

APPEAL #

PART C – Decision under Appeal

This is an appeal of the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated November 15, 2013, in which the Ministry denied the appellant ongoing income assistance on the basis that she does not meet the requirement for citizenship set out in section 7 of the *Employment and Assistance Regulation* ("EAR") and does not meet the criteria for exemption from the citizenship requirement set out in section 7.1 of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 7 and 7.1.

PART E – Summary of Facts

The Ministry attended the hearing with an observer and the appellant consented to the observer's attendance at the hearing.

The information before the Ministry at reconsideration consisted of numerous documents.

- The appellant's request for reconsideration dated October 31, 2013, with attached 2-page handwritten submission;
- A copy of the appellant's work permit issued by Citizenship and Immigration Canada for the period October 17, 2013 to October 17, 2014;
- A copy of the appellant's visitor's visa, issued by Citizenship and Immigration Canada for the period September 10, 2013 to September 10, 2014;
- A copy of a letter from another country to the appellant dated August 27, 2013 indicating that she needs to submit additional information to complete her application for her passport application;
- A copy of a letter from Citizenship and Immigration Canada to the appellant dated July 15, 2013 indicating that she must be in possession of a valid passport to continue processing her application for permanent residence status in Canada;
- A copy of the Citizenship and Immigration Canada "client application status" printout (2 pages) for the appellant dated July 11, 2013 showing that the appellant's application for permanent residence was received on March 10, 2005;
- A copy of a letter from Service Canada dated October 18, 2013 indicating that the appellant has applied to change the expiry date on her Social Insurance Number (which would expire October 17, 2014);
- A copy of the first page of a letter dated June 27, 2008 from a lawyer to Citizenship and Immigration Canada, as well as a copy of a letter dated October 4, 2007 from a lawyer regarding the appellant's application for permanent residence in Canada;
- A copy of a tenancy agreement for the appellant with BC Housing dated July 10, 2013 (2 pages), as well as a photocopy of two cheques for the appellant's October and November 2013 rent, and a copy of a residential tenancy agreement for the appellant dated September 15, 2011;
- A photocopy of the appellant's BC driver's licence;
- A copy of a Ministry employment plan for the appellant dated July 11, 2013;
- A copy of a certificate showing the appellant had completed safety awareness training with a homecare provider on October 10, 2009;
- A copy of a certificate from June 25, 2003 indicating that the appellant has successfully completed training to be an emergency medical technician in another country, as well as a copy of a diploma from a community college dated April 10, 1998, indicating that the appellant had completed studies in medical assisting;
- 2 pages of information from the Internet regarding Ministry policy updates for assistance for single parents without citizenship status fleeing abuse;
- A 2-page list of addresses of where the appellant has lived in Canada from May 1993-present;
- Copies of the appellant's records of employment (3 pages);
- Copies of the appellant's tax returns for the years 2000-2012 (14 pages);
- A copy of the appellant's birth certificate;
- A copy of a Citizenship and Immigration Canada Medical Examination Form for the appellant (2 pages); and

- A copy of a one-page confirmation from a medical practitioner dated May 23, 2013, confirming the appellant has undergone Canadian Immigration medical examination, with attached results.

In her notice of appeal dated November 23, 2013, the appellant wrote that she disagreed with the reconsideration decision for the following reasons:

1. The Ministry did not contact her to let her know she was being investigated.
2. She was in compliance with an Employment Plan, "only to be told I could not receive assistance."
3. The Canada Border Services Agency agent in another province revoked her status and gave her the visitor's visa. The appellant says that the agent is "border patrol" and "doesn't have the authority" to revoke the appellant's immigration status. The appellant also says that it was this agent who told the Ministry that the appellant has one Canadian child – the appellant has three Canadian children, two of whom live with her. The appellant indicated that she has reported the agent to her MP and the supervisors at the other provincial border location.
4. The appellant says she has kept the Ministry up-to-date with her immigration process, including providing the Ministry with medical screens and security screens.
5. The appellant says that she is not a visitor to Canada but that she is a temporary resident applying for permanent residency in Canada. She says that she has lived in Canada for 29 years and worked for many years before moving to British Columbia from another province.
6. The appellant says that she came to British Columbia fleeing abuse and that she feels she is being abused by the system.
7. She wrote that she is looking for work and hopes to find employment early in 2014.
8. She wrote that she has "done what Immigration and the Ministry of Social Services" has asked of her and "followed all the rules."

At the hearing, the appellant reiterated the submissions attached to her notice of appeal. The appellant confirmed that she has three children, all of whom are Canadian citizens, but only one is still her dependant (the other 2 children are over 19 and one lives in another province). In 2010, the appellant applied for and began receiving income assistance in British Columbia. Her income assistance ended in September 2013 when the Ministry told her she did not have status as a Canadian citizen or resident in Canada and did not meet the requirements under the applicable legislation. The appellant told the panel that she has had a work permit to work in Canada for several years. She said that she applied for permanent residence status on humanitarian and compassionate grounds in 2005, but her application is still in progress. She said that she has also applied for a temporary residence permit, but she could not provide the panel with proof of her application for temporary residence status, and said that it is still in progress at the facility in another province. The appellant told the panel that she will not return to her former country to live as it is not safe for her and her child. She said that she has fled an abusive relationship and the person who abused her has threatened to kill her and for this reason she feels she cannot return to her former country. The appellant confirmed that she is not subject to a court order requiring her to stay in Canada, and there is no custody order regarding her dependent child. She also confirmed that her dependent child is not being treated for a medical condition.

The Ministry explained that a work permit does not give the individual status to qualify for income assistance in B.C. – the person must also have a temporary residence permit or permanent residence status in order to meet the citizenship requirements to receive social assistance in B.C.

The Ministry said that the appellant does not have a temporary residence permit and has not obtained her permanent residence status. The Ministry admitted that the approval of the appellant's application for employment assistance in 2010 was done in error – the Ministry mistakenly thought the appellant had permanent residency status when she did not. The Ministry said that it was only in September 2013 when it was advised by Citizenship and Immigration Canada that the appellant had been issued a visitor's visa that the Ministry realized its mistake and confirmed that the appellant does not meet the citizenship requirements set out in section 7 of the EAR. The Ministry agreed that the appellant has a dependent child who is Canadian, and that the appellant was fleeing an abusive spousal relationship when she came to B.C. The Ministry said that the appellant does not have a court order or separation agreement, there is no custody claim over her dependent child, and her dependent child is not receiving medical treatment.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's determination that the appellant is not eligible for ongoing income assistance because she does not meet the citizenship requirement set out in section 7 of the EAR and does not meet the criteria for exemption from the citizenship requirement set out in section 7.1 of the EAR.

Applicable legislation – Employment and Assistance Regulation

The requirement that an applicant for, or recipient of, family assistance meet one of the criteria for citizenship is set out in section 7(1) of the EAR as follows:

Citizenship requirements

7(1) For a family unit to be eligible for income assistance at least one applicant or recipient in the family unit must be:

- (a) A Canadian citizen;
- (b) Authorized under an enactment of Canada to take up permanent residence in Canada;
- (c) Determined under the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada) to be a Convention refugee;
- (d) In Canada under a temporary residence permit issued under the *Immigration and Refugee Protection Act* (Canada) or on a minister's permit issued under the *Immigration Act* (Canada);
- (e) In the process of having his or her claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act* (Canada); or
- (f) Subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed.

The EAR allows an exemption for the citizenship requirement of section 7(1), if **all** of the provisions of section 7.1 of the EAR apply. Section 7.1 provides:

Exemption from citizenship requirements

7.1 (1) Despite section 7(1), a family unit that does not satisfy the requirement under that section is eligible for income assistance if the minister is satisfied that all of the following apply:

- (a) The applicant is a sole applicant or, in the case of a recipient, the recipient is a sole recipient;
- (b) The applicant or recipient has one or more dependent children who are Canadian citizens;
- (c) The applicant or recipient has separated from an abusive spouse;
- (d) The applicant or recipient has applied for status as a permanent resident under the *Immigration and Refugee Protection Act* (Canada);
- (e) The applicant or recipient cannot readily leave British Columbia with the dependent children because
 - (i) A court order, agreement or other arrangement with respect to one or more of the dependent children provides custody, guardianship or access rights to another person who resides in British Columbia and leaving British Columbia with the dependent children would likely contravene the provisions of the court order, agreement or other arrangement,
 - (ii) Another person who resides in British Columbia is claiming custody, guardianship or access rights with respect to one or more of the dependent children and the person's claims have not yet been resolved, or
 - (iii) The applicant or recipient, or a dependent child of the applicant or recipient, is being

treated for a medical condition and leaving British Columbia would result in imminent danger to the physical health of the applicant, recipient or dependent child.

The appellant says that she has status in Canada as provided by her work visa, and implied status in Canada prior to her work visa being renewed. She says that she received employment assistance starting in 2010 based on the information she provided at the time, which would have been that she had a work visa. The appellant is extremely frustrated by her treatment by the Canada Border Services Agency and feels that it is unfair that the Ministry has stopped providing her income assistance based on the information provided to it by the Canada Border Services Agency, some of which she feels was incorrect. The appellant says that she has applied for both a temporary residence permit and for permanent residence status, but that the process is taking a long time. The appellant stressed that she has always kept the Ministry informed about all the steps she is taking with Citizenship and Immigration Canada, and that she has been compliant with her employment plans for the Ministry. She feels that she is being unfairly treated.

In its reconsideration decision, the Ministry determined that the information provided by the appellant does not establish that she meets the required criteria to be eligible for assistance under section 7 of the EAR. The Ministry noted in its reconsideration decision that the appellant is a sole recipient, with one dependent child who is a Canadian citizen and that she has separated from an abusive spouse and has applied for status as a permanent resident. However, the Ministry determined that the appellant had not provided any information to establish that she cannot readily leave B.C. with her dependent child due to custody issues or medical treatment and for this reason, does not meet all the required criteria to be eligible under s. 7.1 of the EAR.

Panel's Analysis and Decision

Subsection 7(1) of the EAR requires that, to be eligible for income assistance in British Columbia, the applicant must meet one of the listed citizenship requirements. It is agreed that the appellant is not a Canadian citizen, so she does not meet the criteria in subs. 7(1)(a). The parties agree that the appellant is not a Convention refugee and she does not claim refugee protection and she is not subject to a removal order that cannot be executed, so she does not meet the criteria set out in subsection 7(1)(c), (e) or (f).

Subsection 7(1)(b) provides status to an applicant who is authorized under an enactment of Canada to take up permanent residence in Canada. The Ministry said that this means the applicant must have permanent residence status, which is different from permission to work in Canada provided by a work visa. The Ministry says that the appellant does not have permanent residence status, although she has applied for it. The appellant agreed that she does not have her permanent residence status yet and although she applied for it in March 2005, it is still in progress. The panel finds that the Ministry's determination that the appellant did not meet the requirements of subs. 7(1)(b) as she is not yet authorized under an enactment of Canada to take up permanent residence in Canada is reasonable based on the evidence.

Subsection 7(1)(d) affords status to an applicant who is in Canada under a temporary residence permit or on a minister's permit issued under the Immigration Act. The appellant is not on a minister's permit. The Ministry said that an applicant must have a temporary residence permit in order to qualify under subsection 7(1)(d) – that an application for a temporary residence permit is not sufficient to

meet the requirements of subs. 7(1)(d). The appellant has applied for a temporary residence permit, but she told the panel at the hearing that she does not yet have a temporary residence permit. Accordingly, the panel finds that the Ministry's determination that the appellant does not meet the requirement set out in subs. 7(1)(d) is reasonable based on the evidence and is a reasonable application of the legislation to the appellant's circumstances.

Section 7.1 of the EAR provides that an individual who does not satisfy the requirements under section 7 of the EAR may be eligible for assistance if the minister is satisfied that **all** of the criteria set out in subs. 7.1(a) through (e) apply. The Ministry agrees that the appellant meets the criteria set out in subs. 7.1(a) – (d):

- she is a sole recipient (or applicant) as required by subs. 7.1(a);
- she has one or more dependent children who are Canadian citizens (the criteria of subs. 7.1(b));
- she has separated from an abusive spouse, as required by subs. 7.1(c); and
- she has applied for status as a permanent resident under the *Immigration and Refugee Protection Act*, as required by subs. 7.1(d).

The Ministry says that the appellant does not meet the criteria set out in subs. 7.1(e) of the EAR as she has not provided information that she cannot readily leave B.C. with her dependent child due to custody issues or medical treatment. The appellant told the panel that she does not have a court order, agreement or other arrangement with respect to her dependent child, which provides custody, guardianship or access rights to another person who lives in B.C. The appellant also confirmed that there is no other person living in B.C. who claims custody, guardianship or access over her dependent child and she further confirmed that her dependent child is not being treated for a medical condition. Given the evidence of the appellant, the panel finds that the Ministry's determination that she does not meet the criteria of subs. 7.1(d) is reasonable.

Accordingly, the panel finds that the Ministry's determination that the appellant is not eligible for income assistance because she does not meet the citizenship requirement set out in section 7 of the EAR and does not meet the criteria for exemption from the citizenship requirement set out in section 7.1 of the EAR is reasonably supported by the evidence and is a reasonable application of the legislation in the appellant's circumstances. The panel therefore confirms the Ministry's decision.