Federal Court Cour fédérale

Date: 20150206

Docket: IMM-5959-14

Citation: 2015 FC 159

Ottawa, Ontario, February 06, 2015

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

TIANLE MA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant seeks to set aside the decision of a Citizen and Immigration Case Processing officer dated July 23, 2014, refusing to process an inland application for permanent residence in the spouse or common-law partner class. For the reasons that follow the application is dismissed.

I. Facts

[2] The applicant, Tianle Ma, has lived in Canada since November 2002 when he arrived on a student visa. He did not leave Canada when his studies ended and an exclusion order was issued against him. However, the order was never executed and no removal proceedings were ever commenced. No explanation is found in the record as to how this remarkable series of events came to pass.

[3] On July 1, 2013, the applicant married Yuxiang Zou, a permanent resident of Canada, and also a Chinese national. The applicant asserts that his marriage is genuine. In the fall of 2013 the applicant made an overseas application for permanent residence in the family class. He also made an inland application for permanent residence in the spouse or common-law partner class. These two applications form the basis of this judicial review application.

[4] The overseas application for permanent residence in the family class was received by the Case Processing Centre office in Vegerville, Alberta (CPCV) on November 1, 2013 at 9:22 a.m. However, the application was incomplete. The required forms, specifically the "Use of a Representation" form was not provided until December 16, 2013, at which time it was considered by CPCV to be complete. The application was electronically created in Citizenship and Immigration Canada's (CIC) electronic file system and the application was considered complete and "locked in" as of that date.

[5] The inland application for permanent residence in the spouse or common-law partner class was received by the Case Processing Centre in Mississauga, Ontario (CPCM) on November

1, 2013 at 10:52 a.m. However, it too was incomplete and was returned to the applicant for more information. The "Generic Application Form for Canada" was not provided until December 31, 2013. The inland application was electronically created and considered "locked in" as of that date.

[6] On July 23, 2014, a Case Processing officer (the officer) became aware of the two sponsorship applications. She reviewed both the overseas and inland applications and determined that the lock-in date for the overseas file was December 16, 2014 – fifteen days before the lock-in date for the inland application. The officer determined that it was not until December 31 that the inland application was complete.

[7] As it is not CIC policy to contact applicants or sponsors when two sponsorship applications are received, and because the inland application was received fifteen days after the overseas application, the officer determined that the inland application was a "multiple application" contrary to subsection 10(5) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *Regulations*). The officer therefore cancelled the inland application on July 23, 2014. Before doing so, however, she checked the paper and electronic inland application file for any indication that the sponsor and/or applicant may have wanted to withdraw the overseas application. She found nothing to that effect. She then informed the sponsor of the decision in a letter dated July 23, 2014, returned the inland application, and refunded the fees paid. She did not retain any part of the inland application at CPCM with the exception of the fee receipt.

II. Relevant Provisions

[8] Subsection 13(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA)* provides that a Canadian citizen or permanent resident may sponsor a foreign national, but that the sponsorship is subject to the *Regulations*.

13. (1) A Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province or an unincorporated organization or association under federal or provincial law — or any combination of them — may sponsor a foreign national, subject to the regulations.	13. (1) Tout citoyen canadien, résident permanent ou groupe de citoyens canadiens ou de résidents permanents ou toute personne morale ou association de régime fédéral ou provincial — ou tout groupe de telles de ces personnes ou associations — peut, sous réserve des règlements, parrainer un étranger.

[9] Subsection 10(4) of the *Regulations* provides that an application for permanent residence in the family class is to be accompanied by a sponsorship application referred to in subsection 130(1)(c).

10(4) An application made by a foreign national as a member of the family class must be preceded or accompanied by a sponsorship application referred to in paragraph 130(1)(c).	(4) La demande faite par l'étranger au titre de la catégorie du regroupement familial doit être précédée ou accompagnée de la demande de parrainage visée à l'alinéa 130(1)c).

[10] Subsection 130(1)(c) of the *Regulations* makes clear that in order to sponsor a member of the family class or the spouse or common-law partner in Canada class, the sponsor has to file a sponsorship application:

130(1) Subject to subsections (2) and (3), a sponsor, for the purpose of sponsoring a foreign national who makes an application for a permanent resident visa as a member of the family class or an application to remain in Canada as a member of the spouse or common-law partner in Canada class under subsection 13(1) of the Act, must be a Canadian citizen or permanent resident who	130. (1) Sous réserve des paragraphes (2) et (3), a qualité de répondant pour le parrainage d'un étranger qui présente une demande de visa de résident permanent au titre de la catégorie du regroupement familial ou une demande de séjour au Canada au titre de la catégorie des époux ou conjoints de fait au Canada aux termes du paragraphe 13(1) de la Loi, le citoyen canadien ou résident permanent qui, à la fois :
(a) is at least 18 years of age;	a) est âgé d'au moins dix-huit ans;
(b) resides in Canada; and	b) réside au Canada;
(c) has filed a sponsorship application in respect of a member of the family class or the spouse or common-law partner in Canada class in accordance with section 10.	c) a déposé une demande de parrainage pour le compte d'une personne appartenant à la catégorie du regroupement familial ou à celle des époux ou conjoints de fait au Canada conformément à l'article 10.

[11] Subsection 10(5) of the *Regulations* prevents the submission of multiple sponsorship applications:

10(5) No sponsorship application may be filed by a sponsor in respect of a person if the sponsor has filed another sponsorship application in respect of that same person and a final decision has not been made in respect of that other application.	(5) Le répondant qui a déposé une demande de parrainage à l'égard d'une personne ne peut déposer une nouvelle demande concernant celle-ci tant qu'il n'a pas été statue en dernier ressort sur la demande initiale.

III. Analysis

A. *Which application was filed first*

[12] This question is a factual one and governed by the standard of review of reasonableness. The officer concluded that the inland application was completed fifteen days after the overseas application. While the overseas application was received 30 minutes prior to the inland application, it was not complete. This decision was the only decision open to the officer on the record before her.

[13] An application under *IRPA* must be a complete application. The receipt of an application which is missing key components is not an application within the meaning of *IRPA* and the *Regulations*. This interpretation ensures that officers spend their time reviewing completed files, allowing for a more effective use of resources. Importantly, applicants are not preserving their place or priority in a queue based on the filing of partial applications, to the determinant of those applicants who file later, but file complete files.

[14] In this case, the officer's determination that the inland file was not complete until December 31, 2013 was reasonable.

[15] Section 10 of the *Regulations* sets out the minimum requirements for applications. Specifically, subsection 10(1)(c) states that an application under the *Regulations* shall "include all information and documents required by these *Regulations*, as well as any other evidence required by the Act." As the applicant's inland application that was initially submitted on

November 1, 2013, was incomplete, his application was therefore not locked-in until December 31, 3013, when all of the necessary information pursuant to subsection 10(1)(c) was received.

[16] In reaching this conclusion the officer was guided by both regulation and policy directive. Subsection 10(2) of the *Regulations* describes certain minimum required information with respect to the applicant and his or her representative. Policy Directive IP 2 – *Processing Applications to Sponsor Members of the Family Class* establishes in a more detailed manner certain minimum documentary requirements that must be met before an application will be considered sufficiently complete to be locked in. To round out the operational scheme, section 12 of the *Regulations* provides that where the minimum requirements are not met, the documents are to be returned to the applicant.

B. *Subsection 10(5) of the Regulations applies to inland spousal sponsorship applications*

[17] The legislative scheme established by *IRPA* and the *Regulations* requires the filing of a sponsorship for both overseas and inland spousal applications. Subsection 13(1) of *IRPA* provides that a Canadian citizen or permanent resident may sponsor a foreign national, but that sponsorship is subject to the *Regulations*, including subsection 10(5).

[18] Specifically, subsection 130(1)(c) of the *Regulations* establishes that in order to sponsor a member of the family class or the spouse or common-law partner in Canada class pursuant to subsection 13(1) of *IRPA*, the sponsor has to file a sponsorship application "in accordance with section 10". This language explicitly states that section 10 of the *Regulations* therefore applies to both the family class or the spouse or common-law partner class.

[19] Although the applicant argues that a *sine qua* non for a sponsorship to attach to an inland spousal application is a finding that the applicant is in a *bona fide* relationship with the sponsor, this argument is incorrect. Subsection 10(5) of the *Regulations* is triggered prior to the merits of an application being determined.

C. *Subsection 10(5) of the Regulations is intra vires IRPA*

[20] The argument that subsection 10(5) of the *Regulations* is ultra vires the *IRPA* must fail. The *Regulations*, including subsection 10(5), were enacted by the Governor-in-Council pursuant to the broad discretion conferred under subsection 5(1) of *IRPA*:

5.(1) Except as otherwise provided, the Governor in Council may make any regulation that is referred to in this Act or that prescribes any matter whose prescription is referred to in this Act.	5. (1) Le gouverneur en conseil peut, sous réserve des autres dispositions de la présente loi, prendre les règlements d'application de la présente loi et toute autre mesure d'ordre réglementaire qu'elle prévoit.

[21] Specifically, the applicant argues that subsection 10(5) conflicts with subsection 3(1)(d) of *IRPA*. Subsection 3(1)(d) states that one objective of *IRPA* is to see that families are reunited in Canada. However, it is unclear how subsection 10(5) conflicts with this objective. Subsection 10(5) prevents abuse of the immigration system by disallowing multiple applications on the same issue, before potentially different decision-makers. Subsection 10(5) also facilitates efficient use of resources and thereby furthers the proper administration of *IRPA*.

[22] Further, neither the absence of a statutory appeal to the IAD nor the absence of an offer bye the officer to include an H&C exemption to an inland application results in a discordance between subsection 10(5) of the *Regulations* and with the *Charter*. It was open to the applicant

to pursue an inland application, which if unsuccessful on that application, would allow for an H&C application. However, the applicant in this case chose not to solely pursue an inland application. It is not the responsibility of the respondent to guide an applicant in his or her decision-making in terms of which immigration class to apply for.

[23] The applicant also advances a procedural fairness argument, contending that the officer should not have decided to cancel the inland application upon her realization that two sponsorship applications existed. Procedural fairness requires that the applicant be contacted and asked to state a preference as to which of two completed applications he wished to proceed. Counsel for the applicant advances a number of consequences for an applicant who is similarly situated in terms of their ongoing immigration status in Canada and the costs and delays associated with commencing a fresh inland application.

[24] Procedural fairness varies with the nature of the interests involved. In this case, the applicant had no right to file multiple applications and did not accrue any right or entitlement to a duty of fairness by doing so. His overseas application continues to be processed, which he is free to withdraw at any time and consider other options.

[25] The officer was under no duty to contact the applicant and advise him of the various immigration routes available to him. This is not the role of an administrative decision-maker. Instead, it was up to the applicant, who was acting under advice from counsel, to choose which route he wanted to follow. In this case, the applicant chose to apply for both in circumstances where the *Regulations* do not permit multiple applications.

[26] Given the subsection 10(5) restriction on multiple sponsorship applications, the respondent was under no obligation to assess the merits of the inland application - that is, the second application received. The officer returned the inland application to the applicant pursuant to a validly enacted regulation, and the applicant's procedural rights were not breached. In any event, the officer afforded the applicant fairness by examining the inland application for any indication that the applicant had intended to withdraw the overseas application.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"Donald J. Rennie"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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