Federal Court  Cour fédérale

Date: 20240326

Docket: IMM-11030-22

Citation: 2024 FC 479

Vancouver, British Columbia, March 26, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ESTHER IGBOHIME ASIJE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS AND JUDGMENT

[1] Ms. Esther Igbohime Asije (the "Applicant") seeks judicial review of the decision of an officer (the "Officer"), refusing her application for an extension of her visitor record, pursuant to subsection 181(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the "Regulations").

[2] According to the Global Case Management System ("GCMS") notes, the Applicant entered Canada as a visitor on November 5, 2015. She extended her status several times, her most recent visitor record expiring on August 17, 2021. Her Nigerian passport expired on the same day.

[3] Immigration, Refugees and Citizenship Canada ("IRCC") received the Applicant's application for an extension on September 17, 2021.

[4] Under cover of a letter dated November 17, 2021, the application was returned to the Applicant because it was incomplete; it was unsigned. The Applicant was advised to resubmit her completed application, together with a copy of the letter of November 17, 2021.

[5] IRCC, in this letter, also advised the Applicant that her eligibility for the document she was seeking had not been assessed and that is was her responsibility to make sure she was eligible, before sending in her application.

[6] The Applicant completed her application and submitted it. The application was received by IRCC on December 13, 2021.

[7] In the affidavit filed in support of this application for judicial review, the Applicant deposed that she did not apply to extend her visitor record before its expiry date because she could not apply to renew her passport, due to the closure of the Nigerian Embassy as a result of COVID-19.

[8] The Applicant further deposed that she renewed her passport as soon as the Embassy reopened and applied to extend her status in Canada soon after that.

[9] The Applicant now argues that in refusing her application to extend her visitor record, the Officer breached her rights to procedural fairness since the letter dated November 17, 2021 created the impression that the application would be assessed as of the date of its initial delivery to IRCC, that is on September 17, 2021.

[10] The Applicant further submits that it was also a breach of procedural fairness to return her application after the expiry of the 90-day period for restoration of status and then assess her application as of the date of resubmission.

[11] Finally, the Applicant argues that IRCC should have informed her that there was no point in resubmitting her application if it was not to be assessed as of the date of first submission, that is September 17, 2021, a date that fell within the 90-day period.

[12] The Minister of Citizenship and Immigration (the "Respondent") contends that there was no breach of procedural fairness and that, in any event, the decision is reasonable, having regard to the legislative scheme and the Regulations.

[13] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[14] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.), the merits of the decision are reviewable on the standard of reasonableness.

[15] In considering reasonableness, the Court is to ask if the decision under review "bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision"; see *Vavilov*, *supra* at paragraph 99.

[16] I am not persuaded by the Applicant's submissions. I agree with the position advanced by the Respondent, that an incomplete application is not an "application" within the meaning of the Regulations.

[17] I refer to subsection 10(1) and section 12 of the Regulations that provide as follows:

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 other evidence required by the Act;	**c)** comporte les renseignements et documents exigés par le présent règlement et est accompagnée des autres pièces justificatives exigées par la Loi;
(d) be accompanied by evidence of payment of the applicable fee, if any, set out in these Regulations; and	**d)** est accompagnée d'un récépissé de paiement des droits applicables prévus par le présent règlement;
(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.	**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.
Return of application	**Renvoi de la demande**
12 Subject to section 140.4, if the requirements of sections 10 and 11 are not met, the application and all documents submitted in support of it, except the information referred to in subparagraphs 12.3(b)(i) and (ii), shall be returned to the applicant.	**12** Sous réserve de l'article 140.4, si les exigences prévues aux articles 10 et 11 ne sont pas remplies, la demande et tous les documents fournis à l'appui de celle-ci, sauf les renseignements visés aux sous-alinéas 12.3b)(i) et (ii), sont retournés au demandeur.

[18] The Regulations are clear. An application under the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 and the Regulations must be signed. The Applicant had not signed the

application that was received by IRCC on September 17, 2021. That means the application did not comply with subsection 10(1) of the Regulations.

[19] That non-compliance triggered the application of section 12 of the Regulations.

[20] The Federal Court of Appeal addressed the status of an incomplete application in *Gennai v. Canada (Citizenship and Immigration)*, 2017 FCA 29, saying the following at paragraphs 5 and 6:

> [5] The Judge certified the following question, which has been slightly amended, as indicated, on appeal:
>
> > If an application for permanent residence is incomplete as it fails to meet the requirements prescribed by s 10 of the Immigration and Refugee Protection Regulations ("IRPA Regulations") and the application and all supporting documents are returned to the applicant pursuant to s 12 of the IRPA Regulations, does the application still "exist" such that it preserves or "locks in" the applicant's position in time so that a subsequently submitted complete application must be assessed according to the ~~regulatory~~ scheme that was in effect when the first, incomplete application was submitted?
>
> [6] I agree with the Judge that an incomplete application is not an application within the meaning of IRPA and the Regulations. In my view, an incomplete application can no longer exist because the text of section 12 provides that the entirety of an application that has failed to meet the requirements under section 10 is returned to the applicant. When the appellant submitted his CEC application in February 2015, the respondent assessed the appellant's application in light of the scheme in place at that time and not in reference to his previous incomplete and returned application. There was no authority to do otherwise. Therefore, as the appellant did not comply with the requirements of the Express Entry scheme, the respondent reasonably refused to consider his application.

[21] The Applicant was responsible for finding out the requirements for a “complete” application. Further, the record shows that she has been in Canada since 2015 and had previously sought and received temporary status, as well as an extension to that status.

[22] In 2021, the Applicant applied for an extension of her visitor record after it had expired. Section 181 of the Regulations provides that a person can apply for an extension of temporary status in Canada, as follows:

Circumstances	**Cas**
181 (1) A foreign national may apply for an extension of their authorization to remain in Canada as a temporary resident if	**181 (1)** L’étranger peut demander la prolongation de son autorisation de séjourner à titre de résident temporaire si, à la fois :
(a) the application is made by the end of the period authorized for their stay; and	**a)** il en fait la demande à l’intérieur de sa période de séjour autorisée;
(b) they have complied with all conditions imposed on their entry into Canada.	**b)** il s’est conformé aux conditions qui lui ont été imposées à son entrée au Canada.
Extension	**Prolongation**
(2) An officer shall extend the foreign national’s authorization to remain in Canada as a temporary resident if, following an examination, it is established that the foreign national continues to meet the requirements of section 179.	**(2)** L’agent prolonge l’autorisation de séjourner à titre de résident temporaire de l’étranger si, à l’issue d’un contrôle, celui-ci satisfait toujours aux exigences prévues à l’article 179.

[23] The Respondent points out that here, the Applicant applied for an extension to her visitor record, rather than for restoration of that status. Subsection 182(1) of the Regulations provides as follows:

Restoration	**Rétablissement**
182 (1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act.	**182 (1)** Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

[24] The Applicant neither applied for an extension of her visitor record before it expired nor applied to restore her status within the 90-day period allowed by the Regulations.

[25] The Officer committed no breach of procedural fairness. The decision of the Officer, refusing the Applicant's request, was reasonable since it accords with the relevant Regulations and applicable jurisprudence.

[26] In the result, the application for judicial review will be dismissed.

[27] Subsequent to the hearing and further to a Direction issued on February 26, 2024, Counsel for the Applicant submitted the following questions for certification:

> 1. Is the length of time between the immigration officer's receipt of an application for the extension of a temporary resident status and the time it is returned for resubmission due to the Application being incomplete to be calculated as part of the restoration period?
>
> 2. When an immigration officer chooses to provide advice or instruction to an Applicant regarding issues pertaining to the Applicant's pending application for the extension of the Applicant's temporary resident's status, is the immigration officer obliged to give a complete and uncomplicated advice with respect to all relevant issues that pertain to the pending application at the time the advice or instruction was given?

[28] Counsel for the Respondent opposed certification of either of the proposed questions, largely on the grounds that the questions do not meet the test for certification, that is a serious question of general importance that is dispositive of the case; see *Zazai v. Canada (Minister of Citizenship and Immigration)* (2004), 318 N.R. 365 (F.C.A.).

[29] I agree with Counsel for the Respondent. No question will be certified.

JUDGMENT IN IMM-11030-22

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

No question will be certified.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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