Federal Court  Cour fédérale

Date: 20250919

Docket: IMM-15529-24

Citation: 2025 FC 1543

Ottawa, Ontario, September 19, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

DUONG THI THUY NGO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of an August 12, 2024, decision [the Decision] made by the Immigration Appeal Division [IAD]. The Decision affirmed a visa officer's decision to reject an application for permanent residence in the family class by the Applicant's daughter, Thuy Anh NGO [Thuy Anh]. The IAD came to the same conclusion as the visa officer and rejected the application because Thuy Anh did not meet the definition of a dependent child as set out in section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the

IRPR], as she was 23 years old at the time of the application and was not unable to be financially self-supporting due to a physical or mental condition.

[2] The Applicant alleged several grounds in her Application for leave and for judicial review that were not argued before the Court. She instead argued different grounds of review on the merits that were not alleged in her Application for leave and for judicial review. Regardless, the determinative issue is that the Applicant relies on the definition of "dependent child" set out in section 2 of the IRPR as it read prior to being amended on May 20, 2014, through Regulation SOR/2014-133. The Applicant argues that the IAD made an unreasonable decision on this determinative issue by applying the correct regulatory definition of "dependent child" as set out in section 2 of the IRPR in force at the time of the application, rather than a regulatory definition of a "dependent child" revoked in May 2014 and inapplicable on the facts.

[3] The IAD's reasoning and Decision apply the applicable law rather than the law as misread by the Applicant. The Applicant's application for judicial review is therefore dismissed for the reasons that follow.

I. **Background**

[4] The Applicant seeks to sponsor Thuy Anh's application for permanent residence as a member of the family class.

[5] In 2018, the Applicant, a permanent resident in Canada, submitted an application to sponsor Thuy Anh along with her other younger daughter, Mai Anh NGO, as dependent members of her family [the 2018 Application].

[6] On May 16, 2022, a procedural fairness letter was sent to the Applicant's immigration consultant in which an IRCC Migration Officer asked the Applicant to submit proof of Thuy Anh's completion of her immigration medical examination by May 31, 2022 [the 2022 PFL]. The 2022 PFL indicated that a previous letter had been sent on March 31, 2022, through which the visa office requested that the Applicant provide proof that Thuy Anh had completed her immigration medical examination.

[7] The Applicant's immigration consultant wrote to the IRCC on behalf of the Applicant on June 17, 2022, two weeks after the expiry of the time set out in the 2022 PFL. The record does not reflect what compelled the immigration consultant to contact the IRCC at that time. The incomplete email chain produced by the Applicant suggests that the immigration consultant emailed the IRCC seeking the reconsideration of a decision connected to the 2018 Application, but the specific decision at issue and its date remain unclear. The immigration consultant's email suggests that he acknowledged that the 2022 PFL had been sent to his email address and that no action on behalf of the Applicants followed because there were no medical forms or instructions contained in or attached to the IRCC email.

[8] The immigration consultant's June 17, 2022, email reflected that he was then in possession of the medical examination forms. The email contains his unofficial appeal to the

IRCC to reconsider its earlier decision regarding the 2018 Application and allow the applicant daughters to complete their medical examinations. The IRCC's response to the immigration consultant, if any, does not appear in the record in this proceeding.

[9] Neither party produced any document attesting to the outcome of the 2018 Application. Whether the 2018 Application was rejected because the Applicant did not respond to the 2022 PFL in a timely manner or otherwise was not established.

[10] Be that as it may, the Applicant's immigration consultant filed a new application for sponsorship of Thuy Anh as a dependent child on behalf of the Applicant on July 19, 2022 [the 2022 Application]. The 2022 Application indicated that Thuy Anh was born on August 27, 1999. She was 22 years and 10 months old when the 2022 Application was filed.

[11] On October 9, 2023, an IRCC officer at Ho Chi Minh City sent another procedural fairness letter to Thuy Anh [the 2023 PFL]. IRCC informed her through the 2023 PFL that it was completing the assessment of her application for a permanent resident visa as a member of the family class and that it appeared that she did not meet the requirements for immigration to Canada because she did not meet the requirements of a "dependent child" as prescribed in section 2 of the IRPR. The 2023 PFL set out more specifically that:

> "You were 22 or older on the day that we received your application for permanent residence and I am not satisfied, based on the documents on file, that you have depended substantially on the financial support of your parent since before the age of 22 and are unable to be financially self-supporting due to a physical or mental condition."

[12] Thuy Anh was provided 30 days within which to respond to the 2023 PFL, after which a final decision would be made on the 2022 Application.

[13] The Applicant's immigration consultant responded to the 2023 PFL on behalf of Thuy Anh and submitted documents confirming that Thuy Anh was enrolled in post-secondary studies. The specific submission to the IRCC explained that:

> "[…] that 'Thuy Anh Ngo' is a dependent child type B, that is, she has been continuously enrolled in and in attendance as a full-time student at a post-secondary institution accredited by the relevant government authority and has depended substantially on the financial support of her parent (sponsor)'.
>
> 1. Confirmation of Studies
>
> 2. Record of Learning Results."

[14] The 2022 Application was rejected with respect to Thuy Anh on May 20, 2024. The visa officer decision set out that Thuy Anh did not meet the requirements for immigration to Canada as a dependent child because she was not a "dependent child" on the date the 2022 Application was received. The decision set out that:

> "Based on the Information provided, you do not meet the definition of a member of the family class because you were 22 years of age or older on the day your application for permanent residence was received and I am not satisfied, based on the documents on file, that you have depended substantially on the financial support of your parent since before attaining the age of 22 years and are unable to be financially self-supporting due to a physical or mental condition."

[15] The Applicant appealed the IRCC decision to the IAD. The Applicant's submissions to the IAD reiterated the submissions made to the IRCC, specifically, that Thuy Anh "is a

dependent child type B, that is, she has been continuously enrolled in and in attendance as a full-time student at a post-secondary institution accredited by the relevant government authority and has depended substantially on the financial support of her parent (sponsor)".

II. **The Decision**

[16] The IAD considered the arguments advanced by the Applicant and dismissed the appeal. The key portions of the IAD Decision are as follow:

> [8] Appellant's counsel has conceded in their written submissions that the Applicant was already 23 years of age when the underlying sponsorship application was submitted in July 2022. As such, they clearly did not meet the first category of dependency as they were not less than 22 at the time of lock-in. Further, there was no suggestion in the submissions of counsel to suggest that the Applicant was seeking or would qualify under the second category of dependency (unable to be financially self-supporting due to a physical or mental condition).
>
> [9] Instead, Appellant's counsel has argued that the Applicant qualified as a dependent child by virtue of her having been continuously enrolled in and in attendance as a full-time student at a post-secondary institution accredited by the relevant government authority and has depended substantially on the financial support of her parent (the Appellant).
>
> [10] As was noted in the visa office communication of October 9, 2023 (found at Document 5 of the Appellant's counsel's written submissions), the definition of dependent child set out in Section 2 of the Regulations contains only two options: to be under the age of 22 at lock-in; or to be over 22 but unable to be financially self-supporting due to a physical or mental condition. There is no longer a category of dependent child for those over 22 but continuing their studies.
>
> [11] As the Applicant does not meet the requirements for a dependent child set out in the Regulations at the time of application, they do not meet the definition of a dependent child and are not a member of the family class. Accordingly, I find the visa officer's refusal to be legally valid.

[17] The Applicant thereafter commenced this proceeding seeking judicial review of the Decision.

III. **The Issue**

[18] The sole issue in this proceeding is whether the Decision is reasonable.

IV. **The Standard of Review**

[19] The parties agree that the standard of review to be applied is the reasonableness standard as discussed in *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 [*Vavilov*].

[20] The Applicant argues, however, that the standard of correctness applies to the questions relating to the interpretation and application of a statute by an administrative decision maker. I disagree. The Supreme Court of Canada reiterated at paragraph 39 of *Pepa v Canada (Citizenship and Immigration),* 2025 SCC 21 [*Pepa*] that questions of statutory interpretation by an administrative decision maker are reviewed on the standard of reasonableness and not correctness where a statute does not explicitly prescribe a standard of review, or where considerations of the rule of law that require a correctness review because constitutional questions, general questions of law of central importance to the legal system as a whole, or questions related to the jurisdictional boundaries between two or more administrative bodies are at issue. The presumption that the reasonableness standard applies is not rebutted in this case, thus, the reasonableness standard applies.

[21] Under the standard of reasonableness, the reviewing court is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints (*Vavilov* at para 85). The onus is on the Applicants to demonstrate that "any shortcomings or flaws … are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker (*Vavilov* at para 125).

V. **Arguments and Analysis**

[22] The Applicant presents two arguments.

[23] Her first argument is that it was unfair for the IAD to not take the fate of the 2018 Application into consideration when determining the dependent child age lock-in date in connection with the 2022 Application. The Applicant urges this Court to parachute unproven allegations with respect to how the 2018 Application was processed into this proceeding to cure the Applicant's failure to appeal or seek the review of the decision that disposed of the 2018 Application.

[24] Her second argument is a reiteration of the argument she made before the IAD which misreads a conjunctive requirement contained paragraph (b)(ii) in the statutory definition of "dependent child" found at section 2 of the IRPR.

[25] I must reject both arguments.

A. ***The dependant child lock-in date is fixed by the IRPR***

[26] The Applicant argues that the 2022 Application was filed only because an unidentified visa officer advised the Applicant to submit another application for sponsorship of dependent children in 2022. This purported advice is alleged to have created a legitimate expectation in the mind of the Applicant that Thuy Anh's age was locked in at the filing date of the 2018 Application. This argument has no evidentiary or legal support.

[27] There is no evidence in the record of any purported advice being given to the Applicant by any identified visa officer. At best, the Applicant's former immigration consultant represented that he commenced the 2022 Application on the Applicant's behalf after a conversation with an IRCC representative in which he learned that the IRCC would not reconsider the 2018 Application's disposition that followed the 2022 PFL. While no decision disposing of the 2018 Application was produced in the record, the evidence strongly suggests that the 2018 Application was rejected due to the Applicant's failure to provide the information solicited through the 2022 PFL but remained unanswered.

[28] Regardless, the Applicant commenced a fresh application for the sponsorship of Thuy Anh as a dependent child on July 19, 2022. Pursuant to section 25.1(1) of the IRPR, the lock-in date for assessing a dependent child's age is the date on which the applicant makes the application. The Applicant's argument rests on her invocation of legitimate expectations. The doctrine of legitimate expectations is limited to procedural rights; it does not create substantive

ones (*Reference re Canada Assistance Plan (B.C.)*, 1991 CanLII 74 (SCC), [1991] 2 SCR 525 esp. at 557). The Applicant cannot invoke the doctrine of legitimate expectation to nullify the effect of subsection 25.1(1) of the IRPR with respect to a dependent child's lock-in age and effectively backdate her application to when Thuy Anh was not yet 22 years old.

[29] The Applicant invites the Court to apply the reasoning of Justice De Montigny, as he then was, set out in *Zhang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1381, at paras, 27 to 31 [*Zhang*], and of Justice McHaffie set out in *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 513 [*Kaur*] at para 31, for the proposition that it was unreasonable for the IAD to dismiss the Applicant's appeal without assessing the impact of the medical forms which were requested by the immigration consultant after the time set out in the 2022 PFL had expired. Justice Diner considered the application of *Zhang* and *Kaur* in *Cheema v Canada (Citizenship and Immigration)*, 2024 FC 952 at paragraphs 11 to 13. Justice Diner noted that, "[i]ndeed, *Kaur* and *Zhang* hold that this Court may consider past decisions where it is relevant to do in the context of the decision under review. That is not equivalent to saying that the Court should adjudicate the propriety of past, final decisions. They can no longer be challenged directly and thus should not be able to be challenged indirectly." As further noted by Justice Diner, to proceed otherwise allows a collateral attack on a past decision and is generally not permitted.

[30] Additionally, neither *Zhang* nor *Kaur* apply because the factual issues present in those decisions are significantly different and distinguishable from the facts in this proceeding. The Applicant's argument proceeds on the faulty footing that her late response to a prior procedural fairness letter and the decision-maker's refusal to excuse that failure to act are relevant to this

proceeding and to the determination of Thuy Anh's age lock-in date for the purposes of the 2022 Application. The facts regarding to 2018 Applicant and its disposition are not relevant to this proceeding precisely because the Applicant commenced a new proceeding in 2022 and reset the lock-in date by doing so.

[31] The Decision is not unreasonable for not having considered unproven events related to a different proceeding and a separate decision that was neither appealed nor judicially reviewed.

B. *A "dependent child" is defined by the IRPR and excludes the Applicant's suggested interpretation*

[32] The Applicant's argument with respect to the definition of "dependent child" is that Thuy Anh was a "dependent child" despite being 22 years of age or older because,

> "[…] 'Thuy Anh Ngo' is a dependent child type B, that is, she has been continuously enrolled in and in attendance as a full-time student at a post-secondary institution accredited by the relevant government authority and has depended substantially on the financial support of her parent".

[33] The definition of a "dependent child" found at section 2 of the IRPR was amended on May 20, 2014, by Regulation SOR/2014-133. Prior to that amendment, a "dependent child" included the following at its paragraph (b):

> (b) is in one of the following situations of dependency, namely,
>
> > (i) is less than 22 years of age and not a spouse or common-law partner,
> >
> > (ii) has depended substantially on the financial support of the parent since before the age of 22 — or if the child became a spouse or common-law partner before the age of 22, since becoming a

> spouse or common-law partner — and, since before the age of 22 or since becoming a spouse or common-law partner, as the case may be, has been a student
>
> > (A) continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority, and
> >
> > (B) actively pursuing a course of academic, professional or vocational training on a full-time basis, or
>
> (iii) is 22 years of age or older and has depended substantially on the financial support of the parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition.

[34] Regulation SOR/2014-133, came into force on August 1, 2014. Its section 1 reads as follows:

> **1. Paragraph (*b*) of the definition "dependent child" in section 2 of the *Immigration and Refugee Protection Regulations* (see footnote 1) is replaced by the following:**
>
> (*b*) is in one of the following situations of dependency, namely,
>
> > (i) is less than 19 years of age and is not a spouse or common-law partner, or
> >
> > (ii) is 19 years of age or older and has depended substantially on the financial support of the parent since before the age of 19 and is unable to be financially self-supporting due to a physical or mental condition.

[35] Subsequent amendments have increased the dependency age from 19 to 22, but the IRPR otherwise have not been amended to revive the "dependent child type B" definition relied upon by the Applicant that had been replaced effective August 1, 2014.

[36] It is certainly not unreasonable for the IAD to have applied the IRPR and its statutory definition of a "dependent child" as it read at the time of the Applicant's application in July 2022, rather than to have applied a statutory definition that had been replaced by an amending regulation eight years prior. The Applicant's argument is rejected accordingly.

[37] The Applicant nevertheless argues that Thuy Anh continues to fall within the definition of a "dependent child" as set out in paragraph (b)(ii) of the statutory definition of a "dependent child" because she "is 22 years of age or older and has dependent substantially on the financial support of the parent since before the age of 22". The Applicant's interpretation of the regulatory definition of "dependent child" removes all of the regulatory language that reads "[…] and is unable to be financially self-supporting due to a physical or mental condition" that is contained in the paragraph (b)(ii) regulatory language of the definition. By excising the conjunctive portion of the statutory definition that is indicated by the use of the conjunction "and", the Applicant misreads the statute. The IAD reasonably interpreted the regulatory definition at paragraph (b)(ii) of "dependent child" as requiring substantial financial dependence since before age 22 coupled with an inability to be financially self supporting due to a physical or mental condition. There were no facts led that satisfied the conjunctive requirement of paragraph (b)(ii) of the regulatory definition.

[38] The Applicant's proposed interpretation of the statutory definition of a "dependent child" is contrary to the modern approach to statutory interpretation (*Pepa* at para 87; *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27, at para 21) and is rejected.

VI. **Conclusion**

[39] The Applicant has not established that the Decision is unreasonable. The Decision is rational and justified. The Decision is reasonable. This application for judicial review shall be dismissed.

[40] Neither party has suggested that a certified question arises from the facts of this proceeding and none arises.

JUDGMENT in IMM-15529-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no certified question in this proceeding.

3. There are no special reasons warranting a costs award in this proceeding.

"Benoit M. Duchesne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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