Federal Court  Cour fédérale

Date: 20210716

Docket: IMM-3267-20

Citation: 2021 FC 752

Ottawa, Ontario, July 16, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

CHHROVY TANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Chhrovy Tang, is a Canadian permanent resident living in Quebec. She applied to sponsor her mother for permanent residency under the family class. The visa officer determined that Ms. Tang met the requirements. She was then invited to request a Quebec Selection Certificate [CSQ] from the government of Quebec and submit it to Immigration,

Refugees and Citizenship Canada. One of the requirements for the issuance of a CSQ is that a sponsor demonstrate sufficient financial capacity to meet their sponsorship obligations.

[2] After initiating the application, Ms. Tang and her spouse lost their source of income. With the loss of income, they were no longer in a position to demonstrate the financial capacity to support Ms. Tang's mother and as such would not qualify for a CSQ. On the advice of counsel, a CSQ was not requested. In the absence of the required CSQ, Ms. Tang requested that her application to sponsor her mother be refused.

[3] Ms. Tang appealed the refusal to the Immigration Appeal Division [IAD] on the basis that the IAD was in a position to consider whether there were sufficient humanitarian and compassionate [H&C] considerations to warrant special relief. The IAD dismissed the appeal finding that the failure to request a CSQ amounted to a failure to file a sponsorship application in accordance with the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and that the IAD therefore lacked jurisdiction to consider the appeal.

[4] Ms. Tang now applies, pursuant to section 72 of the IRPA, for judicial review of the IAD's February 25, 2020 decision. The Application raises a single issue: whether the IAD erred in concluding that an appeal of the refusal decision was not available because an application had not been filed.

[5] For the reasons that follow, I am satisfied the IAD's determination was reasonable. The Court's intervention is not warranted.

II. The Relevant Law

[6] The IRPA provides a right to appeal the refusal of a family class visa to the IAD where an application has been filed in the prescribed manner (IRPA, s 63(1)). The *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR] prescribe the form and content of the application and also state that a sponsorship application that is not made in accordance with the IRPR is considered not to be an application filed in the prescribed manner for the purposes of IRPA subsection 63(1) (IRPR, s 10(1), 10(6)) .

[7] The application to sponsor a family class member must include an undertaking from the sponsor to support the family member financially. The sponsor must also demonstrate the capacity to provide such support (IRPR, s 130-131). Where a sponsor resides in Quebec, a sponsorship application will only be approved where there is evidence before the officer that the competent authority of the Province of Quebec has determined that the sponsor is able to fulfill their financial support obligations (IRPR, s 137).

[8] The relevant provision of the IRPA and the IRPR are reproduced at Annex A of this Judgment for ease of reference.

III. Standard of Review

[9] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court confirmed that the presumption of reasonableness applies to jurisdictional questions and to matters of statutory interpretation (paras 65-68, 115). The issue raised is one of

interpretation of the IAD's enabling legislation and none of the reasons that might warrant a departure from the presumptive standard of review are present (*Vavilov* at paras 23, 33 and 53 and *Pepa v Canada (Minister of Citizenship and Immigration)*, 2021 FC 348 at para 16). A decision will be reasonable if it is "based on an internally coherent and rational chain of analysis and…is justified in relation to the facts and law" (*Vavilov* at para 85).

IV. Analysis

[10] In dismissing the appeal for a want of jurisdiction, the IAD first provided an overview of the sponsorship process when, as in this instance, the sponsor resides in Quebec. The IAD's description of the process is not disputed and is helpful:

> [10] In order to better understand the specifics of sponsorship for Quebec cases, I think that it is relevant to provide an overview of the sponsorship process. The sponsorship application relates to the sponsor and is usually processed by the [Case Processing Centre-Mississauga], in Canada. The permanent resident visa application relates to the applicant and is usually processed by the visa office. Forms specific to each of these applications must be completed. The form relating to the appellants is entitled "Application to Sponsor, Sponsorship Agreement and Undertaking" and is in the Appeal Book. The section "Undertaking by sponsor and co-signer" outlines the terms on which a sponsor undertakes, along with the Government of Canada, to provide for the needs of the sponsored person and discharge his or her own obligations. The form clearly indicates that this undertaking is for residents of all provinces except Quebec. Therefore, it is clear that additional steps must be taken with Quebec before the sponsorship application can be considered complete.
>
> [11] However, a sponsor cannot take those steps unless the federal authorities have first examined the sponsor's status as such and the eligibility of the applicant to be sponsored in the desired category. It is only after this eligibility is confirmed that the sponsor can approach the province of Quebec and submit an application for an undertaking, and this is what the appellant was invited to do here. Hence, in this case, I understand that when the officer determined the compliance of the sponsorship application

> under section 10, he did so without examining the issue of the appellant's undertaking with Quebec, since in the normal course of the process for Quebec cases, this application is initiated by the officer's decision on eligibility. Nevertheless, I am of the opinion that the application for an undertaking is a prerequisite for the sponsorship application to be considered complete […]

[11] After reproducing the relevant portions of IRPR and the IRPA, the IAD concluded the application was incomplete. Ms. Tang's failure to sign an undertaking or submit an application to the Province of Quebec in accordance with sections 131 and 137 of the IRPR resulted in the application not having been filed in the prescribed manner. Ms. Tang had no right of appeal under subsection 63(1) of the IRPA.

[12] Having found the application incomplete, the IAD also observed that to conclude otherwise would encourage sponsors to circumvent the special immigration system set up with Quebec. Appellants would be encouraged to submit their sponsorship applications knowing they did not meet the financial requirements to do so. Moreover, appellants would also have access to an H&C examination without decision makers having access to the outcome of the financial assessment.

[13] Ms. Tang argues that her appeal is no different from a circumstance where a CSQ application was unsuccessful and that requiring her to submit an application to provincial authorities that she knows will fail is nonsensical. She cites *Lim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 657 for the proposition that statutes should not be interpreted in a "robotic mindless manner" and that the purpose of the IRPA is to allow immigration, not prevent it.

[14] *Lim* does reflect the generally non-controversial tenets that statutes not be read and interpreted in a "mindless robotic manner" and that the purpose of the IRPA is to permit immigration, not prevent it (at para 21). However, these tenets are of little assistance to Ms. Tang in this matter. The IAD's interpretation of the relevant provisions of the IRPR and the IRPA were neither robotic nor mindless.

[15] Ms. Tang did not include all required information and documents with her application. In light of this undisputed fact, the IAD reviewed the relevant statutory provisions and considered the provisions within their context. This included an assessment of the purpose of the statutory provisions and the impact of adopting a different interpretation of the provisions. The IAD concluded the application was noncompliant with subsection 10(1) of the IRPR.

[16] In considering the meaning of subsection 63(1) of the IRPA, the IAD addresses the text of the provisions within its broader context, including the purpose of the legislation. The IAD's conclusion, that the failure to include the required documentation resulted in the application not having been filed in the prescribed manner, is consistent with the text, context and purpose of IRPA subsection 63(1) (*Vavilov* at paras 119-120). The IAD reasonably concludes there is a difference between an unsuccessful CSQ application and none at all. The result is also consistent with prior decisions of the IAD (see *Magiafi v Canada (Minister of Citizenship and Immigration)*, 2020 CanLII 46838 (CA IRB) at paras 11-12; *Tazehdal v Canada (Minister of Citizenship and Immigration)*, 2018 CanLII 129940 (CA IRB) at paras 12, 16-17; see also *Al Mashtouli v Canada (Minister of Citizenship and Immigration)*, 2006 FC 94 at para 11).

[17] Ms. Tang raises a number of further arguments, none of which are persuasive. She submits an entry in the Global Case Management System [GCMS] notes indicates a positive sponsor eligibility decision had been made and therefore subsection 10(1) had been complied with. It does not. In the context of the process as reflected in the regulations, the entry at best indicates successful completion of a step in the process.

[18] Ms. Tang also advances an alternative interpretation of paragraph 137(b) of the IRPR, an argument that even if persuasive, which it is not, does not render the IAD's decision unreasonable. An alternative interpretation on its own does not render an otherwise reasonable interpretation unreasonable.

[19] Finally, submissions are made in respect of the professional responsibilities of counsel in advising Ms. Tang to apply to the Province of Quebec in light of her financial circumstances. I am not convinced as to either the relevance or merit of these submissions in the specific context of this Application.

V. Conclusion

[20] The IAD's decision is intelligible, transparent, and justified in light of the facts and law. The Application is dismissed. The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-3267-20

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed;

2. No question is certified.

"Patrick Gleeson"
Judge

Annex "A"

Immigration and Refugee Protection Act, SC 2001, c 27
Loi sur l'immigration et al protection des réfugiés, LC 2001, c 27

Right to appeal — visa refusal of family class	**Droit d'appel : visa**
63 (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	**63 (1)** Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

Immigration and Refugee Protection Regulations, SOR/2002-227
Règlement sur l'immigration et la protection des réfugiés, DORS/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	**c)** comporte les renseignements et documents

other evidence required by the Act;

(d) be accompanied by evidence of payment of the applicable fee, if any, set out in these Regulations; and

(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.

Application — sponsorship

10 (4) An application made by a foreign national as a member of the family class must be accompanied by a sponsorship application referred to in paragraph 130(1)(c).

Invalid sponsorship application

10 (6) A sponsorship application that is not made in accordance with subsection (1) is considered not to be an application filed in the prescribed manner for the purposes of subsection 63(1) of the Act.

Sponsor

130 (1) Subject to subsections (2) and (3), a sponsor, for the purpose of sponsoring a foreign national who makes an application for a permanent resident visa as a member of

exigés par le présent règlement et est accompagnée des autres pièces justificatives exigées par la Loi;

d) est accompagnée d'un récépissé de paiement des droits applicables prévus par le présent règlement;

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.

Demande de parrainage

10 (4) La demande faite par l'étranger au titre de la catégorie du regroupement familial doit être accompagnée de la demande de parrainage visée à l'alinéa 130(1)c).

Demande de parrainage non valide

10 (6) Pour l'application du paragraphe 63(1) de la Loi, la demande de parrainage qui n'est pas faite en conformité avec le paragraphe (1) est réputée non déposée.

Qualité de répondant

130 (1) Sous réserve des paragraphes (2) et (3), a qualité de répondant pour le parrainage d'un étranger qui présente une demande de visa

the family class or an application to remain in Canada as a member of the spouse or common-law partner in Canada class under subsection 13(1) of the Act, must be a Canadian citizen or permanent resident who

(a) is at least 18 years of age;

(b) resides in Canada; and

(c) has filed a sponsorship application in respect of a member of the family class or the spouse or common-law partner in Canada class in accordance with section 10.

Sponsorship undertaking

131 The sponsor's undertaking shall be given

(a) to the Minister; or

(b) if the sponsor resides in a province that has entered into an agreement referred to in subsection 8(1) of the Act that enables the province to determine and apply financial criteria with respect to sponsorship undertakings and to administer sponsorship undertakings, to the competent authority of the province.

Undertaking — Province of Quebec

137 If the sponsor resides in the Province of Quebec, the

de résident permanent au titre de la catégorie du regroupement familial ou une demande de séjour au Canada au titre de la catégorie des époux ou conjoints de fait au Canada aux termes du paragraphe 13(1) de la Loi, le citoyen canadien ou résident permanent qui, à la fois :

a) est âgé d'au moins dix-huit ans;

b) réside au Canada;

c) a déposé une demande de parrainage pour le compte d'une personne appartenant à la catégorie du regroupement familial ou à celle des époux ou conjoints de fait au Canada conformément à l'article 10.

Engagement de parrainage

131 L'engagement de parrainage est pris, selon le cas :

a) envers le ministre;

b) si la province de résidence du répondant a conclu avec le ministre, en vertu du paragraphe 8(1) de la Loi, un accord l'habilitant à établir et à mettre en oeuvre les normes financières applicables à un tel engagement et à en assurer le suivi, envers les autorités compétentes de la province.

Engagement : cas de la province de Québec

137 Les règles suivantes s'appliquent si le répondant

government of which has entered into an agreement referred to in paragraph 131(b),	réside dans la province de Québec et que celle-ci a conclu l'accord visé à l'alinéa 131b) :
(a) the sponsor's undertaking, given in accordance with section 131, is the undertaking required by An Act respecting immigration to Québec, R.S.Q., c.I-0.2, as amended from time to time;	**a)** l'engagement de parrainage pris conformément à l'article 131 est un engagement requis par la Loi sur l'immigration au Québec, L.R.Q., ch. I-0.2, compte tenu de ses modifications successives;
(b) an officer shall approve the sponsorship application only if there is evidence that the competent authority of the Province has determined that the sponsor, on the day the undertaking was given as well as on the day a decision was made with respect to the application, was able to fulfil the undertaking; and	**b)** l'agent n'accorde la demande de parrainage que sur preuve que les autorités compétentes de la province étaient d'avis que le répondant était en mesure, à la date à laquelle l'engagement a été pris et à celle à laquelle il a été statué sur la demande de parrainage, de se conformer à l'engagement;
(c) subsections 132(4) and (5) and paragraphs 133(1)(g) and (i) do not apply.	**c)** les paragraphes 132(4) et (5) et les alinéas 133(1)g) et i) ne s'appliquent pas

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

M[e] Emile Jean Barakat	FOR THE APPLICANT
M[e] Simone Truong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

M[e] Emile Jean Barakat Montréal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT