

Federal Court



Cour fédérale

Date: 20220520

Docket: IMM-6259-20

Citation: 2022 FC 751

Ottawa, Ontario, May 20, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

FAWAD AZIZI

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Fawad Azizi is a citizen of Afghanistan. His sister Lina Azizi is a citizen of Canada. On October 18, 2018, Ms. Azizi and four other individuals applied to sponsor Mr. Azizi for permanent residence in Canada under the “Group of Five” [G5] refugee sponsorship program.

The application was refused on April 11, 2019, because the G5 applicants were unable to demonstrate they had sufficient funds.

[2] The G5 applicants submitted a new application to sponsor Mr. Azizi on April 28, 2020. The application included proof of sufficient funds, but neglected to include updated police certificates for all sponsors. Police certificates are valid for only six months.

[3] An immigration officer refused the second G5 sponsorship application on October 28, 2020. The G5 applicants promptly submitted updated police certificates and requested reconsideration. A different immigration officer [Officer] refused the request for reconsideration on November 19, 2020.

[4] Mr. Azizi seeks judicial review of the Officer's refusal to reconsider the G5 application.

[5] While Mr. Azizi clearly has an interest in immigrating to Canada, the decision under review affects only the legal rights and obligations of the G5 applicants who attempted to sponsor him. Mr. Azizi lacks standing to bring this application for judicial review. Furthermore, the Officer reasonably found that the decision of the first immigration officer was sound, and no error was made.

[6] The application for judicial review is dismissed.

II. Background

[7] According to the first immigration officer's notes in the Global Case Management System [GCMS], the police certificates that were submitted in support of the first sponsorship application were issued between September 14, 2018 and September 25, 2019. The first officer refused the G5 application on October 28, 2020 because one or more of the police certificates were no longer valid.

[8] The Officer's GCMS notes for November 19, 2020 indicate that the request for reconsideration was refused for the following reasons:

Reconsideration denied - see incoming correspondence
Reconsideration Notes: This application was refused on 2020/10/28 per R156. The officer was not satisfied the members of the sponsorship group were eligible as per R156 as the criminal record checks provided for all five sponsors did not meet the requirement of being issued within 6 months of submission. Reasons provided by sponsor to reconsider: On 2020/11/16, a request to reconsider was received from the paid representative. The representative asserts that upon initial review of the application, we could have requested updated police checks from the sponsors. Along with the reconsideration letter, the representative provided updated police checks for all 5 sponsors. Reconsideration Decision: Although the information provided was reviewed and considered, it is the responsibility of sponsors to provide all relevant information when the sponsors submit the application initially. No information has been provided to suggest that an error was made. The officer's decision is sound and the original decision to refuse this application stands. Reconsideration denied.

III. Issues

[9] This application for judicial review raises the following issues:

- A. Does Mr. Azizi have standing to bring the application for judicial review?
- B. Was the Officer's decision reasonable?

IV. Analysis

A. *Does Mr. Azizi have standing to bring the application for judicial review?*

[10] Subsection to s 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7 provides as follows:

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

[11] In *Douze v Canada (Citizenship and Immigration)*, 2010 FC 1337, Justice Danièle Tremblay-Lamer held that a person may bring an application for judicial review only if the proceeding “directly affects the party’s rights, imposes legal obligations on it or prejudicially affects it directly” (at para 15).

[12] The Respondent argues that the decision under review does not impose legal obligations upon Mr. Azizi or prejudicially affect him in a direct way. Even if Mr. Azizi were to be successful, he would not be granted an enforceable remedy.

[13] In *Wu v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15149 [*Wu*], Justice Frederick Gibson held that the son of parents who sought to apply for permanent residence from within Canada on humanitarian and compassionate grounds lacked standing to challenge the refusal of his parents' request. The son was a Canadian citizen and not himself subject to deportation. Justice Mary Gleason's decision in *Garcia Rodriguez v Canada (Citizenship and Immigration)*, 2012 FC 437 is to similar effect (at para 8; see also *Canadian Newcomers and Immigrants Association et al v Minister of Citizenship and Immigration*, Court File No IMM-3080-18, June 10, 2019).

[14] Mr. Azizi says he will be directly prejudiced by an adverse ruling. While this may be true in a practical sense, it is not true as a matter of law. The Canadian-born son in *Wu* clearly had an interest in having his parents remain in Canada. But the decision in issue did not directly affect his legal rights or obligations. Only his parents were subject to deportation.

[15] By the same token, while Mr. Azizi clearly has an interest in immigrating to Canada, the decision under review affects only the legal rights and obligations of the G5 applicants who attempted to sponsor him. The Respondent notes that the issue of standing was raised in the Respondent's Memorandum of Fact and Law, yet Mr. Azizi and his sister did not seek to amend the application to name the proper applicants.

[16] Mr. Azizi lacks standing to bring this application for judicial review, and it must be dismissed on this ground alone.

B. *Was the Officer's decision reasonable?*

[17] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Officer's GCMS notes form a part of the decision under review (*Ebrahimshani v Canada (Citizenship and Immigration)*, 2020 FC 89 at para 5).

[18] The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). The Court must consider both the outcome of the administrative decision and its underlying rationale (*Vavilov* at para 15).

[19] Mr. Azizi argues that the failure of the G5 applicants to submit current police certificates was inadvertent. Valid certificates were submitted as soon as the error was identified. Mr. Azizi therefore maintains that the Officer's refusal to reconsider and grant the application was unreasonable.

[20] Mr. Azizi relies on *Ronald v Canada (Citizenship and Immigration)*, 2018 FC 1252 [Ronald] and *Doron v Canada (Citizenship and Immigration)*, 2016 FC 429 [Doron]. In *Ronald*, the applicants notified the officer in advance that the required documents were not yet available

and would be sent by mail. There was a delay in shipping and processing. Justice Luc Martineau found it was unreasonable for the officer to visit the consequences of administrative delays on applicants who otherwise appeared to be acting in good faith (*Ronald* at para 14).

[21] In *Doron*, the applicant submitted a police certificate from the wrong agency in the Philippines. Justice Richard Southcott found the applicant had been denied procedural fairness, because the checklist provided to the applicant did not specify which agency's certificate was required.

[22] *Ronald* and *Doron* involved circumstances beyond the applicants' control, or resulted from errors on the part of the decision maker. In his request for reconsideration, counsel for the G5 applicants attempted to shift responsibility for ensuring the application was complete to the Officer:

You will agree that the pandemic that crippled the entire world contributed to the delay of your initial review of the application. If this were not the case, you would have noticed the abnormality upon initial review and would have most likely requested for updated police certificates. Given the novel coronavirus pandemic, processing times for applications are already high.

[23] The Officer disagreed, holding that "... it is the responsibility of sponsors to provide all relevant information when the sponsors submit the application initially".

[24] The first application was refused on April 11, 2019. The second application, supported by proof of sufficient funds, was submitted approximately one year later, on April 28, 2020. It is

difficult to see how that delay may be attributed to the Officer. Nor is it clear how the COVID-19 pandemic contributed to the G5 applicants' delay in submitting the second application.

[25] The onus is on applicants to demonstrate to officers that the circumstances warrant the exercise of their discretion to reopen an application that was previously refused “in the interest of justice” and “in unusual circumstances” (*Pierre Paul v Canada (Citizenship and Immigration)*, 2018 FC 523 at para 27). The Officer reasonably found that the decision of the first immigration officer was sound, and no error was made.

[26] The Respondent notes that the G5 applicants remain at liberty to submit a new application to sponsor Mr. Azizi, supported by proof of sufficient funds and valid police certificates for all sponsors.

V. Conclusion

[27] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

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

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6259-20

STYLE OF CAUSE: FAWAD AZIZI v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

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