

Federal Court



Cour fédérale

Date: 20240723

Docket: IMM-6232-23

Citation: 2024 FC 1144

Ottawa, Ontario, July 23, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**BEHNAZ SADEGHIAN, MANOUCHEHR
SADEGHIAN AND NAHID HOMAEI**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] In November 2022, Behnaz Sadeghian, the Principal Applicant [PA], applied to sponsor her parents for permanent residence under the 2022 Parents and Grandparents Program [PGP]. The application was submitted in response to an invitation from Immigration, Refugees and Citizenship Canada [IRCC] to apply and followed the submission of an Interest to Sponsor form that had been previously completed and provided to IRCC.

[2] At the time of application, the PA recognized that the invitation to apply had been extended to her husband, not the PA. This discrepancy was addressed in a letter accompanying the application to sponsor:

Note: Since “Interest to Sponsor form” was mistakenly submitted via Dr. Alireza Mirlohi’s email, the Sponsor’s husband, who is also the co-signer in this application, the Invitation to Apply Letter, dated October 12, 2022, was issued to Dr. Alireza Mirlohi.

As a proof, please note that the Sponsor has entered her parents’ names in the initial online interest to sponsor application, but since she was using her husband’s laptop and the forms were pre-filled by the browser, the application was mistakenly submitted bearing the Sponsor’s husband’s name and email. However, the names of the Applicants have been registered in the initial online sponsorship sign-up form, which indicate that Ms. Behnaz Sadeghian is the actual sponsor in this application.

To summarize, Dr. Behnaz Sadeghian is the Sponsor in this application, sponsoring her parents, Dr. Manouchehr Sadeghian and Mrs. Nahid Homaei. You are kindly requested, while processing this application, to consider this as an honest mistake on the side of the Sponsor.

[Emphasis in original.]

[3] By letter dated May 4, 2023, the PA was notified that the application did not meet the requirements for processing because “You were not invited by Immigration, Refugees and Citizenship Canada (IRCC) to submit an application.” The letter notes that the Ministerial Instructions of October 15, 2022 issued pursuant to section 87.3 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] (Canada Gazette, Part I, Volume 156, Number 42: Government Notices [Ministerial Instructions]) require that an application for sponsorship be made by the person who had submitted the Interest to Sponsor form. The letter further advised that another invitation to apply for the 2022 PGP would not issue.

[4] The Applicants apply under subsection 72(1) of the IRPA for judicial review of the refusal to accept the sponsorship application for processing.

[5] The Applicants argue the decision is not justified, transparent and intelligible because the explanation for the error and the PA's prompt action to address that error once brought to her attention were ignored.

[6] The Respondent submits the decision not to process the sponsorship application because it is non-compliant with Ministerial Instructions is not justiciable. Alternatively, the Respondent submits the decision maker was required to apply the Ministerial Instructions, and the decision not to process the application was reached in accordance with those instructions (IRPA, subsection 13(4)).

[7] I agree with the Respondent. This Court has consistently held that a decision not to process an application under the IRPA for reasons of non-compliance with Ministerial Instructions is not a decision to refuse the application and therefore is not a matter that is justiciable under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [*Federal Courts Act*] (*Filippiadis v Canada (Citizenship and Immigration)*, 2014 FC 685 at paras 2-3, 32-33, and 37; *Sheikh v Canada (Citizenship and Immigration)*, 2020 FC 199 [*Sheikh*]; *Zhou v Canada (Citizenship and Immigration)*, 2021 FC 1424).

[8] A decision not to process an application is not a rejection or refusal of the sponsorship application (IRPA subsection 87.3(5)). The decision does not affect a party's rights, impose legal

obligations on a party, or prejudicially affect a party directly. As such, the decision not to process the application is not a “matter” for which an application for judicial review may be made under section 18.1 of the *Federal Courts Act* (*Sheikh* at para 62, citing *Mfudi v Canada (Citizenship and Immigration)*, 2019 FC 1319 at para 7, and *Air Canada v Toronto Port Authority*, 2011 FCA 347 at para 29).

[9] The Applicants argue that the Court’s jurisprudence is to be distinguished because the decision in this instance must be viewed as a final decision. The nature of the program prevents the Applicants from addressing the mistake by way of a new application. I disagree.

[10] The PGP process is lengthy and the Applicant will not receive another invitation under the 2022 program. Nor would the submission of a fresh Interest to Sponsor in the future guarantee another invitation. However difficult these circumstances are, they do not change the character of the refusal to process the application.

[11] Very similar circumstances arising from an application to sponsor under the PGP were before the Court in *Sheikh*. In concluding a decision not to process the application for reasons of non-compliance was not a justiciable matter, Justice James Russell acknowledged that the Minister’s program may cause serious inconvenience and frustration. However, he held that a refusal to process at a particular time cannot be conflated with a refusal of the application. The analysis and conclusions are of direct application here and are determinative of the matter (*Shiekh* at paras 50-63 and 67-71).

[12] The Application for Judicial Review is dismissed. The Parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-6232-23

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6232-23

STYLE OF CAUSE: BEHNAZ SADEGHIAN, MANOUCHEHR
SADEGHIAN AND NAHID HOMAEI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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