Federal Court  Cour fédérale

Date: 20160502

Docket: IMM-388-15

Citation: 2016 FC 483

Ottawa, Ontario, May 2, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

GEORGE MEKVABISHVILI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

[1] These are reasons issued pursuant to the Judgment dated April 29, 2016, whereby the within application for judicial review was dismissed.

[2] Mr. George Mekvabishvili (the "Applicant") seeks judicial review of a decision of the Immigration and Refugee Board, Immigration Appeal Division (the "IAD"). In that decision, dated December 19, 2014, the IAD dismissed the appeal of the Applicant against a refusal of the

Minister of Citizenship and Immigration (the "Respondent"), by his delegate, to issue a permanent resident visa to his wife, Liana Iriayli. The Applicant's wife was sponsored for permanent resident status from within Canada pursuant to section 72 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations").

[3] The Applicant's wife had applied for permanent residence from within Canada as a member of the Spouse or Common-law Partner class. In a letter dated December 17, 2012, an Immigration Officer advised the Applicant's wife that her application may be refused, on the basis that she was not cohabitating with the Applicant. The Immigration Officer provided Mrs. Iriayli the opportunity to provide any further information that she wished to have considered by the Immigration Officer.

[4] By letter dated February 26, 2013, the Immigration Officer advised Mrs. Iriayli that her application for permanent resident status in Canada, under the Spouse or Common-law Partner in Canada class, was refused. The basis for the negative decision was the insufficiency of evidence to establish cohabitation with her spouse, that is the Applicant.

[5] By Notice of Appeal dated March 1, 2013, the Applicant appealed to the IAD.

[6] By letter dated August 21, 2014, the Applicant was advised that he may not have a right of appeal to the IAD, since his appeal concerned his spouse's application for permanent residence from within Canada. The Applicant was advised that his appeal apparently did not fall

within the provisions of subsections 63(1) to 63(4) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act").

[7] In its decision, the IAD stated the issue for consideration as follows:

> The issue at this appeal is whether a sponsor who sponsors the application for a member of the family class from within Canada has the right to appeal a negative decision of an immigration officer at the IAD.

[8] The IAD found that it did not have jurisdiction to adjudicate an appeal from a sponsor of an in-Canada family class application.

[9] The decision of the IAD involves a question of interpretation of that tribunal's home statute, that is the Act. The decision is subject to review in this court on the standard of reasonableness; see the decision in *Wilson v. British Columbia (Superintendent of Motor Vehicles)*, [2015] 3 S.C.R. 300 at paragraph 17.

[10] The right to appeal to the IAD is governed by sections 62 to 71of the Act. Subsection 63(1) is relevant to this case and provides as follows:

63 (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	63 (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

[11] The IAD found that the right of appeal conferred by subsection 63(1) is available to a person whose application for admission into Canada, as a member of the family class, has been refused. The IAD noted that in this case, the Applicant's spouse was already present in Canada and she had not been refused a permanent resident visa; rather, she had been refused the status of a permanent resident which she required in order to remain in Canada.

[12] The IAD found that Parliament, in enacting subsection 63(1), intended to limit the right of appeal to persons seeking a "permanent residence visa" and intended to make a distinction between such persons and individuals seeking permanent resident status.

[13] In applying its interpretation of the relevant provision to the evidence before it, the IAD concluded that it did not have jurisdiction to hear the Applicant's appeal.

[14] On the basis of the evidence before the IAD, I am satisfied that the IAD reasonably determined that it did not have jurisdiction to adjudicate the Applicant's appeal. The Applicant has not shown any error by the IAD in making its decision. Accordingly, there is no basis for judicial intervention and this application for judicial review was dismissed.

[15] As stated in the judgment issued on April 29, 2016, there was no question for certification arising.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-388-15
STYLE OF CAUSE:	GEORGE MEKVABISHVILI v. MCI
PLACE OF HEARING:	TORONTO
DATE OF HEARING:	OCTOBER 28, 2015
JUDGMENT AND REASONS:	HENEGHAN J.
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APPEARANCES:

Victor Pilnitz	FOR THE APPLICANT
Christopher Crighton	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Victor Pilnitz Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT