Federal Court  Cour fédérale

Date: 20241121

Docket: IMM-14496-23

Citation: 2024 FC 1867

Ottawa, Ontario, November 21, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

DARIANA SAN JUAN VALDELAMAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Dariana San Juan Valdelamar, seeks judicial review of the Respondent's refusal to process her sponsorship application for permanent residence as a dependent child.

[2] The Applicant is a citizen of Mexico, who arrived in Canada as a visitor in May 2023, together with her stepfather and her two half-siblings. The Applicant retained counsel to prepare a family class sponsorship for her mother to sponsor her as a dependent child; her mother

retained the same counsel to represent her in the sponsorship application. A separate sponsorship application was prepared for the stepfather and step-siblings, and that matter is not before the Court.

[3] The sponsorship application was submitted on September 8, 2023, and at that time the Applicant was eligible for sponsorship as a dependent child because she was still 21 years old. She turned 22 on September 11, 2023, and was no longer eligible to be sponsored as a dependent child. However, the application would be "locked in" and the Applicant's eligibility would be assessed on the date it was originally submitted, if it passed the initial screening done by the Respondent.

[4] On November 3, 2023, the Applicant's sponsor was advised that the sponsorship application was being returned because it was incomplete. The form letter indicated that the Use of a Representative form had not been completed correctly. The application was not refused on its merits, but rather returned as "incomplete" because the Applicant's mother had not signed a form indicating she was using a legal representative for the purposes of the sponsorship application. The Applicant had signed her Use of a Representative form, but her mother had not done so.

[5] On November 14, 2023, the Applicant re-submitted her forms, together with Use of Representative forms signed by her and her mother. In the letter accompanying the new forms, the Applicant requested that the Respondent give effect to the "lock-in" date from her original application, so as to preserve her eligibility for sponsorship as a dependent child. In addition, she

asked the Officer to grant her humanitarian and compassionate ("H&C") relief, in light of the harsh consequences on her caused by a simple missing form. There is no indication in the record that a decision has been taken on the request for reconsideration and/or H&C relief. This application concerns the November 3, 2023 refusal to process the original application.

[6] The Applicant argues that the refusal to process her application is unreasonable, pointing out that she had completed all of the necessary forms and that the instructions regarding the sponsor's obligation to complete and sign the Use of a Representative form were not clear. In the alternative, she asks the Court to recognize the hardship she faces as a result of the paperwork error, and to give her relief on H&C grounds pursuant to section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[7] The Respondent submits that the refusal to process an incomplete application is not a decision that is reviewable by this Court, relying on subsection 87.3 of *IRPA*, which states:

Application	**Application**
87.3 (1) This section applies to applications for visas or other documents made under subsections 11(1) and (1.01), other than those made by persons referred to in subsection 99(2), to sponsorship applications made under subsection 13(1), to applications for permanent resident status under subsection 21(1) or temporary resident status under subsection 22(1) made by foreign nationals in Canada, to applications for work or study permits and to requests under subsection 25(1) made by foreign nationals outside Canada.	**87.3 (1)** Le présent article s'applique aux demandes de visa et autres documents visées aux paragraphes 11(1) et (1.01) — sauf à celle faite par la personne visée au paragraphe 99(2) —, aux demandes de parrainage faites au titre du paragraphe 13(1), aux demandes de statut de résident permanent visées au paragraphe 21(1) ou de résident temporaire visées au paragraphe 22(1) faites par un étranger se trouvant au Canada, aux demandes de permis de travail ou d'études ainsi qu'aux demandes prévues au paragraphe 25(1) faites par un étranger se trouvant hors du Canada.

Clarification	Précision
87.3 (5) The fact that an application or request is retained, returned or otherwise disposed of does not constitute a decision not to issue the visa or other document, or grant the status or exemption, in relation to which the application or request is made.	**87.3 (5)** Le fait de retenir ou de retourner une demande ou d'en disposer ne constitue pas un refus de délivrer les visa ou autres documents, d'octroyer le statut ou de lever tout ou partie des critères et obligations applicable.

[8] The Respondent points out that several recent decisions have found that the refusal to process an application is not a decision on the merits, does not affect the rights or interests of the applicant (who can simply re-apply), and is not justiciable: *Gennai v Canada (Citizenship and Immigration)*, 2017 FCA 29; *Sadeghian v Canada (Citizenship and Immigration)*, 2024 FC 1144 at paras 7-8 [*Sadeghian*], citing *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 and *Zhou v Canada (Citizenship and Immigration)*, 2021 FC 1424.

[9] In response, the Applicant argues that these cases must be distinguished because of the particular circumstances of this case: the refusal to process her application meant that the "lock-in" date did not trigger, and as a consequence she became ineligible for sponsorship as a dependent child. Therefore she cannot simply re-apply for sponsorship, since she is no longer eligible as a dependent child. The Applicant argues that the decision should be subject to review since it so clearly affects her rights and interests and has such a devastating consequence for her.

[10] While I understand the Applicant's frustration with the position she finds herself in, I am not persuaded by her arguments. This Court has acknowledged that refusals at the screening

stage can cause some distress for applicants seeking status in Canada, but this alone is not a basis for granting relief since refusal to process an application is not to be conflated with a refusal on the merits: see e.g., *Sadeghian* at paras 9-11, citing *Sheikh* at paras 50-63 and 67-71.

[11] I accept the Applicant's argument that her case involves some different considerations than the situations dealt with in the case-law relied on by the Respondent. The decision in this case had harsher consequences on her than the ones challenged in those other cases, for the simple reason that she is no longer eligible to be sponsored as a dependent child. As a consequence, the Applicant must therefore apply as an adult if she qualifies under some other immigration stream. I will therefore proceed on the basis that the decision in this case is subject to judicial review because of the specific consequences for the Applicant.

[12] The refusal is to be assessed under the framework for reasonableness review set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[13] One essential aspect of the *Vavilov* framework is whether the decision reflects the legal and factual matrix. In this case, that is fatal to the Applicant's argument because the Officer had virtually no discretion to process her incomplete application. Under the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], an incomplete or improperly completed sponsorship application "is considered not to be an application filed in the prescribed manner…" (*IRPR*, subsection 10(6)), and where the requirements are not met, "the application and all

documents submitted in support of it… shall be returned to the applicant." (*IRPR*, section 12) (Emphasis added).

[14] These provisions set out an extremely narrow scope for a decision on the screening of an incoming sponsorship application, once it is determined that the application is incomplete or a mistake has been made in completing a form. In this case, in refusing to process the Applicant's incomplete sponsorship application package, the Officer was simply following the specific instructions set out in the *IRPA* and *IRPR*. Under subsection 10(2) of the *IRPR*, the Applicant was required, among other things, to provide details regarding their representative, and subsection 130(1) requires the sponsor to do the same. In this case, the Applicant acknowledged that the sponsor did not complete and sign a Use of a Representative form, nor did she provide this information in any other way in relation to her sponsorship of the Applicant. This was only done later, with the application for reconsideration.

[15] The Applicant pleads that the instructions set out in the Document Checklist and application form are not clear. I do not agree, and in any event the Applicant has acknowledged that her sponsor did not submit a signed Use of a Representative form with the original application. Under the law, that meant that the application was incomplete and the instructions and form cannot amend the requirements of the law. The onus was on the Applicant and her sponsor to submit a complete application package. She did not do so. In light of the volumes of requests the Respondent receives every year, requiring them to help applicants complete their forms or to provide more than *pro forma* reasons for refusing to accept incomplete or incorrect applications would impose an untenable burden.

[16] As for the Applicant's request that the Court exercise discretion to grant her H&C relief, I find this is simply not available in this case. The Applicant has submitted a request for reconsideration of her new (and complete) sponsorship package, and has asked the Officer to grant H&C relief by treating September 8, 2023 as the lock-in date. The Respondent indicated that no decision has been taken on that request.

[17] For the reasons set out above, the application for judicial review will be dismissed.

[18] There is no question of general importance for certification.

JUDGMENT in IMM-14496-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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