

Federal Court



Cour fédérale

Date: 20231204

Docket: IMM-6317-21

Citation: 2023 FC 1622

Ottawa, Ontario, December 4, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

OMAR HAMMAD GOBLAN AL-KHATATNEH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Omar Hammad Goblan Al- Khatatneh (the “Applicant”) seeks judicial review of the decision of an immigration officer (the “Officer”), closing his application for permanent residence on the basis that his sponsor had withdrawn her sponsorship pursuant to sections 119 and 120 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”).

[2] On October 9, 2018, the Applicant applied for permanent residence as a member of the family class, that is a “sponsored” spouse. He received Confirmation of Permanent Residence (“COPR”) from the Jordanian Embassy on May 20, 2019.

[3] The following facts and details are taken from Certified Tribunal Record (the “CTR”) and the Global Case Management System (“GCMS”) notes attached as an exhibit to the affidavit of Ms. Linda Splawnski, filed on behalf of the Respondent. Occasionally, the Applicant is referred to as the “PA” in those notes.

[4] The Applicant entered Canada on October 1, 2019, pursuant to the spousal sponsorship application that had been submitted by his wife. He was due to attend his first “landing” interview on November 12, 2019, but this meeting was cancelled and rescheduled for March 26, 2020.

[5] In the meantime, the COVID-19 pandemic arrived and the second interview was cancelled.

[6] The Applicant’s COPR document expired on April 25, 2020. A new COPR document and permanent residence visa were issued on July 6, 2021. By this time, he had not attended a landing interview.

[7] The GCMS notes disclose that an email was sent by the sponsor on June 25, 2021. The notes record an “enquiry” from the sponsor as follows:

Hi, Please accept my withdrawal from the spousal sponsorship applicant which holds file # F000616307....Please find attached letter with all required information in this regards [sic] Reason of withdrawal is marital issues and planning a divorce.

[8] An entry for July 11, 2021 records that the sponsor wanted “to withdraw the case, PA not landed yet.”

[9] An entry made on July 14, 2021 advises that an email was sent to Immigration, Refugees and Citizenship Canada (“IRCC”) “so that we may complete the withdrawal at our end.”

[10] An entry made on July 15, 2021 records that the file was withdrawn and refund of the application fees was put in motion. The entry also records that a letter was sent to the sponsor “confirming file withdrawal and forthcoming refund.”

[11] The GCMS notes show receipt of an email on August 27, 2021 from the new representative of the Applicant, asking that his appointment be rescheduled for “receipt of his initial PR card.”

[12] The GCMS notes show that an email was sent to the Applicant’s representative on September 7, 2021, advising that application F000616307 “is closed”, with the suggestion that the Applicant “contact their sponsor for additional information.”

[13] The GCMS notes record another email sent on September 7, 2021 from the Applicant’s representative, asking for reconfirmation of the landing appointment. The representative advised

that “Any recent application closure at his wife’s request is too late and is irrelevant to his appointment to collect his PR card in Edmonton. Please confirm when he may collect his PR card in Edmonton.”

[14] The Applicant now pleads that he suffered a breach of procedural fairness because IRCC declined to process his application for permanent residence. He argues that he had a reasonable expectation that processing delays associated with COVID-19 would apply to his sponsor’s application to withdraw her sponsorship in the same manner as the delays had applied to the processing of his application for permanent residence.

[15] The Applicant also argues that the reasons provided to him are “deficient” and “illogical”. He submits that he had received “*de facto*” permanent residence when he entered Canada and that his status had “crystalized” when his wife re-entered Canada on February 22, 2022.

[16] The Respondent contends that there was no breach of procedural fairness. He submits that “Program Delivery Instruction” are publicly available documents that address the Applicant’s situation. According to those instructions, a sponsor has the right to withdraw a sponsorship application. Section 119 of the Regulations addresses such a situation.

[17] The Respondent otherwise submits that once the sponsorship application was withdrawn, the decision to close the application for permanent residence was reasonable.

[18] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[19] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the merits of the decision are reviewable on the standard of reasonableness.

[20] In considering reasonableness, the Court is to ask if the decision under review “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”; see *Vavilov, supra* at paragraph 99.

[21] I agree with the Respondent that there has been no breach of procedural fairness. The doctrine of legitimate expectations is directed to “process”, not to a specific outcome. I refer to the decision in *Masam v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 751 at paragraph 15 where Justice Walker commented on the doctrine as follows:

[15] The principle of legitimate expectation derives from the requirements of procedural fairness. If a public entity or official has, by its conduct, led an individual to expect that a process would be conducted in a certain manner, the Court will protect the individual’s expectation. The principle is procedural only. It does not create substantive rights in the individual nor does it guarantee a specific result [*citations omitted*].

[22] The Applicant has not shown any representation made to him by the Respondent that the sponsorship withdrawal would proceed in a certain way.

[23] As for the reasonableness of the decision, in my opinion, the answer lies in section 119 of the Regulations which provides as follows:

Withdrawal of sponsorship application

119 A decision shall not be made on an application for a permanent resident visa by a member of the family class if the sponsor withdraws their sponsorship application in respect of that member.

Retrait de la demande de parrainage

119 Il n'est pas statué sur la demande de visa de résident permanent au titre de la catégorie du regroupement familial si la demande de parrainage a été retirée à l'égard de l'intéressé.

[24] This Regulation clearly provides that a sponsorship application can be withdrawn, upon the initiative of the sponsor and independently of the person who is the subject of the sponsorship application.

[25] In the circumstances outlined above, the decision to close the Applicant's application is reasonable.

[26] The Applicant proposed the following question for certification:

Does IRCC have an obligation to ensure that its Covid protocols and resultant time delays are applied in a consistent and uniform manner to individual applications in spousal sponsorship cases?

[27] I agree with the position put forward by the Respondent. The adjudication of this application for judicial review turns on the facts presented and the application of the law. No question will be certified.

[28] In the absence of any breach of procedural fairness or any legal error, the application for judicial review will be dismissed.

JUDGMENT IN IMM-6317-21

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

No question will be certified.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6317-21

STYLE OF CAUSE: OMAR HAMMAD GOBLAN AL-KHATATNEH v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

DATE OF HEARING: JULY 11, 2023

REASONS AND JUDGMENT: HENEGHAN J.

DATED: DECEMBER 4, 2023

APPEARANCES:

Shirish P. Chotalia FOR THE APPLICANT

Maria Green FOR THE RESPONDENT

SOLICITORS OF RECORD:

Pundit & Chotalia FOR THE APPLICANT
Barrister and Solicitor
Edmonton, Alberta

Attorney General of Canada FOR THE RESPONDENT
Edmonton, Alberta