Federal Court  Cour fédérale

Date: 20250207

Docket: IMM-445-24

Citation: 2025 FC 251

Ottawa, Ontario, February 7, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

SUI SI IN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Sui Si In, a citizen of Vietnam and a permanent resident of Canada, seeks judicial review of a decision of the Immigration Appeal Division [IAD]. The IAD refused her application to sponsor her adult son to join her in Canada as a dependant child. The IAD found that her son, who was 33 years old at the time of her application, was not a "dependent child"

within the meaning of section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. The IAD determined that the evidence of the son's dependency on the Applicant was inconsistent and also found that the Applicant's position that her son could not work, was contrary to the information disclosed in an earlier application for a temporary resident visa.

[2] On judicial review it is not the role of the Court to reweigh or reconsider the evidence – rather the Court is restricted to assessing if the IAD reasonably considered the evidence. In this case, while the consequences may seem harsh, the Court has no grounds to disturb the IAD decision as it is reasonably grounded on the evidence and the statutory requirements.

I. Background

[3] In 2018, the Applicant applied to sponsor her son, Say Senh Cun [Say], to join her in Canada as her dependant. The Visa officer of the Immigration Division [ID], who considered her sponsorship application, refused it on the grounds that Say was not a "dependent child" within the meaning of section 2 of the *IRPR*. The Officer was not satisfied that Say was financially dependant on the Applicant and was not satisfied that Say could not financially support himself.

[4] The Applicant appealed to the IAD.

II. IAD Decision under review

[5] The IAD concluded that the Applicant (1) did not provide evidence of continuous financial support to Say; and (2) did not provide clear and convincing evidence to establish that Say is unable to work and support himself in Vietnam due to his physical condition.

[6] The medical evidence was that Say had been badly burned as a child and sustained serious injuries to his hands and feet. The IAD noted the medical evidence stating that he can walk, dress himself, and write without help. The medical evidence is also that he has full mental capacity and has university training in information technology, web design, computer assembly and language translation. Despite his physical limitations, the IAD noted that Say was offered a job in Canada for an office IT position and that he had been employed in Vietnam for seven years.

[7] On financial support, the IAD considered the documentary evidence indicating the Applicant's daughter provided financial support to Say for various periods in 2013, 2014, 2017 and 2019. The IAD found the Applicant herself did not start to substantially support Say until 2019, when he was 30 years old. Say also receives a monthly government disability allowance.

[8] The IAD noted inconsistent positions on Say's abilities between the medical reports and the information in temporary resident visa [TRV] applications filed in 2014 and 2017. For example, the 2017 TRV application noted that Say had been employed in Vietnam for seven years, whereas the sponsorship application declared he was a dependent child.

[9] Overall, the IAD concluded that the Applicant failed to provide reliable documents on Say's employment and educational history in Vietnam. The IAD dismissed the appeal, concluding that Say is not a dependent child as defined in section 2 of the *IRPR*.

III. Issues

[10] The Applicant raises the following issues with the IAD decision:

A. Did the IAD reasonably assess the evidence of Say's ability to work and support himself?

B. Did the IAD reasonably conclude that the Applicant did not provide evidence of continuous financial support to Say

IV. Standard of Review

[11] The parties agree that the applicable standard of review on both issues is reasonableness. On a reasonableness review, the Court takes a "reasons first" approach and determines if the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 paras 8, 59).

[12] A reasonable decision is one that is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision-maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85 [*Vavilov*]).

[13] 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 (*Vavilov* at para 100).

V. Relevant Legislation

[14] Section 2 of the *IRPR* states:

dependent child, in respect of a parent, means a child who	***enfant à charge*** L'enfant qui :
(a) has one of the following relationships with the parent, namely,	**a)** d'une part, par rapport à l'un de ses parents :
(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or	**(i)** soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,
(ii) is the adopted child of the parent; and	**(ii)** soit en est l'enfant adoptif;
(b) is in one of the following situations of dependency, namely,	**b)** d'autre part, remplit l'une des conditions suivantes :
(i) is less than 22 years of age and is not a spouse or common-law partner, or	**(i)** il est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait,
(ii) is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be	**(ii)** il est âgé de vingt-deux ans ou plus et n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents depuis le moment où il a atteint

financially self-supporting due to a physical or mental condition. (*enfant à charge*)	l'âge de vingt-deux ans, et ne peut subvenir à ses besoins du fait de son état physique ou mental. (*dependent child*)

VI. Analysis

A. *Did the IAD reasonably assess the evidence of Say's ability to work and support himself?*

[15] The Applicant argues that, considering the medical evidence, it is not reasonable for the IAD to have found that Say can be self-sufficient. She argues that the evidence demonstrates that her son has only had "marginal employment", and that he is not financially self-supporting because of his physical disabilities.

[16] The IAD considered the April 6, 2021 Report of Dr. Martinez that states Say "can walk without help, can get dressed and he can write." The IAD further noted that Say has full mental capacity, drives a disability-adapted vehicle, and that he can do most actions with his arms, with no feeding or evacuation problems. In a further report dated June 16, 2022, the same Dr. Martinez notes that Say is: "NOT FIT TO WORK due to his hand and feet disability," and that "He is unable to perform most works that need any physical demand or clear oral communication (impaired pronunciation)." As noted by the IAD, this information is contained in the travel medical certificate dated the same day as the letter containing the information that discussed his physical limitations. However, in this medical note, Dr. Martinez does not explain the contradiction between his reports. Namely, stating in one report that he is unable to perform

"physical demand or clear oral communication" work, and in the other report stating, "not fit to work".

[17] Given this unclear medical opinion, it was reasonable for the IAD to conclude that the evidence on Say's ability to work was inconsistent. This was further compounded by the conflicting evidence on his work history in Vietnam and the lack of evidence on his education background. For example, when Say applied for a TRV in March 2017, he advised in his application that he worked for approximately seven years at ABC.DID Co. as staff, which indicates an ability to work despite his physical disability. The Officer's GCMS notes this inconsistency in the information provided in the current sponsorship application and Say's 2017 TRV application:

> […] I note that background information in GCMS shows [Say] declared working as "STAFF at ABC.DID Co LTD from Jan 2010 to March 2017". This information was provided in context of a TRV application submitted on March 24, 2017. I note the TRV was refused and refusal notes also reiterate [Say's] declared employment as it states: "Relatively low wage. Large recent term deposit made not commensurate with income." Finally, I note SPR declared in previous application […] dated 2017 that [Say] was a worker. This leads me to believe that [Say] previously worked and was able to financially support himself. I note SPR did not declare [Say] as a dependent in her FC1 application […]

[18] The Applicant does not dispute that the information provided in support of the sponsorship application is not consistent with information that was provided in support of an earlier TRV application. She simply says that her misstatements in the sponsorship application should not be held against her son. However, the contradictions are not confined to her

evidence. The IAD noted a lack of documentary evidence, which the Applicant could have provided to clarify Say's education and employment background.

[19] I accept that the Applicant is highly motivated to have her son join her in Canada, and that may explain the inconsistent positions taken between the TRV applications, and the sponsorship application. However, in the face of this inconsistent evidence, it was reasonable for the IAD to conclude that the Applicant failed to provide clear and convincing evidence to establish that her son is unable to work and support himself.

[20] The IAD considered the totality of evidence on the issue of Say's ability to work and support himself. The IAD noted the inconsistencies in that evidence and also noted the absence of evidence on key considerations being his work history and his educational attainment. I find that the IAD consideration of this issue is justified, transparent and intelligible, and therefore reasonable.

B. *Did the IAD reasonably conclude that the Applicant did not provide evidence of continuous financial support to Say?*

[21] The Applicant argues that the IAD failed to properly consider the evidence showing Say's financial dependence on her before he reached the age of 22 in 2011. She argues that the evidence demonstrates that the money he receives from the Vietnamese government is not sufficient for him to survive; and that she has been sending him money to help with living expenses and hiring help.

[22] The relevant case law on this issue interprets the definition of "dependent child" as requiring *continuous and unbroken* financial support (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 1620 at paras 30-34 citing *Gilani v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1522 at para 11). A break in dependency will result in the exclusion of the individual from the family class.

[23] The IAD considered the evidence and noted that Say was employed in Vietnam from 2010 until 2017. The IAD also noted that he began receiving a disability pension in 2015. However, the evidence demonstrated that the Applicant herself did not provide continuous material support or financial assistance to Say in Vietnam after she came to Canada.

[24] The Applicant argues that she and her daughter provided financial support to Say and that qualifies as continuous financial support. She relies upon *Arastehpour v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8597 (FC) [*Arastehpour*] in support of her position that continuous financial support can come from another family member. In my view, *Arastehpour* does not assist the Applicant as the court there was satisfied, based upon the evidence, that the dependent child could not support himself and the continuity of financial support was not directly at issue as it is in this case.

[25] In this case, the IAD was not satisfied that there was evidence that the Applicant had provided continuous and unbroken financial support for Say prior to him reaching the age of 22. While there is evidence of some financial support, as it was not continuous and unbroken financial support, it did not meet the requirements of the legislation.

[26] Based upon the evidence before the IAD, this is a reasonably based finding.

VII. Conclusion

[27] The Applicant has not identified any errors in the IAD consideration of the evidence before them. In essence, the Applicant's arguments are a request that the Court re-weigh or reconsider the evidence before the IAD. That is not the role of the Court on a judicial review. Overall, there are no grounds for the Court to disturb the IAD decision as it is reasonably grounded on the evidence and the statutory provisions.

[28] This judicial review is dismissed. There is no question for certification.

JUDGMENT IN IMM-445-24

THIS COURT'S JUDGMENT is that:

1. This judicial review is dismissed.

2. There is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-445-24
STYLE OF CAUSE:	SUI SI IN V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	NOVEMBER 6, 2024
JUDGMENT AND REASONS:	MCDONALD J.
DATED:	FEBRUARY 7, 2025

APPEARANCES:

Wennie Lee	FOR THE APPLICANT
Antonietta Raviele	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lee & Company Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT