Federal Court  Cour fédérale

Date: 20120529

Docket: IMM-8022-11

Citation: 2012 FC 661

Toronto, Ontario, May 29, 2012

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

DORIS NYARKO

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] of a decision of the Immigration Appeal Division of the Immigration and Refugee Board [the Board] dated October 13, 2011. The decision denied the applicant's appeal from the refusal of her son's application for permanent residence as a member of the family class.

[2] The applicant Doris Nyarko is a Canadian permanent resident and a permanent resident of Ghana. In July 2009, she and her daughter came to Canada after being sponsored by her husband. Her two sons remained in Ghana until the applicant was settled.

[3] On July 19, 2010, she applied to sponsor her sons for permanent resident status. One of her sons was issued a permanent resident visa, but the application of her other son Julius Appiah [Julius] was refused on the basis that he was not a dependent.

[4] She appealed on his behalf, and it is the refusal of that appeal that is now under review.

[5] The Board held the hearing in writing pursuant to Rule 25 of the *Immigration Appeal Division Rules*, as it found that there was no need for oral testimony and neither party objected.

[6] The Board determined that Julius is not a dependent because he is not enrolled in post-secondary education. It noted that Julius was 23 at the time of the sponsorship application and that he had been continuously enrolled in and attending an education institution since before he was 22 years of age. However, since both of the institutions that Julius attended were high schools, the Board found that he was not a dependent child within the meaning of section 2(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations].

[7] The Board also noted discrepancies in the documentation provided by the applicant and expressed concern that the certificate she submitted which was titled “West African Examinations Council Basic Education Certificate Examination” was not genuine.

[8] The Board therefore denied the appeal.

[9] The applicant alleges a breach of procedural fairness because she was not afforded the opportunity to be informed of the Board's concerns and to address them. However, given her admission that Julius is attending a high school, any such breach is immaterial and has no impact on the outcome of the application. As the Supreme Court has affirmed the principle that the Court may refuse to grant relief where a breach of procedural fairness is "purely technical and occasions no substantial wrong or miscarriage of justice" (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43), I need not address this issue further.

[10] Decisions of the Board on appeal as to whether a foreign national is a sponsor's dependent child are reviewable on the reasonableness standard (*Canada (Minister of Public Safety and Emergency Preparedness) v Martinez-Brito*, 2012 FC 438, 2012 CarswellNat 1060 at para 16).

[11] The applicant submits that the Board erred by failing to consider the central issue: whether the definition of "post-secondary" in the Regulations includes high school. In the respondent's words, the applicant argues that "in light of the reunification provisions in [the Act] the intent could not possibly have been to disqualify someone from being considered a dependent because they had not yet completed high school."

[12] I disagree. As the respondent has argued, it would have been quite easy for Parliament to include secondary school students in the definition of dependents if that was its intention. Although

the Regulations do not define the term “post-secondary”, the Minister’s operational manual *Overseas Processing 2 – Processing members of the family class* notes several questions that should be considered in deciding whether a foreign national is a dependent child in section 14, titled *Procedure: Assessment of claim that a dependent child is a student.* One of these questions is “Is the student enrolled in a program given at an educational institution such as a university, college or other educational institution?” (my emphasis, subsection 14.2). Thus it is obvious that the term “post-secondary” does not include high school. I note as well that this interpretation is consistent with common usage in Canada of the term “post-secondary” in relation to education, which is defined in the *Canadian Oxford Dictionary* as “of or relating to education occurring after the completion of high school.”

[13] For these reasons, the application is dismissed.

[14] The applicant proposed the following question for certification:

> For the purpose of interpreting the conditions set out in the definition of “dependent child” established under clause 2(b)(ii)(A) of the Immigration and Refugee Protection Regulations, SOR/2002-227, as amended, with respect to the phrase “post-secondary institution”, can the Immigration Appeal Division take into consideration whether secondary school can be incorporated into the definition of “post-secondary institution”?

[15] The respondent argues that no certified question is necessary, as the definition of “post-secondary institution” is self-evident and does not include secondary school and as the proposed question does not extend beyond the facts of this case or contemplate issues of general application. I agree. No question is certified.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Danièle Tremblay-Lamer"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8022-11
STYLE OF CAUSE:	DORIS NYARKO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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APPEARANCES:

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