

Federal Court



Cour fédérale

**Date: 20120605**

**Docket: IMM-5113-11**

**Citation: 2012 FC 693**

**Ottawa, Ontario, June 5, 2012**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**SOOK JUNG**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] Ms. Jung seeks judicial review of a decision of the Immigration Officer, O. Dumitru (the Officer), dated July 18, 2011, wherein the Officer determined that she is not a dependent child of Ms. Gyoun Ja Moon (or Ms. Jung's mother), under section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], and cannot be included in Ms. Moon's application

for permanent residence under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the following reasons, this application for judicial review is dismissed.

## **II. Facts**

[3] Ms. Jung is a 24-year-old citizen of South Korea.

[4] Her mother, Ms. Moon, married Mr. Suk Nam Cho, on January 11, 2005. Mr. Cho is a permanent resident of Canada.

[5] Both Ms. Jung and her mother entered Canada as visitors in March 2005.

[6] On August 5, 2009, Ms. Moon applied for a permanent visa in Canada under the spouse and common-law partner in Canada class. She listed Ms. Jung as a dependent child.

[7] In May 2011, Ms. Jung's lawyer forwarded submissions to Citizenship and Immigration Canada stating that she is financially dependent on her parents because she is unable to work on a full-time basis due to her depression.

[8] On July 18, 2011, the Officer determined, after a thorough review of Ms. Moon's application for permanent residence, that Ms. Jung failed to qualify as a "dependent child" under section 2 of the *IRPR* and was therefore excluded from her mother's application.

### III. Legislation

[9] Section 2 of the *IRPR* and subsection 25(1) of the *IRPA* provide as follows :

<p><b>2.</b> The definitions in this section apply in these Regulations.</p> <p>...</p> <p>“dependent child” « <i>enfant à charge</i> » “dependent child”, in respect of a parent, means a child who</p> <p>(a) has one of the following relationships with the parent, namely,</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(ii) is the adopted child of the parent; and</p> <p>(b) is in one of the following situations of dependency, namely,</p> <p style="padding-left: 40px;">(i) is less than 22 years of age and not a spouse</p>	<p><b>2.</b> Les définitions qui suivent s'appliquent au présent règlement.</p> <p>[...]</p> <p>« enfant à charge » “<i>dependant child</i>” « enfant à charge » L'enfant qui :</p> <p>a) d'une part, par rapport à l'un ou l'autre de ses parents :</p> <p style="padding-left: 40px;">(i) soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,</p> <p style="padding-left: 40px;">(ii) soit en est l'enfant adoptif;</p> <p>b) d'autre part, remplit l'une des conditions suivantes :</p> <p style="padding-left: 40px;">(i) il est âgé de moins de vingt-deux ans et n'est</p>
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or common-law partner,

pas un époux ou conjoint de fait,

(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

(ii) il est un étudiant âgé qui n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents à compter du moment où il a atteint l'âge de vingt-deux ans ou est devenu, avant cet âge, un époux ou conjoint de fait et qui, à la fois :

(A) continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority, and

(A) n'a pas cessé d'être inscrit à un établissement d'enseignement postsecondaire accrédité par les autorités gouvernementales compétentes et de fréquenter celui-ci,

(B) actively pursuing a course of academic, professional or vocational training on a full-time basis, or

(B) y suit activement à temps plein des cours de formation générale, théorique ou professionnelle,

(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

(iii) il est âgé de vingt-deux ans ou plus, n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents à compter du moment où il a atteint l'âge de vingt-deux ans et ne peut

condition.

subvenir à ses besoins  
du fait de son état  
physique ou mental.

**25.** (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

**25.** (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

#### **IV. Issue and standard of review**

##### **A. Issue**

- *Is the Officer's decision to exclude Ms. Jung from her mother's application for permanent residence in Canada reasonable?*

## **B. Standard of review**

[10] The determination of whether Ms. Jung is a dependent child under section 2 of the *IRPR* is a question of mixed fact and law and should be reviewed on a standard of reasonableness (see *Nawfal v Canada (Minister of Citizenship and Immigration)*, 2011 FC 464 at para 13).

[11] In reviewing the Officer's decision, the Court must therefore be concerned with "the existence of justification, transparency and intelligibility within the decision-making process... It is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (see *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

## **V. Parties' submissions**

### **A. Ms. Jung's submissions**

[12] The Officer made the following determinations:

1. Ms. Jung was not a full time student at the lock-in date; and
2. There is no evidence that Ms. Jung had sought further medical attention and treatment for her depression. Ms. Jung submits that whether she attended school on a full time basis or not is irrelevant under the *IRPR*. She claims that it is not a requirement under subparagraph 2(b)(iii) of the definition of 'dependent child' that an Applicant attends school on a full time basis at the time of the application for permanent residence.

[13] Ms. Jung argues that where an Officer takes into consideration factors that are irrelevant, the Officer's decision must be reviewed (see *Guo v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ No 1197).

[14] Ms. Jung submits that the Officer's decision was based on irrelevant considerations, that is whether she sought further medical attention and treatment for her depression. She underlines that evidence of further medical treatment may be relevant in determining whether an Applicant's financial dependence is due to her mental condition. But the necessity of treatment can reasonably be implied from the fact that the depression is affecting Ms. Jung's ability to work on a full-time basis. Therefore, no further medical evidence was required in her case.

[15] Ms. Jung concludes her submissions by arguing that the Officer fettered her discretion by placing too much emphasis on the fact that she did not seek further medical treatment. She claims the officer committed a reviewable error by excluding Dr. Choe's report.

[16] At the hearing, counsel for Ms Jung raised issues related to the Officer's assessment of her H&C application even though these were not part of his written submissions.

**B. Respondent's submissions**

[17] The Respondent affirms that the Officer's decision was reasonable since Ms. Jung failed to adduce persuasive evidence to demonstrate that she met one of the categories set out in section 2 of the *IRPR*.

[18] The Respondent indicated to the Court that when Ms. Jung filed her application in August 2009, she responded in the negative to question #6 whether she was suffering from a serious physical or mental disease (see page 238, Certified Tribunal Record). He also underlines that her counsel's correspondence dated August 6, 2009 is silent with respect to Miss Jung's mental condition but emphasizes her artistic achievements in school. Finally he claims that Ms. Jung's mental health condition was only raised in May of 2011 when Dr. Choe's report was filed in evidence.

[19] The Respondent also submits that Ms. Jung stated that her lack of immigration status meant that she was unable to pursue her post-secondary education in Canada. Therefore, she fell into a depression. However, the definition of dependent child in the *IRPR*, according to the Respondent is not meant to remedy depression by affording adult children an opportunity to attend post-secondary education in Canada. Rather, it acknowledges that, in certain circumstances, a physical or mental condition results in a child being dependent of his/her parents.

[20] In response to Ms. Jung's submissions, the Respondent argues that the Officer did not fetter her discretion by placing undue emphasis on Ms. Jung's failure to seek further medical treatment.



Instead, the Officer reasonably determined that Ms. Jung failed to adduce sufficient persuasive evidence to support her claim.

[21] Counsel for the Respondent also raised the issue related to the lack of allegations related to the assessment of Ms. Jung's H&C application in her counsel's written submissions.

## **VI. Analysis**

- *Is the Officer's decision to exclude Ms. Jung from her mother's application for permanent residence in Canada reasonable?*

[22] The Court finds that the Officer's treatment of Ms. Jung's application for permanent residence in Canada was reasonable.

[23] The Officer determined that Ms. Jung failed to adduce evidence that "she attended full time education at the lock-in date" (see Officer's decision and rationale at page 19 of the Tribunal Record). She also stated that "a medical letter from the family physician has been provided. However, there is no letter from a medical specialist showing that Sook Jung pursued further medical attention and treatment" (see Officer's decision and rationale at page 19 of the Tribunal Record).

[24] In light of Ms Jung's negative response to the question found in her written application as to whether she was suffering from a mental or physical condition, and her representations which

focussed primarily on her artistic abilities and offers from various universities, the Officer considered all the relevant factors in making her decision. The Officer carefully reviewed all the evidence adduced that could establish Ms. Jung's dependency under either one of the categories of the definition of 'dependent child'.

[25] Subparagraph 2(b)(iii) of the *IRPR* provides that a "'dependent child" in respect of a parent, means a child who (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".

[26] As for Ms. Jung's mental condition, The Court finds that it was reasonable for the Officer to note the absence of a letter from a medical specialist to establish that Ms. Jung pursued further medical treatment since that basis for claiming status was introduced much later and was only supported by a letter from Dr. S. Choe.

[27] .In May 2011, Dr. S. Choe writes that "Miss Sook Jung has been under my care since 2005. She has been depressed and stayed home for two years. Her depression started when a local school declined her admission because of her visa status. She experienced difficulty in getting a job because of her depression" (see Dr. Choe's letter at page 43 of the Applicant's Record).

[28] The Officer did not fetter her discretion when assessing the evidence adduced to support the existence of this additional ground to be considered a dependent child. More so, in view of the fact that Ms. Jung had worked part-time. It was open and reasonable for the Officer to take note of the

lack of persuasive evidence establishing that Ms. Jung met the requirements to be considered a dependent child as defined in section 2 of the *IRPR*.

[29] In *Jang v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 312 at para 12, the Federal Court of Appeal held that “An application to be admitted to Canada as an immigrant gives rise to a discretionary decision on the part of a visa officer, which is required to be made on the basis of specific statutory criteria. Where that statutory discretion has been exercised in good faith and in accordance with the principles of natural justice and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, courts should not interfere”.

[30] Finally, with respect to the treatment of Ms. Jung’s H&C application, the Court will not entertain the representations made by her counsel which are not in conformity to the Rules of this Court.

[31] For the above reasons, this application for judicial review is dismissed and the Officer’s decision stands.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. This application for judicial review is dismissed; and
2. There is no question of general importance to certify.

"André F.J. Scott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5113-11

**STYLE OF CAUSE:** SOOK JUNG  
v  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 19, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SCOTT J.

**DATED:** June 5, 2012

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