Federal Court  Cour fédérale

Date: 20250711

Docket: IMM-18732-24

Citation: 2025 FC 1237

Calgary, Alberta, July 11, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

OLUGBENGA SOLOMON FASHINA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Mr. Olugbenga Solomon Fashina (the "Applicant") seeks judicial review of the decision of an officer (the "Officer") refusing his application for permanent residence in Canada in the Provincial Nominee Program. His application was refused on the ground that it was incomplete because it did not include required documentary information about a dependent child who was born a month before he submitted his application for permanent residence.

[2] The Applicant argues that the decision is both procedurally unfair and unreasonable.

[3] The Minister of Citizenship and Immigration (the “Respondent”) submits that the application was incomplete and that the Officer did not err in refusing it. He also contends that there was no duty on the part of the Officer to advise the Applicant of any deficiencies in the application and there was no breach of procedural fairness.

[4] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 S.C.R. 339.

[5] Following the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653, the merits of the decision are reviewable on the standard of reasonableness.

[6] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision"; see *Vavilov*, *supra* at paragraph 99.

[7] I agree with the submissions of the Respondent that the decision of the Federal Court of Appeal in *Gennai v. Canada (Citizenship and Immigration)*, [2017] F.C.J. No. 154 (QL) directly applies to this matter.

[8] At paragraphs 5 and 6, the Federal Court of Appeal said the following:

> [5] The Judge certified the following question, which has been slightly amended, as indicated, on appeal:
>
> > If an application for permanent residence is incomplete as it fails to meet the requirements prescribed by s 10 of the Immigration and Refugee Protection Regulations ("IRPA Regulations") and the application and all supporting documents are returned to the applicant pursuant to s 12 of the IRPA Regulations, does the application still "exist" such that it preserves or "locks in" the applicant's position in time so that a subsequently submitted complete application must be assessed according to the regulatory scheme that was in effect when the first, incomplete application was submitted?
>
> [6] I agree with the Judge that an incomplete application is not an application within the meaning of IRPA and the Regulations. In my view, an incomplete application can no longer exist because the text of section 12 provides that the entirety of an application that has failed to meet the requirements under section 10 is returned to the applicant. When the appellant submitted his CEC application in February 2015, the respondent assessed the appellant's application in light of the scheme in place at that time and not in reference to his previous incomplete and returned application. There was no authority to do otherwise. Therefore, as the appellant did not comply with the requirements of the Express Entry scheme, the respondent reasonably refused to consider his application.

[9] An incomplete application is not an "application" within the scope of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 and the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[10] There is no basis for judicial intervention and this application for judicial review will be dismissed. There is no question for certification.

JUDGMENT IN IMM-18732-24

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, there is no question for certification.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	OLUGBENGA SOLOMON FASHINA v. MCI
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APPEARANCES:

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