Federal Court  Cour fédérale

Date: 20210706

Docket: IMM-7060-19

Citation: 2021 FC 709

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 6, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

JULIENNE MALANDA
ARISTIDE KOUDIATOU

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The female applicant, Julienne Malanda, is a citizen of the Republic of Congo. Her son, the male applicant, Aristide Koudiatou, has been a Canadian citizen since 2014. He wishes to sponsor his mother as a member of the family class. The letter accompanying the sponsorship

application indicates that the application is based on paragraph 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] On October 31, 2019, an immigration officer informed the male applicant that the sponsorship application did not meet the processing requirements. In the letter responding to the application, the officer stated that, on January 1, 2019, pursuant to section 87.3 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], the Minister of Citizenship and Immigration [Minister] published the *Ministerial Instructions with respect to the processing of applications for a permanent resident visa made by parents or grandparents of a sponsor as members of the family class and the processing of sponsorship applications made in relation to those applications* [Ministerial Instructions]. These include instructions on the eligibility of new applications to sponsor parents and grandparents. In order to be considered eligible, such an application must be made by a person who has successfully submitted an interest to sponsor and who has received an invitation to submit a complete application from Immigration, Refugees and Citizenship Canada [Department]. The officer informed the male applicant that neither his sponsorship application nor the female applicant's related application for permanent residence would be processed or placed in queue for 2019.

[3] The applicants argue that the officer erred in the analysis of the requirements to process the application, thereby violating the principles of natural justice and procedural fairness. Since the sponsorship application was made pursuant to paragraph 117(1)(h) of the IRPR, the applicant was not required to submit an interest to sponsor in advance in order to receive an invitation

from the Department. They also argued that they had the right to receive a decision with reasons explaining why paragraph 117(1)(h) of the IRPR did not apply.

II. Analysis

[4] The decision that is the subject of judicial review in this case is the refusal to process the male applicant's sponsorship application. This refusal arose from the officer's interpretation of the Ministerial Instructions and the provisions of the IRPA and the IRPR. Where an administrative decision maker interprets its home statute, the presumed standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16, 17, 25 [*Vavilov*]; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 30). That presumption has not been rebutted in this case.

[5] Where the standard of reasonableness applies, the Court focuses "on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must consider whether "the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[6] With respect to procedural fairness, the Federal Court of Appeal clarified in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] that issues of procedural fairness do not necessarily lend themselves to a standard of review analysis.

Rather, the role of this Court is to determine whether the proceedings were fair having regard to all the circumstances (*Canadian Pacific* at paras 54–56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The adequacy of reasons does not constitute a basis for finding a breach of procedural fairness unless there are no reasons at all (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board*), 2011 SCC 62 at paras 14–16).

[7] The Court cannot agree with the applicants' arguments.

[8] The officer's reasons should be read in light of the record and with due sensitivity to the administrative setting in which they were given (*Vavilov* at para 94).

[9] Section 12 of the IRPA created three classes under which a foreign national may apply to be selected as a permanent resident: family reunification, economic immigration and refugees.

[10] With respect to the family class, it is intended to promote family reunification (IRPA, s 3(1)(d)). A foreign national may be selected on the basis of the foreign national's relationship "as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident".

[11] Section 13 of the IRPA deals with the right to sponsor a foreign national, subject to the regulations.

[12] Subsection 70(1) of the IRPR sets out the requirements for the issuance of a permanent resident visa. One of these requirements is that the foreign national be a member of the class in which the application is made and that the foreign national meet the selection criteria and other requirements applicable to that class (IRPR, s 70(1)(c) and (d)).

[13] Subsection 117(1) of the IRPR determines who is a member of the family class. The relevant paragraphs read as follows:

Member	**Regroupement familial**
117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is	**117 (1)** Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :
. . .	. . .
(c) the sponsor's mother or father;	**c)** ses parents;
. . .	. . .
(h) a relative of the sponsor, regardless of age, if the sponsor does not have a spouse, a common-law partner, a conjugal partner, a child, a mother or father, a relative who is a child of that mother or father, a relative who is a child of a child of that mother or father, a mother or father of that mother or father or a relative who is a child of the mother or father of that mother or father	**h)** tout autre membre de sa parenté, sans égard à son âge, à défaut d'époux, de conjoint de fait, de partenaire conjugal, d'enfant, de parents, de membre de sa famille qui est l'enfant de l'un ou l'autre de ses parents, de membre de sa famille qui est l'enfant d'un enfant de l'un ou l'autre de ses parents, de parents de l'un ou l'autre de ses parents ou de membre de sa famille qui est l'enfant de l'un ou l'autre des parents

	de l'un ou l'autre de ses parents, qui est :
(i) who is a Canadian citizen, Indian or permanent resident, or	**(i)** soit un citoyen canadien, un Indien ou un résident permanent,
(ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.	**(ii)** soit une personne susceptible de voir sa demande d'entrée et de séjour au Canada à titre de résident permanent par ailleurs parrainée par le répondant.

[14] Under subsection 87.3(3) of the IRPA, the Minister may give instructions with respect to the processing of sponsorship applications made under subsection 13(1) of the IRPA, including the categories of applications to which the instructions apply, the conditions that must be met before the processing of an application, the order for the processing of applications, the number of applications to be processed in any year and the disposition of applications, including those made subsequent to the first application. This Court has recognized the validity of instructions given by the Minister under subsection 87.3(3) of the IRPA (*Dhillon v Canada (Citizenship and Immigration)*, 2019 FC 391 at paras 28, 31; *Lamothe v Canada (Citizenship and Immigration)*, 2016 FC 849 at paras 2, 15).

[15] On January 1, 2019, the Minister published the Ministerial Instructions in the *Canada Gazette*, Part 1, Volume 153, Number 2. They state, *inter alia*, the following:

> These Instructions apply to applications for a permanent resident visa of sponsors' parents or grandparents made under the Family Class, referred to in paragraphs 117(1)(c) and (d) of the [IRPR],

> respectively, as well as to sponsorship applications made in relation to those applications.
>
> [Emphasis added.]

[16] They set out the conditions associated with these sponsorship and permanent resident visa applications. Among these conditions is that the sponsorship application be submitted by a person who has successfully submitted an interest to sponsor and who has received an invitation from the Department to submit a complete application. It is also stated that any application that does not meet the applicable conditions set forth in the instructions will be returned.

[17] In this case, the male applicant has not received any invitation from the Department. Knowing that the sponsorship application would not be processed under paragraph 117(1)(c) of the IRPR, the male applicant seeks to avail himself of paragraph 117(1)(h) of the IRPR.

[18] Although the cover letter requested that the sponsorship application be processed under paragraph 117(1)(h) of the IRPR, the generic application form attached to the sponsorship application clearly indicated in box 2 that the female applicant was being sponsored under the parent/grandparent class. The Court finds that it was reasonable for the officer, in these circumstances, to consider that the application was subject to the Ministerial Instructions. As a result, it was reasonable for the officer to return the sponsorship application without processing it because it did not meet the requirements of the Ministerial Instructions.

[19] In any event, the Court finds that the male applicant could not use paragraph 117(1)(h) of the IRPR to sponsor the female applicant. This provision applies only where a sponsor has no

family members who could otherwise be sponsored as members of the family class under paragraphs 117(1)(a) to (g) of the IRPR. The use of the phrase “a relative of the sponsor” in paragraph 117(1)(h) of the IRPR suggests that the persons identified in the preceding paragraphs are not covered.

[20] Furthermore, under subparagraph 117(1)(h)(ii) of the IRPR, the female applicant is a person “whose application . . . as a permanent resident the sponsor may otherwise sponsor” as the male applicant’s mother pursuant to paragraph 117(1)(c) of the IRPR. Thus, she could not be sponsored under paragraph 117(1)(h) of the IRPR (*Jordano v Canada (Citizenship and Immigration)*, 2013 FC 1143 at para 4 [*Jordano*]).

[21] The applicants argue, as in *Jordano*, that the female applicant may not otherwise be sponsored because the Ministerial Instructions now prevent the acceptance of her application pursuant to paragraph 117(1)(c) of the IRPR (*Jordano* at para 5). In *Jordano*, the Ministerial Instructions in force imposed a temporary pause on sponsorship applications for parents and grandparents. The applicant in *Jordano* argued that, under the freeze, she could not sponsor her mother. The Court rejected that argument on the ground that paragraph 117(1)(h) of the IRPR is only intended to favour persons who do not have relations in Canada and have no possibility to sponsor any relations under other provisions. The interpretation of paragraph 117(1)(h) of the IRPR excluded the applicant’s mother because she was subject to sponsorship under subparagraph 117(1)(c). The Court was of the view that the administrative action providing for the freeze did not have the effect of varying that interpretation (*Jordano* at paras 9–11).

[22] The Court agrees with this interpretation of paragraph 117(1)(h) of the IRPR and adds that it would be illogical for a sponsor to make an application under paragraph 117(1)(h) of the IRPR to avoid the application of the Ministerial Instructions. The Ministerial Instructions do not leave room for any other interpretation. To sponsor a relative, a sponsor must first submit an interest to sponsor and wait to receive an invitation from the Department before submitting a complete application.

[23] As for the applicants' argument that the officer's reasons should have included the reasons why paragraph 117(1)(h) did not apply, the Court is of the view that the letter to the applicant provides a sufficiently clear explanation of why the officer refused to process the application. Since the female applicant was sponsored as a parent, the application had to comply with the Ministerial Instructions. The officer was not required to engage in a formalistic statutory interpretation exercise in the circumstances of this case. To impose such expectations would have a paralyzing effect on the officer's work (*Vavilov* at paras 119, 123).

III. Style of cause

[24] The original style of cause included only the female applicant as the applicant. Following the hearing, the Court issued a directive on June 18, 2021, inviting the parties to clarify whether it was the female applicant or the male applicant who had standing to act as the applicant in this case. In response to the Court's directive, the respondent submitted that it was rather the male applicant who had standing to act, as the letter dated October 31, 2019, was addressed to him and dealt with his sponsorship application. As for the applicants, they argued that both the female

applicant and the male applicant had standing to act in this case, and they filed a motion to add the male applicant as an applicant. The respondent did not challenge that motion.

[25] The Court agrees with the parties that the male applicant has standing. Accordingly, Aristide Koudiatou has been added to the style of cause as an applicant. As for the female applicant, given the officer's assertion in his letter of October 31, 2019, that the related permanent residence application would not be processed, the Court is not satisfied that she is not directly affected by the matter in respect of which relief is sought, pursuant to subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7. The female applicant has therefore not been removed from the style of cause.

IV. Certified question

[26] At the hearing, the applicants proposed that the Court certify the following questions:

> [TRANSLATION]
>
> Can the exercise of the right under section 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], be circumscribed by the random principle of the application of sections 117(1)(c) and (d) of the IRPR via section 87.3 of the *Immigration and Refugee Protection Act*, SC 2001, c 27, in the case of a person alone in the world?
>
> In the case of a person alone in the world who has a relative under section 117(1)(c) or (d) of the IRPR, can section 117(1)(h) of the IRPR be applied to sponsor this person who is a member of one of these two classes?

[27] The Court is of the view that the questions proposed by the applicants do not meet the criteria for certification.

[28] The criteria for certification are well established. The certified question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. A question in the nature of a reference or whose answer turns on the unique facts of the case cannot ground a properly certified question (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15–17; *Lai v Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21 at para 4; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at paras 28–29; *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at paras 11–12; *Canada (Minister of Citizenship and Immigration) v Liyanagamage*, [1994] FCJ No 1637 (FCA) (QL) at para 4).

[29] The questions proposed by the applicants are too vague and lack context. The connection between the expression [TRANSLATION] “person alone in the world” and subsection 117(1) of the IRPR is not established and the Court is not satisfied that this expression applies to the applicants. Thus, the Court does not rule on the issues as framed by the applicants. Moreover, these issues would not be determinative of the outcome of the appeal, given this Court’s conclusion that it was reasonable for the officer to refuse to process the sponsorship application under paragraph 117(1)(h) of the IRPR since the generic application form indicated that the

female applicant was being sponsored under the parent/grandparent class. The Court therefore declines to certify the proposed questions.

V. Conclusion

[30] For all these reasons, the application for judicial review is dismissed.

[31] The Court denies the applicants' request to certify a question.

JUDGMENT in IMM-7060-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed;

2. The style of cause is amended to add Aristide Koudiatou as an applicant; and

3. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Vincent Mar

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7060-19
STYLE OF CAUSE:	JULIENNE MALANDA ET AL v MINISTER OF CITIZENSHIP AND IMMIGRATION
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