Federal Court Cour fédérale

Date: 20250513

Docket: IMM-2632-24
IMM-5045-24
IMM-3596-24

Citation: 2025 FC 876

Toronto, Ontario, May 13, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

IMELDA HOLLERO ACHACOSO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AND BETWEEN:

DINESH GANGADHARAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Court has before it three interrelated applications for judicial review. The Applicants Imelda Hollero Achacoso and Dinesh Gangadharan seek judicial review of decisions by an immigration officer, dated February 7, 2024, and February 12, 2024, respectively, refusing their applications for permanent resident visas under the start-up business class in relation to the same proposed start-up (respectively, Court File Nos. IMM-2632-24 and IMM-3596-24). Ms. Achacoso also seeks judicial review of a decision by a different immigration officer, dated February 15, 2024, refusing her application for a temporary work permit connected to her permanent resident application (Court File No. IMM-5045-24). In Orders dated January 24, 2025, the Court granted leave for all three applications for judicial review to commence and be heard together.

[2] As explained in further detail below, these applications for judicial review are moot and, despite what may be valid concerns about the reasonableness of the underlying permanent residence decisions, I decline to hear them. Accordingly, all three applications for judicial review are dismissed.

II. FACTS

[3] The Applicants Imelda Hollero Achacoso and Dinesh Gangadharan are business partners in a proposed start-up enterprise called Apex Genesis Technologies Inc. (“Apex Genesis”). They applied to immigrate to Canada along with a third business partner, Gautam Sawhny, under the start-up business class program, pursuant to s. 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and s. 98.01 of the *Immigration and Refugee Protection Regulations*,

SOR/2002-227 [IRPR]. Ms. Achacoso submitted her application for permanent residence on November 24, 2022, and added a work permit application on December 11, 2023. Mr. Gangadharan submitted his permanent residence application on October 17, 2022, and Mr. Sawhny submitted his permanent residence application on November 16, 2022.

[4] The start-up business in which the Applicants and Mr. Sawhny are partners, Apex Genesis, is a British Columbia-based company described by the Applicants as a platform that supports start-ups via cryptocurrency crowdfunding. Ms. Achacoso is a founder of Apex Genesis and its Head of Product Design. Mr. Sawhny and Mr. Gangadharan are the co-founders and are, respectively, CEO and CFO of the business. Both Ms. Achacoso and Mr. Gangadharan identified Mr. Sawhny as an essential team member in their joint enterprise.

[5] Among the requirements for admission under the start-up business class is that applicants have the committed backing of one or more entities or organizations designated by the Minister of Immigration, Refugees and Citizenship Canada [IRCC] for this purpose, and the commitment must be less than six months old on the date of application for permanent residence (IRPR s. 98.01(2)). Proof of the commitment of a designated entity organization [DEO] is established by way of a “commitment certificate” issued directly to IRCC by the DEO. In addition, applicants are provided with, and must submit to IRCC with their application, a letter of support from the DEO confirming the commitment and identifying other essential team members.

[6] The Applicants assert that Apex Genesis had a commitment of support from VANTEC Angels Network Inc. (“VANTEC”), an angel investor group and qualifying DEO. Ms. Achacoso advises that she provided IRCC with proof of this commitment by way of a formal “letter of

support” issued on June 21, 2022, that she included with her application for permanent residence filed five months later, on November 24, 2022. The letter identifies Mr. Gangadharan and Mr. Sawhny as essential team members. Mr. Gangadharan advises that he did the same when he filed his permanent residence application a month earlier on October 17, 2022.

[7] On December 14, 2023, an immigration officer at IRCC’s Montreal office sent a “procedural fairness letter” to the Applicants, stating that IRCC had not received a valid commitment certificate from a DEO, and inviting them to provide information within 30 days.

[8] In response to the letter, on December 30, 2023, VANTEC (the DEO) forwarded an email to IRCC dated July 10, 2022, attaching the June 2022 commitment certificates for Ms. Achacoso, Mr. Gangadharan and Mr. Sawhny. IRCC acknowledged receipt of the December 30, 2023, email and attachments but denies having previously received the forwarded July 10, 2022, email. Ms. Achacoso also resubmitted her original commitment certificate via webform on or around January 5, 2024.

[9] Separately, on January 29, 2024, a different immigration officer based in Manila (the IRCC office responsible for processing Ms. Achacoso’s work permit application) wrote to Ms. Achacoso requesting documentation in support of her outstanding work permit application, including a letter of support from the DEO. She was instructed to provide the requested documents within 30 days.

[10] On February 7, 2024, the immigration officer in Montreal refused all three permanent resident applications. The officer found that, because the commitment certificates had not been

received by IRCC when the Applicants submitted their permanent resident applications in 2022, the Applicants did not meet the requirement of s. 98.01(2)(a) of the IRPR, which provides:

> **98.01 (2)** 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;
>
> …

[11] Ms. Achacoso, Mr. Gangadharan and Mr. Sawhny promptly applied for leave for judicial review of their visa refusals (Court File Nos. IMM-2632-24, IMM-3596-24 and IMM-2593-24, respectively).

[12] A week later, on February 15, 2024, the immigration officer in Manila advised Ms. Achacoso that her work permit application had also been refused because the application for permanent residence with which it was associated had been refused and was no longer pending. Ms. Achacoso sought leave for judicial review of this decision as well (Court File No. IMM-5045-24).

[13] This Court issued production orders in respect of the three applications for leave for judicial review of the permanent resident application on November 4, 2024. However, Mr. Sawhny discontinued his application (Court File No. IMM-2593-24) a few weeks later, on December 5, 2024. While he filed a fresh application for leave and judicial review regarding the same decision on February 11, 2025 (Court File No. IMM-3612-25), that application for leave

was summarily dismissed by Justice Gascon on motion by the Respondent. As a result, only two of the three essential team members of Apex Genesis, Ms. Achacoso and Mr. Gangadharan, are challenging their permanent residence refusals before this Court.

[14] On January 24, 2025, Justice Little granted Ms. Achacoso's and Mr. Gangadharan's applications for leave for judicial review of their permanent residence refusals, ordering that they be heard together with Ms. Achacoso's application for judicial review of her work permit refusal, for which he also granted leave.

III. **ISSUES**

[15] The Applicants primarily challenge the reasonableness of IRCC's interpretation of s. 98.01(2)(a) of the IRPR. They say the regulation cannot reasonably be interpreted as requiring both that commitment certificates be less than six months old at the time of filing of the associated permanent residence applications and that the commitment certificates must be filed with IRCC before or at the time the permanent residence applications are submitted.

[16] Ms. Achacoso also challenges the refusal of her work permit application on the basis that it was procedurally unfair to refuse it before she had an opportunity to respond to the request for documents, and that fairness required that IRCC hold the matter in abeyance pending the application for judicial review of the associated permanent residence application.

IV. **PRELIMINARY CONCERN: MOOTNESS**

[17] In his further memorandum of argument, the Respondent raises an additional issue that, in my view, is determinative: mootness. He observes that, because the Applicants' business partner Mr. Sawhny, identified as an essential team member, discontinued his first application for judicial review (Court File No. IMM-2593-24) and his second application for judicial review was denied leave (Court File No. IMM-3612-25), the refusal of Mr. Sawhny's permanent residence application stands. He argues that as a result, the remaining applicants cannot succeed on redetermination even if they were to be successful before this Court. This is because of the operation of s. 98.08(2) of the IRPR, which provides:

> If there is more than one applicant in respect of the same business and one of the applicants who was 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.

[18] According to the Respondent, refusal in these circumstances is mandatory and there is no discretion available to immigration officers to overcome the provision.

[19] The Respondent further submits that judicial review of Ms. Achacoso's work permit application in IMM-5045-24 is also moot because eligibility for this work permit requires Ms. Achacoso to have a pending application for permanent residence under the start-up business class.

(1) **Analysis**

[20] As the Supreme Court of Canada explained in *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC) [*Borowski*], in order to determine whether a case is or has become moot and should not be decided, courts follow a two-step process. First, the court determines whether there is (or remains) any live controversy that affects or may affect the rights of the parties. If the answer is no, the matter is moot. However, that is not the end of the inquiry; the court must then decide whether to exercise discretion to hear the matter anyway (*Democracy Watch v Canada*, 2018 FCA 195 at para 10 [*Democracy Watch*]). At this second step, there are three factors to consider: (a) the presence of an adversarial relationship; (b) the need to promote judicial economy; and (c) an awareness of the court's adjudicative role (*Democracy Watch* at para 13). As Laskin JA explained in *Democracy Watch:*

> [14] The first factor may support the exercise of the discretion where despite the absence of a concrete dispute, the issues will be fully argued by parties with a stake in the outcome. The second factor includes, where applicable, consideration of whether the case presents a recurring issue, but one that is of short duration or otherwise evasive of court review. The third factor recognizes that the courts' primary task within our constitutional separation of powers is to resolve real disputes. As this Court has stated, "While *Borowski* and cases that apply it do not forbid courts in appropriate circumstances from determining a proceeding after the real dispute has disappeared, this underlying rationale reminds us that the discretion to do so must be exercised prudently and cautiously": *Canada (National Revenue) v. McNally*, 2015 FCA 248 at para. 5.

[21] In argument before me, the Applicants did not seriously challenge the Respondent's assertion that the judicial review of the applications for permanent residence are now moot, and conceded that if those judicial reviews were dismissed then the challenge to the work permit refusal would likewise be moot. However, the Applicants asked the Court to exercise its

discretion to hear the matters anyway, under the second step of the analysis. Counsel asserted that there remains an adversarial relationship as the Applicants continue to believe that their applications were unreasonably and unfairly refused and they seek an Order from the Court confirming this. Counsel asserted further that if the immigration officer's impugned interpretation of s. 98.01(2)(a) is left undisturbed in this case, it might be repeated in other cases.

[22] I find that the matters are moot, largely for the reasons highlighted by the Respondent. While the Applicants raise a strong argument with respect to the reasonableness of the immigration officer's interpretation of the provision at issue, no legitimate purpose would be served by its disposition in this case. The Applicants have acknowledged that even if I were to grant them the relief they seek and remit the permanent residence applications for redetermination, the outcome would be a foregone conclusion: they would immediately be refused under s. 98.08(2) of the IRPR. As found by Justice Boswell in a similar case, an Order granting the application "would be a meaningless remedy and serve no practical effect" (*Kozel v Canada (Citizenship and Immigration)*, 2015 FC 593 at para 16).

[23] While the Applicants request the Court to decide their case despite mootness, I am not persuaded that this is a case warranting such an exercise of discretion.

[24] It is certainly understandable that the Applicants, having advanced this far along in the legal process, would like to see their position vindicated; they have a stake in the outcome from this perspective, and the case could be fully argued despite the lack of any remaining live controversy affecting the rights of the parties.

[25] The Applicants further assert that the statutory interpretation issue they raise may be a recurring one; however, when questioned during the hearing they were unable to point to any evidence or even experience to support the assertion or to explain why, even if it were to recur, it would be evasive of court review.

V. **CONCLUSION**

[26] In the circumstances, bearing in mind the Court's primary task under the constitutional separation of powers is to resolve real disputes, and without any reason to believe that the issue raised by the Applicants is somehow evasive of review, I decline to exercise my discretion to decide these moot applications.

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

JUDGMENT in IMM-2632-24, IMM-5045-24 and IMM-3596-24

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are dismissed.

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

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2632-24, IMM-5045-24, IMM-3596-24
STYLES OF CAUSE:	IMELDA HOLLERO ACHACOSO V. MCI, IMELDA HOLLERO ACHACOSO V. THE MINISTER OF CITIZENSHIP AND IMMIGRATION, DINESH GANGADHARAN V. MCI
DATE OF HEARING:	APRIL 17, 2025
JUDGMENT AND REASONS:	BROUWER J.
DATED:	MAY 13, 2025

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