Federal Court  Cour fédérale

Date: 20170505

Docket: IMM-4416-16

Citation: 2017 FC 452

Ottawa, Ontario, May 5, 2017

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

SNEZANA TOSIC-KRAVIC

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Snezana Tosic-Kravic, is a Canadian citizen who arrived in Canada in the 1990s. On December 27, 2015, she completed an application to sponsor her parents to become permanent residents under the family class; her spouse co-signed the sponsorship application. Pursuant to section 133 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*], the Applicant was required to meet various requirements in order to sponsor her parents, one of which was to meet a minimum necessary income level. An officer at

Immigration, Refugees and Citizenship Canada [the Officer] refused the Applicant's application to sponsor her parents because she failed to meet the minimum necessary income requirements. She has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], for judicial review of the Officer's decision.

I. Background

[2] In order to sponsor her parents as permanent residents, the Applicant was required, pursuant to clause 133(1) (j) (i)(B) of the *Regulations*, to have "a total income that is at least equal to the minimum necessary income, plus 30%, for each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application." Since the Applicant's spouse co-signed the application, his income could be included in the income calculations pursuant to sections 132(5) and 134 of the *Regulations*. The minimum necessary income for each year is equal to the "low income cut-off amount" based on the size of the sponsor's family, plus 30%. The low income cut-off amount is Statistics Canada's determination of the minimum amount of before-tax annual income necessary to support a group of persons.

[3] It warrants note in the context of this case that, by virtue of subparagraph 134(1.1) (b) (iv) of the *Regulations*, a sponsor's income cannot include "any amounts paid to the sponsor under the *Employment Insurance Act*, other than special benefits." Subsection 2(1) of the *Employment Insurance Act*, SC 1996, c 23, defines "special benefits" as benefits paid for any reason mentioned in subsection 12(3); namely, benefits paid because a claimant is pregnant, is caring for one or more new-born children of the claimant or one or more children placed with the

claimant for the purpose of adoption, has a prescribed illness or injury or is in quarantine, or is providing care or support to one or more family members or to one or more critically ill children.

[4] The sponsorship application form required the Applicant to outline the different sources of her income, and explicitly asked whether any amounts had been paid under the *Employment Insurance Act*, other than special benefits. The Applicant indicated in her application that she had not received any payments under the *Employment Insurance Act* and that her total income, including the income of her spouse, exceeded the minimum necessary income for the years 2012, 2013, and 2014. Since the Applicant's family consisted of five individuals (i.e., the Applicant, her spouse, child, and two parents), the minimum necessary income was $62,023 for 2012, $63,833 for 2013, and $64,791 for 2014. The Applicant stated in the application that she exceeded the minimum necessary income as her total income was $83,505 in 2012, $71,188 in 2013, and $77,558 in 2014; she submitted her and her spouse's Notices of Assessment from the Canada Revenue Agency [CRA] to support these amounts of income.

[5] An officer from Immigration, Refugees and Citizenship Canada sent the Applicant a letter dated May 17, 2016, indicating that her sponsorship application was incomplete. The officer requested that the Applicant and her spouse submit the original Option C printouts of their 2012, 2013, and 2014 tax assessments from the CRA. This additional documentation showed that the Applicant's total income in 2013 was processed as being $23,837, and of that amount $19,408 was Employment Insurance [EI] benefits comprised of $14,162 for "Regular EI benefits" and $5,246 for "Financial assistance to re-enter workforce."

II. The Officer's Decision

[6] In a letter dated September 28, 2016, the Officer advised the Applicant that she was not eligible to sponsor her parents because, pursuant to subparagraph 133(1) (j) (i), she did not meet the minimum necessary income requirement. The Officer's letter included calculations of the total eligible income of the Applicant and her spouse. These calculations showed that the Applicant did not meet the minimum necessary income requirement in the 2013 taxation year. The Officer calculated the Applicant's eligible income as $4,429 and her spouse's income as $49,169, for a total eligible income of only $53,598, and not $71,188 as indicated in the Applicant's application. Since the minimum necessary income requirement in the 2013 taxation year was $63,833, the Applicant's total eligible income fell below the required amount by $10,235. The Officer's notes in the Global Case Management System show that the "EI regular benefits and Financial assistance to re-enter workforce income were removed from sponsor's 2013 income."

III. Issues

[7] This application raises the following issues:

1. What is the appropriate standard of review?
2. Was the Officer's decision unreasonable?
3. Was the duty of procedural fairness breached by the Officer?

IV. Analysis

A. *Standard of Review*

[8] Whether an applicant meets the financial requirements for sponsorship under the *IRPA* and its *Regulations* is a factual determination and, therefore, is reviewed under the standard of reasonableness (*Pospelova v Canada (Citizenship and Immigration)*, 2013 FC 555 at para 12, [2013] FCJ No 623; *Dokaj v Canada (Citizenship and Immigration)*, 2009 FC 847 at para 18, 180 ACWS (3d) 483).

[9] Under the reasonableness standard, "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process … also … with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708 [*Newfoundland Nurses*]. Additionally, "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; and it is also not "the function of the reviewing court to reweigh the evidence": *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59, 61, [2009] 1 SCR 339 [*Khosa*].

[10] The standard to review issues of procedural fairness is correctness (*Kaur Sidhu v Canada (Citizenship and Immigration)*, 2010 FC 1272 at para 18, 195 ACWS (3d) 1123 [*Kaur Sidhu*]; *Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502; *Khosa* at para 43). Under the correctness standard, a reviewing court shows no deference to the decision maker's reasoning process and the court will substitute its own view and provide the correct answer if it disagrees with the decision maker's determination (see: *Dunsmuir* at para 50). Moreover, the Court must determine whether the process followed in arriving at the decision under review achieved the level of fairness required by the circumstances of the matter (see: *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115, [2002] 1 SCR 3).

[11] When applying a correctness standard of review, it is not only a question of whether the decision under review is correct, but also a question of whether the process followed in making the decision was fair (see: *Hashi v Canada (Citizenship and Immigration)*, 2014 FC 154 at para 14, 238 ACWS (3d) 199; and *Makoundi v Canada (Attorney General)*, 2014 FC 1177 at para 35, 249 ACWS (3d) 112). The content of the duty of procedural fairness owed by an officer in deciding whether to grant or dismiss an application to sponsor a family member is low (*Kaur Sidhu* at paras 26-27).

B. *Was the Officer's decision unreasonable?*

[12] The Applicant contends that the EI payments in this case constituted "special benefits" payments under subparagraph 134(1.1) (b) (iv) of the *Regulations* because they were provided to further the Applicant's education and, consequently, should not have been deducted from the Applicant's 2013 eligible income. At the hearing of this matter, the Applicant argued that the

Officer's decision was not reasonable because the Officer should have looked to subsection 25(1) of the *IRPA* and applied humanitarian and compassionate considerations to allow the Applicant to sponsor her parents since the shortfall in eligible income was only a few thousand dollars and only for one year.

[13] The Respondent argues that the Officer's decision was reasonable because the Applicant's tax return documents indicated that she did not satisfy the minimum necessary income requirement. The Respondent notes that the Applicant's reported income in 2013 consisted of EI benefits totaling $19,408, and it was reasonable for the Officer to deduct the EI benefits because subparagraph 134(1.1) (b) (iv) of the *Regulations* says a sponsor's income cannot include "any amounts paid to the sponsor under the *Employment Insurance Act*, other than special benefits." According to the Respondent, the Officer reasonably deducted this amount and determined that the Applicant's eligible income for the 2013 taxation year was only $4,429.

[14] None of the arguments advanced by the Applicant undermine the reasonableness of the Officer's decision. In this case, the Officer reasonably determined that the Applicant's payments under the *Employment Insurance Act*, for both regular EI benefits and the financial assistance to re-enter the workforce, were to be excluded from the Applicant's eligible income for her sponsorship application. These payments were not "special benefits" as contemplated by subsections 2(1) and 12(3) of the *Employment Insurance Act*. Subparagraph 134(1.1) (b) (iv) of the *Regulations* explicitly stipulates that a sponsor's minimum necessary income cannot include "any amounts paid to the sponsor under the *Employment Insurance Act*, other than special

benefits." It is clear and transparent that the Officer applied this provision to exclude the Applicant's EI benefits from her eligible income.

[15] Moreover, the Officer's reasons enable the Court "to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland Nurses* at para 16). The Officer reasonably determined that the $19,408 paid to the Applicant under the *Employment Insurance Act* did not constitute special benefits and, therefore, this amount was excluded from the calculation of her income for the purpose of the sponsorship application.

C. *Was the duty of procedural fairness breached by the Officer?*

[16] The Applicant says the Officer should have sought her input and explanation in the case of any material discrepancy with respect to the income in the CRA documents. The Applicant also says the Officer failed to request information from her about the full breakdown and nature of the EI payments. According to the Applicant, the Officer breached the duty of procedural fairness by failing to comply with the requirements of paragraph 134(2) (a) of the *Regulations*, which provides:

134 (2) An officer may request from the sponsor, after the receipt of the sponsorship application but before a decision is made on an application for permanent residence, updated evidence of income if	**134 (2)** L'agent peut demander au répondant, après la réception de la demande de parrainage mais avant qu'une décision ne soit prise sur la demande de résidence permanente, une preuve de revenu à jour dans les cas suivants :
(a) the officer receives information indicating that	**a)** l'agent reçoit des renseignements montrant que

the sponsor is no longer able to fulfil the obligations of the sponsorship undertaking;	le répondant ne peut plus respecter les obligations de son engagement à l'égard du parrainage;

In the Applicant's view, the Officer's failure to provide her with an opportunity to respond to the EI payments prevented her from being able to assess any errors in the EI payments or apply under section 25 of the *IRPA* for relief from the minimum necessary income requirements based on humanitarian and compassionate grounds.

[17] The Applicant's arguments that the Officer breached the duty of procedural fairness are without merit. The content of the duty of procedural fairness is not as high as the Applicant contends. As stated in *Kaur Sidhu*: "the decision to grant or dismiss an application to sponsor a family member is obviously important, but it is not such as to affect the fundamental rights of an individual" (at para 26). The duty of fairness owed to the Applicant in this case falls on the lower end of the spectrum.

[18] Furthermore, the Applicant was well-aware of the financial obligations to sponsor her parents and that she received EI payments. The sponsorship application form required the Applicant to outline the different sources of her income, and explicitly asked the Applicant to indicate any amounts "paid to you under the *Employment Insurance Act*, other than special benefits." The Applicant completed this form and indicated that she had not received any payments under the *Employment Insurance Act*. However, after an officer requested additional CRA documents, the Applicant submitted documents which clearly indicated that she received $19,408 in EI payments for "regular benefits" and "assistance to re-enter workforce."

[19] The Officer in this case did not breach the duty of procedural fairness by assessing the Applicant's sponsorship application based on the information she submitted. The Officer did not consult any external sources or address any issues not already known to the Applicant. The Officer was not required to provide the Applicant with a further opportunity to provide submissions; nor was the Officer required to request "updated evidence of income" from the Applicant pursuant to paragraph 134(2) (a) since the Applicant had already provided evidence of her income on two prior occasions. The Officer had the necessary information to make a decision and did not breach any duty of fairness by not providing the Applicant with a third opportunity to submit information about her income.

V. Conclusion

[20] For the reasons stated above, this application for judicial review is dismissed. The Officer's decision in this case is justifiable, transparent, and intelligible, and is an acceptable outcome defensible in respect of the facts and law.

[21] Neither party proposed a question for certification, so no such question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed; and no question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Milan Tomasevic	FOR THE APPLICANT
James Todd	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Milan Tomasevic Barrister and Solicitor Mississauga, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT