

Federal Court



Cour fédérale

**Date: 20191022**

**Docket: IMM-637-19**

**Citation: 2019 FC 1319**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, October 22, 2019**

**PRESENT: The Honourable Associate Chief Justice Gagné**

**BETWEEN:**

**GRACIA PAYENZO MFUDI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Nature of the matter

[1] The parents of Gracia Payenzo Mfudi, citizens of the Democratic Republic of the Congo, submitted an application for a parent and grandparent super visa, which was rejected. Taking into consideration the reason for their visit, the immigration officer was not satisfied that Ms. Mfudi's

parents would leave Canada at the end of their stay as temporary residents. She also found that the requirements for issuing a super visa were simply not met.

[2] Ms. Mfudi is seeking judicial review of this decision and, representing herself, she argues that her parents generally meet the criteria set out in the ministerial instructions regarding super visa applications.

## II. Issues and standard of review

[3] This application for judicial review raises the following issues:

- A. *Does Ms. Mfudi have standing?*
- B. *Does the application for a super visa by Ms. Mfudi's parents meet the applicable requirements?*

[4] I do not have to determine the standard of review applicable to the first issue because if I find that Ms. Mfudi does not have standing in this case, I must dismiss her application for judicial review.

[5] In my analysis of the immigration officer's decision to deny the issuance of a temporary resident visa to Ms. Mfudi's parents, an essentially discretionary decision, I owe a high degree of deference. The applicable standard of review is therefore that of reasonableness (*Doret v Canada (Minister of Citizenship and Immigration)*, 2009 FC 447, at para 19; *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339, 2009 SCC 12, at paras 46, 53; *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

## III. Analysis

A. *Whether the applicant has standing*

[6] Section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 (Act), deals with the identity of the party that may make an application for judicial review before the Court:

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

[7] The test for determining whether a party is directly affected by the matter in respect of which relief is sought is “whether the matter at issue directly affects the party’s rights, imposes legal obligations on it, or prejudicially affects it directly” (*Douze v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1337, at para 15).

[8] Consequently, the visa applicants, whose rights are affected by the immigration officer’s decision, and not the relatives they intend to visit in Canada, are those with an interest in challenging the decision on judicial review before this Court. Even though the decision may certainly have a negative impact on their relatives, the Act does not provide them with standing.

[9] Ms. Mfudi’s name does not appear on her parents’ super visa application; the immigration officer denied her parents a visa on the ground that they did not satisfy the requirements. It is her parents who should have challenged the decision (see also *Chinenye v Canada (Citizenship and Immigration)*, 2015 FC 378, at paras 17 and 18).

[10] Even though my analysis could have stopped here, given that Ms. Mfudi cannot file the application on behalf of her parents, I will nonetheless briefly analyze the merits of the decision under review.

B. *Reasonableness of the refusal to issue a super visa to Ms. Mfudi's parents*

[11] The reasons given by the immigration officer to reject the applications for a super visa are rather brief. In her notes, the following appears:

The applicant has not provided evidence of a medical exam nor evidence of purchase of medical insurance that meets the requirements for issuance of a supervisa. The host's income is insufficient to meet the requirements for issuance of a supervise [sic]. I am therefore not satisfied that the applicant meets the requirements for the issuance of a supervisa for which the applicant applied. Application refused. To note that host in Canada is a Canadian Citizen who initially made a refugee claim, and then obtained permanent resident status through skilled worker application. I note that applicant has previous application in 2014 that was refused with purpose of attending a seminar. This is during period where daughter was in Canada on implied status awaiting for refugee determination. Does not appear this information was disclosed at time of application. Also noted that no previous travel demonstrated. 1 child resides in France.

[12] The eligibility criteria for obtaining a super visa, which allows several entries into Canada over a 10-year period, are the subject of ministerial instructions published on the Department of Citizenship and Immigration website: applicants must establish that their Canadian child or grandchild meets a minimum income threshold; submit a signed promise of financial support from their child or grandchild; establish that they have medical insurance from a Canadian insurance company that is valid for at least one year from their date of entry in Canada; and undergo a medical exam.

[13] Even though her memorandum of fact and law is somewhat vague in this respect, Ms. Mfudi admitted at the hearing before me that her parents had made a number of errors when they submitted their application.

[14] She admitted that they had submitted the wrong insurance certificate issued by Blue Cross. According to the evidence produced, only her father was insured and the policy would come into effect only two months after her parents arrived in Canada (one month after their return to Kinshasa).

[15] Ms. Mfudi also admitted that her parents only presented her record of employment, failing to produce that of her spouse. She does not dispute that, on her own, she does not earn the minimum gross family income required to support her parents' super visa application.

[16] If one adds to that the fact that her parents did not provide proof of the medical exam required by the ministerial instructions and that they failed to disclose, in the relevant section, that they had previously been denied a visa, one can only conclude that the immigration officer properly exercised her discretion in denying their super visa application.

#### IV. Conclusion

[17] Ms. Mfudi unfortunately does not have standing as an applicant in this case, nor does she have the capacity to represent her parents' interests. However, even if Ms. Mfudi had standing, she failed to satisfy me that the immigration officer erred in refusing to issue a super visa to her parents.

[18] No question of general importance has been proposed by the parties for me to certify, and it is my view that none arises in this case.

## **JUDGMENT**

### **THIS COURT ORDERS that:**

1. The application for judicial review is dismissed;
2. No question of general importance is certified.

“Jocelyne Gagné”  
\_\_\_\_\_  
Associate Chief Justice

Certified true translation  
This 8th day of November, 2019.  
Michael Palles, Reviser

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

**DOCKET:** IMM-637-19

**STYLE OF CAUSE:** GRACIA PAYENZO MFUDI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** SEPTEMBER 4, 2019

**REASONS FOR JUDGMENT  
AND JUDGMENT:** GAGNÉ A.C.J.

**DATED:** OCTOBER 22, 2019

**APPEARANCES:**

Gracia Payenzo Mfudi FOR HERSELF

Sarah Chênevert-Beaudoin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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