Federal Court  Cour fédérale

Date: 20160118

Docket: IMM-1544-15

Citation: 2016 FC 51

Ottawa, Ontario, January 18, 2016

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

CHUNLI SU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision made by an officer of Citizenship and Immigration Canada ("Officer") refusing to process the Applicant's application for permanent residence.

Background and Decision Under Review

[2] On May 30, 2014, the Applicant submitted an application for permanent residence under the business class as a self-employed person. This required, amongst other things, that two forms be completed and signed by any dependent child over the age of 18. At the time of her application, the Applicant's son was 19 years old but her submitted application did not include the two required forms.

[3] On August 1, 2014, amendments to the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("IRPA Regulations") came into effect, one of which changed the definition of dependent children to include children less than 19 years of age. Prior to August 1, the definition had included children less than 22 years of age. The amendments also removed an exception for children over the age of 22 who had been and continued to be students at an accredited post-secondary institution.

[4] By letter of August 7, 2014, the Officer informed the Applicant that her application did not meet the requirements of s 10 of the IRPA Regulations as it was incomplete and that it was being returned to her for that reason. The letter also stated that:

> … Your application fee was not processed and is also being returned to you. Your application has not been received, and no record has been retained.
>
> If you submit an application, please pay particular attention to all the forms, information, documents, evidence, signatures, and fees required. Applications missing any of these items are incomplete and will not be received. They will be returned to you
>
> In addition, please note that applications will be assessed according to the instructions in place at the time they are received.

[5] The Applicant received her returned application on November 17, 2014.

[6] On December 2, 2014, the Applicant resubmitted her application which included the two missing forms. The covering letter from her counsel noted that changes to the IRPA Regulations would impact her application as her 19 year old son would no longer meet the definition of dependent child and would be excluded if her resubmission were treated as a fresh application. Her counsel submitted that the Officer should treat the resubmission as a continuation of her original application of May 2014 (*Campana Campana v Canada (Citizenship and Immigration)*, 2014 FC 49 [*Campana*]).

[7] By letter of January 13, 2015, the Officer returned the application, having determined that the Applicant's son did not meet the definition of dependent child under the amended IRPA Regulations.

Issue

[8] In my view, the sole issue in this matter is whether the Officer's interpretation of s 10 of the IRPA Regulations was reasonable.

Standard of Review

[9] The Applicant submits simply that the standard of correctness applies to issues concerning the interpretation of statutes, as this is an issue of law. The Respondent makes no

formal submissions on standard of review, however, implicitly requests that the Court review the decision on a reasonableness standard.

[10] Questions of law arising under a tribunal's home statute are presumptively reviewed on a reasonableness standard (*Tervita Corp v Canada (Commissioner of Competition)*, 2015 SCC 3 at para 35; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 30; *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 54). In my view, in the absence of any suggestion that there is a basis upon which the presumption should be rebutted in the present case, the standard of reasonableness applies (*Tareen v Canada (Citizenship and Immigration)*, 2015 FC 1260 at para 16; *Canada (Public Safety and Emergency Preparedness) v Zaric*, 2015 FC 837 at para 15; *De Silva v Canada (Citizenship and Immigration)*, 2014 FC 790 at paras 17-23).

[11] I would also note that the Supreme Court of Canada in *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 31-33 found that the administrative decision-maker may be better placed to choose between possible, reasonable interpretations of an unclear statutory provision.

Relevant Legislation

***Immigration and Refugee Protection Regulations*, SOR/2002-227**	***Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227**
Form and content of application	**Forme et contenu de la demande**
10. (1) Subject to paragraphs 28(b) to (d) and 139(1)(b), an	10. (1) Sous réserve des alinéas 28b) à d) et 139(1)b), toute

application under these Regulations shall

(a) be made in writing using the form provided by the Department, if any;

(b) be signed by the applicant;

(c) include all information and documents required by these Regulations, as well as any other evidence required by the Act;

(d) be accompanied by evidence of payment of the applicable fee, if any, set out in these Regulations; and

(e) if there is an accompanying spouse or common-law partner, identify who is the principal applicant and who is the accompanying spouse or common-law partner.

demande au titre du présent règlement :

a) est faite par écrit sur le formulaire fourni par le ministère, le cas échéant;

b) est signée par le demandeur;

c) comporte les renseignements et documents exigés par le présent règlement et est accompagnée des autres pièces justificatives exigées par la Loi;

d) est accompagnée d'un récépissé de paiement des droits applicables prévus par le présent règlement;

e) dans le cas où le demandeur est accompagné d'un époux ou d'un conjoint de fait, indique celui d'entre eux qui agit à titre de demandeur principal et celui qui agit à titre d'époux ou de conjoint de fait accompagnant le demandeur principal.

Required information

(2) The application shall, unless otherwise provided by these Regulations,

(a) contain the name, birth date, address, nationality and immigration status of the applicant and of all family members of the applicant, whether accompanying or not, and a statement whether the applicant or any of the family members is the spouse, common-law partner or conjugal partner of another

Renseignements à fournir

(2) La demande comporte, sauf disposition contraire du présent règlement, les éléments suivants :

a) les nom, date de naissance, adresse, nationalité et statut d'immigration du demandeur et de chacun des membres de sa famille, que ceux-ci l'accompagnent ou non, ainsi que la mention du fait que le demandeur ou l'un ou l'autre des membres de sa famille est l'époux, le conjoint de fait ou le partenaire conjugal d'une

person;

(b) indicate whether they are applying for a visa, permit or authorization;

(c) indicate the class prescribed by these Regulations for which the application is made;

(c.1) if the applicant is represented in connection with the application, include the name, postal address and telephone number, and fax number and electronic mail address, if any, of any person or entity — or a person acting on its behalf — representing the applicant;

(c.2) if the applicant is represented, for consideration in connection with the application, by a person referred to in any of paragraphs 91(2)(a) to (c) of the Act, include the name of the body of which the person is a member and their membership identification number;

(c.3) if the applicant has been advised, for consideration in connection with the application, by a person referred to in any of paragraphs 91(2)(a) to (c) of the Act, include the information referred to in paragraphs (c.1) and (c.2) with respect to that person;

(c.4) if the applicant has been advised, for consideration in

autre personne;

b) la mention du visa, du permis ou de l'autorisation que sollicite le demandeur;

c) la mention de la catégorie réglementaire au titre de laquelle la demande est faite;

c.1) si le demandeur est représenté relativement à la demande, le nom, l'adresse postale, le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique de toute personne ou entité — ou de toute personne agissant en son nom — qui le représente;

c.2) si le demandeur est représenté, moyennant rétribution, relativement à la demande par une personne visée à l'un des alinéas 91(2)a) à c) de la Loi, le nom de l'organisme dont elle est membre et le numéro de membre de celle-ci;

c.3) si le demandeur a été conseillé, moyennant rétribution, relativement à la demande par une personne visée à l'un des alinéas 91(2)a) à c) de la Loi, les renseignements prévus aux alinéas c.1) et c.2) à l'égard de cette personne;

c.4) si le demandeur a été conseillé, moyennant

connection with the application, by an entity — or a person acting on its behalf — referred to in subsection 91(4) of the Act, include the information referred to in paragraph (c.1) with respect to that entity or person; and

(d) include a declaration that the information provided is complete and accurate.

Application of family members

(3) The application is considered to be an application made for the principal applicant and their accompanying family members.

Sponsorship application

(4) An application made by a foreign national as a member of the family class must be preceded or accompanied by a sponsorship application referred to in paragraph 130(1)(c).

Multiple applications

(5) No sponsorship application may be filed by a sponsor in respect of a person if the sponsor has filed another sponsorship application in respect of that same person and a final decision has not been made in respect of that other application.

Invalid sponsorship application

rétribution, relativement à la demande par une entité visée au paragraphe 91(4) de la Loi — ou une personne agissant en son nom —, les renseignements prévus à l'alinéa c.1) à l'égard de cette entité ou personne.

d) une déclaration attestant que les renseignements fournis sont exacts et complets.

Demande du membre de la famille

(3) La demande vaut pour le demandeur principal et les membres de sa famille qui l'accompagnent.

Demande de parrainage

(4) La demande faite par l'étranger au titre de la catégorie du regroupement familial doit être précédée ou accompagnée de la demande de parrainage visée à l'alinéa 130(1)c).

Demandes multiples

(5) Le répondant qui a déposé une demande de parrainage à l'égard d'une personne ne peut déposer de nouvelle demande concernant celle-ci tant qu'il n'a pas été statué en dernier ressort sur la demande initiale.

Demande de parrainage non valide

(6) A sponsorship application that is not made in accordance with subsection (1) is considered not to be an application filed in the prescribed manner for the purposes of subsection 63(1) of the Act.

(6) Pour l'application du paragraphe 63(1) de la Loi, la demande de parrainage qui n'est pas faite en conformité avec le paragraphe (1) est réputée non déposée.

…

…

Return of application

12. Subject to section 140.4, if the requirements of sections 10 and 11 are not met, the application and all documents submitted in support of it shall be returned to the applicant.

Renvoi de la demande

12. Sous réserve de l'article 140.4, si les exigences prévues aux articles 10 et 11 ne sont pas remplies, la demande et tous les documents fournis à l'appui de celle-ci sont retournés au demandeur.

***Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA")**

***Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, ch. 27**

3. (1) The objectives of this Act with respect to immigration are

3. (1) En matière d'immigration, la présente loi a pour objet :

…

…

(f) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;

f) d'atteindre, par la prise de normes uniformes et l'application d'un traitement efficace, les objectifs fixés pour l'immigration par le gouvernement fédéral après consultation des provinces;

…

…

62. The Immigration Appeal Division is the competent Division of the Board with respect to appeals under this Division.

62. La Section d'appel de l'immigration est la section de la Commission qui connaît de l'appel visé à la présente section.

63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	63. (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

Analysis

Applicant's Position

[12] The Applicant submits that the proper interpretation of s 10 of the IRPA Regulations has already been settled by this Court in *Campana* and *Xiao v Canada (Minister of Citizenship and Immigration)*, (1998) 149 FTR 147 [*Xiao*]. She submits that in *Campana*, the Court found that s 10 of the IRPA Regulations did not contain any language granting visa officers the power to treat incomplete applications as non-existent. The Applicant submits that *Campana* is directly on point in her case.

Respondent's Position

[13] The Respondent submits that the IRPA Regulations, Ministerial Instructions, the Regulatory Impact Analysis Statements ("RIAS") and this Court's decision in *Ma v Canada (Citizenship and Immigration)*, 2015 FC 159 [*Ma*] demonstrate that an incomplete application is not an application within the meaning of the IRPA Regulations. Because the Applicant did not have a completed application in place prior to the August 1, 2014 amendments, she was not

locked into the pre-amendment scheme. Therefore, the Officer's decision to return the Applicant's application due to its failure to meet the amended requirements was reasonable.

[14] Section 10 of the IRPA Regulations employs mandatory language regarding the content of applications, making them preconditions to a valid application. Section 12 of the IRPA Regulations instructs that an application is to be returned when the mandatory requirements in ss 10 and 11 of the IRPA Regulations are not met. RIAS are also useful in revealing the intention of the government (*Bristol-Myers Squibb Co v Canada (Attorney General)*, 2005 SCC 26 at paras 155-156) and the RIAS relating to Part 2 of the IRPA Regulations state that its purpose was to specify the requirements that must be met in order for an application to be considered. Incomplete applications that do not meet the requirements of s 10 will be returned without being processed.

[15] The Respondent also submits that an incomplete application is not an application under the IRPA and IRPA Regulations. This interpretation ensures that officers spend their time reviewing completed files and that applicants cannot preserve their place in the queue to the detriment of those applicants who file complete applications later (*Ma* at para 13). Further, analogous jurisprudence concerning the payment of application fees has held that applications cannot be processed until they are "perfected, that is to say, until such time as the required fee was paid" (*Maharaj v Canada (Minister of Citizenship and Immigration)*, 1995 FCJ No 1495 [*Maharaj*] at paras 27-30).

[16] As to *Campana*, the Respondent submits that the decision in that case failed to consider s 12 of the IRPA Regulations which explicitly provides the authority for returning an incomplete application and, thereby, treating it as non-existent under the IRPA and the IRPA Regulations. And, in oral submissions, the Respondent referred the Court to the recent decision of Justice Harrington in *Stanabady v Canada (Citizenship and Immigration)*, 2015 FC 1380 [*Stanabady*] which addressed both *Ma* and *Campana* and adopted an analysis closer to that found in *Ma*.

[17] Finally, and in the alternative, the Respondent submits that not every requirement must be set out in a statute (*Balasundaram v Canada (Minister of Citizenship and Immigration)*, 2015 FC 38 at para 27 [*Balasundaram*]).

Applicant's Reply

[18] In reply, the Applicant submits that the Court's failure to consider s 12 in *Campana* is unhelpful to the Respondent because the authority to return an incomplete application is not at issue. At issue is whether the application returned for incompleteness has not existed. Further, the Applicant submits that the Court's conclusion on s 10(1) in *Campana* is supported by the presumption against tautology, specifically, if Parliament had intended for an incomplete application not to be an application, s 10(6) would be redundant. The Applicant also distinguishes between cases that deal with "locking in" of sponsorship applications, as opposed to the present case of how the law should be applied to a resubmitted application. The Applicant also adopts the Court's analysis of the RIAS in *Campana*, submitting that it cannot be used to add words to ss 10 and 12 where they are silent on the issue.

[19] Finally, the Applicant submits that the Respondent failed to demonstrate that there is a general established practice of how incomplete applications are to be treated and, therefore, *Balasundaram* does not apply. The Respondent also failed to show any explicit and positive language in the law to support its position that an incomplete application does not exist.

Analysis

[20] There are two lines of jurisprudence of this Court, *Ma* and *Campana*, that come to differing conclusions as to the interpretation of s 10 of the IRPA Regulations. For that reason, it is necessary to carefully review both of those decisions, as well as the subsequent decision of *Stanabady*.

[21] In *Campana*, the applicant submitted an application to sponsor his wife under the IRPA Regulations, spouse or common law partner in Canada class. Subsequent to the submission of his application, the regulations were amended to exclude sponsorship applications made by permanent residents who were themselves sponsored less than five years before their application. The applicant later received a letter from a Citizenship and Immigration Canada ("CIC") officer, returning his application for incompleteness as it was missing information and fees and instructing him to resubmit. The applicant resubmitted, but his application was refused on the basis that he was ineligible to sponsor under the newly amended regulations. On judicial review of the officer's decision, the applicant argued that the officer had to consider his resubmission under the pre-amendment regulations, while the respondent argued that the application was not merely incomplete, but that it did not exist at the time of the regulatory amendment.

[22] Justice Roy framed the question at issue as being whether the missing information was enough for the application to be treated as if it did not exist (at para 8). He rejected the argument that the use of the word "resubmit" indicated continuity of the application, but found that the officer's treatment of the application was unsupported by the regulations or other authority. Like the parties in the present case, the respondent in *Campana* relied on *Maharaj* and the applicant relied on *Xiao*. Justice Roy found that *Maharaj* was not of assistance as "the issue is not if the application can be processed, but rather whether it continues to exist" (at para 13) and relied on *Xiao* in finding that silence in the regulations and longstanding operational manuals or practices were insufficient to provide authority for the respondent's interpretation of s 10 of the IRPA Regulations.

[23] In *Campana*, Justice Roy also declined to rely on the RIAS, given the language of s 10 of the IRPA Regulations, which contained nothing that confirmed that "a lack of compliance results in an application not being in existence" (at para 20). He also noted that the RIAS spoke only to consideration and processing of applications and the refusal of incomplete applications. Justice Roy held that this was insufficient to conclude that such an application is deemed never to have existed. He also noted that s 10(6) provided language that was significantly closer to the language that would be would be necessary in order for the respondent to be successful in its argument that an incomplete application has never existed.

[24] In the subsequent decision of *Ma*, the applicant made an inland application for permanent residence in the spouse or common law class and on the same date also made an overseas application for permanent residence in the family class. Both applications were returned for

incompleteness. The applicant then reapplied under the family class with a complete application and, about two weeks later, he also reapplied under the spouse or common law class with a complete application. As the filing of multiple applications was precluded by s 10(5) of the IRPA Regulations, a visa officer cancelled the later filed application and returned it to the applicant.

[25] In considering which application should be cancelled, Justice Rennie considered when the applications were "locked-in". He found that:

> [13] An application under *IRPA* must be a complete application. The receipt of an application which is missing key components is not an application within the meaning of *IRPA* and the *Regulations*. This interpretation ensures that officers spend their time reviewing completed files, allowing for a more effective use of resources. Importantly, applicants are not preserving their place or priority in a queue based on the filing of partial applications, to the determinant of those applicants who file later, but file complete files.
>
> [14] In this case, the officer's determination that the inland file was not complete until December 31, 2013 was reasonable.
>
> [15] Section 10 of the *Regulations* sets out the minimum requirements for applications. Specifically, subsection 10(1)(c) states that an application under the *Regulations* shall "include all information and documents required by these *Regulations*, as well as any other evidence required by the Act." As the applicant's inland application that was initially submitted on November 1, 2013, was incomplete, his application was therefore not locked-in until December 31, 3013, when all of the necessary information pursuant to subsection 10(1)(c) was received.
>
> [16] In reaching this conclusion the officer was guided by both regulation and policy directive. Subsection 10(2) of the *Regulations* describes certain minimum required information with respect to the applicant and his or her representative. Policy Directive IP 2 – *Processing Applications to Sponsor Members of the Family Class* establishes in a more detailed manner certain minimum documentary requirements that must be met before an application will be considered sufficiently complete to be locked

> in. To round out the operational scheme, section 12 of the *Regulations* provides that where the minimum requirements are not met, the documents are to be returned to the applicant.

[26] Justice Rennie did not refer to *Campana*, he based his decision on the facts in the matter before him and his contextual interpretation of the IRPA Regulations.

[27] More recently, Justice Harrington in *Stanabady* addressed a situation where the applicants had been issued temporary resident permits. Section 29 of the IRPA and s 183(1) of the IRPA Regulations required them to leave Canada before their permits expired on July 15, 2014. However, s 183(5) of the IRPA Regulations provides that if a temporary resident has applied for an extension before the expiry date, then the period for which they are authorized to remain in Canada is extended until the application is refused or, if it is permitted, until the end of the new authorized period. The applicants applied for an extension before their permits expired but their applications were returned to them as they had neither paid the correct fee nor had they provided all of the required documentation. By the time the applications were returned, their temporary resident permits had expired. They resubmitted their applications, however, prior to a decision being rendered, an exclusion order was issued pursuant to s 44(2) of the IRPA on the basis that they had violated s 29(2) by failing to leave Canada at the expiry of their permits. The applicants submitted that the exclusion order was invalid because they had applied for an extension before their permits expired, therefore, they maintained their status until a final decision had been rendered on the merits of their applications.

[28] Justice Harrington framed the issue before him as whether the submission of an incomplete application form, in which an extension of a temporary resident permit is sought,

extended the period for which the applicants were authorized to stay in Canada until the application was granted or refused on the merits. He concluded that the decision to issue the exclusion order was both reasonable and correct. An application within the meaning of s 183 of the IRPA must be such that the decision-maker is able to grant the extension, or to reject it, on the merits. The applications for extensions could not be granted if the forms were incomplete.

[29] Justice Harrington stated that s 183 must be read together with ss 10 and 12 of the IRPA Regulations. Section 10(1) provides that applications must, among other things, be made in writing using the prescribed forms, be signed, include all required information and documents and be accompanied by evidence of payment of the applicable fee. Section 12 goes on to provide that if the requirements of s 10 (and s 11) are not met, the application and all documents submitted are returned to the applicant, which was what happened in *Stanabady*. Further, Justice Harrington stated:

> [13] I do not consider that the fact that Citizenship and Immigration Canada sent the Stanabadys a form letter, after their temporary resident permits had expired, which letter stated that if they wished to reapply they had to send back a copy of that letter together with an application form complete in all respects locked in their status until a negative decision was made on the merits.

[30] He concluded that:

> [20] The simple fact of the matter is that the officer could not have made a positive decision on the application form submitted before the Stanabadys' temporary residence permits expired because the applications were incomplete. Therefore, they were required to depart Canada under s 183(1) of the Regulations and s 29 of the Act.

[31] As to *Campana* and *Ma*, Justice Harrington reviewed both cases and acknowledged the principle of comity but concluded that his analysis was closer to that of Justice Rennie's in *Ma*, noting that *Campana* had not specifically dealt with s 12 which requires that the application form be returned. However, he certified a question of general importance as follows:

> When a temporary resident has applied for an extension of the period authorized for his or her stay, but the Application is returned to the Applicant, due to incompleteness, in accordance with section 12 of the Immigration and Refugee Protection Regulations, does the Applicant benefit from implied status until he or she actually submits a complete application and that Application is either refused or allowed?

[32] In the matter before me the issue turns on the reasonableness of the Officer's interpretation of the IRPA Regulations. In that regard, I would note that in *Kinsel v Canada (Citizenship and Immigration)*, 2014 FCA 126 the Federal Court of Appeal provided an overview of the Supreme Court of Canada's jurisprudence concerning statutory interpretation, stating that:

> [37] The Supreme Court has expressed the preferred approach to statutory interpretation in the following terms:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> See: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at paragraph 21. See also: *R. v. Ulybel Enterprises Ltd.*, 2001 SCC 56, [2001] 2 S.C.R. 867 at paragraph 29.
>
> [38] The Supreme Court restated this principle in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601 adding at paragraph 10:
>
> > […] The interpretation of a statutory provision must be made according to a textual, contextual and

> purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.
>
> [39] Inherent in the preferred approach to statutory interpretation is the understanding that the grammatical and ordinary sense of a provision is not determinative of its meaning. A court must consider the total context of the provision at issue "no matter how plain the disposition may seem upon initial reading" (*ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140 at paragraph 48). From the text and this wider context the interpreting court aims to ascertain legislative intent, "[t]he most significant element of this analysis" (*R. v. Monney*, [1999] 1 S.C.R. 652 at paragraph 26).

[33] Applying that approach, I note that s 10 of the IRPA Regulations sets out the mandatory requirements, in both form and content, for permanent residence applications. This includes all information and documents required by the IRPA Regulations and any other evidence required by the IRPA. In my view, this must be read together with s 12 which explicitly states that if the requirements of s 10 (and s 11) are not met, then the application and all documents submitted in support of it shall be returned to the applicant. Accordingly, *Campana* can be distinguished on the same basis: that it did not consider s 10 together with s 12.

[34] Sections 10 and 12 make no reference to an application remaining alive and pending, that is, continuing to exist, after it and all documentation pertaining to it have been returned. Nor do they provide any authority for visa officers to maintain incomplete applications or to treat them

as continuations of the prior applications following resubmission. To my mind, it would make little sense that applications returned in whole would continue to exist and hold a place in the queue in perpetuity. If the application itself and all supporting documentation is returned, then what is left as a place holder? And, if this were the case, then applicants who have no intention of resubmitting a completed application or those who are unable to meet the requirements for permanent residence at the time of their original submission, could still hold a place in line.

[35] For these reasons, in my view, the IRPA's stated objective of "consistent standards and prompt processing" to attain the government's immigration goals (s 3(1)(f) of the IRPA), also supports the Officer's interpretation of the IRPA Regulations.

[36] As to the RIAS, the Supreme Court of Canada commented in *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 113 on the use of RIAS as an extrinsic aid in determining the intention of Parliament:

> Although not determinative nor exhaustive of a regulation's purpose or interpretation, regulatory impact analysis statements are a useful tool to understand how regulations are intended to work: see MiningWatch Canada v. Canada (Minister of Fisheries & Oceans), 2010 SCC 2, [2010] 1 S.C.R. 6 (S.C.C.), at para. 33; RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 (S.C.C.), at pp. 352-53.

[37] RIAS have also often been employed by this Court and the Federal Court of Appeal as an aid in determining the objectives of regulatory provisions (see *Eli Lilly Canada Inc v Canada (Minister of Health)*, 2003 FCA 24 at para 33; *Canada (Minister of Transport, Infrastructure and Communities) v Jagjit Singh Farwaha*, 2014 FCA 56 at paras 110-111; *Chow v Canada*

(Citizenship and Immigration), 2015 FC 861 at para 26; *Huynh v Canada (Citizenship and Immigration)*, 2013 FC 748 at para 14).

[38] In this case the relevant RIAS states as follows:

> *Description*
>
> The *Immigration and Refugee Protection Act* provides that foreign nationals are under an obligation to produce certain required documents before entering Canada. These Regulations address mandatory requirements respecting these documents.
>
> Purpose of these provisions
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> The purpose of these provisions is to establish which documents foreign nationals require before seeking to enter Canada. The regulations in this part also specify the requirements that **must be met in order for an application to be considered**, such as the type of form to be used in making an application, the required information to be submitted on such a form, including any supporting documentation necessary, and the place where an application is to be filed.
>
> What the regulations do
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> The application and documentation provisions prescribe:
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> …
>
> - The form, content, mandatory information required and place where an application can be made; and…
>
> What has changed
>
> Except for some differences in terminology, the legislative regime surrounding the requirement for foreign nationals to obtain visas prior to entry is essentially unchanged.
>
> …
>
> Under the current Act, requirements concerning the making of applications were not regulated and were frequently the source of litigation. These Regulations are new and provide **a regulatory basis for the perfected application principle by establishing the**

mandatory requirements that need to be met for applications to be considered as having been submitted.

These requirements deal with:

- the form, content and documents that should be provided;…

…

Benefits and Costs

These provisions clearly define for applicants what is required for their application to be considered.

Fewer resources will be required to process applications **since those who do not meet the required standards will not be processed.**

These Regulations are expected to improve the quality of service provided to applicants who submit the necessary information at the outset.

…

Pre-publication

…

Provisions regarding processing of applications have been modified to reflect more accurately the requirements of the *Financial Administration Act* and CIC's current practices. Incomplete applications will be returned to the applicants who will then have the option of completing the application and re-submitting it or applying for a refund.

…

Compliance and Enforcement

The existence of regulatory provisions specifying that the mandatory requirements of an application will result in increases in self-compliance. **Should an application not meet these requirements, it will be returned to the applicant without being processed.**

Failure to provide the necessary documentation in its required form may result in a refusal of the application

…

(emphasis added)

[39] In my view, the regulatory purpose as described in the RIAS supports an interpretation that, before an application for permanent residence can be considered, it must meet the requirements stipulated in the IRPA and the IRPA Regulations, including form and content. In this regard, the regulations are intended to provide a basis for "the perfected application principle" requiring applications to be returned, unprocessed, if the stipulated requirements are not met. It also demonstrates the Governor-in-Council's efforts to ensure fairness and efficiency in the processing of applications.

[40] An application must meet the s 10 requirements before it will be considered as having been submitted. And, if an incomplete application is viewed as not having been submitted, then any future submission would be *de novo*. Put otherwise, an application does not "exist" until it is complete and can then be considered and processed. Therefore, the objectives described in the RIAS accord with an interpretation of ss 10 and 12 of the IRPA Regulations in which resubmission of a previously incomplete application is treated as a new application.

[41] I acknowledge the Applicant's submission that had Parliament intended "an application not to be an application if the requirements in section 10(1) are not met" then s 10(6) would be redundant, and, that *Campana* referred to the language in s 10(6) as being more explicit and closer to the wording that would be required to permit a finding that an incomplete application does not exist. However, s 10(6) states that "a sponsorship application that is not made in accordance with subsection (1), that is in the required form and with the required content, is

considered not to be an application filed in the prescribed manner for the purposes of section 63(1) of the Act".

[42] In my view, this section is not particularly helpful to the Applicant. That is because the purpose of s 63(1) of the IRPA is to provide applicants with a right of appeal. Subsection 63(1) states that a person who has "filed in the prescribed manner" an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa. Thus, s 10(6) of the IRPA Regulations simply defines what is meant by "filed in the prescribed manner" as required by s 63(1) of the IRPA in order to permit a right of appeal. In my view, this has no impact on the interpretation of s 10 of the IRPA Regulations in the present case.

[43] Finally, it is true that *Maharaj*, *Fernando v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 205 [*Fernando*] and *Feng v Canada (Minister of Citizenship and Immigration)*, (1998) 153 FTR 59 [*Feng*] all involve situations where applications for permanent residence were returned because they were not accompanied by the processing fee required by s 3(2) of the *Immigration Act Fees Regulations, SOR/97-22 (repealed by s 364(c) Immigration and Refugee Protection Regulations, SOR/2002-227)* which stipulated that the prescribed fees were to be paid at the time the application was made. Thus, the applications were not "locked in" until the correct fees were received. However, as stated in Feng:

> [14] In *Mou v. Canada (Minister of Citizenship & Immigration)* (1997), 125 F.T.R. 203 (Fed. T.D.), at 208, Mr. Justice Lutfy considered the case of an applicant, a citizen of China, who applied for permanent residence for himself as principal applicant, and for his spouse and son as dependents, but not all the fees required for all the applicants were received. His Lordship said, in part:

> The *Fees Regulations* require that the processing fee and, more recently, the right of landing fee are payable at the time the application is made. Administrative efficiency may well dictate that all the fees for the principal applicant and the dependents be paid before the rights of them are locked-in. However, I have found no statutory or regulatory provision which clearly allows for this practice. It has not been necessary to address this issue definitively in this case.

That issue has been dealt with under the *Fees Regulations* which require that all fees for dependant applicants are to be paid with those of their principal applicants before the applications are considered complete. This case is covered under those regulations, but even if it were not, the same result, as a matter of administrative discretion, in my opinion, is open to the Minister and his officers.

[44] Similarly in *Fernando*:

> [15] The *Immigration Act Fees Regulations*, SOR/86-64 ("Fees Regulations") in force at that time required in respect of applications for landing, payment of a fee of $500.00 at the time an application was made. Additional fees were required in the amount of $500.00 for a spouse, and $100.00 for a dependent (not a spouse) under 19 years of age. However, an application for landing "by an entrepreneur, an investor, or a self-employed person" required a fee of $825.00. Additional fees for spouses and minor dependents were the same as in other applications.
>
> [16] On this basis I conclude from the tribunal record that Mr. Fernando did not pay the fees required in order for his application to be processed in the self-employed category.
>
> [17] As to the consequence of that failure, in *Maharaj v. Canada (Minister of Citizenship & Immigration)* (1995), 103 F.T.R. 205 (Fed. T.D.) Teitelbaum J. considered what makes up an application for permanent residence. He concluded, in view of the requirement of the Fees Regulations that fees be paid at the time an application for landing is made, that an application cannot be processed until it is perfected. Perfection requires that the necessary fees be paid. I, respectfully, agree. There was, therefore, no duty at law to assess Mr. Fernando as a self-employed person

> absent the payment of the requisite fees at the time the application for landing was made.

(also see *Maharaj* at paras 28-30).

[45] In this case, s 10 of the IRPA Regulations prescribes what must be submitted when making an application for permanent residence, including, among other requirements, proof of payment of applicable fees. In my view, failure to pay the prescribed fees is one example of a failure to meet the prescriptions in s 10. However, whether the missing component is a fee payment, required document or necessary information, the result is, as stated in *Fernando*, an unperfected application. In such a circumstance, no duty arises to process the application. Absent such a duty, if an application is not processed and is instead returned, it cannot be considered to still exist and, even if it did, it would not serve to "lock in" and thereby hold a place in line for the applicant (*Ma* at para 15). Thus, an incomplete application is not immune from the impact of regulatory changes that come into force before the application is perfected.

[46] The Officer's interpretation of s 10 of the IRPA Regulations was reasonable as it fell within the range of interpretations that are possible, acceptable and available based on a reading of s 10 in the context of the IRPA and the IRPA Regulations, including s 12, and considering the objectives of the legislative scheme and the Government's intent as described in the RIAS. In the result, the Officer also reasonably applied the amended definition of dependent children, which came into effect after the Applicant's submission of an incomplete application, which was returned unprocessed, but before her submission of a complete application.

[47] Having reached this conclusion, it is not necessary to address the Respondent's alternate argument that not every requirement, or consequence of a failure to meet that requirement, must be set out in a statute (*Balasundaram*).

Certified Question

[48] The Applicant submitted the following question for certification:

> When an application has been made under the Immigration and Refugee Protection Regulations ("IRPR"), but the application is returned to the applicant due to incompleteness, in accordance with section 12 of the IRPR, is the application still an application under the IRPR?

[49] Pursuant to s 74(d) of the IRPA, an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question. The test for certifying a question is that it "must (i) be dispositive of the appeal and (ii) transcend the interests of the immediate parties to the litigation, as well as contemplate issues of broad significance or general importance" (*Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9 [*Zhang*]).

[50] The proposed question, reworded as I have set out below, would be dispositive of this matter. If an incomplete and returned unprocessed application still "exists" and serves to "lock in" an applicant then, in this case, the amended s 2 of the IRPA Regulations would not apply and the Applicant's son would have met the prior definition of a family member as a dependent child. The second criterion in *Zhang* is also satisfied in this case as the status of incomplete applications transcends the interests of the immediate parties to the litigation and contemplates

an issue of broad significance or general importance both to visa applicants and the Minister who must administer the application process.

[51] Accordingly, I hereby certify the following question:

> 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?

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is denied;

2. The following question of general importance is certified pursuant to s 74(d) of the IRPA:

> 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?

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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