Federal Court Cour fédérale

Date: 20250717

Docket: IMM-5712-24

Citation: 2025 FC 1279

Toronto, Ontario, July 17, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

M.H.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application challenges the Federal Government's power to enact subparagraph 133(1)(e)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], which prohibits Canadian citizens or permanent residents from sponsoring their spouse or common-law partner's visa application if there is evidence that the sponsor has been convicted of an offence of a sexual nature, or of an attempt or threat to commit such an offence.

[2] The Applicant, MH, seeks to sponsor his common-law partner's application for permanent residency [PR] in Canada. His partner is a citizen of the United States and holds temporary immigration status in Canada in the form of a closed work permit tied to his employer. The couple have cohabited together in Vancouver since March 2020, except during the months where the Applicant was incarcerated, or on day parole.

[3] In 2018, the Applicant was charged and convicted of two counts of distributing and possessing child pornography contrary to subsections 163.1(3) and 163.1(4) of the *Criminal Code*, RSC 1985, c C-46 [Criminal Code] and was sentenced to 20 months in prison and following his release, 36 months probation. He was released from prison on November 22, 2022 and granted day parole. His parole ended on July 21, 2023, and his mandatory 5-year probationary period will run until July 21, 2026. Pursuant to subparagraph 133(1)(e)(i) of the IRPR, the Applicant is not eligible to sponsor his partner for permanent residence until July 21, 2031, which is 5 years after the conclusion of his probation.

[4] On November 17, 2023, the Applicant applied to sponsor his partner for PR in Canada, and in his application requested an exemption from subparagraph 133(1)(e)(i).

[5] On March 6, 2024, an officer of Immigration, Refugees and Citizenship Canada [IRCC] found the Applicant ineligible to sponsor his partner due to his criminal convictions. His partner's PR application was forwarded to the Humanitarian Migration Office of the IRCC for separate processing on humanitarian and compassionate [H&C] grounds. As of the date of the hearing, the application was still pending.

[6] The Applicant seeks a declaration that subparagraph 133(1)(e)(i) of the IRPR is *ultra vires* the regulatory power conferred under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and an order quashing the Decision and remitting the matter to a different officer for redetermination without the imposition of the bar under subparagraph 133(1)(e)(i).

II. Issues and Standard of Review

[7] The Applicant raises a single issue for this Court's consideration: whether subparagraph 133(1)(e)(i) of the IRPR is a lawful exercise of delegated rulemaking under the IRPA?

[8] The parties assert, and I agree, that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[9] In *Auer v Auer*, 2024 SCC 36 [*Auer*], the Supreme Court of Canada clarified that the *Vavilov* framework applies when reviewing the *vires* of subordinate legislation, including regulations (at paras 22-23, 26).

[10] The SCC confirmed that many of the principles from *Katz Group Canada Inc. v Ontario (Health and Long-Term Care)*, 2013 SCC 64 continue to inform reasonableness review, including that: (1) subordinate legislation must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object; (2) subordinate legislation benefits from a presumption of validity; (3) the challenged subordinate legislation and the enabling statute should be interpreted using a broad and purposive approach to statutory interpretation;

and (4) a *vires* review does not involve assessing the policy merits of the subordinate legislation to determine whether it is necessary, wise, or effective in practice (at paras 3, 29, 32).

[11] For subordinate legislation to be found *ultra vires* on the basis that it is inconsistent with the purpose of the enabling statute, however, it no longer needs to be "irrelevant", "extraneous" or "completely unrelated" to that statutory purpose: *Auer* at paras 3, 32.

[12] As explained in *Auer*, a determination of whether regulations are reasonable depends on whether the regulations are justifiably (or reasonably) within the scope of the authority delegated by the enabling legislation (at para 54). This is fundamentally an exercise of statutory interpretation to ensure that the delegate has acted within the scope of their lawful authority under the enabling statute (at para 59) and requires a review of the statutory scheme that is relevant to the decision (at para 61).

III. Statutory Framework

[13] Subsection 13(1) of the IRPA provides for the sponsorship of foreign nationals:

Sponsorship of foreign nationals	**Parrainage de l'étranger**
13(1) A Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province or an unincorporated organization or association under federal or provincial law — or any combination of them — may sponsor a	13 (1) Tout citoyen canadien, résident permanent ou groupe de citoyens canadiens ou de résidents permanents ou toute personne morale ou association de régime fédéral ou provincial — ou tout groupe de telles de ces personnes ou associations — peut, sous réserve des règlements, parrainer un étranger.

foreign national, subject to the regulations.

[14] The authority to create regulations relating to conditions for sponsorship is set out in subsection 14(2) of the IRPA, which provides broad powers to create regulations pertaining to "any matter relating to" sponsorship, as follows:

Regulations	**Sélection et formalités**
(2) The regulations may prescribe, and govern any matter relating to, classes of permanent residents or foreign nationals, including the classes referred to in section 12, and may include provisions respecting	(2) Ils établissent et régissent les catégories de résidents permanents ou d'étrangers, dont celles visées à l'article 12, et portent notamment sur :
[…]	[…]
(e) sponsorships;	e) le parrainage;

[15] Subparagraph 133(1)(e)(i) of the IRPR sets out the conditions for sponsorship, including the requirement that the sponsor has not been convicted under the Criminal Code of an offence of a sexual nature, or of an attempt or threat to commit such an offence:

Requirements for sponsor	**Exigences : répondant**
133 (1) A sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor	133 (1) L'agent n'accorde la demande de parrainage que sur preuve que, de la date du dépôt de la demande jusqu'à celle de la décision, le répondant, à la fois :
[…]	[…]

(e) has not been convicted under the *Criminal Code* of	e) n’a pas été déclaré coupable, sous le régime du *Code criminel* :
(i) an offence of a sexual nature, or an attempt or a threat to commit such an offence, against any person	(i) d’une infraction d’ordre sexuel ou d’une tentative ou menace de commettre une telle infraction, à l’égard de quiconque,

[16] Subsection 133(2) of the IRPR provides an exception to the sponsorship ban under subparagraph 133(1)(e)(i) if the individual has been pardoned or if 5 years has elapsed since completion of the sentence relating to the offence:

(2) Despite paragraph (1)(e), a sponsorship application may not be refused	(2) Malgré l’alinéa (1)e), la déclaration de culpabilité au Canada n’emporte pas rejet de la demande de parrainage dans les cas suivants :
(a) on the basis of a conviction in Canada in respect of which a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal; or	a) la réhabilitation — sauf révocation ou nullité — a été octroyée au titre de la Loi sur le casier judiciaire ou un verdict d’acquittement a été rendu en dernier ressort à l’égard de l’infraction;
(b) if a period of five years or more has elapsed since the completion of the sentence imposed for an offence in Canada referred to in paragraph (1)(e).	b) le répondant a fini de purger sa peine au moins cinq ans avant le dépôt de la demande de parrainage.

IV. Analysis

[17] The Applicant asserts that while the rule making authority delegated by the IRPA is broad, it is nonetheless constrained by the statutory purposes found in section 3 of the IRPA, including public safety (3(h)), family unification (3(d)) and the establishment of fair and efficient immigration procedures to maintain the integrity of the Canadian immigration system (3(f.1)). The Applicant asserts that these purposes are not furthered in the application of a blanket sponsorship bar on those that have committed sexual offences as it insufficiently targets those cases with a clear public safety imperative, serving instead to punish and stigmatize offenders that may not be a safety concern, and to actively undermine objectives where, like in this case, the sponsor's family ties are a bulwark against recidivism.

[18] I do not find this argument persuasive for several reasons.

[19] First, as a preliminary matter, there can be no question that subparagraph 133(1)(e)(i) of the IRPR falls within the regulator's scope of authority as provided by subsection 14(2) of the IRPA. As noted in *Auer*, the legislature may use broad, open-ended or highly qualitative language to confer broad authority on a delegate (at para 62). Here, as acknowledged, subsection 14(2) is drafted broadly. It captures "all matters arising from" the issue of sponsorship. This includes setting out the conditions required to qualify as a sponsor.

[20] Second, a review of the Regulatory Impact Analysis Statements [RIAS] relating to the implementation and amendment of paragraph 133(1)(e) demonstrates that Parliament considered public safety as well as the other purposes of the IRPA, including the integrity of the

immigration system and the sponsorship program when considering the structure of paragraph 133 of the IRPR and the offences targeted by paragraph 133(1)(e).

[21] The 2004 RIAS which accompanied the implementation of amendments to paragraph 133(1)(e) identified the specific serious criminal offences (*i.e.*, those of a sexual nature or that result in bodily harm, or that attempt or threat to commit such offences) that were intended to "prevent a permanent resident or a Canadian citizen from sponsoring a member of the family class". With respect to paragraph 133(1)(e), the RIAS described the bar to sponsorship arising from these offences as follows:

> Amendments to paragraph 133(1)(e) have been made to better reflect the policy intent of the sponsorship bar. Where a person has been convicted under the Criminal Code of a sexual offence or an attempt or threat to commit such an offence, whether the victim is a relative or not, or of an offence that results in bodily harm or an attempt or threat to commit such an offence against a relative, including a family member of the sponsor or relative of a family member, that person is barred from sponsoring a member of the family class to Canada until 5 years have passed since the completion of their sentence or they have received a pardon or rehabilitation.
>
> Des modifications ont été apportées à l'alinéa 133(1)e) pour mieux respecter l'objectif poursuivi par l'interdiction de parrainage. Ne peut ainsi parrainer un membre de sa famille, avant cinq ans après avoir fini de purger sa peine ou après avoir été réadaptée, la personne déclarée coupable, en vertu du Code criminel, d'une infraction d'ordre sexuel ou d'une tentative ou menace de commettre une telle infraction — que la victime soit un membre de sa famille ou non — ni la personne déclarée coupable d'une infraction entraînant des lésions corporelles, ou d'une tentative ou menace de commettre une telle infraction à l'égard d'un parent, y compris un membre de la famille du répondant ou un parent d'un membre de la famille du de celui-ci.

[22] In 2011, the Federal Court released its decision in *Canada (Citizenship and Immigration) v Brar*, 2008 FC 1285 [*Brar*], a spousal sponsorship case which involved the interpretation of subparagraph 133(1)(e)(ii)(A) of the IRPR (set out below as it then read) and specifically whether the sister-in-law of the respondent in that case fell within the definition of the victims (*i.e.*, "a relative of the sponsor, including a dependent child or another family member of the sponsor") of offences resulting in bodily harm under the clause in subparagraph 133(1)(e)(ii)(A) of the IRPR.

133 (1) A sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor	133 (1) L'agent n'accorde la demande de parrainage que sur preuve que, de la date du dépôt de la demande jusqu'à celle de la décision, le répondant, à la fois :
[…]	[…]
(e) has not been convicted under the Criminal Code of	e) n'a pas été déclaré coupable, sous le régime du Code criminel :
(ii) an offence that results in bodily harm, as defined in section 2 of the Criminal Code, to any of the following persons or an attempt or a threat to commit such an offence against any of the following person, namely,	(ii) d'une infraction entraînant des lésions corporelles, au sens de l'article 2 de cette loi, ou d'une tentative ou menace de commettre une telle infraction, à l'égard de l'une ou l'autre des personnes suivantes :
(A) a relative of the sponsor including a dependent child or other family	(A) un membre de sa parenté, notamment un enfant à sa charge ou un autre

member of the sponsor,	membre de sa famille,

[23] Following *Brar*, amendments were made to paragraph 133(1)(e) of the IRPR to address a perceived gap in the regulation. The RIAS stated that the objectives of the amendments were to:

(a) strengthen the original intent of paragraph 133(1)(e) of the Regulations, namely, to assist in the protection of foreign nationals from family violence;	a) renforcer l'objectif initialement poursuivi par l'alinéa 133(1)e) du Règlement, notamment, aider à protéger les étrangers contre la violence familiale;
(b) reinforce the integrity of the sponsorship program by barring sponsorship in cases where the sponsor is at risk of perpetuating abuse or has committed a serious criminal offence; and	b) améliorer l'intégrité du programme de parrainage en interdisant de parrainage une personne qui risquerait de perpétuer de mauvais traitements ou qui a commis un crime grave;
(c) further support the objectives of the *Immigration and Refugee Protection Act* (IRPA) to protect the health and safety of Canadians.	c) concourir encore davantage à l'atteinte de l'objectif de la *Loi sur l'immigration et la protection des réfugiés* (LIPR) de pré server la santé et la sécurité des Canadiens.

[24] Although the amendments were directed at revisiting the list of family relationships captured by subparagraph 133(1)(e)(ii)(A), the RIAS emphasized certain overriding principles relating to paragraph 133(1)(e) of the IRPR as a whole; in particular, that "[s]ponsorship is conditional" and that someone who has committed a serious crime should not benefit from the privilege and responsibility of being a sponsor.

[25] The Applicant argues that subparagraph 133(1)(e)(i) cannot be a reasonable exercise of rule-making power as it captures individuals like the Applicant whose offence, he asserts, creates

no plausible danger or risk to the family member he proposes to sponsor. However, this is not the appropriate test.

[26] As noted in *Auer*, "[t]he potential or actual consequences of the subordinate legislation are relevant only insofar as a reviewing court must determine whether the statutory delegate was reasonably authorized to enact subordinate legislation that would have such consequences. Whether those consequences are in themselves necessary, desirable or wise is not the appropriate inquiry" (at para 58).

[27] Further, I am not persuaded that subparagraph 133(1)(e)(i) creates an overall unfairness or stigma by temporarily excluding sexual offenders from their ability to sponsor their partner as the provision must be considered in the context of the conditional nature of sponsorship and the nature and seriousness of the offence.

[28] As noted by the Respondent, the consequences on the Applicant are the result of his own actions. He was arrested, charged, and convicted of a serious crime of a sexual nature which has repercussions on his ability to act and take on the responsibility of being a sponsor for his partner. Those repercussions flow directly from the Applicant's criminal behaviour (see comments made in *Akhter v Canada (Minister of Citizenship and Immigration)*, 2006 FC 481 at para 24).

[29] The Applicant's suggestion that his partner's sponsorship status is linked to his recidivism and runs contrary to a public safety objective is in my view misplaced. To the extent

that the Applicant's relationship with his partner has been a factor in his rehabilitation this has already been considered in the Applicant's sentencing. While the duration of the Applicant's sentence will impact the length of the sponsorship bar, the Applicant's rehabilitative assessment has not been made dependent on sponsorship.

[30] Additionally, while the Applicant asserts that the impugned regulation is also unreasonably inconsistent with the goal of family unification, I cannot agree.

[31] As highlighted by the Respondent, there is no authority for the argument that family unification should trump the plain language of section 14 of the IRPA and subparagraph 133(1)(e)(i) of the IRPR, or another objective under the IRPA. As noted in *De Guzman v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1276 at paragraph 38: "The objective of family reunification does not override, outweigh, supercede or trump the basic requirement that the immigration law must be respected, and administered in an orderly and fair manner."

[32] The Applicant's argument amounts to a disagreement with the regulators' policy decision to give more weight to the conditional nature of sponsorship when dealing with sexual offenders than the principle of family unification. However, a *vires* review does not involve assessing the policy merits of subordinate legislation.

[33] Notably, the bar to sponsorship is also not final. Contrary to the assertions of the Applicant, the bar to sponsorship does not prevent family unification. The bar is temporary and non-arbitrary. As noted earlier, it is directly linked to the Applicant's sentence and will expire 5

years after completion of the sentence, or if the Applicant is pardoned: IRPR, subsections 133(2), 156(2).

[34] In this case, the Applicant's partner also has other immigration routes available to him. For example, he currently holds a closed work permit and could seek renewal from the same employer. Additionally, he has requested that his PR application be assessed for H&C considerations. The outcome of that determination is currently unknown.

[35] While these options may not be the couple's preferred choices, they nonetheless present other immigration possibilities. The fact that another method to immigrate to Canada is not easy or preferred is not an argument for the *vires* of regulations.

[36] As noted by the Respondent, there is no automatic right to immigrate to Canada, nor any automatic right to sponsor a foreign national. The eligibility to immigrate and to sponsor is "subject to regulations": IRPA, subsection 13(1).

[37] For all these reasons, the application is dismissed.

[38] There was no question for certification proposed by the parties, and I agree, none arises in this case.

JUDGMENT IN IMM-5712-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

A. Connie Campbell	FOR THE APPLICANT
Philippe Alma	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Edelmann & Co Law Offices Barristers and Solicitors Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT