Officer issued a Final Notice – Request for Supplementary Evidence to each applicant, requesting the same documents to confirm that the applicants had maintained their permanent resident status.
- [47] When this resulted in the same response from the applicants, the Officer issued a decision dated June 10, 2024, again treating M's application for citizenship as abandoned pursuant to section 13.2 of the Citizenship Act. The Officer concluded that M had not provided a

reasonable excuse for not providing the documentation requested. The Officer found that a determination of whether an applicant had lost their permanent resident status could not be made by a citizenship officer, but only by an immigration or border services officer, since the status and its requirements are defined by the IRPA. She stated that this was why the request for a permanent resident card or travel document was made, since providing such a document would imply that a determination had been made by an immigration or border services officer.

- [48] The Officer also addressed M's submissions regarding the expiry of her permanent resident card and the lengthy processing of her citizenship application. She noted that standard processing times were not applicable to complex cases, and found that relying on a pending decision on the citizenship application was not a reasonable excuse for M being unable to provide a valid permanent resident card or other evidence that she had maintained her permanent resident status.
- [49] With respect to the H&C grounds raised, the Officer held that she had no discretion to consider H&C grounds for assessing the requirements of paragraph 5(1)(c). However, she noted that an immigration officer could consider such grounds in an assessment under sections 28 and 46 of the IRPA. Although the application was treated as abandoned, the Officer indicated that M's request for a discretionary grant of citizenship under subsection 5(4) of the Citizenship Act would continue to be processed.
- [50] In a separate letter issued on the same day, June 10, 2024, the Officer advised that A's application for citizenship under subsection 5(2) of the Citizenship Act was refused since she was not the child of a Canadian citizen.
- (b) Processing of the applications under subsection 5(4) [51] In parallel with the foregoing process, the Delegate was engaged in the review of the applicants' applications under subsection 5(4) of the Citizenship Act. On December 6, 2023, the Delegate sent the applicants a letter soliciting further submissions and evidence as to why they were deserving of a special grant of citizenship on the basis of special and unusual hardship.
- [52] In response, the applicants filed submissions referring to their family history, A's physical and intellectual disability, and the lengthy processing of their applications. They also cited the duty to accommodate A's disability in accordance with subsection 5(3.1) of the Citizenship Act, suggesting that it would have been unreasonable to force A to travel to Canada in the midst of the pandemic. The applicants' submissions were supported by an affidavit from M; Spanish government documents recognizing A's disability; a 2023 psycho-pedagogical report; and a 2021 medical report.

C. The decisions under review (1) The initial decision [53] In a decision dated June 11, 2024 (the day after the Officer's abandonment decision), the Delegate refused the applicants' request for a grant of citizenship pursuant to subsection 5(4) of the Citizenship Act. After reviewing the processing history, the applicants' submissions regarding the delay in processing their applications, the family's circumstances, and A's special needs, the Delegate was not satisfied that

the applicants had experienced special or unusual hardship warranting a discretionary grant of Canadian citizenship.

- [54] On the issue of processing times, the Delegate noted that the times posted on the IRCC website (which had been about 12 months when the applicants filed their applications) were for most applications or routine processing, and that 20% of applications fell outside that processing time. She noted that the applicants' applications were not routine given the issues that were flagged in processing. She concluded that the processing time between receiving the applications and when they were first considered abandoned—about 3 years and 10 months—was not unreasonable in the context of the backlogs created by the COVID-19 pandemic, and was a justifiable processing time for complex files in this period.
- [55] The Delegate also considered the interests of the three children and the need for the family to reside abroad to have the support of M's husband. She found that the interests of the other daughters had been partially met given their withdrawal of their citizenship applications and their studying in Canada. However, she found that the applicants had not shown how granting citizenship to alleviate special and unusual hardship would accomplish the long-term interests of A.
- [56] The Delegate considered the application of subsections 5(3) and (3.1) of the Citizenship Act. She found that subsection 5(3.1) was "in reference to compassionate grounds under [sub]section (3)," and that if any of the conditions for compassionate grounds applied, then the Minister could waive requirements such as the language, knowledge, or oath requirements. She found that subsection 5(3.1) "may be applicable if the grant is approved for the child."
- [57] The Delegate therefore found that M had not shown special and unusual hardship for the discretionary grant of Canadian citizenship. Since A had applied under subsection 5(2), she could only be granted citizenship once M had become a citizen.
- [58] On July 8, 2024, the applicants filed their application for judicial review of the Delegate's June 11, 2024, decision (Court File No T-1708-24).
- (2) The reconsideration decision [59] In the interim, the applicants also asked the Delegate to reconsider her June 11, 2024, decision. They submitted that the Delegate may not have received or reviewed A's entire medical file, and that their request for "accommodations under subsections 5(3) [sic] and 5(3.1)" of the Citizenship Act was not assessed. They emphasized in particular A's inability to travel during the COVID-19 pandemic because of her physical and intellectual disabilities, which they characterized as special and unusual hardship. They also referred to A's long-term interests, given her intention to return to Canada to be reunited with her sisters, who are expected to play a significant role in her future care, as well as her desire to grow up in an English-speaking environment, as English is her first language.

[60] In a decision dated July 9, 2024, the Delegate declined the request to reconsider the earlier decision. In her reconsideration decision, the Delegate clarified that subsection 5(3) of the Citizenship Act only allowed the Minister to waive certain requirements on compassionate grounds, namely those in paragraphs 5(1)(d) and (e), as well as the additional requirements that could be waived for minor applicants or applicants with a mental disability. With respect to subsection 5(3.1), she clarified that accommodations under this provision could include, for example, taking the knowledge test in braille or an oral version of the test, additional time to repeat the oath of citizenship, or having someone assist during the oath. She also noted that subsection 5(3.1) was not to grant citizenship to applicants because they have a disability, but to provide accommodations for those with a disability.

[61] The Delegate considered the long-term interests raised in the applicants' submissions, noting that it was "futuristic and unknown" whether A's sisters would remain in Canada after their current studies. She also referred to the medical reports, finding that they did not identify grounds to grant citizenship on a discretionary basis. The Delegate also noted that although A did not travel to Canada during the COVID-19 pandemic, she had not travelled to Canada since leaving in 2017, either before or after the pandemic. She concluded as follows:

I have reviewed all submissions for reconsideration. No waivers on compassionate grounds, 5(3), are necessary as the file has not been granted. No accommodations are needed under 5(3.1) as the file has not been granted. The Applicant has not demonstrated special and unusual hardship for a discretionary grant of Canadian citizenship.

[62] On July 12, 2024, the applicants filed their application for judicial review of the Delegate's July 9, 2024, reconsideration decision (Court File No T-1754-24). As noted above, the applicants' judicial reviews of the Delegate's two decisions were heard together and their arguments on the applications addressed the two decisions collectively.

(3) The abandonment decision is not challenged on these applications [63] Given the nature of some of the applicants' arguments, it is worth underscoring at this point that the Officer's decision dated June 10, 2024, is not the subject of either of these applications for judicial review. Neither of the applicants' two notices of application for leave and judicial review seeks leave to commence an application for judicial review of the Officer's decision of June 10, 2024, or even refers to that decision. The notice of application in Court File No T-1708-24 expressly identifies the decision dated June 11, 2024, refusing the citizenship applications under subsection 5(4), rendered by the Delegate. The notice of application in Court File No T-1754-24 expressly identifies the decision dated July 9, 2024, refusing the reconsideration of the refusal of the citizenship applications under subsection 5(4), rendered by the Delegate.

[64] As a result, this Court's orders granting leave in these matters similarly referred to the application for leave to commence an application for judicial review of the decisions of June 11, 2024, and July 9, 2024, respectively. The orders granted leave to commence applications for judicial review of those decisions. They did not grant leave to commence an application for judicial review of the June 10, 2024, abandonment decision.

- [65] Despite this, the applicants make a number of arguments contending that the Officer's decision treating their applications as abandoned is unreasonable and runs contrary to the order and reasons of Justice Gagné on the earlier application for judicial review. The appropriate forum for such arguments would be an application for judicial review of that decision, not applications for judicial review of different decisions made under different statutory provisions. Absent an application for judicial review of the Officer's decision, that decision stands.
- [66] The applicants cite jurisprudence decided under Rule 302 of the Federal Courts Rules, SOR/98-106, to the effect that the Court may permit an application for judicial review to address more than one decision where an applicant challenges "continuing acts or a course of conduct": *David Suzuki Foundation v Canada (Health)*, 2018 FC 380 at paras 164, 173; *Potdar v Canada (Citizenship and Immigration)*, 2019 FC 842 at paras 18–19. However, the issue is not that the applicants sought to challenge two decisions in a single application for judicial review, which is the situation addressed in Rule 302 and cases such as *David Suzuki* and *Potdar*. It is that they did not seek to challenge the Officer's decision under subsection 5(1) at all. As noted, neither notice of application for leave and judicial review even refers to the Officer's decision.
- [67] Similarly, the applicants' written submissions on these applications for judicial review refer to the Officer's decision as "a separate decision on section 5(1) and 5(2)," while the Delegate's decisions are described as "the two decisions under review." Notably, the applicants did not seek leave under Rule 302 in either of their applications, and did not raise Rule 302 or the jurisprudence addressing that rule until the oral hearing of this matter. Even at the hearing, when asked whether the applicants were asking the Court to overturn the Officer's decision, counsel responded that the applicants were asking the Court to overturn the Delegate's decisions.
- [68] As a result, the reasonableness of the Officer's abandonment decision, the compliance of that decision with Justice Gagné's order, and the applicants' eligibility for citizenship under subsections 5(1) and 5(2) of the Citizenship Act are not matters before the Court on these applications.

D. There has been no breach of the duty of procedural fairness (1) The applicants' fairness arguments [69] The applicants contend that the two decisions refusing their application for discretionary relief under subsection 5(4) of the Citizenship Act "perpetuate breaches of procedural fairness."

- [70] The applicants' arguments in this regard are essentially directed at the delay in the processing of their applications for citizenship. In particular, they point to delay during the following periods:

between May 2018 (when they responded to a request for physical presence questionnaire) and February 2021 (when IRCC sent a Request for Supplementary Evidence);

between November 2021 (when the applicants responded to IRCC's first Final Notice – Request for Supplementary Evidence) and September 2022 (when IRCC issued the first notice of abandonment); and

between December 2023 (when the Delegate sent her request for further submissions after Justice Gagné's decision) and June 2024 (when the Officer and the Delegate's decisions were rendered).

- [71] The applicants argue that the Delegate failed to “justify” these delays in her June 11, 2024, decision. Instead, she simply qualified the file as complex and “blamed the COVID pandemic.” The applicants claim that if their citizenship applications had been processed in a reasonable period of time, they would have been granted citizenship since there would not be any concerns with respect to their compliance with the section 28 residency obligation.
- (2) The applicants have not established a breach of the duty of procedural fairness [72] There are several fatal problems with the applicants' arguments.
- [73] The first is that the Delegate did not have an obligation to justify any delay that occurred in the processing of the applications. Her mandate was to assess whether the applicants had met their burden to show that their case met the threshold of “special and unusual hardship”. Importantly, this is not an application for a mandamus order, in which an authority responsible for a delay may be called upon to provide a satisfactory justification for it: *Conille v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9097 at para 23; *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at paras 30–36. Here, the only question was whether the applicants had shown that the delay and/or any other circumstance amounted to special and unusual hardship.
- [74] The second is that a significant portion of the overall delay in the processing of the applicants' citizenship applications, particularly after February 2021, stems from the applicants' own insistence that they would not apply for a permanent resident card or take any other step to trigger an assessment by an immigration officer of their compliance with the section 28 residency obligation and thus their permanent resident status. While the applicants claim it was their right not to take such a step, there is no doubt that this position rendered their file more complex and required significant internal consideration and deliberation within IRCC.
- [75] The third is that, as this Court has held in the past, an application for citizenship does not suspend the section 28 residency obligation, and an applicant cannot generally cite delays in a citizenship application to explain their own failure to comply with the residency obligation: *Yu v Canada (Citizenship and Immigration)*, 2020 FC 1028 at paras 23, 25; *Nassif v Canada (Citizenship and Immigration)*, 2018 FC 873 at para 32; *Bissouri v Canada (Public Safety and Emergency Preparedness)*, 2018 CanLII 72681 (CA IRB) at para 34. As a factual matter, the applicants ceased to comply with the section 28 residency obligation in about August 2020. From that point onward, the situation has remained that the applicants have not complied with the residency obligation, and they have not sought a determination that

H&C considerations justified excusing that non-compliance. The applicants are thus effectively arguing that the Minister had an obligation to process their applications before August 2020, or to treat their applications as they were on or prior to that date. Subject to the comments below about abuse of process, the Citizenship Act contains no such obligation.

- [76] The final, and perhaps most fundamental, problem with the applicants' fairness arguments is that as a general rule, the duty of procedural fairness does not create substantive rights or entitle a party to a particular result: *Angara v Canada (Citizenship and Immigration)*, 2021 FC 376 at para 29; *Visions Electronics Limited Partnership (Visions Electronics) v Canada (Attorney General)*, 2021 FC 478 at para 98; *Campbell v The Bloom Group*, 2023 BCCA 84 at para 48. A breach of the duty of procedural fairness may render a decision invalid and require that the matter be decided anew, but it does not generally result in a party obtaining their desired outcome.
- [77] As referenced above, undue delay in administrative decision-making may justify an order of mandamus requiring a hearing to be held or a decision to be made, provided that the other requirements of such an order are present: *Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004, [1994] 1 FC 742 (CA) at pp 766–769, aff 1994 CanLII 47 (SCC); *Conille* at paras 21–23; *Almuhtadi* at paras 31–32; *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at paras 80–82. However, delay in processing an application, even undue delay, does not alone entitle the applicant to the granting of the application. Nor can it change the substantive requirements applicable to the application.
- (3) There has been no abuse of process [78] The Supreme Court of Canada has recognized that in some cases, delay may amount to a denial of natural justice that justifies a more significant administrative law remedy, such as a stay of proceedings, based on the doctrine of abuse of process: *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras 101–117; *Abrametz* at paras 38–44, 83, 89–90. However, an applicant must demonstrate both an unacceptable or inordinate delay and significant prejudice—either to the fairness of the hearing or in another form such as significant psychological harm or reputational stigma—to warrant such relief: *Blencoe* at paras 102, 115, 121; *Abrametz* at para 43. As the Supreme Court underscored in *Blencoe* and *Abrametz*, delay, without more, will not warrant a finding of an abuse of process, as this could effectively result in the imposition of a judicially created limitation period: *Blencoe* at paras 101, 133; *Abrametz* at paras 43, 67, 72.
- [79] The applicants did not directly raise the doctrine of abuse of process or attempt to demonstrate that they met the requirements of *Blencoe* and *Abrametz*, either before IRCC (the Delegate or the Officer) or this Court (on these applications or, apparently, before Justice Gagné). Having failed to raise such an allegation at the earliest opportunity, and indeed, having failed to raise it squarely at all, the Court might simply decline to address the matter: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–23.

- [80] However, the applicants did allege before IRCC that the delay in processing their case was unjustified and unreasonable, that IRCC's conduct amounted to "abuse," and that this delay resulted both in them not obtaining citizenship and a state of prolonged uncertainty. These submissions might be considered to go to the constituent elements of abuse of process as a result of administrative delay. In the circumstances, I am prepared to consider these arguments in their appropriate legal framework, namely that of abuse of process by administrative delay.
- [81] In any case, whether the issue was properly brought before the Court or not, the evidence does not establish that there has been an abuse of process or other breach of procedural fairness justifying either the quashing of the Delegate's decisions or any direction that the applicants' citizenship applications be granted. Regardless of whether the delay in processing the applicants' applications was "inordinate" in all of the circumstances—circumstances that include the nature of the applicants' file, the additional inquiries conducted by IRCC, typical processing times, the delays brought about by the COVID-19 pandemic, and the further delays caused by the complexities arising from the applicants' position—the applicants have not demonstrated a significant prejudice arising from any such delay.
- [82] As noted, prejudice for purposes of abuse of process may be either in the form of prejudice to the fairness of a hearing or another form of significant prejudice. The applicants do not raise any prejudice of the former nature in the form of faded memories, lost evidence, or the death of essential witnesses: *Blencoe* at para 102. The question is thus whether they have established some other form of significant prejudice that might demonstrate an abuse of process. I find they have not.
- [83] The fact that the applicants ceased to comply with the section 28 residency obligation during the processing of their citizenship applications does not itself amount to prejudice in the circumstances of this case. As noted above, a citizenship application does not suspend the section 28 residency obligation. The applicants' non-compliance with that obligation was largely the result of M's own choices, rather than either the delay in processing their citizenship applications or circumstances beyond their control. M candidly states that she and her daughters moved from Canada to Europe in 2017 of their own volition to follow M's husband owing to his work assignment. While M may feel that she had little option but to follow her husband where his work took him, this remains a personal or family decision and not one that is beyond M's control.
- [84] Further, when the applicants' permanent resident cards expired in September 2019, they still complied with the section 28 residency obligation. However, as M's own declaration states, the applicants "made the deliberate choice to postpone return until the approval of [their] Canadian citizenship," rather than seeking renewal of their permanent residence cards or a travel document allowing them to return to Canada. The fact that they chose to do so cannot be considered prejudice arising from the length of processing of their citizenship applications.

- [85] In this regard, the COVID-19 pandemic no doubt prevented the applicants from travelling to Canada for a period of time. However, there is no evidence that the applicants, including A, were unable to travel at any time between that point and the onset of the pandemic in March 2020, or after pandemic travel restrictions were lifted, with the possible exception of a period in 2019 when A experienced an episode of depression and required urgent treatment. Rather, the applicants appear to have deliberately chosen not to comply with the section 28 residency obligation despite opportunities to do so, for personal and family reasons.
- [86] The applicants may well have felt that they had valid reasons to remain outside Canada notwithstanding the ongoing section 28 residency obligation. After August 2020, when they ceased to comply with the obligation, they could at any time have put those reasons before an immigration officer to seek a determination pursuant to paragraph 28(2)(c) of the IRPA that H&C considerations justified the retention of their permanent resident status. Again, however, they chose not to do so. In such circumstances, the fact that the applicants moved away from Canada for personal reasons and chose not to comply with the section 28 residency obligation while their citizenship applications were being processed—even if there was delay in processing those applications—cannot in my view constitute significant prejudice justifying an administrative law remedy based on abuse of process.
- [87] Nor does the evidence show that any ongoing state of uncertainty arising from the delay has resulted in significant psychological harm. The episode of depression referred to above was associated with the family's move within Europe. None of the medical evidence refers to any psychological harm to either applicant arising from the delay in processing their citizenship applications. Indeed, not even M's own declaration suggests that she or A have suffered significant psychological harm from the delay.
- [88] I therefore conclude that there has been no abuse of process that would justify an administrative law remedy in respect of the Delegate's decisions and/or the applicants' citizenship applications.
- (4) The jurisprudence does not assist the applicants [89] The applicants place significant reliance on this Court's decision in *Murad v Canada (Citizenship and Immigration)*, 2013 FC 1089, contending that it supports a conclusion that the delay in their case justifies an order requiring the Minister to grant them citizenship. In my view, the legislative and factual differences between this case and *Murad* render it of little support to the applicants.
- [90] At the time *Murad* was decided, section 14 of the Citizenship Act provided that applications for citizenship were to be considered by a citizenship judge who, within 60 days, was to determine whether or not the person who made the application met the requirements of the Citizenship Act and associated regulations. Forthwith after a positive determination, the citizenship judge was to notify the Minister, who could appeal that determination to this Court within 60 days. In addition, section 17 of the Citizenship Act granted the Minister the authority to suspend the processing of an application for investigation, for a period not to exceed six months: *Murad* at para 52.

- [91] Pursuant to section 14 as it then stood, Dr. Murad's citizenship application was heard by a citizenship judge in January 2011, almost three years after he filed it. Within 60 days, the citizenship judge approved the application: Murad at paras 14–16. The Minister did not appeal within the appeal period and, indeed, concluded internally that the application had to be granted: Murad at paras 18–20. Nonetheless, the Minister did not grant the application. In May 2012, 16 months after the hearing with the citizenship judge and 14 months after the citizenship judge approved the application, Dr. Murad brought an application for an order of mandamus. Two months after that mandamus application was filed, an immigration officer issued an inadmissibility report under section 44 of the IRPA based on a purported non-compliance with the section 28 residency obligation: Murad at paras 26–28.
- [92] In these circumstances, Justice Roy of this Court concluded that all of the conditions for an order in the nature of mandamus were met. Since subsection 5(1) required the Minister to grant citizenship if the requirements of that subsection were met, and the citizenship judge had determined that they were met in a decision the Minister had not appealed, Justice Roy found there was a clear right to the grant of citizenship, particularly since any ability to suspend the application for six months had also long expired: Murad at paras 48–52, 65–68. Indeed, Justice Roy found that the Minister's representatives had engaged in a "sham" in attempting to schedule interviews long after the citizenship judge's decision: Murad at para 58. With respect to the section 44 report and the purported non-compliance with the section 28 residency obligation, Justice Roy noted that "[w]hat has taken place after the application for mandamus was filed is not relevant to this application" and that "had citizenship been granted when it should have been, whatever travel done by the applicant would have been of no moment" since Dr. Murad would have been a citizen: Murad at para 61.
- [93] Both the current statutory scheme and the current factual situation are different than those in Murad. Unlike the situation in Murad, there has not been a determination that the applicants meet the subsection 5(1) requirements for eligibility by the person tasked with that determination. That person is now the Minister and not a citizenship judge, since there is no issue with respect to the Citizenship Act's physical presence requirement: Citizenship Act, ss 5(1), 14(1)(a). There is also no indication that IRCC has attempted to engage in a "sham" to delay proceedings or effectively reverse a citizenship judge's findings after failing to appeal them within the statutory time frame. The applicants attempt to characterize IRCC's requests for a permanent resident card or travel document as a "trap" or an effort to "lure them into losing their permanent residency," but Justice Gagné has already rejected such characterizations and I similarly reject them: MA at para 37.
- [94] In this latter regard, it is worth noting that this Court has previously recognized the appropriateness of a citizenship officer asking an applicant to provide a valid permanent resident card or travel document in similar factual circumstances: Saab at paras 4–8, 27, 32–33, 38, 45, 48–54; Naboulsi v Canada (Citizenship and Immigration), 2019 FC 1651 at paras 13, 56, 59–73, 76, 80. Indeed, Justice Gagné in her decision adopted the characterization in Saab that the request for documents "was the beginning of a process to determine whether the

Applicants still complied with residency conditions required for the grant of citizenship”: MA at para 39. This is particularly so, at least arguably, given the presumption in the IRPA that a person outside Canada who does not have a permanent resident card does not have permanent resident status: IRPA, s 31(2)(b); Immigration and Refugee Protection Regulations, SOR/2002-227, s 53(1). In any event, neither the citizenship officer’s request for documents nor their ultimate conclusion under subsection 5(1) are the subject of these applications for judicial review.

- [95] I therefore conclude that Murad does not assist the applicants. Contrary to their submissions, Murad does not stand for a general proposition that citizenship should be granted any time that an applicant ceases to comply with the section 28 residency obligation while their citizenship application is outstanding. Nor does it purport to set out a particular period of time for processing a citizenship application that will be considered unreasonable or result in an order directing a grant of citizenship.
- (5) Other fairness arguments [96] I note for completeness that the applicants also make passing reference under the heading of procedural fairness to (i) a failure to consider all the evidence; (ii) a breach of legitimate expectation; and (iii) inadequate reasons. Where reasons are provided, a failure to consider evidence and shortcomings in reasons are matters to be considered in assessing the reasonableness of the decision: Vavilov at paras 76–81, 84–86, 95–96, 99, 125–128, 136. As for legitimate expectations, the applicants did not materially expand on this issue, except to assert that they had a reasonable or legitimate expectation that their file would be processed within a reasonable time, essentially invoking the same delay issues raised above.
- [97] The applicants also assert in their submissions that the Minister “unfairly declar[ed] their file abandoned.” As the abandonment decision is not contested on these applications for judicial review, I will not address this argument which, in any case, does not appear to be one of procedural fairness.
- (6) Conclusion [98] I therefore conclude that the applicants have not shown a breach of the duty of procedural fairness, either in the form of an abuse of process or other breach arising from the asserted delay in processing their applications, that would justify setting aside the Delegate’s decisions or an order requiring the Minister to grant them citizenship.

E. The decisions are reasonable [99] Many of the applicants’ reasonableness arguments are directed cumulatively at the Delegate’s two decisions, rather than being focused on the reasonableness of each decision. This is understandable in the circumstances, since the two decisions largely address the same factual context and statutory provisions. However, the Court’s assessment of the reasonableness of a decision should start with the reasons given for that decision, and the reasonableness of the decision will depend both on the reasons given by the decision maker and the submissions made to them by the affected party: Vavilov at paras 81–85, 127–128. Since the Delegate’s initial decision and her reconsideration decision are, at least theoretically, of a different nature, I will address them separately, while recognizing that there is

overlap between them.

- (1) The initial decision is reasonable [100] The applicants challenge the Delegate's treatment and application of each of subsections 5(3), (3.1), and (4) of the Citizenship Act. For the following reasons, I conclude the decision as a whole is reasonable. While the Delegate used somewhat unclear language in addressing subsections 5(3) and (3.1), any uncertainty in this regard cannot have affected the result and, in any event, was clarified in her reconsideration decision. As for her conclusions in respect of subsection 5(4), they are transparent, intelligible, and justified in light of the relevant legal and factual constraints, and are thus reasonable: Vavilov at paras 15, 86, 99–101. I will address subsections 5(3) and (3.1) first before turning to the Delegate's conclusions on special and unusual hardship under subsection 5(4).
- (a) Subsections 5(3) and (3.1) [101] The applicants contend that the Delegate fettered her discretion and reached unreasonable conclusions in interpreting and applying subsections 5(3) and (3.1) of the Citizenship Act. They refer to A's disabilities, the circumstances that led them to leave and remain away from Canada, the impact of the pandemic on their travel, and Justice Gagné's order remitting the matter for reconsideration in light of the H&C grounds: MA at paras 44, 46–47, 51, 55. They contend that the Delegate's reasons show a lack of empathy or compassion in considering their circumstances and the evidence, rendering it unreasonable. For the following reasons, I disagree.
- (i) The discretion under subsection 5(3) of the Citizenship Act [102] As set out above, subsection 5(3) of the Citizenship Act permits the Minister to consider H&C factors and to waive certain requirements of the Citizenship Act in consequence. However, in the case of an adult without a mental disability, that waiver can only be of the language or knowledge requirements: Citizenship Act, ss 5(1)(d)–(e), 5(3)(a). For a minor, there can also be waiver of the physical presence requirement in subparagraph 5(1)(c)(i), the oath of citizenship, or the requirement respecting who may make an application on their behalf: Citizenship Act, s 5(3)(b). For a person with a mental disability, there can be a waiver of the requirement to take the oath: Citizenship Act, s 5(3)(c).

[103] In this case, neither M nor A required a waiver of any of these requirements. M required no waiver of the language or knowledge requirements, and since A's application was made under subsection 5(2), those requirements did not apply to her. As for the oath of citizenship, it is only administered to those whose citizenship applications have been granted, so again no waiver was required: Citizenship Act, ss 3(1)(c), 24, 27(1)(h); Citizenship Regulations, SOR/93-246, s 19(1).

[104] Put another way, regardless of what compassionate grounds may exist, subsection 5(3) only permits the Minister to waive certain requirements on the basis of such grounds. As none of the requirements that can be waived on compassionate grounds under subsection 5(3) were at issue in the applicants' citizenship applications, the Court is unable to discern any basis on which that subsection has relevance or application to the applicants.

- [105] In their submissions on these applications, the applicants cite the various H&C factors in their case and refer generally to “residency requirements” and more specifically to their non-compliance with the section 28 residency obligation. In doing so, they make two related category errors: conflating the section 28 residency obligation with the physical presence criterion in subparagraph 5(1)(c)(i) of the Citizenship Act, and conflating the circumstances in which H&C factors can be raised to address those different requirements.
- [106] Subparagraph 5(3)(b)(ii) permits the Minister to waive, for a minor applicant, the physical presence criterion in subparagraph 5(1)(c)(i) of the Citizenship Act. As noted, this criterion (1,095 days physically present in Canada in the five years prior to the application) is not in issue, both because M and A met the requirement and because, for A, it is not a requirement of an application made under subsection 5(2).
- [107] The residency obligation imposed on permanent residents by section 28 of the IRPA (730 days physically present in Canada in every five-year period) is a different requirement. It is not enumerated as something that can be waived under subsection 5(3) of the Citizenship Act. Nor does subsection 5(3) permit the Minister to waive any other requirement in subsection 5(1), such as the requirement that the applicant be a permanent resident and have no unfulfilled conditions under the IRPA. To the contrary, by enumerating specific requirements that can be waived, subsection 5(3) confines the Minister’s discretion to those listed requirements. The list is exhaustive.
- [108] The discretion under subsection 5(3) therefore does not permit the Minister to address non-compliance with the residency obligation under section 28 of the IRPA. Thus, while the applicants raise H&C factors in the context of discussing their non-compliance with the section 28 residency obligation, this is not something the Minister can address under subsection 5(3). This does not amount to a “fettering” of the Minister’s discretion under subsection 5(3), but a direct application of the limits on that discretion set out in the statute.
- [109] H&C factors may certainly be raised in an assessment of compliance with the section 28 residency obligation by virtue of paragraph 28(2)(c) of the IRPA. Justice Gagné noted as much and found there was enough information in the applicants’ file for the decision to be referred to a final determination of permanent resident status: MA at paras 43–44. While Justice Gagné did not specify the mechanics by which such a referral would occur in the absence of an application for a permanent resident card, a travel document, or a request to enter Canada, this may involve an admissibility determination being made under paragraph 41(b) and section 44 of the IRPA.
- [110] The applicants conflate these questions in their submissions, asserting that Justice Gagné “sent the file for redetermination by an officer that would consider compassionate grounds under the Citizenship Act.” This is not what Justice Gagné did. Justice Gagné referred to the consideration of H&C factors under section 28 of the IRPA, noting that the file could be referred for a final determination of permanent residence. She neither did nor could impose on a citizenship officer reviewing the matter under the Citizenship Act a

consideration that went beyond the scope of the provisions of that Act.

[111] It is worth noting that in their submissions to the Officer after Justice Gagné’s decision, the applicants made no submissions as to how H&C factors should overcome the shortfall in the section 28 residency obligation under paragraph 28(2)(c) of the IRPA. To the contrary, they submitted that “a final determination with regards to the residency obligation [...] would result in the loss of their permanent resident status.” Indeed, it has been clear throughout the entire process that the applicants were looking to avoid a determination under section 28, arguing as early as 2021 that it would constitute “bad faith” for IRCC to assess their residency obligations. Rather, their submissions on H&C factors were directed to subsections 5(3), (3.1), and (4) of the Citizenship Act.

[112] In the event, while a referral for a section 28 determination was clearly considered by the Officer, such a referral did not ultimately occur. Rather, the Officer considered the file abandoned and provided her reasons for doing so, while ensuring that the applicants’ request for consideration under subsections 5(4) would be addressed. At the risk of repetition, that decision is not under review.

(ii) Accommodation under subsection 5(3.1) [113] The applicants contend that subsection 5(3.1) should be read in the context of the headings or marginal notes above subsections 5(1) (“Grant of citizenship”), 5(3) (“Waiver by Minister on compassionate grounds”), and 5(4) (“Special cases”), as well as the heading above subsection 5(3.1) (“Disabled persons”). They contend the relief in these sections are all part of the “power of the Minister to grant citizenship,” that subsection 5(3.1) is written in mandatory terms, and that as such, it compels the Minister to take measures to grant citizenship when one or more of the legal requirements are not met. At the same time, they also argue that the Minister has a discretion under subsection 5(3.1), which can be exercised on compassionate grounds, to waive the eligibility requirements for citizenship for disabled applicants.

[114] These arguments are unpersuasive. The applicants have, in my view, wholly misread subsection 5(3.1).

[115] Subsection 5(3.1) refers to “measures that are reasonable to accommodate the needs” of a disabled person (“mesures d’accommodement raisonnables pour répondre aux besoins”). The notion of reasonable accommodation is well-established in human rights legislation and jurisprudence, including in respect of the need to accommodate people with disabilities.

[116] For example, section 2 of the Canadian Human Rights Act, RSC 1985, c H-6, states in part that the purpose of the Act is to give effect to “the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated [...]” [emphasis added]. Subsection 15(2) of that Act similarly refers to the accommodation of the needs of an individual as part of the determination of whether a requirement is a bona fide occupational requirement.

- [117] In *VIA Rail*, Justice Abella for the majority of the Supreme Court of Canada addressed the duty to accommodate at length: *Council of Canadians with Disabilities v VIA Rail Canada Inc*, 2007 SCC 15 [*VIA Rail*] at paras 109–110, 119–133. She noted that “[t]he concept of reasonable accommodation recognizes the right of persons with disabilities to the same access as those without disabilities, and imposes a duty on others to do whatever is reasonably possible to accommodate this right”: *VIA Rail* at para 121. This includes the removal of “discriminatory barriers” unless there is a bona fide justification for their retention: *VIA Rail* at para 121.
- [118] It is clear from its language and its statutory context that subsection 5(3.1) is directed at ensuring that the Minister takes into consideration reasonable measures to accommodate the needs of a disabled person, i.e., to ensure that there are no discriminatory barriers in the process that might prevent a disabled person from applying for or obtaining citizenship.
- [119] Contrary to the applicants’ submissions, the obligation to accommodate in subsection 5(3.1) does not create a generalized discretion on the part of the Minister either to grant citizenship to a disabled person based on a consideration of their circumstances, or to waive the statutory requirements for obtaining citizenship. Such an interpretation, effectively allowing an unlimited discretion to waive any requirements for applicants with a disability, would run directly contrary to the narrow and specific enumeration in subsection 5(3) of what requirements may be waived based on “a person’s particular circumstances,” including for applicants with a mental disability.
- [120] In essence, the applicants seek to rely on subsection 5(3.1) in asking the Minister to waive the obligation imposed on M by section 28 of the IRPA to be physically present in Canada for 730 days in every five-year period, on grounds that M was caring for a disabled child and could not travel back to Canada. This goes well beyond the scope of reasonable accommodation as provided for in subsection 5(3.1). It also flies in the face of the overall statutory scheme, which provides an avenue by which such factors can be considered, namely an assessment of H&C factors conducted under paragraph 28(2)(c). The applicants, having deliberately chosen not to have those factors considered in an examination of their residency obligation under section 28, cannot successfully attempt to shoehorn them into the notion of reasonable accommodation referred to in subsection 5(3.1).
- [121] Contrary to the applicants’ argument, the headings of different subsections cannot be read to expand the scope or nature of the obligation contained in subsection 5(3.1). It is clear, for example, that both the discretion found in subsection 5(3) and that found in subsection 5(4) are distinct from the duty to accommodate in subsection 5(3.1). The applicants are correct that subsection 5(3.1) refers to section 5 of the Citizenship Act as a whole with its introductory reference use of the phrase “[f]or the purposes of this section.” However, while the obligation to consider accommodation measures may arise in the context of an application under subsection 5(1), there is no indication that the “measures” contemplated in subsection 5(3.1) include the grant of citizenship when the requirements for that grant are not met.

(iii) The Delegate's decision on subsections 5(3) and (3.1) is reasonable [122] The limited scope of the discretion under subsection 5(3) and the nature of the duty to accommodate under subsection 5(3.1) are no doubt the reason that the Delegate addressed them only briefly in her initial decision. Her reasons on these issues read as follows:

For section (3.1) of the Act for disabled persons, this is in reference to compassionate grounds under section (3) of the Act. If any of the conditions for compassionate grounds apply for a disabled person, then the Minister may waive on compassionate grounds. Examples include waiving the language, knowledge and in some cases taking the oath. Section (3.1) of the Act may be applicable if the grant is approved for the child.

[123] This passage includes some unclear language. It is unclear, for example, what the Delegate means when saying that subsection 5(3.1) "is in reference to compassionate grounds under [sub]section (3)," since the duty to accommodate a disability in subsection 5(3.1) does not refer to compassionate grounds. Indeed, the duty to reasonably accommodate those with a disability arises as a matter of human rights law and the positive obligation set out in subsection 5(3.1), not as a question of discretion based on H&C grounds. However, the Delegate is correct in saying that if the conditions for compassionate grounds set out in paragraph 5(3)(c) apply for a person with a mental disability, then the Minister may waive the requirement for the taking of the oath as described in that section. Similarly, regardless of any disability, the Minister may waive the language and knowledge requirements based on compassionate factors.

[124] It is also unclear what the Delegate meant by her statement that subsection 5(3.1) "may be applicable if the grant is approved for the child." I agree with the applicants that, to the extent that the Delegate intended to indicate that subsection 5(3.1) only applies after a grant of citizenship is approved, this is incorrect. The duty to accommodate in subsection 5(3.1) may arise before the grant of citizenship. It may, for example, arise in the context of an assessment under subsection 5(1). If an applicant for citizenship had a visual impairment, subsection 5(3.1) could require consideration of what measures were needed to accommodate that impairment, such as conveying requests for additional information or evidence under section 23.1 in an accessible form. The subsection might similarly impose an obligation to consider whether accommodation measures were necessary in respect of an examination before the Minister or a citizenship judge, either in person or by means of telecommunication. These examples do not purport to limit either the nature or extent of the duty to accommodate, but they underscore that the duty to accommodate is not limited to the period after the grant.

[125] That said, in context, I take the Delegate's statement to mean that in the circumstances, she understood that accommodation might be required in A's case if citizenship were granted to the applicants. However, there was no indication that A required accommodation of the nature contemplated in subsection 5(3.1) before that point. In particular, the central question before the Delegate was whether the applicants had demonstrated that theirs was a case of special and unusual hardship. There was no indication that A required any

measures to accommodate her disability in making this case. Certainly, the applicants did not make any particular request for accommodation measures, other than their misguided submissions that this could include waiving the statutory requirements for citizenship or the section 28 residency obligation.

- [126] In this regard, the applicants' submissions to the Delegate in respect of subsection 5(3.1) included the submission that it would have been unreasonable to force her to travel to Canada in the midst of a global pandemic. Had the Minister required A, for example, to travel to Canada during the pandemic to attend an examination, it might well have been reasonable to request accommodation in the form of, say, a written or videoconference examination. However, the Minister did not require A to travel to Canada during the pandemic. Rather, M was required by statute to comply with her residency obligation during each five-year period. Leaving aside whether the applicants have demonstrated that the pandemic provides a sufficient explanation for their lengthy absence from Canada—which commenced two and a half years before the pandemic and continued long after travel restrictions had been lifted—this is a matter for a paragraph 28(2)(c) determination and not a question of reasonable accommodation.
- [127] Similarly, reference to A's well-being in being reunited with her mother and sisters in Canada is not a matter of reasonable accommodation of a disability and creates no obligation on the part of the Minister under subsection 5(3.1).
- [128] I therefore conclude that the Delegate's reasons with respect to subsections 5(3) and 5(3.1) in her initial decision, while brief and somewhat unclear, are reasonable given the factual context and the submissions made to her. In any event, any error in her description of these sections cannot have affected the outcome of her decision since (a) neither applicant required the waiver of any requirement that could be waived in accordance with subsection 5(3); and (b) neither A as a person with a disability, nor M as her caregiver, required any measures to reasonably accommodate A's disability that could be the subject of the obligation under subsection 5(3.1). Moreover, as will be seen below, the Delegate provided additional explanation and clarity in respect of her reasoning on these sections in her reconsideration decision, further addressing any concern regarding the brevity and lack of clarity in the passage above.
- (b) Subsection 5(4) (i) The discretion under subsection 5(4) [129] Subsection 5(4) empowers the Minister, in her discretion, to grant citizenship in three specific circumstances: (i) to alleviate cases of statelessness; (ii) to alleviate cases of special or unusual hardship; and (iii) to reward services of an exceptional value to Canada: *Grossmann-Hensel v Canada* (Citizenship and Immigration), 2022 FC 193 at paras 70, 82. Only the second of these circumstances is at issue in these applications.
- [130] As Justice Gleeson noted in *Grossmann-Hensel*, what constitutes "special and unusual hardship" under subsection 5(4) of the Citizenship Act has not been developed to the same degree as the meaning of "hardship" when considered as an H&C factor under subsection

25(1) of the IRPA: Grossmann-Hensel at para 84, citing *Ayaz v Canada* (Citizenship and Immigration), 2014 FC 701 at para 50. However, the threshold for the exercise of discretion under subsection 5(4) has been described as “high” and “exacting”: *Abdellatif v Canada* (Citizenship and Immigration), 2023 FC 983 at paras 44, 51; *Tabori v Canada* (Citizenship and Immigration), 2022 FC 1076 at paras 28–30; *Hassan v Canada* (Citizenship and Immigration), 2023 FC 717 at paras 8, 27; *Calleya v Canada* (Citizenship and Immigration), 2024 FC 1624 at paras 28–29. This Court has also noted that the French version of the subsection, which refers to “une situation particulière et inhabituelle de détresse,” connotes anguish and distress, tending to confirm the “high severity of the hardship that would open the door to the exercise of discretion”: *Calleya* at para 31.

- [131] In particular, this Court has underscored that simply not having citizenship or encountering delays before it can be acquired is not in itself a matter of “special and unusual hardship”: *Ayaz* at paras 50–51; *Hassan* at para 27; *Tabori* at paras 41–43. However, the consequences of a denial or delay in obtaining citizenship may be relevant factors in considering special and unusual hardship: *Grossmann-Hensel* at para 85; *Ayaz* at para 51.
- [132] The applicants raise two arguments regarding the interpretation and scope of subsection 5(4) that are worth addressing here before turning to their other arguments regarding the Delegate’s decision.
- [133] First, the applicants submit that the purpose of subsection 5(4) is to address cases of special and unusual hardship “in order to end any arbitrary abuse by [IRCC] officers.” They therefore argue the Delegate ought to have reviewed the Officer’s actions in requesting a valid permanent resident card or travel document and their subsequent abandonment decision; ought to have concluded that the Officer’s request and decision were contrary to Justice Gagné’s order; and ought to have considered this to be an aspect of special and unusual hardship that justified the granting of citizenship.
- [134] I cannot agree. The purpose of subsection 5(4) is to give the Minister the discretion to grant citizenship in certain special cases, despite the usual requirements of the Citizenship Act. It is not to provide a review mechanism through which one official re-examines the legality of decisions by another official. That is the purview of the judicial review process specifically addressed in Part V.1 of the Citizenship Act. Nothing in the language, statutory context, or purpose of subsection 5(4) allows a conclusion that the discretion in that subsection is designed to act as a substitute for this Court’s exclusive judicial review jurisdiction: *Federal Courts Act*, RSC 1985, c F-7, s 18; *Citizenship Act*, ss 22.1–22.4.
- [135] The applicants also contend that their interpretation of subsection 5(4) is supported by international treaties such as the Convention on the Rights of the Child, Can TS 1992 No 3. International treaties can certainly be relevant to the interpretation of domestic legislation, particularly where that legislation is intended to implement the treaty: *Vavilov* at para 114; *Mason v Canada* (Citizenship and Immigration), 2023 SCC 21 at para 72. However, the applicants’ vague and general reference to the Convention on the Rights of the Child—an

argument not raised before the Delegate—is of little assistance in interpreting the scope of subsection 5(4). I accept that the best interests of the child, to which the Convention on the Rights of the Child gives primacy, can be a relevant consideration in a subsection 5(4) analysis: Grossmann-Hensel at paras 26, 91; Hassan at para 6. However, this does not change the overall interpretation of subsection 5(4), which relates to the alleviation not just of any hardship, but of special and unusual hardship: Grossmann-Hensel at paras 70, 78, 82.

[136] Second, the applicants submit that the approach to “special and unusual hardship” in subsection 5(4) of the Citizenship Act ought to parallel the approach to H&C applications under subsection 25(1) of the IRPA. They cite the reference in *Kanthasamy* to factors appearing in IRCC’s former guidelines regarding H&C applications as “Factors to consider in assessment of hardship,” such as establishment, ties to Canada, the best interests of children affected, factors in the country of origin, health considerations, and the consequences of separation of relatives: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 27.

[137] An applicant can certainly raise a variety of factors for consideration by the Minister under subsection 5(4): *Calleya* at para 39. However, neither the text of subsection 5(4) nor its legislative context suggests that it is supposed to fulfill the same role in respect of citizenship that subsection 25(1) of the IRPA has in respect of permanent residence. Parliament chose to use different language in subsection 5(4) (“special and unusual hardship”) than is used in either subsection 5(3) of the Citizenship Act (“compassionate grounds”) or subsection 25(1) of the IRPA (“humanitarian and compassionate considerations”). That legislative choice must be respected. Contrary to the applicants’ submissions, the legislative history of subsection 25(1) of the IRPA, reviewed in *Kanthasamy*, does not suggest that any provision referring to hardship is intended to invoke the *Chirwa* test: *Kanthasamy* at paras 11–21; citing *Chirwa v Canada (Minister of Citizenship and Immigration)*, [1970] IABD No 1, 4 IAC 338. Rather, as this Court has previously found, “[t]he assessment under the ‘special and unusual hardship’ ground of s 5(4) is not equivalent to a humanitarian and compassionate assessment under s 25(1)” of the IRPA: *Hassan* at para 33.

(ii) The Delegate’s decision on subsection 5(4) is reasonable [138] In their submissions to the Delegate in December 2023, the applicants relied primarily on A’s disabilities to support their contention that their case was one of special and unusual hardship. They cited A’s need to evolve in a stable environment with the care and support of her mother and sisters, and the family’s desire to be reunited in Canada, where A’s sisters were studying and wish to live, and where M always intended to return. They submitted that A’s medical condition was a significant factor explaining the applicants’ absence from Canada during the last years, “particularly during the pandemic.” The applicants also referred to the length of processing of their citizenship applications, a matter that they had raised more directly in connection with subsection 5(4) in earlier submissions.

- [139] As set out above, the Delegate's initial decision addressed both the allegation of unreasonable processing times and the submissions regarding A's special needs. Considering these issues, she found that the applicants had not shown special and unusual hardship that warranted granting citizenship.
- [140] The applicants raise a number of criticisms of the Delegate's reasons. For the following reasons, I am not persuaded that the applicants have identified any sufficiently serious shortcomings in the decision that it can be considered unreasonable.
- [141] I have addressed above certain aspects of the applicants' arguments regarding delay, particularly as they relate to procedural fairness. However, the issue is also relevant to an assessment of the reasonableness of the decision, given that it is a factor addressed by the Delegate in her decision and it is raised by the applicant as a factor for consideration in their request for relief under subsection 5(4).
- [142] The Delegate reviewed the procedural history of the applicants' citizenship applications and concluded that in the circumstances, the processing time—and particularly the time between the applications and the first abandonment decision—was reasonable and “a justifiable processing time for complex files to be actioned during this time.” The applicants argue that this conclusion is unreasonable because it is inadequately justified and based on unexplained complexity and the COVID-19 pandemic. I cannot agree. While the Delegate's reasons on the issue are not lengthy, she reasonably considered both the time involved and the reasons for that timing.
- [143] In particular, contrary to the applicants' arguments, it was not unreasonable for the Delegate to consider the impact that the COVID-19 pandemic had on the processing of citizenship applications. The applicants claim that referring to the pandemic is a “discredited excuse,” relying on this Court's decision in *Almuhtadi*. However, nothing in *Almuhtadi* suggests that it is unreasonable or inappropriate to consider the impacts of the pandemic on processing times. In reviewing the reasonableness of a delay in a *mandamus* application, Justice Ahmed found that “the COVID-19 pandemic does not fully explain IRCC's delay” [emphasis added] and that the pandemic “does not negate the Respondents' decision-making capacity for the entirety of the time subsequent to March 2020” [emphasis added]: *Almuhtadi* at para 47. At the same time, however, Justice Ahmed recognized on several occasions in his decision that the impacts of the pandemic were part of the overall assessment of the reasonableness of the delay, accepting that it had “slowed IRCC processing times”: *Almuhtadi* at paras 34, 38.
- [144] Certainly, in the present case, COVID-19 cannot explain the entire processing time for the applicants' citizenship applications, since it was filed well before the onset of the pandemic. However, the Delegate did not purport to attribute the entire period to delays occasioned by the pandemic. She simply referred to it in the overall context of assessing the time between the applications and the first abandonment in 2021. This was reasonable.

- [145] I note no small irony in the applicants' arguments on this issue, as they rely heavily on the travel restrictions of the pandemic as the reason they could not comply with the section 28 residency obligation. Yet those travel restrictions, either as they related to the general population or as they might have affected someone with A's conditions, cannot explain the applicants' personal choices to remain outside Canada for the period between their applications and the onset of the pandemic, and to remain outside after those restrictions were lifted. Further, to the extent the pandemic caused the applicants to fall out of compliance with the section 28 residency obligation, (a) this would have been a ground to raise in a determination under subsection 28(2)(c), but the applicants chose to avoid such a determination; and (b) their non-compliance would not be due to delays in the processing of their citizenship applications.
- [146] In this regard, the applicants' submissions are replete with assertions that their failure to return to Canada to ensure they complied with the section 28 residency obligation was beyond their control. There are several answers to this. First, as discussed above, it is unclear that this is true as a matter of fact, given the applicants' own decisions that took and kept them away from Canada. Second, if the applicants were in fact prevented from complying for reasons beyond their control, this is something they could have raised at any time in a determination under subsection 28(2)(c). The fact that they remain steadfastly unwilling to submit themselves to such determination undermines their argument that their failure to comply should lie at the feet of others. Third, while the reasons that an applicant may not be eligible for citizenship can be relevant to an application under subsection 5(4), the focus of the analysis is whether there is special and unusual hardship that warrants relief.
- [147] It is also worth reiterating in respect of the applicants' arguments regarding delay that the jurisprudence of this Court clearly establishes that the mere fact of not having citizenship or of encountering further delays before it can be acquired is not of itself a matter of special and unusual hardship, absent some significant additional consequence: Ayaz at para 50; Hassan at para 27; Grossmann-Hensel at paras 84–85.
- [148] The additional consequence cited by the applicants as special and unusual hardship relates to A's disabilities and her future care. In addition to their submissions regarding compassionate consideration, discussed above, the applicants contend that the Delegate's treatment of this issue was unreasonable in failing to consider the evidence before her, particularly the 2023 psycho-pedagogical report and the 2021 medical report. They argue that these documents confirm that the "goal and plan" was to have A join her sisters, who would be her future care takers.
- [149] I cannot agree. Neither the psycho-pedagogical report nor the medical report addresses a plan to have A join her sisters. At best, the psycho-pedagogical report states that "[i]t is very difficult for [A] to live away from her sisters," an assertion that the applicants did not highlight in their submissions to the Delegate. Indeed, the applicants' submissions did not refer to the medical evidence at all, and that medical evidence says nothing about hardship

to either A or M that would be alleviated by a grant of citizenship. In the circumstances, I cannot consider it unreasonable for the Delegate not to have made specific reference to the medical reports in considering A's disabilities. As the Federal Court of Appeal recently confirmed, "[i]t is trite law that decision makers need not refer in their reasons to each and every piece of evidence before them, as they are presumed to have considered the whole record": *Algoma Steel Inc v Canada (Attorney General)*, 2023 FCA 164 at para 66; *Vavilov* at paras 125–128.

[150] The applicants also argue that it was unreasonable for the Delegate to refer in her decision to A's "short-term" and "long-term" interests, since subsection 5(4) is not limited to the future or to "long-term future special and unusual hardship." This argument is without merit. It is clear that in referring to A's short-term and long-term interests, the Delegate was directly considering the applicants' own submissions—made in their letters of March and November 2021—regarding the short-term and long-term interests of A. Indeed, the Delegate expressly cited the applicants' argument that they should not have to choose between A's short-term and long-term interests. It cannot be unreasonable for a decision-maker to directly address an argument raised by the applicants: *Vavilov* at paras 127–128. I note that this submission is particularly ill-founded in light of the applicants' subsequent submissions, in their reconsideration request, directed toward "[A]'s Long-Term Interests."

[151] Nor is it unreasonable for the Delegate not to have addressed arguments or factors that were not raised by the applicants. The applicants contend that it was unreasonable for the Delegate not to have articulated the factors that she considered, including establishment in Canada, ties to Canada, and factors in the country of origin. However, the applicants did not raise these factors, and it was not incumbent on the Delegate to itemize all potential factors that might have been raised but were not. Nor did the Delegate limit her discretion to exclude the possibility that a particular factor could be determinative, as the applicants contend.

[152] In short, the Delegate addressed the arguments and circumstances raised by the applicants and did so in a reasonable manner, concluding that they were not satisfied that the applicants had shown special or unusual hardship warranting a discretionary grant of citizenship. Many of the applicants' unreasonableness arguments seek to muddy the waters between the discretion that can be exercised under subsection 5(4) and other provisions in the Citizenship Act and the IRPA. Others are simply unsupported on the record before the Court. The remainder largely amount to repeating their submissions regarding A's condition and the unreasonableness of the delay in processing their citizenship applications. However, it is not the role of this Court on judicial review to conduct its own assessment of the evidence and reach its own conclusions on how it would decide the matter: *Vavilov* at paras 83, 125. Mere disagreement with the decision reached under subsection 5(4) does not render it unreasonable: *Grossmann-Hensel* at para 90. Rather, an applicant must show that the decision is internally incoherent, fails to provide a transparent, intelligible, and justified basis for the outcome, or does not conform to the

legal and factual constraints upon it: Vavilov at paras 99–100. The applicants have not done so.

- (2) The reconsideration decision is reasonable [153] As noted above, the applicants' request for reconsideration included a new declaration from M, further copies of the medical evidence, and a submission letter. The submission letter raised a concern that the medical evidence had not been considered, made further submissions about A's disability, the impossibility of travelling during the pandemic, and A's long-term interests, plans, and wishes. It also raised a concern that the applicants' requests under subsections 5(3) and (3.1) were not assessed.

[154] As the Minister points out, the Delegate's decision on reconsideration addressed the issues raised in the applicants' reconsideration submissions. In some cases, the Delegate provided more detailed reasons, clarifying the scope of subsections 5(3), (3.1), and (4), confirming that she had taken into account what was submitted, and addressing the particular additional submissions raised regarding A, her condition, her best interests, and her plans and wishes.

[155] The applicants' arguments regarding the reasonableness of the reconsideration decision mostly coincide with those raised in respect of the original decision, as the applicants presented their arguments jointly in respect of both decisions. Those arguments are addressed above, and need not be repeated as there is nothing relevant in the reconsideration decision that changes the analysis. I will focus for the following discussion on arguments raised by the applicants in respect of particular statements made by the Delegate in her reconsideration decision.

[156] With respect to subsections 5(3) and (3.1), the applicants again contend that the Delegate fettered her discretion in applying a narrow approach to these provisions. For the reasons given above, I find that the Delegate's description of the discretion found in subsection 5(3) and the duty to accommodate found in subsection 5(3.1) are reasonable. I note, with reference to the discussion at paragraph [124] above, that the Delegate's second decision makes clear that she correctly understood that the need for accommodation could arise before the grant of citizenship, as she makes reference to the possibility, for example, of administering the knowledge test in Braille, large-print, or an oral version. As the Delegate correctly stated, subsection 5(3.1) "is not to grant applicants [citizenship] because they are a disabled person but is for providing accommodations for disabled applicants." Given these other references, I cannot take the Delegate's statement that "[n]o accommodations are needed under 5(3.1) as the file has not been granted" as providing her view that accommodation is only relevant once an application for citizenship has been granted. As indicated above, no request for accommodation falling within the scope of subsection 5(3.1) was made.

[157] The applicants also take issue with the Delegate's discussion of A's ability to travel. While arguing that the Delegate shows "uncompassionate and circular reasoning that fails to reveal a rational chain of analysis and compassion pursuant to subsection 5(3)," the

applicants have not in fact identified any error in the Delegate's analysis. As the Delegate reasonably noted, A's condition, the pandemic, and her episode of depression may have prevented her from travelling, but the evidence did not show any other inability to travel outside the period of the pandemic.

[158] The same is true of the applicants' arguments regarding the Delegate's discussion of A's plan to be reunited with her sisters in Canada, which the Delegate described as "futuristic." The applicants' submissions on this issue are limited to repeating that her plan is to join her sisters and that this will be better for A's overall adaptation and stability. Indeed, they go so far as to assert that "[h]er overall adaptation and stability require that she be granted citizenship." This argument is made both without evidentiary support and without consideration of the relevant legal test, which requires the existence of special and unusual hardship.

[159] The applicants have not otherwise demonstrated that it was unreasonable for the Delegate to decline to reconsider their earlier decision, or that their reasons in respect of the reconsideration request lack the coherence, transparency, intelligibility, and justification required of a reasonable decision.

(3) Conclusion [160] Having considered the various, numerous, and often scattergun arguments presented by the applicants in respect of the reasonableness of the Delegate's decisions, I am not satisfied that they have demonstrated that either decision is unreasonable. Rather, the majority of the applicants' arguments consist of either misreading the relevant statutory provisions, insisting that their case is one of special and unusual hardship, or reiterating their arguments about delay in their citizenship applications and their failure during that period to comply with the residency obligation under section 28 of the IRPA. None of these arguments establishes a basis to interfere with the decisions.

IV. Conclusion [161] As the applicants have not established that the Delegate's decisions are unfair or unreasonable and have not sought judicial review of the Officer's decisions, the applications for judicial review must be dismissed. Since the applicants were unsuccessful and the Minister does not seek costs, I do not need to address the applicants' request for costs.

[162] Neither party asked the Court to certify a serious question of general importance. I agree that no question meeting the requirements for certification under paragraph 22.2(d) of the Citizenship Act is raised.

JUDGMENT IN T-1708-24 AND T-1754-24

THIS COURT'S JUDGMENT is that

The applications for judicial review are dismissed.

"Nicholas McHaffie"

Judge

ANNEX “A” – STATUTORY PROVISIONS

Citizenship Act, RSC 1985, c C-29

Grant of Citizenship

Attribution de la citoyenneté

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

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

(a) makes application for citizenship;

a) en fait la demande;

[...]

[...]

(c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, has, subject to the regulations, no unfulfilled conditions under that Act relating to his or her status as a permanent resident and has

c) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l’immigration et la protection des réfugiés, a, sous réserve des règlements, satisfait à toute condition rattachée à son statut de résident permanent en vertu de cette loi et :

(i) been physically present in Canada for at least 1,095 days during the five years immediately before the date of his or her application, and

(i) a été effectivement présente au Canada pendant au moins mille quatre-vingt-quinze jours au cours des cinq ans qui ont précédé la date de sa demande,

[...]

[...]

(d) if 18 years of age or more but less than 55 years of age at the date of his or her application, has an adequate knowledge of one of the official languages of Canada;

d) si elle a 18 ans ou plus mais moins de 55 ans à la date de sa demande, a une connaissance suffisante de l’une des langues officielles du Canada;

(e) if 18 years of age or more but less than 55 years of age at the date of his or her application, demonstrates in one of the official languages of Canada that he or she has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and

e) si elle a 18 ans ou plus mais moins de 55 ans à la date de sa demande, démontre dans l’une des langues officielles du Canada qu’elle a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

(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.

[...]

[...]

Grant of citizenship

Attribution de la citoyenneté

5 (2) The Minister shall grant citizenship to any person who is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act and is the minor child of a citizen, if

5 (2) Le ministre attribue en outre la citoyenneté à l'enfant mineur d'un citoyen qui est résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés si les conditions suivantes sont réunies :

(a) an application for citizenship is made to the Minister by a person authorized by regulation to make the application on behalf of the minor child; and

a) la demande lui est présentée par la personne autorisée par règlement à représenter le mineur;

(b) the person has, subject to the regulations, no unfulfilled conditions under that Act relating to his or her status as a permanent resident.

b) le mineur a, sous réserve des règlements, satisfait à toute condition rattachée à son statut de résident permanent en vertu de cette loi.

Waiver by Minister on compassionate grounds

Dispenses

5 (3) The Minister may, in his or her discretion, after having reviewed a person's particular circumstances, waive on compassionate grounds,

5 (3) Pour des raisons d'ordre humanitaire, le ministre a le pouvoir discrétionnaire d'exempter, après examen de ses circonstances particulières :

(a) in the case of any person, the requirements of paragraph (1)(d) or (e);

a) toute personne des conditions prévues aux alinéas (1)d) ou e);

(b) in the case of a minor

b) dans le cas d'un mineur :

[...]

[...]

(ii) the requirement respecting the length of physical presence in Canada set out in paragraph (1)(c),

(ii) de la condition relative à la durée de présence effective au Canada, énoncée à l'alinéa (1)c),

[...]

[...]

(iv) the requirement respecting the taking of the oath of citizenship, or

(iv) de la condition relative à la prestation du serment de citoyenneté

(v) the requirement respecting who may make an application in respect of a minor set out in paragraph 1.04(1); and

(v) de la condition relative à la personne qui peut faire une demande concernant un mineur, énoncée à l'alinéa (1.04)a);

(c) in the case of any person who is prevented from understanding the significance of taking the oath of citizenship by reason of a mental disability, the requirement to take the oath.

c) dans le cas d'une personne incapable de saisir la portée du serment de citoyenneté en raison d'une déficience mentale, de l'exigence de prêter ce serment.

Disabled persons

Personnes handicapées

(3.1) For the purposes of this section, if an applicant for citizenship is a disabled person, the Minister shall take into consideration the measures that are reasonable to accommodate the needs of that person.

(3.1) Pour l'application du présent article, le ministre prend en compte les mesures d'accommodement raisonnables pour répondre aux besoins de l'auteur d'une demande de citoyenneté qui est une personne handicapée.

Special cases

Cas particuliers

(4) Despite any other provision of this Act, the Minister may, in his or her discretion, grant citizenship to any person to alleviate cases of statelessness or of special and unusual hardship or to reward services of an exceptional value to Canada.

(3.1) Malgré les autres dispositions de la présente loi, le ministre a le pouvoir discrétionnaire d'attribuer la citoyenneté à toute personne afin de remédier à une situation d'apatridie ou à une situation particulière et inhabituelle de détresse ou de récompenser des services exceptionnels rendus au Canada.

[...]

[...]

Abandonment of application

Abandon de la demande

13.2 (1) The Minister may treat an application as abandoned

13.2 (1) Le ministre peut considérer une demande comme abandonnée dans les cas suivants :

- (a) if the applicant fails, without reasonable excuse, when required by the Minister under section 23.1,
- a) le demandeur omet, sans excuse légitime, alors que le ministre l'exige au titre de l'article 23.1 :
- (i) in the case where the Minister requires additional information or evidence without requiring an appearance, to provide the additional information or evidence by the date specified, or
- (i) de fournir, au plus tard à la date précisée, les renseignements ou les éléments de preuve supplémentaires, lorsqu'il n'est pas tenu de comparaître pour les présenter,
- (ii) in the case where the Minister requires an appearance for the purpose of providing additional information or evidence, to appear at the time and at the place — or at the time and by the means — specified or to provide the additional information or evidence at his or her appearance; or
- (ii) de comparaître aux moment et lieu — ou au moment et par le moyen — fixés, ou de fournir les renseignements ou les éléments de preuve supplémentaires lors de sa comparution, lorsqu'il est tenu de comparaître pour les présenter;
- (b) in the case of an applicant who must take the oath of citizenship to become a citizen, if the applicant fails, without reasonable excuse, to appear and take the oath at the time and at the place — or at the time and by the means — specified in an invitation from the Minister.
- b) le demandeur omet, sans excuse légitime, de se présenter aux moment et lieu — ou au moment et par le moyen — fixés et de prêter le serment alors qu'il a été invité à le faire par le ministre et qu'il est tenu de le faire pour avoir la qualité de citoyen.

Effect of abandonment

Effet de l'abandon

(2) If the Minister treats an application as abandoned, no further action is to be taken with respect to it.

(2) Il n'est donné suite à aucune demande considérée comme abandonnée par le ministre.

[...]

[...]

Additional information, evidence or appearance

Autres renseignements, éléments de preuve et comparution

23.1 The Minister may require an applicant to provide any additional information or evidence relevant to his or her application, specifying the date by which it is required. For that purpose, the Minister may require the applicant to appear in person or by any means of telecommunication to be examined before the Minister or before a citizenship judge, specifying the time and the place — or the time and the means — for the appearance.

23.1 Le ministre peut exiger que le demandeur fournisse des renseignements ou des éléments de preuve supplémentaires se rapportant à la demande et préciser la date limite pour le faire. Il peut exiger à cette fin que le demandeur comparaisse — devant lui ou devant le juge de la citoyenneté pour être interrogé — soit en personne et aux moment et lieu qu'il fixe, soit par le moyen de télécommunication et au moment qu'il fixe.

Immigration and Refugee Protection Act, SC 2001, c 27

Definitions

Définitions

2 (1) The definitions in this subsection apply in this Act.

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

[...]

[...]

permanent resident means a person who has acquired permanent resident status and has not subsequently lost that status under section 46. (résident permanent)

résident permanent Personne qui a le statut de résident permanent et n'a pas perdu ce statut au titre de l'article 46. (permanent resident)

[...]

[...]

Residency obligation

Obligation de résidence

28 (1) A permanent resident must comply with a residency obligation with respect to every five-year period.

28 (1) L'obligation de résidence est applicable à chaque période quinquennale.

Application

Application

(2) The following provisions govern the residency obligation under subsection (1):

(2) Les dispositions suivantes régissent l'obligation de résidence :

(a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are

a) le résident permanent se conforme à l'obligation dès lors que, pour au moins 730 jours pendant une période quinquennale, selon le cas :

(i) physically present in Canada,

(i) il est effectivement présent au Canada,

[...]

[...]

(b) it is sufficient for a permanent resident to demonstrate at examination

[...]

(ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year period immediately before the examination;

b) il suffit au résident permanent de prouver, lors du contrôle, qu'il se conformera à l'obligation pour la période quinquennale suivant l'acquisition de son statut, s'il est résident permanent depuis moins de cinq ans, et, dans le cas contraire, qu'il s'y est conformé pour la période quinquennale précédant le contrôle;

(c) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.

c) le constat par l'agent que des circonstances d'ordre humanitaire relatives au résident permanent — compte tenu de l'intérêt supérieur de l'enfant directement touché — justifient le maintien du statut rend inopposable l'inobservation de l'obligation précédant le contrôle.

[...]

[...]

Non-compliance with Act

Manquement à la loi

41 A person is inadmissible for failing to comply with this Act

- (a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and
- (b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.

41 S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.

Permanent resident

Résident permanent

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;

[...]

[...]

Right of appeal — residency obligation

Droit d'appel : obligation de résidence

63 (4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28.

63 (4) Le résident permanent peut interjeter appel de la décision rendue hors du Canada sur l'obligation de résidence.

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SOLICITORS OF RECORD

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