

Federal Court



Cour fédérale

Date: 20160721

Docket: IMM-257-16

Citation: 2016 FC 849

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 21, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**JEAN FRANÇOIS ROBESPIERRE LAMOTHE
MARIE JOSETTE BOURGUIGNON**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] One of the purposes of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) is to see that families are reunited in Canada (see paragraph 3(1)(d)). As for the legislative scheme for sponsoring foreign nationals, section 12 of the IRPA sets out the eligibility

criteria for sponsoring a foreign national in the family reunification category, while section 13 of the IRPA stipulates that a Canadian citizen, permanent resident or a corporation incorporated under a law of Canada or of a province or an unincorporated organization or association under federal or provincial law may sponsor a foreign national, subject to the regulations.

[2] Section 87.3 of the IRPA grants the Minister extensive regulatory powers in terms of giving instructions with respect to the processing of sponsorship applications. As a result, the processing of applications and requests is to be conducted in a manner that, in the opinion of the Minister, will best support the attainment of the immigration goals established by the Government of Canada (see subsection 87.3(2) of the IRPA). The Minister may therefore give instructions establishing conditions that must be met for the processing of an application or request (paragraph 87.3(3)(a.1) of the IRPA) (see *Lukaj v Canada (Citizenship and Immigration)*, 2013 FC 8 [*Lukaj*] and *Esensoy v Canada (Citizenship and Immigration)*, 2012 FC 1343 [*Esensoy*] for an excellent overview of the legislative scheme for sponsorship).

II. Introduction

[3] This is an application for judicial review under subsection 72(1) of the IRPA concerning a decision made by a representative of the Minister at the Case Processing Centre in Mississauga (CPC-M) to not accept or process the applicant's sponsorship application.

III. Facts

[4] The applicant, Jean François Robespierre Lamothe (age 73) is a citizen of Haiti who was living there when this application for leave and judicial review was submitted.

[5] On January 4, 2016, the applicant attempted to submit his application for permanent residence under the Parent and Grandparent Program through a bailiff.

[6] Based on the letter of explanation sent by the Minister's representative, specifically the Operations Support Manager at the CPC-M, it appears that the applicant's sponsorship application was returned to sender because the bailiff refused to wait in line, contrary to the Minister's instructions, in order to have an Immigration, Refugees and Citizenship Canada agent or officer provide an acknowledgement of receipt.

[7] Instead of waiting in line, the bailiff simply served the sponsorship application to the Minister's representative at the CPC-M. As a result, the sponsorship application was returned to sender.

[8] In his application for judicial review, the applicant is claiming that the Minister's representative arbitrarily rejected the sponsorship application because he misinterpreted the IRPA and instructions. Alternatively, even if the application had not been delivered as per the instructions of the Minister's representative, the sponsorship application could nevertheless have been added to the other applications when those offices closed on that day.

IV. Issues in dispute

[9] The Court is of the opinion that the only issue in this judicial review is determining whether the Minister's representative erred in refusing to accept the delivery of the applicant's sponsorship application.

V. Analysis

[10] The parties agree that the reasonableness standard of review applies in this case. The Court notes, however, that case law is not clear in terms of the standard of review that applies to how a Minister's representative interprets or applies the IRPA or the Regulations.

[11] In *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131, at paragraph 13, Mr. Justice Diner summarized the various lines of authority:

[13] In *Qin*, Justice Gleason found that she was bound by Federal Court of Appeal authorities (*Khan v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 339 (CanLII) [*Khan*] and *Patel v Canada (Minister of Citizenship and Immigration)*, 2011 FCA 187 (CanLII) [*Patel*]) which determined that the correctness standard applies to a visa officer's interpretation of the Regulations. Justice Gleason acknowledged that recent jurisprudence from the Supreme Court suggests that deference should be afforded to administrative decision-makers' interpretation of their home statute. Nonetheless, she found that *Khan* and *Patel* were directly on point and thus binding.

[12] Nevertheless, as was the case in *Lukaj*, above, given that the Court may render a decision without making a determination on this issue, the Court will refrain from doing so. In this case, regardless of whether the correctness or reasonableness standard applies, the Minister's representative's interpretation and application of the Guide were legally correct.

[13] One of the objectives of the IRPA is to see that families are reunited in Canada (see paragraph 3(1)(d)). As for the legislative scheme for sponsoring a foreign national, section 12 of the IRPA stipulates the eligibility requirements for a foreign national to be sponsored as a member of the family class, while section 13 of the Act stipulates that a Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province or an unincorporated organization or association under federal or provincial law may sponsor a foreign national, subject to the regulations.

[14] Paragraph 14(2)(e) of the IRPA indicates that the regulations may include provisions respecting sponsorships. Consequently, the legislative scheme for sponsorship is notably discussed in Division 3 of Part 7 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR), specifically in sections 130-137.

[15] Section 87.3 of the IRPA gives the Minister extensive regulatory powers in terms of giving instructions with respect to the processing of sponsorship applications. As a result, the processing of applications and requests is to be conducted in a manner that, in the opinion of the Minister, will best support the attainment of the immigration goals established by the

Government of Canada (see subsection 87.3(2) of the IRPA). The Minister may therefore give instructions establishing conditions that must be met for the processing of an application or request (paragraph 87.3(3)(a.1) of the IRPA) (see *Lukaj* and *Esensoy*, above, for an excellent overview of the legislative scheme for sponsorship).

[16] In this case, that is what the Minister did by implementing *Guide 5772 - Application to Sponsor Parents and Grandparents* (Guide 5772), which includes instructions on the procedure to follow to present an application to sponsor a parent or grandparent. Furthermore, as explained in the affidavit provided by the Minister's representative, Guide 5772 refers users to a section entitled "Help Centre", which provides further instructions about the courier services that can be used as well as the delivery procedures for applications at the CPC-M:

Couriers must have waybills and require a signature by CPC-M staff to prove that it was delivered, when it was delivered and that it was accepted (for their client's tracking purposes).

CPC-M does not accept envelopes or packages from non-courier services, such as taxi companies, trying to deliver to the office.

[17] Given that the Guide establishes a clear, unambiguous and unqualified procedural framework for receiving applications to sponsor a parent or grandparent at the CPC-M, the applicant could have reasonably expected that the receipt of his application would be dealt with in accordance with the procedure set out in it (*Agraira v Canada (Public Safety and Emergency Preparedness)*, [2013] 2 SCR 559, 2013 SCC 36, at paragraph 98 [*Agraira*]).

[18] In this case, according to the uncontradicted evidence, the Minister's representative at the CPC-M asked the bailiff hired by the applicant to wait in line to produce the waybill and receive a signature from a CPC-M employee, as stipulated in Guide 5772. The bailiff, who could not or chose not to wait in line, served the application to the Minister's representative and left the premises without receiving a signature from a CPC-M employee.

[19] In addition, according to the affidavit provided by the Minister's representative as well as the evidence in the record, the instructions concerning the procedure for delivering sponsorship applications are in place because of their quota: 5,000 sponsorship applications could be accepted, and this was later increased to 10,000 applications. The purpose of the instructions in place is therefore to ensure that the applications are processed fairly and that only the first 10,000 applications that can be accepted, are accepted.

[20] Unfortunately for the applicant, although he took the necessary measures for his sponsorship request to be delivered to the CPC-M on the first day that the Parent and Grandparent Program reopened, the bailiff refused to follow instructions from the Minister's representative. The Minister's representative therefore refused to accept the applicant's sponsorship request. The Court is therefore obliged to agree with the respondent's arguments; however, the Court does consider that the consequences of such a rejection should be taken into consideration, given the very serious repercussions it would have on a 73-year-old man who may have been accepted under a special program if the purely technical requirements had been followed by the bailiff when delivering the documents, as requested by the applicant.

[21] At the discretion of the Minister, the outcome could have been the opposite, and this 73-year-old man could have been considered for sponsorship as a parent or grandparent. A second review is required to determine reasonableness in this case.

VI. Conclusion

[22] Recognizing that this is a unique case due to its exceptional circumstances, for the reasons set out above, the Court is allowing the applicant's application for judicial review (*Agraira*, above, at paragraphs 31, 51, 52 and 60).

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be allowed and that the file be returned for a decision at the discretion of the Minister who has jurisdiction in this matter, given the exceptional circumstances in this case. There is no question of importance to certify.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-257-16

STYLE OF CAUSE: JEAN FRANÇOIS ROBESPIERRE LAMOTHE,
MARIE JOSETTE BOURGUIGNON v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JULY 14, 2016

JUDGMENT AND REASONS: SHORE J.

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