Federal Court  Cour fédérale

Date: 20231213

Docket: T-258-22

Citation: 2023 FC 1680

[ENGLISH TRANSLATION]

Québec, Quebec, December 13, 2023

PRESENT: Mr. Justice Pentney

BETWEEN:

JOËLLE MÉLINARD-BEAULIEU

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] This is an application for judicial review with respect to the Appeal Division of the Social Security Tribunal [Appeal Division].

[2] The applicant, Joëlle Mélinard-Beaulieu, applied to the Minister of Employment and Social Development [Minister] for an Allowance for the Survivor under the Old Age Security

Program following the death of her ex-spouse, Mr. Beaulieu. The Minister denied her application, as did the General Division, because the applicant was not a [TRANSLATION] "survivor" under the *Old Age Security Act*, RSC 1985, c O-9, as she got divorced 14 years prior to the death of her ex-spouse in May 2019. The decision-makers took into account the divorce judgment issued by the Superior Court of Québec on April 30, 2004.

[3] The applicant appealed the decision of the General Division after the applicable time limit. The Appeal Division refused the applicant's request for an extension of time. To arrive at this conclusion, the Appeal Division applied the four criteria for an extension of time that are set out in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883 [*Gattellaro*]. The Appeal Division concluded that the applicant met three of these criteria: she showed a continuing intention to pursue the appeal; there is a reasonable explanation for the delay; and there is no prejudice to the other party in allowing the extension of time.

[4] However, the Appeal Division refused the request for an extension of time by applying the fourth criterion: whether the matter discloses an arguable case. The Appeal Division determined that "[t]he Applicant alleges that the General Division failed to question the validity of the divorce judgment. However, the Tribunal does not have the power to change or set aside a judgment of the Superior Court of Québec". The Appeal Division further stated:

> [22] The Applicant applied for a benefit under a Canadian law. And, for the purposes of Canadian law, the Superior Court of Québec judgment says that the Applicant's marriage to the deceased ended in 2004. The Tribunal is required to respect that judgment until a Quebec court changes it or sets it aside.

[5] The Appeal Division also noted that “several of the remedies the Applicant sought fall outside the Tribunal’s jurisdiction, particularly those related to the divorce judgment and the settlement of the deceased’s estate”. In considering the fourth factor in the test for an extension of time, the Appeal Division “assessed what the interests of justice might require” and concluded that the appeal was bound to fail. For these reasons, the Appeal Division refused to extend the applicant’s time to file her application with the Appeal Division.

[6] The applicant seeks judicial review of the decision of the Appeal Division. The standard of review that applies is that of reasonableness, according to the framework described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[7] This framework requires an administrative decision to be internally coherent, justified, intelligible and transparent in light of the record before the decision-maker. The decision-maker must also consider the submissions of the parties (*Vavilov* at paras 99, 105–07, 125–28). If the decision-maker has misapprehended or not taken the evidence into account, the reasonableness of the decision may be compromised (*Vavilov* at para 126).

[8] To intervene, a reviewing court must be satisfied that there are sufficiently “serious shortcomings” in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. They must constitute more than a “minor misstep”. The problem must be sufficiently central or significant to render the decision unreasonable. (*Vavilov* at para 100).

[9] Before this Court, on judicial review, the applicant reiterated her arguments regarding the validity of the divorce judgment issued by the Superior Court of Québec. She is a citizen of France and of Canada, and she married Mr. Beaulieu in Martinique, under French law. According to the applicant, she never gave the consent required by Canadian and French law, and therefore, the divorce is not valid. She states that she suffered economic consequences related to Mr. Beaulieu's failure to comply with his matrimonial obligation.

[10] At the hearing before the Court, the applicant conceded that she had asked the Appeal Division to inquire into the validity of the divorce. She argues that the Court should invalidate the divorce judgment by allowing her application for judicial review. She is also seeking other Court orders.

[11] The Appeal Division's decision is based on the determination that the applicant's appeal does not have a reasonable chance of success. The "arguable case" requirement obliges applicants to demonstrate that they have a reasonable chance of success (*Leblanc v Canada (Human Resources and skills Development)*, 2010 FC 641 at para 24, citing *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41 at para 37).

[12] Under subsection 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA], the only valid grounds of appeal are a breach of a principle of natural justice, acting beyond or refusing to exercise jurisdiction, an error in law, or a decision based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. Subsection 58(2) of the DESDA specifies that the Appeal Division of the

Tribunal must refuse leave to appeal "if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[13] On the basis of the record and the written and oral submissions of the applicant and the respondent, there is no cause for intervention. The decision is reasonable.

[14] The Appeal Division's decision to deny the applicant's request for an extension of time is based on the application of the factors set out in the law and developed in *Gattellaro*. The determination that the General Division and the Appeal Division do not have jurisdiction to grant the applicant the order she is seeking is reasonable.

[15] It must be remembered that the applicant applied for an Allowance for the Survivor under the Old Age Security program. The decision-makers refused this application because the applicant was not the wife of the deceased at the time of his death, considering the divorce judgment issued by the Superior Court of Québec. The Appeal Division decided that the applicant's appeal is bound to fail on account of the divorce judgment, which is a final judgment.

[16] I see no errors in the Appeal Division's decision. Even if we accept that the applicant has gone through a difficult time in her life since the end of her relationship with Mr. Beaulieu, and that she does not agree with the divorce judgment or the Appeal Division's decision, the Appeal Division's decision should not be set aside.

[17] The applicant maintains that she has dual nationality: French and Canadian. She states that the divorce judgment should be invalidated because she did not give her consent. However, in this case, the Appeal Division cannot ignore the divorce judgment issued by the Superior Court of Québec. The applicant's arguments relative to the legal status of the marriage under French law cannot undo the effect of the divorce judgment under Canadian law. The Appeal Division does not have jurisdiction with respect to the validity of the marriage under French law, or with respect to the *Divorce Act*, RSC 1985, c 3 in Canada.

[18] The decision of the Appeal Division is reasonable, according to the *Vavilov* framework. For all these reasons, the application for judicial review is dismissed.

[19] Having regard to all the circumstances, I exercise my discretion not to award costs against the applicant.

ORDER in T-258-22

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.

2. No costs are awarded.

"William F. Pentney"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-258-22
STYLE OF CAUSE:	JOËLLE MÉLINARD-BEAULIEU v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	QUÉBEC, QUEBEC
DATE OF HEARING:	DECEMBER 6, 2023
ORDER AND REASONS:	PENTNEY J
DATED:	DECEMBER 13, 2023

APPEARANCES:

Joëlle Mélinard-Beaulieu	FOR THE APPLICANT (ON HER OWN BEHALF)
Marcus Dirnberger	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Department of Justice Canada Québec, QC	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA