Federal Court  Cour fédérale

Date: 20200319

Docket: IMM-2362-19

Citation: 2020 FC 390

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, March 19, 2020

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

MARIE EVENA INNOCENT

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] The applicant is originally from Haiti. She has a son, Don Stanley Dupiton, born on April 12, 1995, who still lives in that country. After an unsuccessful refugee protection claim in Canada in 2007, she was granted permanent resident status on November 18, 2015, under a humanitarian and compassionate [H&C] application. On March 21, 2017, she filed a sponsorship

application in the family class for her son with Citizenship and Immigration Canada [CIC] authorities. On the same day, Don Stanley filed an application for permanent residence that he signed himself.

[2] Don Stanley was 21 years old at that time. For the sponsorship application to be accepted, the applicant had to show that her son had the status of dependent child within the meaning of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [Act], and its regulations, the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[3] On April 3, 2017, several days after the applicant filed her sponsorship application, CIC informed her of the definition of dependent child in force at the time. She was also informed at the time that, given that her son might not meet the applicable definition of dependent child, she could withdraw her application. If she did, she would be reimbursed for some of the applicable fees. She could also continue with the application and pay the additional fees of $400. The applicant chose that route and sent CIC a letter on August 14, 2017. According to the Global Case Management System [GCMS] notes, the letter specified that, although Don Stanley did not meet the definition of dependent child provided in the letter dated April 3, 2017, she still wanted her sponsorship application to be processed.

II. DECISIONS UNDER REVIEW

[4] On August 10, 2018, a CIC immigration officer denied the sponsorship application because he was of the view that Don Stanley did not meet the definition of dependent child since, at that time, he was over 19 years of age, was no longer in school, did not have a medical

condition and no longer depended on the applicant financially. A few days earlier, an officer indicated in the notes entered into the GCMS that, after reviewing the file, he was not satisfied that H&C considerations justified an exemption.

[5] That decision was appealed to the Immigration Appeal Division [IAD]. On March 21, 2019, the IAD dismissed the appeal since it was not satisfied that Don Stanley met the definition of dependent child or that he was part of the family class, which was the basis of the sponsorship application. The IAD therefore found that it had no jurisdiction under section 65 of the Act to review the application based on H&C considerations.

III. APPLICANT'S POSITION

[6] The applicant submits that that decision is erroneous. She is of the opinion that, since her situation was governed by a [TRANSLATION] "multi-step" immigration process, the age of the dependent child could be set at a date prior to that of the sponsorship application. The applicant adds that, in this case, Don Stanley met the definition of dependent child both when her refugee protection claim was filed in 2007 and when her permanent residence application was filed in 2013. According to her, the lock-in date did not have to be that of the sponsorship application and of Don Stanley's permanent residence application because he could benefit—or should have been able to benefit—from the definition of dependent child before it was amended on August 1, 2014, to lower the age for the purposes of the definition from 22 to 19. She adds that Don Stanley was identified and recognized as a dependent child as part of the proceedings that led to her being granted permanent resident status.

[7] She also alleges that the IAD did not review her appeal on the basis of H&C considerations and that these considerations, in her view, favour approving the sponsorship application.

IV. ISSUE

[8] It must be determined in this case whether, in concluding as it did, the IAD made an error warranting the Court's intervention.

[9] For the reasons that follow, I am of the view that intervention is not warranted.

V. ANALYSIS

A. *Applicable definition of dependent child*

[10] To begin with, I note that before the IAD the applicant did not seem to challenge the immigration officer's conclusion that her son did not meet the definition of dependent child applicable to his case, that is, according to the officer, the definition applicable when the sponsorship application and Don Stanley's permanent residence application were filed with CIC authorities. Instead, the applicant limited herself to arguing that the application should be accepted for H&C considerations.

[11] However, in the letter sent to the applicant by the IAD on January 16, 2019, in order to [TRANSLATION] "explain [to her] the procedure to follow to enable [the IAD] to settle [her] appeal as quickly as possible", the applicant was invited to present written arguments to show

that the person she wished to sponsor met the definition of dependent child (Certified Tribunal Record [CTR] at pp 82–83). As I have mentioned, in a letter signed by her counsel and dated February 5, 2019, the applicant presented no arguments of that nature, preferring to concentrate her efforts on supporting H&C considerations that could militate in favour of granting her sponsorship application (CTR at pp 85–86).

[12] This explains, in my view, the part of the IAD decision where it states that the applicant "acknowledged that [her son] did not meet the definition of a dependent child" and concluded that she therefore did not demonstrate on a balance of probabilities that her son was a dependent child within the meaning of the Regulations (IAD decision, CTR at paras 3 and 5). This also explains why the IAD declared itself without jurisdiction, based on the wording of section 65 of the Act, to review the sponsorship application from the perspective requested by the applicant, namely, that of H&C considerations.

[13] Although an appeal before the IAD is *de novo*, it must still be carried out in light of the allegations against the administrative decision-maker at first instance whose decision is before the IAD. In this case, the appeal dealt only with the issue of H&C considerations militating in favour of granting the sponsorship application. It is difficult in such a context to criticize the IAD for concluding as it did. In my view, this would normally be sufficient to dispose of this judicial review.

[14] In any case, even if we suppose that the issue of the definition of dependent child applicable to Don Stanley should be examined here, the applicant did not satisfy me that it was

unreasonable to apply to her sponsorship application the definition of dependent child in force when that application was made in March 2017.

[15] When this case was argued, the applicant submitted that the standard of review applicable to the issue of the definition of dependent child applicable to her sponsorship application was that of correctness and that the error made in this regard was an error of law. The respondent, for his part, claimed that this judicial review should be decided on the reasonableness standard because it was a question of mixed fact and law.

[16] However, a few days after judgment was reserved in this case, the Supreme Court of Canada issued its judgment in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], a case that provided the Court "with an opportunity to re-examine its approach to judicial review of administrative decisions" (*Vavilov* at para 1).

[17] In a direction issued to the parties, I invited them to produce additional written submissions on the impact that judgment could have on this case. The parties informed the Court that they had no additional submissions to make in connection with *Vavilov*.

[18] Before the Supreme Court's judgment in *Vavilov*, it was assumed that, when an administrative decision-maker was called upon to interpret provisions of its own statute or a statute closely connected to its function, its decision was reviewable on the reasonableness standard. In other words, deference would usually result, unless the question fell into one of the categories of questions to which the correctness standard continued to apply (*Alberta*

(Information and Privacy Commissioner) v Alberta Teachers' Association, 2011 SCC 61 at para 30; *Vavilov* at para 25).

[19] In my view, *Vavilov* did not change the law in that respect. Indeed, to clarify and simplify the applicable law with respect to determining the standard of review applicable in a given case, the Supreme Court adopted a "framework . . . begin[ning] with a presumption that reasonableness [was] the applicable standard in all cases" (*Vavilov* at paras 10 and 25). This framework assumes, as the conceptual basis for this presumption, the expertise of the administrative decision-maker considered to be inherent in its specialized function (*Vavilov* at paras 26–28).

[20] The presumption can be rebutted in two types of situations. The first is where the legislature has indicated that it intends a different standard to apply. This will be the case where the legislature explicitly prescribes the applicable standard of review or has provided a statutory appeal mechanism from an administrative decision to a court. It is then a matter of complying with the legislature's intent (*Vavilov* at para 17).

[21] The second situation in which the presumption of reasonableness review will be rebutted is where the rule of law requires that the standard of correctness be applied. This will be the case for constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at para 17).

[22] This case does not have characteristics of a matter raising a general question of law of central importance to the legal system as a whole. As the Supreme Court noted in *Vavilov*, the correctness standard of review applies to "general questions of law that are of 'fundamental importance and broad applicability', with significant legal consequences for the justice system as a whole or for other institutions of government" (*Vavilov* at para 59). It stressed that the mere fact that a dispute is of wider public concern or touches on an important issue is not sufficient for a question to fall into the category of general questions of law of central importance to the legal system as a whole (*Vavilov* at para 61).

[23] But even more importantly, the Supreme Court reiterated in *Vavilov* that the reasonableness standard continued to apply to decisions where the administrative decision-maker interprets a statutory or regulatory provision falling within its jurisdiction. It noted that, in such cases, the reviewing court does not undertake a *de novo* analysis or ask itself what the correct decision would have been (*Vavilov* at para 116). However, it specified that it should be assumed in judicial review that, like courts, administrative decision-makers called upon to interpret the law will do so in taking into account the modern principle of statutory interpretation, in accordance with legislative intent, that is, having regard to the text, context and purpose of the provision at issue (*Vavilov* at paras 118–20).

[24] I reiterate that the applicant essentially submits that her situation was governed by a [TRANSLATION] "multi-step" immigration process, a concept she does not define, and that the dependent child's age could therefore be set at a date preceding her sponsorship application, such

as the date of her own permanent residence application made in 2013, when Don Stanley had no trouble meeting that definition.

[25] During the period relevant to this dispute, the definition of dependent child was amended three times.

[26] When the applicant filed her permanent residence application in 2013, the relevant definition of dependent child included children under 22 years of age and those who were 22 years of age or older but still depended on the financial support of either of their parents for their tuition fees or because of a physical or mental condition.

[27] The definition was amended on August 1, 2014, when the *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2014-133 [2014 Amending Regulations] came into effect, and the age was lowered from 22 to 19. Thus, until October 23, 2017, the definition of dependent child included children under the age of 19 and those who were 19 years of age or older, still depended on the financial support of either of their parents and were unable to be financially self-supporting due to a physical or mental condition.

[28] The definition of dependent child was amended again by the *Regulations Amending the Immigration and Refugee Protection Regulations (Age of Dependent Children)*, SOR/2017-60 [2017 Amending Regulations]. The 2017 Amending Regulations came into force on October 24, 2017, and are still in effect to this day. They essentially brought the age back up to 22.

[29] According to the general rule set out in section 25.1 of the Regulations, the lock-in date for determining whether a child is a dependent child is the date on which the "application" is made. This rule provides for exceptions for certain specific categories of applications:

General rule — one-step process	**Règle générale — processus à une étape**
25.1 (1) For the purposes of determining whether a child is a dependent child, the lock-in date for the age of a child of a person who is a member of any of the classes set out in these Regulations, other than in those cases referred to in subsections (2) to (9), and who makes an application under Division 5, 6 or 7 of Part 5 is the date on which the application is made.	25.1 (1) La date déterminante de l'âge d'un enfant, pour établir s'il est l'enfant à charge d'une personne appartenant à une catégorie visée par le présent règlement — sauf dans les cas visés aux paragraphes (2) à (9) — qui présente une demande au titre des sections 5, 6 ou 7 de la partie 5, est celle où la demande est faite.
Certificat de sélection — distressful situation	**Certificat de sélection — situation particulière de détresse**
(2) For the purposes of determining whether a child is a dependent child, the lock-in date for the age of a child of a person who is referred to in section 71, to whom a Certificat de sélection du Québec has been issued declaring that that person is in a particularly distressful situation and who makes an application under Division 6 of Part 5 is the date on which the application for selection was made to Quebec.	(2) La date déterminante de l'âge d'un enfant, pour établir s'il est l'enfant à charge d'une personne visée à l'article 71 à qui est délivré un certificat de sélection du Québec attestant qu'elle est dans une situation particulière de détresse et qui présente une demande au titre de la section 6 de la partie 5, est celle où la demande de sélection a été faite auprès de la province.
Quebec economic candidate	**Candidats économiques du Québec**
(3) For the purposes of	(3) La date déterminante de

determining whether a child is a dependent child, the lock-in date for the age of a child of a person who is referred to in section 86, 90, 97 or 101, to whom a Certificat de sélection du Québec has been issued and who makes an application under Division 6 of Part 5 is the date on which the application for selection was made to Quebec.

l'âge d'un enfant, pour établir s'il est l'enfant à charge d'une personne visée aux articles 86, 90, 97 ou 101 à qui est délivré un certificat de sélection du Québec et qui présente une demande au titre de la section 6 de la partie 5, est celle où la demande de sélection a été faite auprès de la province.

Provincial nominee

(4) For the purposes of determining whether a child is a dependent child, the lock-in date for the age of a child of a person who is a member of the provincial nominee class, who is nominated by the province and who makes an application under Division 6 of Part 5 is the date on which the application for nomination was made to the province.

Candidats des autres provinces

(4) La date déterminante de l'âge d'un enfant, pour établir s'il est l'enfant à charge d'une personne appartenant à la catégorie des candidats des provinces désignée par la province et qui présente une demande au titre de la section 6 de la partie 5, est celle où la demande de désignation a été faite auprès de la province.

(5) [Repealed, SOR/2017-78, s. 2]

(5) [Abrogé, DORS/2017-78, art. 2]

Sponsorship — refugee

(6) For the purposes of determining whether a child is a dependent child, the lock-in date for the age of a child of a person who is referred to in paragraph 139(1)(h), who makes an application under Division 6 of Part 5 and in respect of whom an undertaking application is made by a sponsor who meets the requirements of sponsorship set out in section

Parrainage — réfugiés

(6) La date déterminante de l'âge d'un enfant, pour établir s'il est l'enfant à charge d'une personne visée à l'alinéa 139(1)h) qui présente une demande au titre de la section 6 de la partie 5 et à l'égard de laquelle une demande d'engagement est présentée par un répondant qui satisfait aux exigences de parrainage visées à l'article 158, est celle où la demande d'engagement a été

158 is the date on which the undertaking application was made to Quebec.

faite auprès de la province de Québec.

Refugee

(7) For the purposes of determining whether a child is a dependent child, the lock-in date for the age of a child of a person who submits an application for a permanent resident visa under Division 1 of Part 8 along with one of the referrals set out in section 140.3 is the date on which the referral was made.

Réfugiés

(7) La date déterminante de l'âge d'un enfant, pour établir s'il est l'enfant à charge d'une personne qui présente une demande de visa de résident permanent au titre de la section 1 de la partie 8 accompagnée de l'une des recommandations visées à l'article 140.3, est celle où la recommandation a été fournie.

Family member who does not accompany applicant

(8) For the purposes of determining whether a child who submits an application under paragraph 141(1)(b) is the dependent child of a person who has submitted an application under paragraph 139(1)(b), the lock-in date for the age of that child is the date on which that person submitted the application.

Membre de la famille n'accompagnant pas le demandeur

(8) La date déterminante de l'âge d'un enfant qui présente la demande visée à l'alinéa 141(1)b), pour établir s'il est l'enfant à charge d'une personne qui fait la demande visée à l'alinéa 139(1)b), est celle où cette dernière a fait sa demande.

Refugee protection

(9) For the purposes of determining whether a child is a dependent child, the lock-in date for the age of a child of a person who has submitted a claim for refugee protection inside Canada under subsection 99(3) of the Act, who has acquired protected person status and who has made an application for

Demande d'asile

(9) La date déterminante de l'âge d'un enfant, pour établir s'il est l'enfant à charge d'une personne qui a présenté une demande d'asile au Canada conformément au paragraphe 99(3) de la Loi, à qui la qualité de personne protégée a été reconnue, et qui a présenté une demande de résidence permanente, est celle où la

permanent residence is the date on which the claim for refugee protection was made.	demande d'asile a été faite.

[30] It is clear that the case of the applicant and her son does not fall under any of these exceptions. Therefore, the general rule must apply, which, based on the wording of subsection 25.1(1) of the Regulations, specifies that the lock-in date for determining whether Don Stanley fits the definition of dependent child is the date on which the "application" was made.

[31] The question to be answered now is which "application" section 25.1 of the Regulations refers to in the context of this case: the sponsorship application accompanied by a permanent residence application signed by Don Stanley (March 21, 2017), the refugee protection claim (2007) or the applicant's permanent residence application (2013).

[32] The refugee protection claim date must be discarded right away. Under the cumulative effect of subsections 13(1) of the Act and 130(1) of the Regulations, only permanent residents and Canadian citizens may make a sponsorship application. Since the applicant's refugee protection claim was rejected, she did not have the required status, before being granted permanent resident status, to make such an application. In other words, she could not provide a member of her family with the benefit of a status she did not have herself.

[33] As for the applicant's permanent residence application, filed in 2013, the respondent submits that it cannot be adopted because Don Stanley did not accompany his mother to Canada

when that application was filed, even though he had been identified as a dependent child for the purposes of that application. I agree.

[34] It appears, based on subsection 69(2) of the Regulations, that Don Stanley could not be considered for a permanent resident visa when the applicant filed her application for permanent residence, given that he was outside Canada. That provision enables family members accompanying a foreign national who is granted such a visa on the basis of H&C considerations to be granted one as well. Since Don Stanley did not accompany the applicant, he could not take advantage of that opportunity.

[35] The date of March 21, 2017, when the sponsorship application wad filed, was the date used by the immigration officer who decided the application. As I stated at the very beginning of these reasons, it was also the date when Don Stanley made his own permanent residence application (CTR at pp 21–23). I reiterate that, by that time, the age limit had been lowered back to 19, based on the regulations in effect.

[36] Therefore, I am of the view that it was reasonable to apply the definition of dependent child in effect between August 1, 2014, and October 27, 2017, to Don Stanley and to do so at the time when the sponsorship application was made for him.

[37] At that time, in March 2017, Don Stanley was over 19 years of age. To meet the definition of dependent child in effect at that time, he therefore had to meet the additional criteria provided in the definition of dependent child, namely, that because of a physical or mental

condition, he depended on his parents' financial support. However, there is no evidence to that effect on the record. In addition, I reiterate that this argument was raised neither before the immigration officer who decided the sponsorship application nor before the IAD.

[38] In sum, I am of the view that the finding that the definition of dependent child applicable to Don Stanley's case was the one in effect on the date of the sponsorship application filed by the applicant and the finding that Don Stanley did not meet the requirements of that definition at that time were reasonable.

[39] With respect, there is no more merit in the argument that Don Stanley's case should have been assessed at an earlier date because it was part of a [TRANSLATION] "multi-step" process. In addition to section 25.1 of the Regulations, which mentions a one-step process, the Regulatory Impact Analysis Statement [RIAS] accompanying the 2014 Amending Regulations, which can be used to determine the purpose and the intended application of the Regulations (*Tharmarasa v Canada (Citizenship and Immigration)*, 2018 FC 1174 at para 18; *Bristol-Myers Squibb Co v Canada*, 2005 SCC 533 at para 157), confirms that this was indeed a one-step process.

[40] The RIAS accompanying the 2014 Amending Regulations specifies that permanent residence applications filed in the family class are part of a one-step process:

> Lock-in determinations that officers must use to determine the age of a child for the purpose of assessing whether or not the child meets the definition of dependent child will be defined clearly in the Regulations for all categories. Specifically, the age of dependent children will be locked in at
>
> **Application processes with one step**

> • The date CIC receives a complete permanent resident application, for applicants in the federal economic class (e.g. federal skilled workers, federal skilled trades, Canadian Experience Class, federal business).
>
> • **The date CIC receives a complete permanent resident application, for applicants in the family class (including the Spouse and Common-Law Partners in Canada class).**
>
> • The date CIC receives a complete permanent resident application, for applicants for humanitarian and compassionate consideration in Canada.
>
> • The date CIC receives a complete permanent resident application, together with a complete sponsorship undertaking, for privately sponsored refugees.
>
> [Emphasis added.]

[41] Conversely, the RIAS also provides examples of what constitutes a [TRANSLATION] "multi-step" immigration process or a process with several steps:

> **Application processes with two or more steps**
>
> • The date Quebec receives a complete application for a Certificat de sélection du Québec, for applicants in Quebec economic categories (Quebec skilled workers and Quebec investors, entrepreneurs and self-employed), persons in distressful situations and persons sponsored under collective sponsorships destined to Quebec.
>
> • For provinces and territories other than Quebec, the date the province or territory receives a complete application for provincial nomination, for applicants in the Provincial Nominee program;
>
> • The date CIC receives an initial and complete work permit application from abroad from applicants in the Live-In Caregiver program.
>
> • The date CIC receives a referral from a referral organization, for refugees selected abroad who are referred by a referral organization.

> • The date CIC receives the permanent residence visa application for refugee protection as per paragraph 139(1)(b) of the Regulations for persons who do not accompany the applicant and apply for permanent residence within one year from the day on which the refugee protection was conferred to that applicant (referred to as one-year window).
>
> • The date a person's claim was made to an officer as per subsection 99(3) of IRPA, for persons who made a claim for refugee protection in Canada and who subsequently acquired protected person status.

[42] It can therefore be understood that the immigration process undertaken by the applicant was not a [TRANSLATION] "multi-step" process because, as shown by the examples from the RIAS, it was not subject to a preliminary step. Since Don Stanley did not accompany the applicant when she was granted permanent resident status, the process that could have led to the same status being granted to Don Stanley also could not be a [TRANSLATION] "multi-step" process as long as it was based on a sponsorship application or permanent residence application made personally outside Canada, and hence in a one-step process. I note in that respect that nowhere in her written or oral submissions to this Court did the applicant specify where in the applicable regulations a basis could be found for her arguments on this point.

B. *H&C considerations component*

[43] In light of the foregoing, the IAD had good reason, in my view, under section 65 of the Act to find that it lacked jurisdiction to consider the H&C considerations raised by the applicant.

[44] Section 65 of the Act provides that the IAD may not consider H&C considerations unless it has decided that the foreign national before it is a member of the family class. Thus, once it has

been decided that this is not the case, the IAD has no authority to consider H&C factors raised by that person (*Essindi v Canada (Citizenship and Immigration)*, 2018 FC 288 at para 22). This is what happened in this case. In light of all of the circumstances in this case, it was open to the IAD to make this conclusion. There is no error that could warrant the Court's intervention.

[45] The application for judicial review will therefore be dismissed. Neither party proposed a question to be certified for appeal. I am also of the view that no such question arises in the circumstances of this case.

JUDGMENT in IMM-2362-19

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question is certified.

"René LeBlanc"
Judge

Certified true translation
This 22nd day of April 2020.

Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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