

Federal Court



Cour fédérale

Date: 20181016

Docket: IMM-1848-18

Citation: 2018 FC 1035

Ottawa, Ontario, October 16, 2018

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

ADEKOYA, UKEME ABAYOMI

Applicant

and

**MINISTER OF CITIZENSHIP OF
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA] against a decision of an immigration officer [the Officer] from Case Processing Centre Mississauga, dated April 10, 2018, concluding that the Applicant is not an eligible sponsor because she did not meet the minimum necessary income

[MNI] requirement as per subparagraph 133(1)(j)(i)(B) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

II. Background

[2] The Applicant lives in Calgary, Alberta. In 2017, the Applicant completed an application to sponsor her parents to become permanent residents under the family class. In a letter dated April 10, 2018, the Officer advised the Applicant that she was ineligible to sponsor her parents because she did not meet the MNI requirement, pursuant to subparagraph 133(1)(j)(i) of the IRPR. The Officer stated:

We have reviewed your application and regret to advise that you are not an eligible sponsor for the following reason:

Pursuant to regulation 133(1)(j)(i), you do not meet the minimum necessary income requirement. Please refer to the Immigration and Refugee Protection Regulations below for details.

You indicated on your sponsorship application that you wish to withdraw your application if found ineligible. As a result, your sponsorship application has been officially withdrawn and no further action will be taken. There is no right to appeal this decision.

(Applicant's Record [AR], Decision dated April 10, 2018, p 4)

[3] In a different letter dated April 10, 2018, the Officer included a financial assessment that contained calculations of the total eligible income of the Applicant and her co-signer:

Taxation Year	Eligible income (\$)	Total Eligible Income (\$)	MNI
2014 Sponsor	\$192481	\$318446	\$57124
Co-signer	\$125965		
2015 Sponsor	\$274852	\$400817	\$65377
Co-signer	\$125965		
2016 Sponsor	\$-649	\$40737	\$66653
Co-signer	\$41386		

(AR, Financial Assessment Letter dated April 10, 2018, p 13)

[4] Based on these calculations, the Officer concluded that the Applicant did not meet the MNI requirement in the 2016 taxation year. The Officer calculated the Applicant's eligible income as \$41,386 as indicated on Line 150 (Total Income) of the Applicant's Notice of Tax Assessment (AR, p 47). The Officer therefore concluded that the total eligible income in the amount of \$40,737 of both the Applicant and her spouse was below the minimum necessary income of \$66,653.

[5] In the present application for judicial review, the Applicant seeks an order quashing the decision of the Officer, as well as an order declaring that her 2016 income be excluded from the MNI requirement as the amount of \$41,386 was based on Employment Insurance benefits which she had received while being on maternity leave in the year 2016.

[6] The Applicant argues that the Officer's decision is discriminatory on the ground of Sex, pursuant to Section 3(2) of the *Canadian Human Rights Act*, RSC, 1985, c H-6, as the calculations for the 2016 income should not have included "any amounts paid to the sponsor under the Employment Insurance Act, other than special benefits".

[7] The Respondent, on the other hand, filed a motion pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 for an order granting the application for judicial review and sending the matter back for redetermination by a different officer, thereby setting aside the April 10, 2018 decision. The Respondent sent a letter to the Applicant, advising her that the Respondent consents to the application for judicial review. The Applicant, however, opposed the Respondent's motion because the Respondent would not consent to the Applicant's order declaring that her 2016 income be excluded from the MNI requirement.

III. Issues

[8] As a preliminary issue, and with the consent of the parties, the style of cause in the present application is hereby amended in order to reflect the correct Respondent, the Minister of Citizenship and Immigration.

[9] As a further preliminary matter, the Applicant sought to file with the Court an affidavit concerning her attempts to seek redress from the Canadian Human Rights Commission in the days prior to the hearing. The Respondent objected arguing that it would be prejudiced and that in any event the Applicant's time for perfecting her record and submitting arguments has passed. The Court agrees with the Respondent and the affidavit will not be accepted.

[10] After reviewing the parties' submissions, the Court finds that both parties seek an order from this Court to allow the application for judicial review; however, the matter raises the following issues:

1. Was it reasonable for the Officer to find that the Applicant was not an eligible sponsor, pursuant to subparagraph 133(1)(j)(i) of the IRPR?
2. Was it discriminatory for the Officer to consider the Applicant's 2016 income based on maternity leave in her total income, pursuant to s 3(2) of the *Canadian Human Rights Act*?

[11] The present matter should be reviewed under the standard of reasonableness.

Whether an applicant meets the financial requirements for sponsorship under the IRPA and its Regulations is a factual determination and, therefore, is reviewed under the standard of reasonableness (*Pospelova v Canada (Citizenship and Immigration)*, 2013 FC 555 at para 12, [2013] F.C.J. No 623; *Dokaj v Canada (Citizenship and Immigration)*, 2009 FC 847 at para 18, 180 ACWS (3d) 483).

(*Tosic-Kravic v Canada (Citizenship and Immigration)*, 2017 FC 452 at para 8)

IV. Relevant Provisions

[12] The following provisions from the IRPR are relevant in this proceeding:

Requirements for sponsor	Exigences : répondant
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	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) if the sponsor resides	j) dans le cas où il réside :
(i) in a province other than a	(i) dans une province autre

province referred to in paragraph 131(b),

qu'une province visée à l'alinéa 131b) :

Exception

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:

(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) 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;

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;

(b) the sponsor's income is the income earned as reported in the documents referred to in paragraph (a), not including

b) son revenu équivaut alors à la somme indiquée sur les documents visés à l'alinéa a), exclusion faite de ce qui suit :

(i) any provincial allowance received by the sponsor for a program of instruction or training,

(i) les allocations provinciales reçues au titre de tout programme d'éducation ou de formation,

(ii) any social assistance received by the sponsor from a province,

(ii) toute somme reçue d'une province au titre de l'assistance sociale,

(iii) any financial assistance received by the sponsor from the Government of Canada under a resettlement assistance program,

(iii) toute somme reçue du gouvernement du Canada dans le cadre d'un programme d'aide pour la réinstallation,

(iv) any amounts paid to the sponsor under the Employment Insurance Act, other than

(iv) les sommes, autres que les prestations spéciales, reçues au titre de la Loi sur l'assurance-emploi,

special benefits,	(v) tout supplément de revenu mensuel garanti reçu au titre de la Loi sur la sécurité de la vieillesse,
(v) any monthly guaranteed income supplement paid to the sponsor under the Old Age Security Act, and	(vi) les allocations canadiennes pour enfants reçues au titre de la Loi de l'impôt sur le revenu;
(vi) any Canada child benefit paid to the sponsor under the Income Tax Act; and	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.
(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.	

[13] The following provisions of the *Employment Insurance Act*, SC 1996, c 23 are also relevant:

Definitions

2 (1) In this Act,
special benefits means benefits paid for any reason mentioned in subsection 12(3) or 152.14(1); (prestations spéciales)

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.
prestations spéciales
Prestations versées pour une raison mentionnée aux paragraphes 12(3) ou 152.14(1). (special benefits)

V. Analysis

[14] For the following reasons, the application for judicial review is dismissed.

[15] The Court finds that the application for judicial review is dismissed as it was reasonable for the Officer to determine that the Applicant was not eligible to sponsor her parents. The Officer applied the correct provisions of the IRPR in order to conclude that the Applicant's 2016 income is considered to be a "special benefits" under the *Employment Insurance Act*, thus including the amount of \$41386 in her eligible income. The Court is of the view that the Applicant simply seems to have misinterpreted s 134(1.1)(b)(iv) of the IRPR, which reads as follows:

the sponsor's income is the income earned as reported in the documents referred to in paragraph (a), not including

any amounts paid to the sponsor under the *Employment Insurance Act*, other than special benefits. [Emphasis added by the Court].

[16] "Special Benefits" as defined in section 2(1) of the *Employment Insurance Act* refers to subsection 12(3) and 152.14(1), both of which in turn refer to benefits paid because of pregnancy. The Officer did not err in interpreting the legislation.

[17] The Court also finds that it does not have jurisdiction, in the case at bar, to address the Applicant's complaints of discrimination on the basis of sex pursuant to s 18.1(3)(b) of the *Federal Courts Act*, RSC, 1985, c F-7, considering that it is premature for the Applicant to address that issue in the present application absent a notice regarding a constitutional question served on the Attorney General of Canada as stated in subsection 57(1) of the *Federal Courts Act*.

VI. Conclusion

[18] The application for judicial review is dismissed. No question of general importance is certified.

JUDGMENT in IMM-1848-18

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

There is no question of general importance to be certified. There are no costs awarded.

“Paul Favel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1848-18

STYLE OF CAUSE: ADEKOYA, UKEME ABAYOMI v MINISTER OF
CITIZENSHIP OF IMMIGRATION

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: SEPTEMBER 11, 2018

JUDGMENT AND REASONS: FAVEL J.

DATED: OCTOBER 16, 2018

APPEARANCES:

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