

Federal Court



Cour fédérale

Date: 20250401

Docket: IMM-794-23

Citation: 2025 FC 602

Ottawa, Ontario, April 1, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**GULWANT KAUR
MUSKANDEEP KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Kaur and her minor daughter (the “Applicants”) applied for permanent residence through the parent/grandparent sponsorship program (“Sponsorship Application”) in December 2021. Ms. Kaur’s son, Malikpreet Singh, a permanent resident of Canada, was their sponsor.

[2] As a sponsor, Mr. Singh had to demonstrate that he had sufficient income to support his mother, his minor sister, and himself. On January 4, 2023 an officer (the “Officer”) at Immigration, Refugees and Citizenship Canada (“IRCC”) found Mr. Singh ineligible to sponsor through the parent sponsorship program because he did not meet the income requirements.

[3] The Applicants are challenging the Officer’s ineligibility finding on judicial review. The Applicants argue that the Officer’s interpretation of how the minimum necessary income is calculated for the three years preceding the sponsorship application was unreasonable.

[4] The Officer found that Mr. Singh was required to show that he met the minimum necessary income requirement plus 30 percent (“Income Requirement”) for his family size as it existed in each of the three years preceding the Sponsorship Application. However, Mr. Singh’s family size changed during those three years: his father died and one of his sisters turned 23. Therefore, by the time the Sponsorship Application was filed (December 2021), Mr. Singh’s family size for the purposes of sponsorship was three, but in one of the preceding three years it was five (2018) and in another year, it was four (2019).

[5] The parties agree that had the Officer used Mr. Singh’s family size at the time of the application to calculate the income required in the three years preceding the application (the Applicants’ interpretation of the contested provision), he would have been eligible to sponsor his mother and minor sister.

[6] The Applicants argue that the Officer's interpretation does not align with the text, context, and purpose of the statutory provision at issue, subparagraph 133(1)(j)(i)(B) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], and is therefore unreasonable. In particular, the Applicants argue that insisting that sponsors be able to financially support individuals in the past who no longer are able to be sponsored at the time of the application is not consistent with the government's objective to ensure sponsors can financially support those who they can sponsor.

[7] The Minister argues that the Applicants are barred from making this statutory interpretation argument because they failed to do so before the Officer. If they are permitted to make the argument on judicial review, the Minister argues that the Officer's interpretation, which accords with the relevant guidelines in place at the time of the decision, was a reasonable one.

[8] Decision-makers must interpret the legislative provisions they are applying reasonably irrespective of whether they are asked. I have serious concerns that the Officer's approach is not consistent with the purpose of the regulation at issue, causing this Court to lose confidence in the outcome reached (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 122). Given the harsh consequences the Applicants and their sponsor face as a result of the Officer's interpretation of the provision, more had to be done to explain how the interpretation being applied "best reflects the legislature's intention" (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [Mason] at para 76).

[9] I am allowing the judicial review. I am sending the matter back to allow the administrative decision-maker to explain how their interpretation of the contested provision is consistent with its text, context and purpose.

II. Statutory Provision at Issue

[10] In 2014, the income eligibility requirements for sponsors of parents and grandparents changed. The amendments to the IRPR now found in clause 133(1)(j)(i)(B) made two significant changes:

- i. sponsors now had to show that they meet the minimum necessary income (“MNI”) calculation plus 30 percent - whereas prior to 2014, it was only the MNI amount; and
- ii. sponsors now had to show they met the MNI plus 30 percent not just for the most recent taxation year, but for the three years preceding the date of filing the sponsorship application.

[11] The second change – meeting the Income Requirement for three years - is the amendment at issue on this judicial review.

[12] Clause 133(1)(j)(i)(B) of the IRPR, the contested provision that establishes the Income Requirement for sponsors, provides:

Requirements for sponsor

133 (1) A sponsorship application

Exigences : répondant

133 (1) L’agent n’accorde la

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

...

(j) if the sponsor resides

(i) in a province other than a province referred to in paragraph 131(b),

(B) has a total income that is at least equal to the minimum necessary income, plus 30%, for each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application, if the sponsorship application was filed in respect of a foreign national who is

(I) the sponsor's mother or father,

(II) the mother or father of the sponsor's mother or father, or

(III) an accompanying family member of the foreign national described in subclause (I) or (II), and

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 :

...

j) dans le cas où il réside :

(i) dans une province autre qu'une province visée à l'alinéa 131b) :

(B) a un revenu total au moins égal à son revenu vital minimum, majoré de 30 %, pour chacune des trois années d'imposition consécutives précédant la date de dépôt de la demande de parrainage, s'il a déposé une demande de parrainage à l'égard de l'un des étrangers suivants :

(I) l'un de ses parents,

(II) le parent de l'un ou l'autre de ses parents,

(III) un membre de la famille qui accompagne l'étranger visé aux subdivisions (I) ou (II),

[13] Subsection 1(3) defines "family member" for the purposes of sponsorship:

Definition of family member

(3) For the purposes of the Act, other than section 12 and paragraph 38(2)(d), and for the purposes of these Regulations,

Définition de membre de la famille

(3) Pour l'application de la Loi — exception faite de l'article 12 et de l'alinéa 38(2)d) — et du présent règlement — exception faite de

other than paragraph 7.1(3)(a) and sections 159.1 and 159.5, family member in respect of a person means

(a) the spouse or common-law partner of the person;

(b) a dependent child of the person or of the person's spouse or common-law partner; and

(c) a dependent child of a dependent child referred to in paragraph (b).

l'alinéa 7.1(3)a) et des articles 159.1 et 159.5 —, membre de la famille, à l'égard d'une personne, s'entend de :

a) son époux ou conjoint de fait;

b) tout enfant qui est à sa charge ou à la charge de son époux ou conjoint de fait;

c) l'enfant à charge d'un enfant à charge visé à l'alinéa b).

[14] And Section 2 defines “minimum necessary income”:

minimum necessary income means the amount identified, in the most recent edition of the publication concerning low income cut-offs that is published annually by Statistics Canada under the Statistics Act, for urban areas of residence of 500,000 persons or more as the minimum amount of before-tax annual income necessary to support a group of persons equal in number to the total number of the following persons:

(a) a sponsor and their family members,

(b) the sponsored foreign national, and their family members, whether they are accompanying the foreign national or not, and

(c) every other person, and their family members,

(i) in respect of whom the sponsor

revenu vital minimum Le montant du revenu minimum nécessaire, dans les régions urbaines de 500 000 habitants et plus, selon la version la plus récente de la grille des seuils de faible revenu avant impôt, publiée annuellement par Statistique Canada au titre de la Loi sur la statistique, pour subvenir pendant un an aux besoins d'un groupe constitué dont le nombre correspond à celui de l'ensemble des personnes suivantes :

a) le répondant et les membres de sa famille;

b) l'étranger parrainé et, qu'ils l'accompagnent ou non, les membres de sa famille;

c) toute autre personne — et les membres de sa famille — visée par :

(i) un autre engagement en cours

has given or co-signed an undertaking that is still in effect, and

de validité que le répondant a pris ou cosigné,

(ii) in respect of whom the sponsor's spouse or common-law partner has given or co-signed an undertaking that is still in effect, if the sponsor's spouse or common-law partner has co-signed with the sponsor the undertaking in respect of the foreign national referred to in paragraph (b). (revenu vital minimum)

(ii) un autre engagement en cours de validité que l'époux ou le conjoint de fait du répondant a pris ou cosigné, si l'époux ou le conjoint de fait a cosigné l'engagement avec le répondant à l'égard de l'étranger visé à l'alinéa b). (minimum necessary income)

[15] On December 31, 2013, IRCC issued an Operational Bulletin (Operational Bulletin 561 – December 31, 2013) explaining that these new provisions affecting parent/grandparent sponsorship would come into force January 1, 2014. No guidance was provided as to how family size would be assessed in relation to the Income Requirement.

[16] When the Applicants filed the Sponsorship Application in 2021, the relevant IRCC guidelines still did not address how family size should be calculated for assessing income for the three years preceding a parent sponsorship application. Sometime in 2022, while the Applicants' application was in process, the IRCC guidelines "Applications under family classes: Assessing the sponsor" were updated to include new guidance to officers on this issue ("Guidelines"). This was the first time since the regulations had come in force, approximately eight years prior, that IRCC provided direct instructions to officers on how to address variable family size in calculating the Income Requirement for parent/grandparent sponsorship.

[17] The Guidelines tell officers that when calculating the MNI for the three previous taxation years, officers should use the family size of a particular year to determine the MNI for that year. In other words, according to the Guidelines, family size does not crystalize at the time of application (as the Applicants are arguing), but rather, it varies each year. There is no reasoning given for this interpretation other than an assertion that this approach is consistent with the language in the regulations. The Guidelines also provide a series of illustrative scenarios in which this rule is applied to increases and decreases in family size.

III. Procedural History

[18] The Applicants filed their Sponsorship Application in December 2021. At the time, Mr. Singh, the sponsor, understood his family size for the purpose of sponsorship to include: himself, his mother, and his minor sister. Mr. Singh was not married and had no children. Mr. Singh's mother was a widow and she had only one dependent who was under 22 years of age and therefore able to be sponsored. Based on this family size, the Applicants understood that their sponsor had sufficient income (MNI plus 30 percent) at that time and in the three years preceding to support a family of three.

[19] The Applicants did not know that Mr. Singh's father, who had passed away in 2019, and his sister, who was over 22 and could not be sponsored, would have been included in the Officer's calculation for determining if their sponsor met the Income Requirement in the three preceding years. Mr. Singh states, in his affidavit on judicial review, that he believed that his family size "should have been determined as of the time of the application was put forward" and not "inflated to include individuals who could not be a part of the application."

[20] On January 4, 2023, the Officer determined that Mr. Singh did not meet the Income Requirement and was therefore ineligible to sponsor his mother and minor sister. The Officer found that though Mr. Singh had sufficient income to support the family of three he was sponsoring at the time of the application, he failed to meet the MNI plus 30 percent for two of the three preceding years.

[21] The Officer's reasons do not explain on what basis they understood that the IRPR required that family size be calculated on a year-to-year basis for the three years preceding the filing of the Sponsorship Application. Presumably, the Officer followed the instructions in the Guidelines. As already noted, the Guidelines also do not provide any reasoning for adopting this interpretation for the Income Requirement.

IV. Analysis

A. *No Bar to Raising Statutory Interpretation Argument on Judicial Review*

[22] The Minister takes the position that this Court should not entertain the Applicants' arguments about the reasonableness of the Officer's interpretation of the contested provision because they failed to make these arguments directly to the Officer. The Minister argues that, by the time the Officer decided the Sponsorship Application, there was published guidance from IRCC on how MNI and family size were to be assessed, and therefore it was up to the Applicants and their sponsor to explain why they wanted the Officer to apply an interpretation that was inconsistent with the instructions in the Guidelines. As the statutory interpretation argument is

the sole issue on judicial review, the Minister asks that the judicial review be dismissed on this basis. I am not persuaded.

[23] The governing statutory scheme is “likely to be the most salient” legal constraint for an administrative decision-maker (*Vavilov* at para 108). Their “task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying [their] particular insight into the statutory scheme at issue” (*Vavilov* at para 121). This obligation exists even without submissions from the parties.

[24] The cases relied upon by the Minister are not analogous (*Sigma Risk Management Inc v Canada (Attorney General)*, 2022 FCA 88 at para 6; *Kalonji v Canada (Attorney General)*, 2018 FCA 8 at para 7; and *Joseph v Canada (Citizenship and Immigration)*, 2020 FC 735 at para 8). The impermissible new argument raised in those cases did not relate to the reasonableness of the decision-maker’s interpretation of the statute they were applying. More analogous, and not addressed by the Minister, is the Supreme Court of Canada’s analysis in *Mason*, where the Supreme Court considered a statutory interpretation argument not made before the first decision-maker despite the objection of the Minister on the same grounds advanced here (*Mason* at para 117). The Federal Court of Appeal did the same in *Canada (Public Safety and Emergency Preparedness) v Weldemariam*, 2024 FCA 69 at paragraphs 38 and 52 (see also *Zeng v Canada (Citizenship and Immigration)*, 2019 FC 1586 at para 14).

[25] I understand the Minister’s concern that the initial decision-maker has not had an opportunity to respond directly to the statutory interpretation arguments made before this Court.

This concern may potentially be addressed in the remedy, rather than barring the Applicants from any relief where they argue that the Officer's interpretation of the key legal constraint bearing on their decision was unreasonable.

B. *Interpretation of the Income Requirement*

[26] The Officer interpreted clause 133(1)(j)(i)(B) of the IRPR to mean that the Income Requirement would be calculated for each of the three preceding years based on the sponsor's family size in a particular year. It is understandable that the Officer applied this interpretation because it follows the instructions in the Guidelines. However, administrative policy is not law, and does not end the inquiry as to whether the contested provision is consistent with the modern principle of statutory interpretation (*Zeifmans LLP v Canada*, 2022 FCA 160 at para 12; *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 60).

[27] The well-established modern approach to statutory interpretation requires that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at paragraph 21, citing *Elmer Driedger in Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at p. 87). Administrative decision-makers are required, no matter the interpretative exercise they use, to interpret legislation in a way that is consistent with its text, context and purpose (*Vavilov* at para 118).

[28] The Applicants' position is that the preamble in clause 133(1)(j)(i)(B) of the IRPR establishes that a sponsor's "total income" in relation to the MNI requirements is to be based on the sponsor's family size "at the time of the application". The provision at issue states:

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 ... has a total income that is at least equal to the minimum necessary income, plus 30%, for each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application...

[29] The Applicants argue that the text of clause 133(1)(j)(i)(B) of the IRPR confirms that the family size crystallizes at the time of the application. The provision at issue contains a temporal requirement against which the sponsor's obligations are to be assessed. The Minister argues that the Applicants' interpretation requires the reading in of words and that the plain meaning of the provision, when read together with the definition of MNI in the IRPR, is consistent with the Officer's approach.

[30] Without definitively pronouncing on the appropriateness of either reading of the text, I am satisfied that the Applicants have put forward what appears to be a plausible reading. I do not accept that the wording of the provision is as plain as the Minister argues. The regulation at issue, even read in conjunction with the definition of MNI, does not expressly say that family size is to be calculated on a yearly basis for the three years preceding the application.

[31] In any case, I find it unnecessary to comment further on either reading of the text because my primary concern is how the Officer's interpretation accords with the purpose of the provision. As explained by the Supreme Court of Canada in *La Presse inc v Quebec*, 2023 SCC

22 [*La Presse inc*]: “In any case, to the extent that the wording of the provision is plain, an interpretation based on plain meaning alone is not determinative and ‘cannot prevail if it is at odds with the purpose and context’” (*La Presse inc* at para 30 citing *R v Alex*, 2017 SCC 37 at para 33).

[32] When the amendments were being considered by Parliament, the government presented a Regulatory Impact Analysis Statement (“RIAS”) that explained the changes being made to the income requirements to “ensure sponsors are better able to support the needs of the PGP [parents or grandparents] and their accompanying family members by ensuring they have stronger financial stability.”

[33] The RIAS specifically explained, in relation to the new requirement of demonstrating sufficient income for three years instead of one year, that this change would “demonstrate greater stability in employment earnings and make it difficult to temporarily inflate income.” Evidence of greater financial stability was linked to the ability to support the group who is actually able to be sponsored during the sponsorship undertaking period:

...a single-year test of income is an insufficient indicator of a PGP [parents or grandparents] sponsor’s ability to support their sponsored PGP over the term of the sponsorship undertaking. A prospective PGP sponsor could have a “banner year” that would not reflect the sponsor’s true financial health (e.g. prospective PGP sponsors may take on extra work within a given year, thereby temporarily inflating income).

[34] With the Minister’s interpretation, a sponsor would have to show that they had sufficient income to support family members who could no longer be sponsored at the time of the

sponsorship and for whom, at the relevant time, the sponsor may not have had any financial obligation to support.

[35] Consider the Applicants' case: even though neither his deceased father or his over-aged sister are eligible to be sponsored at the time of filing the application, the application was refused because three years before Mr. Singh filed the sponsorship application, he did not have sufficient income to support his father and sister. Despite having shown that for three years he has had sufficient income to support the group of people that he is eligible to sponsor, and for whom he is making a sponsorship undertaking, the application was refused.

[36] Yet, if we consider in contrast the scenario of an increase in family size provided in the Guidelines, using the Minister's interpretation of the contested provision, this sponsor would be found eligible even though they have only shown for a one-year period that they have sufficient income to support their family and sponsored family. The example provided states:

For example, the sponsor had a newborn child and married in 2018. The sponsor submits a parent or grandparent application in 2019. The income requirements must be met for the years 2016, 2017 and 2018. The sponsor's spouse and newborn child must only be counted in the family size for the year 2018.

[37] Even though over the term of the sponsorship undertaking, this sponsor's income would have to be sufficient to meet the needs of their spouse and newborn child, they only had to show sufficient income to support this larger group of people for one year. It is not clear how this would meet the objective of ensuring that sponsors have financial stability over a lengthier period to support the group they can sponsor and will be part of their sponsorship undertaking. Yet, as described above, using the Minister's interpretation of the contested provision, Mr. Singh

was found ineligible for not being able to support a theoretical group of people who are not even able to be sponsored and therefore could not be part of the sponsorship undertaking.

[38] The Guidelines do not explain how this interpretation – namely, recalibrating family size in the three preceding years – accords with the purpose of requiring sponsors to show greater financial stability for a longer period to support those who they can sponsor through the program. This key component of the statutory interpretation analysis is missing. This missing piece of the analysis undermines the decision and causes me “to lose confidence in the outcome reached by the decision maker” (*Vavilov* at para 122; *Mason* at para 69).

[39] If the purpose of the contested provision had been considered, the Officer may have reached a different result. There is no indication that the Officer, or IRCC in its Guidelines, contemplated the interpretation put forward by the Applicants and whether this would be consistent with the text, context and purpose of the provision. Given the harsh consequences of the Officer’s determination – the finding that the sponsor was ineligible to sponsor his family – the Officer had to do more to demonstrate that the interpretation being applied “best reflected the legislature’s intent” (*Mason* at paras 69, 76; *Vavilov* at paras 134–135; *Onex Corporation v Canada (Attorney General)*, 2024 FC 1247 [*Onex*] at paras 57, 92 and 105).

[40] It is not up to this Court to provide a complete interpretation of the contested provision. As explained in *Vavilov*, even though there may be instances where a court determines that there is only one reasonable interpretation of a provision, as a general rule, courts “should generally pause before definitely pronouncing upon the interpretation of a provision entrusted to an

administrative decision maker” (*Vavilov* at para 124; *Onex* at para 121). Accordingly, I am sending the matter back to allow IRCC an opportunity to explain, taking into account the Court’s reasons, the interpretation of the contested provision considering its text, context and purpose.

V. Certified Question

[41] The Minister proposed the following question for certification under paragraph 74(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27:

In a family class sponsorship application, when assessing the eligibility of the sponsor per s. 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations* (IRPR) and in the year-by-year calculation of “Minimum Necessary Income” (MNI) as defined in s.2 of the IRPR, should officers’ yearly income assessments for MNI be based only on those persons accounted for in subsections (a)-(c) of the MNI definition on the date the application is received and exclude persons who were captured in the definition of MNI in one or more of the three previous taxation years being assessed but who no longer come under that definition on the date the application is received?

[42] In order to be certified as a serious question of general importance, the question must be: (i) dispositive of the appeal; (ii) transcend the interests of the immediate parties to the litigation; and (iii) contemplate an issue of broad significance or general importance (*Tesfaye v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 2040 at para 76).

[43] The Applicants oppose certification on grounds that this issue is not of broad significance but rather affects a small subset of individuals. I tend to agree. Despite the amendments having come into force over ten years ago, this particular interpretative issue does not appear to have arisen. In any case, I have not definitively pronounced on the appropriate interpretation of the

contested provision and have sent it back to the IRCC to conduct the statutory interpretation exercise. In these circumstances, I decline to certify a question.

JUDGMENT in IMM-794-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision dated January 4, 2023 finding the sponsor to be ineligible is set aside;
3. The matter is sent back to be redetermined by a different decision-maker, taking into account the Court's reasons; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-794-23

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MINISTER OF CITIZENSHIP AND IMMIGRATION

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DATED: APRIL 1, 2025

APPEARANCES:

Naseem Mithoowani	FOR THE APPLICANTS
David Knapp	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mithoowani Waldman Immigration Law Group Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT