Federal Court Cour fédérale

Date: 20241206

Dockets: IMM-4595-23

Citation: 2024 FC 1986

Ottawa, Ontario, December 6, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

EMILIE GRACE TAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision by an officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC] refusing her application for permanent residence under the Start-up Business Class Program. The application was refused on the basis that one of the essential members of her entrepreneurial team had withdrawn his application prior to the determination of the Applicant's application.

[2] The Start-up Business Class is a part of the economic class of immigration pursuant to subsection 12(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*], which provides that a foreign national may acquire permanent residence status in Canada by being selected as a member of the economic class on the basis of their ability to become economically established in Canada.

[3] The requirements for membership in the Start-up Business Class are prescribed by subsection 98.01(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], which provides that a foreign national is a member of the Start-up Business Class if: (a) they have obtained a commitment that is made by one or more entities designated under subsection 98.03(1), that is less than six months old on the date on which their application for a permanent resident visa is made and that meets the requirements of section 98.04; (b) they meet certain language requirements; (c) they meet certain financial criteria; and (d) they have started a qualifying business within the meaning of section 98.06.

[4] Subsection 98.04(3) provides, in part, that if there is more than one applicant in respect of a commitment, the commitment must identify those applicants that the entity making the commitment considers essential to the business.

[5] Subsection 98.08(2) provides:

Multiple applicants	**Demandeurs multiples**
(2) If there is more than one applicant in respect of the same business and one of the applicants who was	**(2)** S’il y a plus d’un demandeur relativement à la même entreprise et que l’un d’entre eux, qui est indispensable à

identified in the commitment as being essential to the business is refused a permanent resident visa for any reason or withdraws their application, the other applicants must be considered not to have met the requirements of subsection 98.01(2) and their permanent resident visa must also be refused	l'entreprise selon l'engagement, se voit refuser la délivrance d'un visa de résident permanent pour quelque raison que ce soit ou retire sa demande, les autres demandeurs sont considérés comme ne satisfaisant pas aux exigences prévues au paragraphe 98.01(2) et ne peuvent se voir délivrer un visa de résident permanent.

[6] The Applicant's permanent residence application, which was submitted in November 2020, indicated that she planned to come to Canada to start an information and communications technology business called NextProp, with four other individuals. NextProp was described as "[a] cloud-based blockchain platform with a mobile application that enables property managers to facilitate lease management, data analytics, and payments on one centralized ecosystem." One of the team members, Sebastian Niklaus Kopp [Mr. Kopp], was to be the Chief Executive Officer, whereas the Applicant was to be the Chief Operating Officer. The Applicant and her team obtained a Commitment Certificate from a Designated Entity (Canadian International Angel Investors Ltd.), which she submitted with her application. The Commitment Certificate deemed all team members, including Mr. Kopp, as "essential" to the entrepreneurial team.

[7] At some point after the Applicant submitted her application, Mr. Kopp withdrew from the application. The remaining business team members decided to pivot their business and created a

new business plan that did not include Mr. Kopp. The team members obtained an amended Commitment Certificate [Amended Commitment Certificate] from Canadian International Angel Investors Ltd., which no longer listed Mr. Kopp as an essential member but continued to list the remaining four team members as essential. Aspects of the start-up business also changed in the Amended Commitment Certificate. The Amended Certificate changed the company name from "NextProp" to "LinkProp" and described LinkProp as:

> […] a PropTech (Property Technology) company that plans to build a property management platform targeting landlords. The platform will support new and existing landlords with granular property valuation service, assessing fair rental value, and managing the relationship with tenants (digital lease/contract management, payment management/processing, repair & maintenance requests). The services Linkprop [*sic*] provides will allow the streamlining and automation of many interactions between landlord and tenant while offering the unique ability to assess the value of properties held or considered.

[8] The Amended Commitment Certificate also revised the financial and legal structure of the business, and re-allocated roles and responsibilities amongst the remaining team members. In this re-shuffling, the Applicant was named the Chief Executive Officer.

[9] On July 18, 2022, the Amended Commitment Certificate was submitted to IRCC, along with a term sheet for financing and other business documents.

[10] By letter dated March 28, 2023, the Officer refused the Applicant's permanent residence application on the basis that:

> Another applicant in respect to the same business as yours (identified as essential to the business in the original commitment certificate) has withdrawn their permanent resident visa application. Therefore, you have not met the requirements of subsection

> 98.01(2), as described in subsection 98.08(2) of IRPR. You are therefore not a member of the Start-up Business Class, and your application for permanent residence in Canada is refused.

[11] The Global Case Management System [GCMS] notes, which form part of the reasons, further provide under the heading "ELIGIBILITY":

> Correspondence received on 2022/07/18 from designated entity providing an amended commitment certificate removing essential tem member # E002067074. Essential team member # E002067074 has withdrawn their SUV application. Principal applicant applied in 2020/11/16 with the original commitment certificate with the withdrew [*sic*] essential member. Therefore, according to paragraph 98.08(2), I am satisfied that applicant is no longer a member of the class as per subsection 98.01(2) as a team member is withdrawing himself from the business proposal and amended commitment certificate was received after the application for a permanent resident visa was made.

[12] The sole issue for determination is whether the Officer's determination that the Applicant is not a member of the Start-up Business Class was reasonable.

[13] The parties agree and I concur that the applicable standard of review is reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such

that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

[14] The Applicant asserts that the Officer unreasonably interpreted and applied subsection 98.08(2) of the *IRPR*. The Applicant states that the Amended Commitment Certificate did not list Mr. Kopp as an essential member and thus there was no basis for the Officer to refuse the application pursuant to subsection 98.08(2), as all members listed as essential on the Amended Commitment Certificate had pending applications for permanent residence at the time of the Officer's decision. The Applicant further asserts that there is nothing in subsection 98.08(2) that suggests that the Officer must assess the Applicant's permanent residence application against the initial Commitment Certificate, nor is there anything in the *IRPR* to suggest that a Designated Entity cannot amend a Commitment Certificate if it is filed prior to any determination on the pending application for permanent residence.

[15] The Applicant asserts that it would be entirely unreasonable and contrary to the broader context of the Start-up Business Class Program and the *IRPA* as well as the public interest, given the administrative burden on applicants to reapply after years of processing, to interpret the *IRPR* in an overly rigid manner that disallows a Designated Entity from amending the Commitment Certificate prior to an Officer's assessment of a permanent residence application. The Applicant asserts that this is particularly unreasonable given the evolving nature of start-up businesses whose essential persons are faced with significant delays in the processing of their applications for permanent residence.

[16] The crux of the Applicant's argument is that a proper interpretation of the *IRPR* allows a Designated Entity to amend a Commitment Certificate after an application for permanent residence is submitted but before a decision on such application is made.

[17] I reject the Applicant's argument. Paragraph 98.01(2)(a) requires that an applicant have obtained a Commitment Certificate from a Designated Entity that is less than six months old on the date on which their application for a permanent residence visa is submitted. In this case, the original Commitment Certificate (issued November 6, 2020) was replaced with the Amended Commitment Certificate (issued July 15, 2022). The Amended Commitment Certificate was not less than six months old on the date on which the Applicant's application was submitted (November 16, 2020).

[18] This Court has recognized that the regulatory requirements of the Start-up Business Class are time sensitive [see *Orouji v Canada (Citizenship and Immigration)*, 2024 FC 1736 at para 15]. There is nothing in the language of subsection 98.01(2) or 98.08(2) that would suggest that an applicant is entitled to side-step this timing requirement by filing an amended Commitment Certificate after submission of their application. To permit an applicant to do so would undermine the timing requirement set out in the *IRPR*. If Parliament intended for applicants to be able to amend Commitment Certificates after the submission of their applications, Parliament certainly could have included language permitting amendments. It did not do so. Accordingly, I find that the Officer's interpretation and application of subsection 98.08(2) was reasonable.

[19] Moreover, to accept what the Applicant proposes as a proper interpretation of subsections 98.01(2) and 98.08(2) would be to invite mischief into the application process. It would allow individuals to secure a spot in the processing queue prior to truly landing on a finalized business arrangement and then, while waiting to have their permanent residence applications processed, continue to fine-tune or potentially dramatically overhaul their planned business. In this case, the changes to the proposed start-up company were significant. Not only was Mr. Kopp no longer associated with the company but the company name had been changed, the description of the business was altered and a new business plan was adopted; the company structure was reorganized with the appointment of a new Chief Executive Officer; and there were changes to both the legal and financial structure of the business. I find that, in the face of such significant changes to the planned company, any suggestion that the Applicant should get the benefit of the initial Commitment Certificate to meet the timing requirement of subsection 98.08(2) is entirely unreasonable.

[20] At the hearing of the application, the Applicant urged the Court to accept their interpretation of subsection 98.08(2) by relying on the most recent Operational Instructions and Guidelines issued by IRCC as of April 30, 2024, on how officers should assess applications in the Start-up Business Class Program. Those Operational Instructions and Guidelines state:

> For all applications, officer must
>
> - only accept updated commitment certificates until the receipt of the first SUV permanent residence application from any member of the entrepreneurial team listed on the certificate
>
> - The receipt of the first permanent residence application will serve as the lock-in date for the commitment certificate, at which time no further changes can be made.

[21] The Applicant urged the Court to interpret those Operational Instructions and Guidelines to mean that IRCC adopted a change in practice and that prior to April 30, 2024, amendments to Commitment Certificates were permitted at least up until the point that an applicant's application was assessed. I reject this interpretation. IRCC's Operational Instructions and Guidelines do not state they are intended to reflect a change in IRCC's practices regarding amended Commitment Certificates. Rather, they provide clarity and confirm that the lock-in date for Commitment Certificates remains the date that the first application for permanent residence is received and after that, no further changes can be made. Moreover and importantly, subsection 98.01(2) of the *IRPR* has not changed, such that the timing requirement of Commitment Certificates remains the same. Even if the Operational Instructions and Guidelines could be interpreted as suggested by the Applicant (whose interpretation I do not support), they cannot override the language of the *IRPR*, which requires the Commitment Certificate to pre-date the application.

[22] As the Applicant has failed to demonstrate that the decision was unreasonable, the application for judicial review shall be dismissed.

[23] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-4595-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Stephen W. Green Spencer Green Madison Gateman	FOR THE APPLICANT
Daniel Engel	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Green and Spiegel, LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT