Federal Court  Cour fédérale

Date: 20170804

Docket: IMM-4233-16

Citation: 2017 FC 755

Ottawa, Ontario, August 4, 2017

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SEYED SAJJAD NEMATOLLAHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Seyed Sajjad Nematollahi [Mr. Nematollahi or the Applicant] is a Canadian citizen. In January, 2014 he and his wife applied to sponsor his mother's application for permanent residence as a member of the family class.

[2] The application was denied. The Officer concluded that Mr. Nematollahi had failed to satisfy the Minimum Necessary Income [MNI] requirements of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], for the three consecutive tax years immediately preceding the date of sponsorship. Specifically, the Officer concluded that the relevant taxation years in considering the application, received and accepted by the Respondent in 2014 were the years 2010, 2011 and 2012, citing Citizenship and Immigration, "Operational Bulletin 561", (Ottawa: CIC, 13 December 2013). The Officer held that the evidence did not establish that Mr. Nematollahi and his wife satisfied the MNI for the taxation year 2010.

[3] The written and oral submissions of the parties have been considered. The Court also received and noted correspondence from Mr. Nematollahi dated July 21, 2017 and correspondence in response from the Respondent dated July 25, 2017. Mr. Nematollahi's letter highlighted circumstances that had come to his attention after the hearing of oral submissions, circumstances relating to other sponsorship applications. Those other applications and their circumstances are not before the Court on this Application. As such, neither the contents of the July 21, 2017 letter nor the July 25, 2017 response have been relied upon in arriving at my conclusion in this case.

[4] In seeking judicial review of the decision, Mr. Nematollahi argues that the Officer erred in interpreting the IRPR requirement that an application be assessed on the basis of a sponsor's income in the three consecutive taxation years immediately preceding the date of the application. I agree; the Officer did err in concluding that the 2010 taxation year fell within the meaning of one of the "three consecutive taxation years immediately preceding the date of filing of the

sponsorship application" (IRPR, s 133(1)(j)(i)(B)). I also am of the opinion that the Officer's failure to address the additional evidence of income for taxation years 2013, 2014 and 2015 contained in Canada Revenue Agency Notices of Assessment and submitted by Mr. Nematollahi in 2016, information that paragraph 134(2)(b) of the IRPR allowed the Officer to request, undermines the transparency and therefore the reasonableness of the decision.

[5] The Application is granted and the matter returned for reconsideration for the reasons that follow.

II. Preliminary Issues

A. *Style of Cause*

[6] The Applicant has named the Minister of Immigration, Refugees and Citizenship Canada as the Respondent in this matter. The correct Respondent is the Minister of Citizenship and Immigration (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *Immigration and Refugee Protection Act*, SC 2001, c 27, s 4(1) [IRPA]). Accordingly, the Respondent in the style of cause is amended to the Minister of Citizenship and Immigration.

B. *Affidavit Evidence*

[7] Mr. Nematollahi argues that the affidavit of Ms. Jillian Dale dated February 15, 2017 [the Dale Affidavit] attaching as an exhibit a document entitled OPERATIONAL BULLETIN 561 – December 31, 2013 (Modified) [OB 561] is improper and should be given no weight on this

Application. He argues that the Dale Affidavit is not confined to facts within her knowledge, that it is not evidence she could provide as a witness before the Court and that it constitutes inadmissible hearsay.

[8] The Respondent submits that the Dale Affidavit has been placed before the Court as an interpretive tool to assist in assessing the meaning of sections 133 and 134 of the IRPR. The Respondent further argues that OB 561 was relied upon by Mr. Nematollahi in his submissions and that its content is based upon information contained in the Regulatory Impact Analysis Statement [RIAS] and Ministerial Instructions, documents the Court can take judicial notice of.

[9] The modern approach to statutory interpretation requires a court to read the words of a statute or regulation in their entire context, in their grammatical and ordinary sense within the scheme and object of the Act and the intention of the legislator (*Re Rizzo & Rizzo Shoes Ltd*, [1998] 1 SCR 27 at para 21, 36 OR (3d) 418 [*Rizzo Shoes Ltd*]). The reliance on extrinsic sources to determine the intent of the legislature, or in this case the Governor in Council, has long been accepted where the court is satisfied that the extrinsic source is relevant and reliable (*Francis v Baker*, [1999] 3 SCR 250 at para 35, 177 DLR (4th) 1).

[10] I am satisfied that OB 561 (Citizenship and Immigration, "Operational Bulletin 561", (Ottawa: CIC, 13 December 2013)) as well as the RIAS published in the Canada Gazette Part I as part of the consultation phase of the regulatory process (Regulations Amending the Immigration and Refugee Protection Regulations: Regulatory Impact Analysis Statement, (2013) C Gaz I, 1182 [Pre-publication RIAS]) on May 18, 2013 and in its final version (Regulations

Amending the Immigration and Refugee Protection Regulations: Regulatory Impact Analysis Statement, (2014) C Gaz II, 93 [Final RIAS]) published with the making of the amended regulations (SOR/2013-246; see also Regulations Amending the Immigration and Refugee Protection Regulations, (2014) C Gaz II, 90) meet the relevant and reliable standard.

[11] Mr. Nematollahi also takes issue with OB 561 on the basis that the title indicates it has been modified without any indication as to what was modified or when. While I note this concern, OB 561 is referenced in the decision under review. In his affidavit Mr. Nematollahi also references and quotes from OB 561, citing this very version. There is no evidence that the version of OB 561 placed before the Court is not the version considered by the Officer. I am also satisfied that the statement in the title of the document indicating it has been modified does not detract from or undermine its value in assisting the Court in addressing both the context and history of the IRPR amendments in issue.

III. Sponsoring Parents and Grandparents

A. *Background*

[12] On January 1, 2014 the Government brought into force amendments to sections 132, 133 and 134 of the IRPR to address backlogs in the sponsorship of family members by Canadian citizens and permanent residents, particularly the sponsorship of parents and grandparents. The RIAS and OB 561 indicate that the Government imposed a temporary pause in November 2011 on the receipt of new applications for the sponsorship of parents and grandparents. The pause ended and on January 2, 2014, after the IRPR amendments to the program came into force. New

applications were subsequently accepted to be assessed in accordance with the amended regulations. With the reopening of the program an annual cap of 5000 new complete applications was imposed.

[13] The RIAS sets out the objectives of the IRPR amendments as including the improved fiscal sustainability of the program by placing greater financial responsibility on sponsors, the requirement for strong evidence of financial stability, and the ability to ensure the ongoing financial capacity of sponsors to satisfy sponsorship obligations.

[14] Section 133 of the IRPR identifies a number of requirements, including the MNI requirements. Clause 133(1)(j)(i)(B) provides that, where a parent is being sponsored, the sponsors must present evidence of "total income that is at least equal to the minimum necessary income, plus 30%, for each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application".

B. *Relevant IRPR Provisions*

[15] Section 134 sets out the income calculation rules to be applied. Paragraph 134(1.1)(a) is applicable where a parent is being sponsored and requires that income is to "be calculated on the basis of the income earned as reported in the notices of assessment, or an equivalent document, issued by the Minister of National Revenue in respect of each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application".

[16] Subsection 134(2) allows an officer to request updated evidence of income where the officer receives information that a sponsor is no longer able to fulfil their sponsorship obligations or more than 12 months have elapsed since the date of filing of the sponsorship application.

[17] Subsection 10(1) sets out the form and content requirements of an application under the IRPR. Among other requirements, an application shall include all of the information and documents required by the IRPR and any evidence required by the IRPA. Section 12 provides that where an application does not meet the requirements of section 10 the application shall be returned.

[18] Relevant portions of the IRPR are reproduced at Annex A of this Judgment for ease of reference.

C. *OB 561*

[19] The Respondent issued OB 561 which reproduces the criteria sponsorship applications for parents and grandparents must meet. OB 561 states the following with respect to the MNI requirement:

> They must demonstrate that for the three consecutive taxation years preceding the date of their application, their income, including the income of the co-signer, if applicable, is equal to or greater than the annual MNI plus 30% for each of the three years;
>
> They must submit a Notice of Assessment (NOA) or an equivalent document (Option C print out) issued by the CRA to substantiate the amount of their income and their co-signer's income, if applicable, for each of the three consecutive years preceding the date of their application (for example, in January 2014, applicants must submit the NOA or Option C print out for 2012, 2011 and 2010 taxation years). *No* other proof of income will be accepted.

[20] It is this Bulletin's instructions that the Officer appears to have relied upon in determining that the 2010 taxation year was one of the three consecutive taxation years immediately preceding the filing of a sponsorship application in 2014.

IV. Standard of Review

[21] Mr. Nematollahi submits that the issue raised on this Application engages a question of law relating to the interpretation of the IRPR which should be considered against a correctness standard of review. Mr. Nematollahi acknowledges that the interpretation of legislation, a question of law, may be reviewable on a standard of reasonableness, but argues this can only occur where the statutory provision is ambiguous and the interpretation is closely related to the Officer's expertise.

[22] In *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*], the Supreme Court of Canada [SCC] held that some questions of law do attract the more deferential reasonableness standard of review. The SCC further held that this will usually be the case where a decision-maker is interpreting its home statute or regulations, with which it will have particular familiarity (*Dunsmuir* at paras 51, 54). In this case the regulatory provision in question is within the decision-maker's home legislation. The provision in question engages the assessment of criteria relating to sponsorship reliability, an activity that I am satisfied falls within the scope of the Officer's specialized function and with which the Officer has particular familiarity raising a presumption in favour of a deferential standard of review. This presumption is not displaced on the basis that the language in question is argued to be unambiguous.

[23] In considering the range of possible acceptable outcomes that are defensible based on the facts and the law, ambiguity in the wording of legislation might well open the door to a broad range of outcomes. Clear and unambiguous language may on the other hand significantly limit the range of reasonable outcomes. This fact alone however cannot justify the adoption of a less deferential standard of review. The issue raised in this Application will be reviewed against a standard of reasonableness.

[24] Having reached this conclusion I am also of the opinion that the standard of review adopted is of little consequence. I am of the view that the Officer's interpretation of the IRPR in this case was both incorrect and unreasonable.

V. Analysis

[25] The Respondent submits that the Officer's interpretation of the words "three consecutive taxation years immediately preceding the date of filing of the sponsorship application" must be read as including the words "*for which there are notices of assessment issued by the Minister of National Revenue (or the Canada Revenue Agency, "CRA")*".

[26] I am unpersuaded by the Respondent's argument. The words in sections 133 and 134 are to be read and interpreted within their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at 7, citing Elmer A. Driedger, *The Construction of Statutes*, (Toronto: Butterworths, 1974) at 67; see also *Rizzo Shoes Ltd* at para 21).

[27] Clause 133 (1)(j)(i)(B) uses precise and unequivocal language in defining the taxation years to be considered as "the three consecutive taxation years ***immediately*** preceding the date of filing [My emphasis]". The word "immediately" is defined in the 2004 Canadian Oxford Dictionary as meaning: "**1** instantly, without pause or delay … **2** without intermediary; in direct connection or relation … **3** with no object, distance, time, etc. intervening" (*The Canadian Oxford Dictionary*, 2nd ed, *sub verbo* "immediately").

[28] The grammatical and ordinary meaning of "immediately" does not support the Respondent's position that the taxation year prior to the year of application is to be excluded from consideration of MNI in favour of an earlier taxation year, if a National Revenue or CRA document is not available for the taxation year prior to the year of application. Further I have been unable to identify anything within the context of the IRPA and IRPR scheme to support the view that the words "three consecutive taxation years ***immediately*** preceding the date of filing [My emphasis]" should be interpreted in a manner that is inconsistent with their plain meaning. Finally, the intent of the scheme as reflected in the extrinsic evidence also leads one to conclude that the words are to be given their plain meaning.

[29] The financial stability of sponsors over a period of time and into the future was a primary objective of the amendments to the IRPR which in turn include a mechanism to allow an Officer to access current information from a sponsor to ensure a sponsor continues to meet the MNI after submitting an application to sponsor. To read out the word "immediately" or to read in words that create uncertainty as to what three year consecutive period is to be considered by an Officer is not consistent with the scheme or objective of the amendments.

[30] The interpretation the Respondent invites the Court to adopt is also inconsistent with the intent of the amendments as set out in the Pre-Publication RIAS that accompanied the pre-published IRPR amendments. The Pre-Publication RIAS stated the following:

> The requirement to submit documentation issued by the CRA may delay when a sponsor is able to submit a sponsorship application as they would need to file their taxes and wait to receive their notice of assessment or other CRA-issued documentation. However it is not anticipated that this potential delay would represent a significant barrier to prospective sponsors.
>
> (Pre-publication RIAS at 1191)

[31] This paragraph indicates that it was understood and intended that the words "three consecutive taxation years immediately preceding the date of filing" were intended to capture the three years immediately preceding the date of application, not some other three year consecutive period where CRA–issued documentation was available to the sponsor at the time of application.

[32] It appears this effect was subject to some comment in the consultation phase and the Final RIAS reflects a different view on this issue:

> Canadian citizens and permanent residents (including co-signers, if applicable) who seek to sponsor their [parents or grandparents]… will be required to demonstrate that they meet the new income threshold for three consecutive years using only documentation issued by the CRA. Documents other than those issued by the CRA will no longer be accepted. In this regard adjustments are made to the pre-published subsection 134(1.1) and paragraph 134(3)(c) to clarify that the sponsor's total income will be calculated on the basis of CRA notices of assessment (NOAs) issued in respect of each of the three consecutive taxation years preceding the date of the filing of the application. The prospective sponsor will not be required, for example, to provide a NOA…for the 2013 taxation year, if the sponsor were to submit the sponsorship application in January 2014. … Under the Regulations, the sponsor will only be required to provide evidence of income for taxation years of 2010,

> 2011 and 2012, given that the NOA for 2013 would not be available at the time of the application.
>
> (Final RIAS at 99)

[33] The Final RIAS reflects an intent and interpretation that is consistent with the positon the Respondent has urged the Court to adopt, the three relevant consecutive years are those years immediately preceding the application *"for which there are notices of assessment issued by the Minister of National Revenue (or the Canada Revenue Agency, "CRA")"*. The Final RIAS however does not suggest that these words can simply be read into the proposed IRPR amendments. Instead, the Final RIAS indicates that adjustments have been made to the pre-published subsection 134(1.1) and paragraph 134(3)(c) to reflect this interpretation. Interestingly, the same "immediately preceding" language is used at clause 133(1)(j)(B) yet there is no reference to this clause in the Final RIAS.

[34] A careful review of the pre-published version of the Regulations in comparison to the final text of the IRPR amendments does not disclose any change in wording and certainly no change that supports the interpretation as expressed in the Final RIAS or by the Respondent. In the absence of adjusted wording the reinterpretation as set out in the Final RIAS is based on nothing more than the RIAS statement itself. In the circumstances, the RIAS statement does not override the grammatical and ordinary sense of the words as they are used within the scheme of the Act and Regulations.

[35] I am of the opinion that the Officer's determination that the 2010, 2011 and 2012 taxation years were the "three consecutive taxation years immediately preceding the date of filing" was

unreasonable. Instead, the IRPR required the Officer to consider taxation years 2011, 2012, and 2013. The Officer also had the right, as a result of the delay in the processing of the application, to request and consider information relating to the 2014 and 2015 taxation years when determining in 2016 whether the MNI was met at the time of application and continued to be met (IRPR s 134(2)).

[36] The Respondent submits that even if the Officer's interpretation of the Regulation was unreasonable the Application still must be dismissed. The Respondent argues that only CRA-issued documents are to be considered as evidence of income on a sponsorship application. In this case Mr. Nematollahi failed to meet the requirement of submitting proof of income in the form of a CRA-issued document for taxation year 2013 and this was fatal to his application based on the requirements of sections 10 and 12 of the IRPR.

[37] Section 12 of the IRPR states that an application that fails to meet the requirements as set out in the Regulations shall be returned to an applicant. In considering section 12, the Federal Court of Appeal has held that the Respondent may return an application that does not meet the requirements of the IRPR on the basis that an incomplete application is not an application (*Gennai v Canada (Citizenship and Immigration)*2017 FCA 29 at para 6, [2017] FCJ No 154 (QL) [*Gennai*]).

[38] In *Gennai*, the application was returned to the applicant as it was incomplete. These are not the facts here. In this case, the Respondent treated the application as complete in 2014. The application was not returned. Instead the Respondent retained and processed the application. In

September 2016, after determining on a preliminary basis that the sponsorship application should be rejected for failure to meet the MNI requirement in 2010 but before the rendering of a final decision on the application and communicating such a decision directly to Mr. Nematollahi, Mr. Nematollahi wrote to the Respondent providing a CRA-issued Notice of Assessment for himself and his wife for each taxation year from 2010 to 2015. It is not disputed that the Officer had proof that the NMI requirement for 2013 (as well as 2014 and 2015) had been satisfied at the time the final refusal decision was rendered.

[39] The Respondent has argued that the failure to include CRA-issued documentation establishing income for 2013 at the time of application leads to only one reasonable outcome, that the application was incomplete and therefore a non-application. I do not agree. As noted above, the application in this case was accepted as complete. Prior to a final decision being rendered and communicated the Applicant placed the very evidence that was absent in the initial application before the decision-maker. In these circumstances I am unable to conclude that the only reasonable outcome was to treat the application as a non-application. While not for this Court to determine, it may well have been reasonably open to the Officer to conclude that the application was complete and could therefore be processed. Having unreasonably concluded that that the Applicant's NMI for 2013 was not relevant the Officer does not address the new evidence. It is not this Court's role to determine what the outcome would have been had the Officer considered the evidence and the circumstances relating to its reception. The Officer's failure to address this question and reach a conclusion on the CRA-issued documentation submitted by Mr. Nematollahi in 2016 undermines the transparency, and in turn, the reasonableness of the decision.

VI. Costs

[40] Mr. Nematollahi seeks costs arguing that the Respondent has unreasonably defended an indefensible case and is "unreasonably opposing an obviously meritorious application for judicial review".

[41] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* (SOR/93-22) [Rules] provides that costs are not to be awarded under the Rules "unless the Court, for special reasons, so orders".

[42] Special reasons justifying an order for costs may arise where the Minister opposes an obviously meritorious application (*Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 7, 423 NR 228), however I am not convinced that is the case here. The position advanced by the Respondent was not unreasonable. Cogent and meaningful arguments were advanced in support of the Respondent's position both in respect of the interpretation of the IRPR and the effect of the "incomplete" application. Special reasons justifying an award of costs have not been demonstrated. No costs are awarded.

[43] The parties have not proposed a question of general importance for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted;

2. The matter is returned for reconsideration by a different decision-maker;

3. No question is certified;

4. Costs are not awarded; and

5. The style of cause is amended to show the Minister of Citizenship and Immigration as the Respondent

"Patrick Gleeson"

Judge

Annex A

Immigration and Refugee Protection Regulations, SOR/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 application under these Regulations shall	10 (1) Sous réserve des alinéas 28b) à d) et 139(1)b), toute demande au titre du présent règlement :
(a) be made in writing using the form, if any, provided by the Department or, in the case of an application for a declaration of relief under subsection 42.1(1) of the Act, by the Canada Border Services Agency;	a) est faite par écrit sur le formulaire fourni, le cas échéant, par le ministère ou, dans le cas d'une demande de déclaration de dispense visée au paragraphe 42.1(1) de la Loi, par l'Agence des services frontaliers du Canada;
(b) be signed by the applicant;	b) est signée par le demandeur;
(c) include all information and documents required by these Regulations, as well as any other evidence required by the Act;	c) comporte les renseignements et documents exigés par le présent règlement et est accompagnée des autres pièces justificatives exigées par la Loi;
(d) be accompanied by evidence of payment of the applicable fee, if any, set out in these Regulations; and	d) est accompagnée d'un récépissé de paiement des droits applicables prévus par le présent règlement;
(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.	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.
[…]	[…]

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.

[…]

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.

[…]

Requirements for sponsor

133 (1) A sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor

[…]

(j) if the sponsor resides

(i) in a province other than a province referred to in paragraph 131(b),

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.

[…]

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.

[…]

Exigences : répondant

133 (1) L'agent n'accorde la demande de parrainage que sur preuve que, de la date du dépôt de la demande jusqu'à celle de la décision, le répondant, à la fois :

[…]

j) dans le cas où il réside :

(i) dans une province autre qu'une province visée à l'alinéa 131b) :

(A) has a total income that is at least equal to the minimum necessary income, if the sponsorship application was filed in respect of a foreign national other than a foreign national referred to in clause (B), or

(A) a un revenu total au moins égal à son revenu vital minimum, s'il a déposé une demande de parrainage à l'égard d'un étranger autre que l'un des étrangers visés à la division (B),

(B) has a total income that is at least equal to the minimum necessary income, plus 30%, for each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application, if the sponsorship application was filed in respect of a foreign national who is

(B) a un revenu total au moins égal à son revenu vital minimum, majoré de 30 %, pour chacune des trois années d'imposition consécutives précédant la date de dépôt de la demande de parrainage, s'il a déposé une demande de parrainage à l'égard de l'un des étrangers suivants :

(I) the sponsor's mother or father,

(I) l'un de ses parents,

(II) the mother or father of the sponsor's mother or father, or

(II) le parent de l'un ou l'autre de ses parents,

(III) an accompanying family member of the foreign national described in subclause (I) or (II), and

(III) un membre de la famille qui accompagne l'étranger visé aux subdivisions (I) ou (II),

(ii) in a province referred to in paragraph 131(b), is able, within the meaning of the laws of that province and as determined by the competent authority of that province, to fulfil the undertaking referred to in that paragraph; and

(ii) dans une province visée à l'alinéa 131b), a été en mesure, aux termes du droit provincial et de l'avis des autorités provinciales compétentes, de respecter l'engagement visé à cet alinéa;

[…]

[…]

Income calculation rules
134

Règles de calcul du revenu
134

[…]

[…]

Exception

(1.1) Subject to subsection (3), for the purpose of clause 133(1)(j)(i)(B), the sponsor's total income shall be calculated in accordance with the following rules:
(a) the sponsor's income shall be calculated on the basis of the income earned as reported in the notices of assessment, or an equivalent document, issued by the Minister of National Revenue in respect of each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application;

[…]

(c) if there is a co-signer, the income of the co-signer, as calculated in accordance with paragraphs (a) and (b), with any modifications that the circumstances require, shall be included in the calculation of the sponsor's income.

Updated evidence of income

(2) An officer may request from the sponsor, after the receipt of the sponsorship application but before a decision is made on an application for permanent residence, updated evidence of income if

(a) the officer receives information indicating that the sponsor is no longer able to fulfil the obligations of the

Exception

(1.1) Sous réserve du paragraphe (3) et pour l'application de la division 133(1)j)(i)(B), le revenu total du répondant est calculé selon les règles suivantes :
a) le calcul du revenu du répondant se fait sur la base des avis de cotisation qui lui ont été délivrés par le ministre du Revenu national à l'égard de chacune des trois années d'imposition consécutives précédant la date de dépôt de la demande de parrainage, ou de tout document équivalent délivré par celui-ci;

[…]

c) le revenu du cosignataire, calculé conformément aux alinéas a) et b), avec les adaptations nécessaires, est, le cas échéant, inclus dans le calcul du revenu du répondant.

Preuve de revenu à jour

(2) L'agent peut demander au répondant, après la réception de la demande de parrainage mais avant qu'une décision ne soit prise sur la demande de résidence permanente, une preuve de revenu à jour dans les cas suivants :

a) l'agent reçoit des renseignements montrant que le répondant ne peut plus respecter les obligations de son

sponsorship undertaking; or

(b) more than 12 months have elapsed since the receipt of the sponsorship application.

Modified income calculation rules

(3) When an officer receives the updated evidence of income requested under subsection (2), the sponsor's total income shall be calculated in accordance with subsection (1) or (1.1), as applicable, except that

(a) in the case of paragraph (1)(a), the sponsor's income shall be calculated on the basis of the last notice of assessment, or an equivalent document, issued by the Minister of National Revenue in respect of the most recent taxation year preceding the day on which the officer receives the updated evidence;

(b) in the case of paragraph (1)(c), the sponsor's income is the sponsor's Canadian income earned during the 12-month period preceding the day on which the officer receives the updated evidence; and

(c) in the case of paragraph (1.1)(a), the sponsor's income shall be calculated on the basis of the income earned as reported in the notices of assessment, or an equivalent

engagement à l'égard du parrainage;

b) plus de douze mois se sont écoulés depuis la date de réception de la demande de parrainage.

Règles du calcul du revenu modifiées

(3) Lorsque l'agent reçoit la preuve de revenu à jour demandée aux termes du paragraphe (2), le revenu total du répondant est calculé conformément aux paragraphes (1) ou (1.1), le cas échéant, sauf dans les cas suivants :

a) dans le cas de l'alinéa (1)a), le calcul du revenu du répondant se fait sur la base du dernier avis de cotisation qui lui a été délivré par le ministre du Revenu national à l'égard de l'année d'imposition la plus récente précédant la date de la réception, par l'agent, de la preuve de revenu à jour, ou de tout autre document équivalent délivré par celui-ci;

b) dans le cas de l'alinéa (1)c), son revenu correspond à l'ensemble de ses revenus canadiens gagnés au cours des douze mois précédant la date de la réception, par l'agent, de la preuve de revenu à jour;

c) dans le cas de l'alinéa (1.1)a), le calcul du revenu du répondant se fait sur la base des avis de cotisation qui lui ont été délivrés par le ministre du Revenu national à l'égard

document, issued by the Minister of National Revenue in respect of each of the three consecutive taxation years immediately preceding the day on which the officer receives the updated evidence.

de chacune des trois années d'imposition consécutives précédant la date de la réception, par l'agent, de la preuve de revenu à jour, ou de tout autre document équivalent délivré par celui-ci.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4233-16
STYLE OF CAUSE:	SEYED SAJJAD NEMATOLLAHI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 27, 2017
JUDGMENT AND REASONS:	GLEESON J.
DATED:	AUGUST 4, 2017

APPEARANCES:

Seyed Sajjad Nematollahi	SELF-REPRESENTED
Sally Thomas	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT