

Federal Court



Cour fédérale

Date: 20131112

Docket: IMM-9157-12

Citation: 2013 FC 1143

Ottawa, Ontario, November 12, 2013

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

BOJURIE JORDANO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Ms Jordano wished to sponsor her mother to come to Canada as a member of a family class pursuant to section 117(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations]. Under normal circumstances, she would have been able to sponsor her mother pursuant to para 117(1)(c) of the Regulations. However, a Ministerial Instruction (Citizenship and Immigration Canada, *Operational Bulletin 350 - November 4, 2011; Fourth Set of Ministerial Instructions: Temporary Pause on Family Class Sponsorship Applications for Parents and Grandparents*, online: <http://www.cic.gc.ca/english/resources/manuals/bulletins/2011/ob350.asp>)

issued pursuant to section 87.3 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*], the validity of which is not in dispute, imposed a temporary freeze on the acceptance for processing of new family class sponsorship applications for a sponsor's parents (para 117(1)(c)) or grandparents (para 117(1)(d)).

[2] The applicant, recognizing that an application to sponsor her mother would not be processed under paragraph 117(1)(c), chose to instead apply pursuant to paragraph 117(1)(h). The applicant received a letter from Citizenship and Immigration Canada [CIC] indicating that the application was being returned because of the temporary pause of sponsorship of parents and grandparents.

[3] Amongst the family classes members under section 117(1) of the Regulations, paragraph 117(1)(h) is intended to provide for sponsorship by persons who do not have family members, such as persons who are orphans or do not have the more common relations described in other paragraphs of section 117(1), i.e. spouses, dependent children, parents and grandparents.

[4] Normally, applications cannot be made pursuant to paragraph 117(1)(h) when the possibility of sponsoring parents is otherwise available under paragraph 117(1)(c), because by subparagraph 117(1)(h)(ii) recourse may not be had to the provision if the "sponsor may otherwise sponsor" the individual to Canada. Inasmuch as the applicant could normally sponsor her mother pursuant to paragraph 117(1)(c), this would make her ineligible to sponsor her mother under paragraph 117(1)(h).

[5] However, the applicant argues that she may not otherwise apply to sponsor her mother because the Ministerial Order now prevents acceptance for processing the application for her mother pursuant to paragraph 117(1)(c). The respondent disagrees that the freeze on applications under paragraph 117(1)(c) renders the applicant eligible to apply pursuant to para 117(1)(h).

[6] This matter therefore turns on whether the Ministerial order affects the interpretation of paragraph 117(1)(h). Section 117(1) reads as follows:

<p>117. (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is</p>	<p>117. (1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :</p>
<p>(a) the sponsor's spouse, common-law partner or conjugal partner;</p>	<p>a) son époux, conjoint de fait ou partenaire conjugal;</p>
<p>(b) a dependent child of the sponsor;</p>	<p>b) ses enfants à charge;</p>
<p>(c) <u>the sponsor's mother or father</u>;</p>	<p>c) <u>ses parents</u>;</p>
<p>(d) the mother or father of the sponsor's mother or father;</p>	<p>d) les parents de l'un ou l'autre de ses parents;</p>
<p>(e) [Repealed, SOR/2005-61, s. 3]</p>	<p>e) [Abrogé, DORS/2005-61, art. 3]</p>
<p>(f) a person whose parents are deceased, who is under 18 years of age, who is not a spouse or common-law partner and who is</p>	<p>f) s'ils sont âgés de moins de dix-huit ans, si leurs parents sont décédés et s'ils n'ont pas d'époux ni de conjoint de fait :</p>
<p>(i) a child of the sponsor's mother or father,</p>	<p>(i) les enfants de l'un ou l'autre des parents du répondant,</p>

(ii) a child of a child of the sponsor's mother or father, or

(ii) les enfants des enfants de l'un ou l'autre de ses parents,

(iii) a child of the sponsor's child;

(iii) les enfants de ses enfants;

(g) a person under 18 years of age whom the sponsor intends to adopt in Canada if

g) la personne âgée de moins de dix-huit ans que le répondant veut adopter au Canada, si les conditions suivantes sont réunies :

(i) the adoption is not being entered into primarily for the purpose of acquiring any status or privilege under the Act,

(i) l'adoption ne vise pas principalement l'acquisition d'un statut ou d'un privilège aux termes de la Loi,

(ii) where the adoption is an international adoption and the country in which the person resides and their province of intended destination are parties to the Hague Convention on Adoption, the competent authority of the country and of the province have approved the adoption in writing as conforming to that Convention, and

(ii) s'il s'agit d'une adoption internationale et que le pays où la personne réside et la province de destination sont parties à la Convention sur l'adoption, les autorités compétentes de ce pays et celles de cette province ont déclaré, par écrit, qu'elles estimaient que l'adoption était conforme à cette convention,

(iii) where the adoption is an international adoption and either the country in which the person resides or the person's province of intended destination is not a party to the Hague Convention on Adoption

(iii) s'il s'agit d'une adoption internationale et que le pays où la personne réside ou la province de destination n'est pas partie à la Convention sur l'adoption :

(A) the person has been placed for adoption in the country in which they reside or is

(A) la personne a été placée en vue de son adoption dans ce pays ou peut par ailleurs y

otherwise legally available in that country for adoption and there is no evidence that the intended adoption is for the purpose of child trafficking or undue gain within the meaning of the Hague Convention on Adoption, and

être légitimement adoptée et rien n'indique que l'adoption projetée a pour objet la traite de l'enfant ou la réalisation d'un gain indu au sens de cette convention,

(B) the competent authority of the person's province of intended destination has stated in writing that it does not object to the adoption; or

(B) les autorités compétentes de la province de destination ont déclaré, par écrit, qu'elles ne s'opposaient pas à l'adoption;

(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

(ii) soit une personne susceptible de voir sa demande d'entrée et de séjour au Canada à titre de

sponsor.

résident permanent par
ailleurs parrainée par le
répondant.

[Emphasis added]

[Je souligne]

[7] Inasmuch as no deference would be owed to the CIC in matters of statutory interpretation, which is the sole nature of the issue raised in this matter, the standard of review is that of correctness.

[8] In this regard, the applicant has seized upon the words “whose application” in subparagraph 117(1)(h)(ii) and is seeking a literal interpretation of the words, arguing that the freeze on applications makes her a sponsor of a relative who was not already living in Canada and who cannot apply to enter.

[9] I reject the applicant’s interpretation of the provision for three reasons. First, the words of subparagraph 117(1)(h) must be given the meaning that fulfills the purposes and intent of Parliament. It is intended to favour persons who do not have relations in Canada and have no possibility to sponsor any relations under other provisions. It would be contrary to the purpose of the provision to allow persons favoured with relations already in Canada or relations who may be otherwise sponsored, to be included in a provision never intended to apply to them.

[10] Second, a temporary Ministerial freeze intended to meet administrative and processing exigencies concerning a provision’s implementation, which is not suggested could have the effect of amending the provision or affecting its purpose as Parliament intended, cannot transform the applicant’s situation from one class of sponsors into another. If without the administrative freeze,

the interpretation of the provision excludes the applicant's mother because she is subject to sponsorship under subparagraph 117(1)(c), administrative action with respect to the implementation of the provision will not vary that interpretation.

[11] Third, if such an interpretation of para 117(1)(h) were permitted, it would undermine the intention of section 87.3 of the *IRPA*. In *Tabingo v Canada (Minister of Citizenship and Immigration)*, 2013 FC 377, Justice Rennie considered the operation of section 87.3 of the *IRPA* in the context of federal skilled worker applications that were experiencing large processing backlogs. He stated as follows at paragraph 8 of his reasons:

[8] To address this problem, the *IRPA* was amended in February of 2008 to introduce section 87.3. Section 87.3 authorized the Minister of Citizenship and Immigration (the Minister) to issue Ministerial Instructions regarding the priority in which applications would be processed, and removed the obligation to process every application received. The Ministerial Instructions provided for a triage of applications according to revised eligibility criteria, including the establishment of categories of applicants and quotas.

[12] One of the purposes of the Ministerial Direction affecting the present matter, as announced in the government's News Release, was "to further reduce the 165,000-strong backlog of parent and grandparent applicants." See Citizenship and Immigration Canada, *News Release – Government of Canada to cut backlog and wait times for family reunification – Phase I of Action Plan for Faster Family Reunification* (4 November 2011), online: <http://www.cic.gc.ca/english/department/media/releases/2011/2011-11-04.asp>. Interpreting the effect of an administrative implementation measure in a fashion that would aggravate the problem it was intended to resolve would constitute a perverse interpretation of both paragraph 117(1)(h) of the Regulations and section 87.3 of the *IRPA*.

[13] For all of the foregoing reasons, the application for judicial review is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. There is no question of general interest to certify.

"Peter Annis"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9157-12

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**REASONS FOR JUDGMENT
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