Federal Court  Cour fédérale

Date: 20191218

Docket: IMM-4081-18

Citation: 2019 FC 1620

Ottawa, Ontario, December 18, 2019

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

SHIPING HUANG (a.k.a. SHI PING HUANG)

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Shiping Huang (also known as Shi Ping Huang) seeks judicial review of the decision of the Immigration Appeal Division (IAD), which upheld the refusal of his application to sponsor his son for permanent residence in Canada. The IAD decision is based on its interpretation of the definition of "dependent child" in the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the *Regulations*], under which it found that the Applicant's son did not qualify as a dependent child because he had not received continuous support from his parents since the age of 22. There was a period of time when the son lived with

and was supported by his grandmother and aunt, and did not receive support from his parents. The IAD held that the definition requires unbroken support, and thus the sponsorship was denied.

[2] The Applicant argues that the IAD's interpretation is unreasonable, because it does not give effect to the purpose of the provision within the overall purposes of the *Immigration and Refugee Protection* Act, SC 2001, c 21 [*IRPA*], and it produces unfair outcomes, as in this case.

[3] For the reasons that follow, I am dismissing this application for judicial review.

I. Context

[4] The facts of this case are simple and uncontested. The Applicant and his wife entered Canada as visitors in April 2006. In May 2006, they submitted claims for refugee protection, fearing a return to China. Their claims were accepted, and they became permanent residents of Canada in November 2007.

[5] The Applicant and his wife have a son, born in China in January 1982. He entered Canada on a student visa in December 2004, when he was 21 years old. His parents provided financial support at that time. In October 2006, the son dropped out of his program of study, and in November 2006, he returned to China, without informing his parents.

[6] From November 2006 until 2011, the son stayed with his grandmother who supported his basic needs, and his aunt also provided financial support. . He was diagnosed with paranoid

schizophrenia in March 2013, and since then has been admitted to hospital for treatment on several occasions. He is unable to work or to support himself.

[7] The Applicant visited his son in China in 2011, and has provided him with financial support since then.. In October 2013, the Applicant submitted an application to sponsor his son under the family class. In November 2013, the application was refused, on a basis unrelated to the matter before the Court. This decision was overturned by the IAD in February 2016, and the matter was returned for reconsideration. The sponsorship application was refused for a second time on July 31, 2018, and it is this decision that is the subject of this application for judicial review.

II. Issues and Standard of Review

[8] The only issue in this case is whether the IAD's finding that the term "dependent child" in subparagraph 2(b)(ii) of the *Regulations* requires continuous, unbroken, substantial financial support since the age of 22 is unreasonable.

[9] The standard of review is reasonableness: *Shomali v Canada (Citizenship and Immigration)*, 2017 FC 1 at para 12. The Supreme Court has recently re-affirmed that an expert tribunal's interpretation of its "home" statute (the law that it is responsible to administer) is to be reviewed on a standard of reasonableness: *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 [*CHRC*]. As explained at paragraph 55 of that decision:

> [55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir,* at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board),* 2011 SCC 62 , [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean,* at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa,* at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple possible outcomes, even where they are not the court's preferred solution.

III. Analysis

[10] This case turns on the definition of "dependent child" in the *Regulations:*

"dependent child" , in respect of a parent, means a child who	**«enfant à charge »** L'enfant qui :
(*a*) has one of the following relationships with the parent, namely,	***a*)** d'une part, par rapport à l'un ou l'autre de ses parents :
(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or	(i) soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,
(ii) is the adopted child of the parent; and	(ii) soit en est l'enfant adoptif;
(*b*) is in one of the following situations of dependency, namely,	***b*)** d'autre part, remplit l'une des conditions suivantes :
	(i) il est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait,

(i) is less than 22 years of age and not a spouse or common-law partner,

(ii) has depended substantially on the financial support of the parent since before the age of 22 — or if the child became a spouse or common-law partner before the age of 22, since becoming a spouse or common-law partner — and, since before the age of 22 or since becoming a spouse or common-law partner, as the case may be, has been a student

(A) continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority, and

(B) actively pursuing a course of academic, professional or vocational training on a full-time basis, or

(iii) is 22 years of age or older and has depended substantially on the financial support of the parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition. (*enfant à charge*)

(ii) il est un étudiant âgé qui n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents à compter du moment où il a atteint l'âge de vingt-deux ans ou est devenu, avant cet âge, un époux ou conjoint de fait et qui, à la fois :

(A) n'a pas cessé d'être inscrit à un établissement d'enseignement postsecondaire accrédité par les autorités gouvernementales compétentes et de fréquenter celui-ci,

(B) y suit activement à temps plein des cours de formation générale, théorique ou professionnelle,

(iii) il est âgé de vingt-deux ans ou plus, n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents à compter du moment où il a atteint l'âge de vingt-deux ans et ne peut subvenir à ses besoins du fait de son état physique ou mental. (*dependent child*)

[11] Pursuant to paragraph 117(1)(b) of the *Regulations*, a foreign national is a member of the family class if he or she is a "dependent child." The finding that the Applicant's son did not fall within this definition was therefore fatal to the sponsorship application.

[12] The IAD decision rests on two key conclusions. First, it found that the evidence demonstrated that the Applicant's son had been financially dependent upon his family prior to his abrupt departure from Canada in November 2006. However, the evidence did not establish that this financial assistance continued between 2007 and 2011. The IAD did not accept the Applicant's explanation as to why financial records demonstrating such support had not been provided, and it concluded that during this period the son was financially dependent upon his grandmother and aunt, and not his parents.

[13] The second essential finding was that the definition of a dependent child required a continuity of dependency that was ongoing from the age of twenty-two. The IAD was guided in this conclusion by a decision of this Court in *Gilani v Canada (Citizenship and Immigration)*, 2005 FC 1522 [*Gilani*]. It found at paragraph 18 of its decision that *Gilani* established that "the continuity of dependency by the child on the parent must be unbroken. A break in dependency is commensurate with the exclusion of the applicant from the family class."

[14] The IAD concluded that the Applicant had not met his burden of demonstrating that his son had depended on his parents for financial support since he was 22 years of age, and therefore it dismissed the sponsorship application.

[15] The Applicant submits that the IAD erred by importing into the definition a requirement for an unbroken, continuous history of financial support. He argues that the lynchpin of the definition is substantial financial dependence, not continuous and unbroken financial support. The IAD erred by relying on *Gilani* because the reference in that decision to a "continuing condition regarding financial support" (para 11) is merely *obiter*, and should not be treated as

persuasive because the Court in that case did not have the benefit of full argument on the point. The continuity of financial dependence was not in dispute nor was it specifically considered in that case, which turned on the question of whether the physical or mental condition that was the basis for the dependency had to be in existence since the time the child reached 22 years of age.

[16] The Applicant argues that the IAD's interpretation does not flow from either a plain reading or purposive interpretation of the statute. The requirement for ongoing and continuous support would defeat the purpose of family reunification set out in paragraph 3(1)(d) of *IRPA*, and adds a limitation to the definition that Parliament did not include. The Applicant notes that in the parallel context of dependents enrolled in school, Parliament has in the past included a specific requirement that the person be "continuously enrolled in and attending a post-secondary institution" (referring to subparagraph 2(b)(ii)(a) of the *Regulations* as it stood from June 20 until July 31, 2014).

[17] In addition, the Applicant argues that the IAD's interpretation should be rejected because it produces unfair and harsh outcomes, as in this case. There is no question that the Applicant's son meets the other requirements of the definition: he is unable to work, he was financially dependent upon his parents before he turned 22, and has been financially dependent upon them since that time. A mere break in dependency should not disentitle him to join his parents in Canada. This defeats the remedial purpose of the provision, which is to recognize circumstances of substantial and longstanding dependency, notwithstanding the person's age.

[18] The Applicant submits that the IAD's interpretation turns on the meaning of the word "since" – recalling that the key portion of subparagraph 2(b)(ii) which defines "dependent child"

states that the person must demonstrate that he or she "has depended substantially on the financial support of the parent since before attaining the age of 22…" Dictionary definitions note that the word "since" has several meanings. The Applicant contends that the word "since" in subparagraph 2(b)(ii) should be interpreted to mean that the individual has depended substantially on the financial support of the parent in the period starting from the time before the claimant turned 22, to the present. This does not and should not include a requirement that the dependency has been continuous.

[19] The Applicant argues that it is not necessary on judicial review to establish that the son meets this definition; it is sufficient to show that the negative decision was reached on an erroneous interpretation of the law, and that the outcome would have been different had this error not been made.

[20] The Respondent argues that the IAD's interpretation was reasonable, and that it was correct to follow *Gilani* because the Court's interpretation of the provision was not *obiter*. The Respondent argues that the Court's approach to interpreting the provision does give effect to Parliament's purpose in its choice of the specific wording of the provision. This is bolstered with reference to the French version of the paragraph, which refers to "et n'a pas cessé de dépendre", which it translates as "has not ceased to depend." This makes Parliament's intention clear that the dependency must be ongoing. Furthermore, dictionary definitions in fact support the IAD's interpretation, since the relevant definition of the word "since" must include continuity.

[21] It is worth repeating, at the outset of my analysis, that this is an application for judicial review on the standard of reasonableness. The factual findings of the IAD are well supported in

the evidence, and are not contested here. The parties' arguments focused entirely on the legal question of the interpretation of the definition of dependent child.

[22] As noted above, the Supreme Court has recently re-affirmed the proper approach to a judicial review in a matter where the administrative tribunal has interpreted its constituent statute, noting that deference is called for because "the decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute." (*CHRC*, at para 55). It is important, in approaching this case, not to lapse into disguised correctness review by launching into the usual interpretive analysis, and then comparing that with the IAD's approach. As the Supreme Court reminds us in *CHRC*, the proper approach recognizes that reasonableness is grounded in the idea that in many exercises of discretion there will be a range of reasonable alternatives. The question for the Court is whether the IAD's decision falls outside of that range because of its interpretation of the law and its application to the facts.

[23] I am not persuaded that the IAD's interpretation of the definition of dependent child is unreasonable, for the following reasons.

[24] First, the IAD did not err in taking guidance from the *Gilani* decision of this Court. I would observe that the very fact that there was a substantial argument before me as to whether the findings were *obiter* or not points to the reasonableness of the IAD's approach. It is neither necessary nor appropriate for me to pronounce upon the question of whether the interpretation of the provision in that case was *obiter*. At the very least, the IAD was not wrong in finding that the

Gilani case involved a somewhat similar factual situation, and that the Court had specifically set out its interpretation of the provision in issue here.

[25] The *Gilani* case involved a review of a decision that Justice Frederick E. Gibson described in the following manner at paragraph 3:

> Thus, I interpret the reasons for the rejection of Mansur's application as being the failure to establish that he was suffering from schizophrenia since before he was twenty-two (22) years of age, the failure to establish that Mansur was socially dependent on his parents from the same age, that is to say that he lived together with them at all times, and the failure to establish that he was substantially financially dependent on his parents from the same age.

[26] After quoting the relevant portion of the definition of dependent child in the *Regulations*, Gibson J. summarized the requirements of the provision as requiring the applicants to establish that the dependent child is over the age of 22, that he has depended substantially on the financial support of his parents since before the age of 22, and that he is unable to be financially self-supporting because of a physical or mental condition. (para 5).

[27] On the facts of the case, Gibson J. found that the child satisfied the first age requirement (he was almost 60 years old at the relevant time). On the second requirement, he was satisfied that "Mansur could be said to have been substantially financially dependent on his parent's support since before the age of twenty-two (22)" (at para 7). The case turned, therefore, on whether the officer's determination that the physical or mental condition causing the dependency had to have existed at all times since the person was 22 years of age, and that the condition had to be diagnosed before the person reached that age.

[28] In assessing this question, Gibson J. noted at paragraph 9 the specific wording of the provision:

> A careful reading of subparagraph (b)(iii) [now b(ii)] of the definition "dependent child" discloses that an applicant must establish that "...he has depended substantially on the financial support of a parent since before the age of twenty-two (22) and that he is "...unable to be financially self-supporting due to a physical or mental condition." It would appear that it is not disputed that Mansur "is", and certainly at all times since the date of his application, has been, suffering from debilitating schizophrenia. (Emphasis in the original.)

[29] This wording was contrasted with that of subparagraph (b)(ii) of the provision at the time, which required that the person “has depended” on their parents for financial support and has been a student since the age of 22.

[30] On the basis of this textual and contextual analysis, Gibson J. concluded with the passage that was relied on by the IAD in this case:

> [11] In the English language version of the foregoing provision, the words "has depended" require a continuing situation since before the age of twenty-two (22) both in respect of financial support and in respect of being a student. That contrasts markedly with the terminology of subparagraph (b)(iii) [currently (b)(ii)] which is here at issue where, in both language versions, a continuing condition regarding financial support commencing before the age of twenty-two (22) is required but where the inability to be financially self-supporting due to a physical or mental condition is in the present tense, thus indicating that the latter condition applies only at the time the test is applied. I am satisfied that it is beyond doubt, that if the Governor-in-Council had intended that the two provisions beinterpreted in the same manner, they would have been similarly constructed in both language versions.

[31] Whether this is technically *obiter* or not, it was a specific finding by a judge of this Court in a case involving the interpretation of the provision of the *Regulations* in issue here, and it is a case that involved a somewhat similar factual context. It was not unreasonable for the IAD to rely on this in support of its interpretation of the words of the provision.

[32] I am bolstered in this conclusion with reference to the French version of the provision, which, as the Respondent correctly noted, requires that the individual "n'a[it] pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents, depuis le moment où il a atteint l'âge de vingt-deux ans…" As a matter of law, the French version of the statute has equal weight with the English version (*Official Languages Act*, RSC 1985, c 31 (4th Supp), s 13). Where there is a discrepancy between the two versions, the courts use a two-step process to interpret the legislation: *R. v Daoust*, 2004 SCC 6 at paras 26-30. First, the shared meaning between the two versions is identified. Then, that meaning if confirmed, or rebutted, by determining if it is compatible with the intended meaning of the provision. (See Pierre André Côté with the collaboration of Stéphane Beaulac and Mathieu Devinat, *Interprétation des lois*, 4th ed (Montreal, QC: Editions Themis, 2009) at 371-378).

[33] Here, the shared meaning between the two versions is one that requires continuous and unbroken financial support. I disagree with the Applicant's argument that this interpretation does not express the intended meaning of the provision.

[34] By its very nature, a situation of dependency can be ongoing and continuous, or intermittent and sporadic. It is not unreasonable to conclude that Parliament intended to extend the ordinary understanding of dependent child in specific and limited circumstances, where the

individual's circumstances are such that they will not transition into the independence we normally associate with adulthood. It is also relevant that there are other provisions that apply in regard to the sponsorship of adult relatives, and so the distinction between a dependent child and an adult family member exists within the context of the overall scheme.

[35] In this case, the IAD relied on a relevant decision of this Court, and interpreted the provision in a reasonable manner. While there may be other reasonable interpretations of the provision, that is not sufficient to warrant judicial intervention on review against a standard of reasonableness.

[36] For the foregoing reasons, I am dismissing the application for judicial review. The parties did not propose a question of general importance for certification, and none arises in this case.

JUDGMENT in IMM-4081-18

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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