

Federal Court



Cour fédérale

Date: 20191104

Docket: IMM-1754-19

Citation: 2019 FC 1382

Toronto, Ontario, November 4, 2019

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

PINKI DUGGAL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application concerns an appeal of a Visa Officer's rejection of the Applicant's sponsorship application. On January 31, 2019, the IAD denied the Applicant's appeal to sponsor her mother, father, and three of her siblings. A key issue at the appeal was whether the 2011 Regulation 133(1)(j)(i), or the 2014 Regulation 133(1)(j)(i)(B), of the *Immigration and Refugee Protection Regulations* was appropriate to apply.

[2] At the IAD, the Applicants were represented by an Immigration Consultant. The Consultant prepared and filed an argument dated October 17, 2017, in support of the use of the 2011 Regulation:

We have been given to understand that regulatory amendments [per the IRPR 132(1)(b)(iv)] came into force as of January 01, 2014. PGP sponsorship applications received before the pause on PGP application intake (implemented November 05, 2011) were to be assessed based on regulations that were in force at that time. PGP sponsorship applications received on or after January 2, 2014, would be assessed based on the amended regulations. This application was received in the CPC-Mississauga office prior the [sic] implementation of the new requirements requiring sponsors to meet the 3 years of minimum income requirements prior to submission of the sponsorship undertaking.

[CTR at p. 185]

[3] The transcript of the hearing before the IAD contains the Member's opening question, and the responses provided:

Member: ...So, there's a couple of things I first want to address. Back in 2014 on January 1st the Regulation 133(1)(j) was amended to include Subsection (B) – or (A) and (B), actually.

Do both counsels agree that that would be the regulation that I would be using today in assessing for [sic] this appeal?

Minister's Counsel: Yes.

Member: So, counsel, you raised your hand and shook your head, but you're going to have verbally tell me [sic].

Counsel: Yes.

Member: Okay, perfect.

Counsel: Sorry.

Member: Okay, thank you so much.

[CTR at pp. 509-510]

[4] Thus, when questioned by the IAD, the Consultant inexplicably consented to applying the 2014 Regulation apparently against his client's interest.

[5] On judicial review, the Applicant objected to the IAD applying the 2014 Regulation, because it created a higher financial threshold for sponsorship than does the 2011 Regulation.

[6] Also in issue are the following factors: the IAD did not provide a reason for selecting the 2014 Regulation; the IAD did not provide a reason for seeking the consent of the parties to the 2014 Regulation; the IAD decided upon the 2014 Regulation without addressing the 2011 Regulation argument; and, indeed, the IAD did not provide a reason for failing to address the 2011 Regulation.

[7] In *Dunsmuir*, 2008 SCC 9, the Supreme Court of Canada states that “[i]n judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process” (para. 47).

[8] Applying *Dunsmuir* to the case at hand, I find that for the IAD's decision to be transparent, the IAD was required to answer the questions and provide the information as described in paragraph 6 of these reasons. Given the conduct there described, I find that the decision is not transparent. Therefore, I find that the decision is unreasonable.

JUDGMENT IN IMM-1754-19

THIS COURT'S JUDGMENT is that the decision under review is set aside, and the matter is referred back for determination by a different Member on the following direction:

Direction

Consider the 2011 Regulation argument and provide a clear reason for choosing or not choosing that Regulation.

No question was posed for certification.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1754-19

STYLE OF CAUSE: PINKI DUGGAL v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 16, 2019

JUDGMENT AND REASONS: CAMPBELL J.

DATED: NOVEMBER 4, 2019

APPEARANCES:

Napinderpal Singh Masaun

FOR THE APPLICANT

Modupe Oluyomi

FOR THE RESPONDENT

SOLICITORS OF RECORD:

WeExcel Lawyers LLP
Barristers and Solicitors
Brampton, Ontario

FOR THE APPLICANT

Attorney General of Canada

FOR THE RESPONDENT