

APPEAL NUMBER  
2020-00173

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated June 22, 2020, which held that the appellant was not eligible for income assistance because neither the citizenship requirements of section 7 of the Employment and Assistance Regulation (EAR) nor the exemptions from those requirements described in section 7.1 of the EAR were met.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation (EAR), section 7 & 7.1

**PART E – SUMMARY OF FACTS**

**Information before the ministry at reconsideration**

- On June 4, 2020, the appellant applied for income assistance as a sole applicant with a dependent child, having recently fled an abusive spouse who had withdrawn his application to sponsor the appellant and her child. The appellant told the ministry that there is no court order or agreement granting custody or access for her child nor is someone claiming custody of the appellant's child. The appellant also stated that neither she nor her child is being treated for a medical condition but that general life in the foreign country from which they relocated is dangerous and children are kidnapped and sold into human trafficking. The appellant provided the following supporting documentation:
  - A September 16, 2019 letter from Immigration, Refugees and Citizenship Canada (IRCC) to the appellant's spouse confirming the spouse's eligibility as a sponsor.
  - An October 23, 2019 letter from IRCC to the appellant advising of the spouse's request to withdraw the sponsorship application and that, as a result, in accordance with section 126 of the Immigration and Refugee Protection Regulations, a decision cannot be made on the appellant's application for a permanent resident visa as a member of the *Spouse or Common-Law Partner in Canada* Class. The letter also states "you do not meet the requirements for immigration to Canada."
  - The appellant's work permit issued by IRCC.
  - The IRCC Visitor Record for the appellant's child, confirming that the child has citizenship in the foreign country.
  - A 3-page "Recognizance after Allegation" indicating that in September 2019 the spouse "did commit an offence of Fear of injury/damage" and is subject to conditions of no contact or communication with the appellant and her child.
- On June 8, 2020, the appellant informed the ministry that she was working with an immigration lawyer to apply for a temporary resident permit as a victim of family violence.
- On June 9, the ministry denied the appellant's request for income assistance because the citizenship requirements were not met and requirements for exemptions from those requirements were not met.
- On June 16, 2020, the appellant submitted a Request for Reconsideration form.

The ministry did not attend the appeal hearing. Having confirmation that the ministry was provided with notification of the hearing, the hearing proceeded in the ministry's absence in accordance with section 86(b) of the EAR.

**Information provided on appeal and admissibility**

In her Notice of Appeal, dated July 2, 2020, the appellant writes that her spouse cancelled the sponsorship when the appellant reported the domestic violence incident and that the appellant was transported to a women's shelter (a letter dated July 3, 2020 from the shelter confirming the appellant's admission to the shelter in May 2020 is attached). The appellant reports having no financial support or resources from anyone, including the spouse. The appellant also notes that her application for immigration for humanitarian reasons is "under process."

Also included with the Notice of Appeal are copies of documents previously submitted to the ministry (as described above) and records of communication in June and July 2020 between a support agency assisting the appellant and the ministry respecting the reasons for denial at reconsideration and the process of appealing to this Tribunal.

At the hearing, with the assistance of an interpreter, the appellant confirmed the information respecting the circumstances resulting in her and her child residing in a shelter, describing the threatening behaviour of the spouse that resulted in the complaint to the police and other difficulties relating to the spouse's behaviour. The appellant also expressed appreciation for the help received from victim services and others. The appellant clarified that she is legally married to her spouse but given her concerns for safety and lack of trust there will be no reconciliation. She is a professional in her country or origin but while in Canada has taken other work and is grateful for that work. The appellant wants to learn English and attend college and become financially independent. She has been provided with both family and immigration lawyers, and will speak with them in a couple of weeks. In response to questions, the appellant confirmed that she is currently in Canada on a work permit. She believes that the immigration lawyer is seeking an extension of the work permit while working on obtaining a visa based on humanitarian reasons. The immigration lawyer has not given the appellant any forms to complete but the file is not closed and the appellant imagines she will be contacted by the immigration lawyer with a request for additional information.

The panel considered the information provided the appellant in the NOA and at the hearing to be required for a full and fair disclosure of the matters related to the appeal and therefore admitted the information under section 22(4) of the *Employment and Assistance Act*.

## PART F – REASONS FOR PANEL DECISION

### Issue on Appeal

The issue on appeal is whether the ministry's decision that the appellant is not eligible for income assistance because the appellant has not met the citizenship requirements nor the requirements for exemption from the citizenship requirements is reasonably supported by the evidence or a reasonable application of the applicable legislation.

### Positions of the Parties

The appellant's position is that she is in need of financial support for herself and her child because she no longer has support from her spouse who withdrew the sponsorship application for the appellant and her child following the appellant's reporting of spousal abuse. The appellant can no longer reside with her spouse as it is a matter of safety for herself and her child, for whom she must do what is best.

The ministry's position is that none of the citizenship requirements described in section 7 of the EAR are met, noting that while the appellant indicates that application for temporary resident permit has been made, the appellant has not provided any information from Canada Border Services Agency (CBSA) indicating that there has been a change to the appellant's or her child's status in Canada.

Respecting the exemption under section 7.1 of the EAR, the ministry's position is that the appellant only meets two of the five requirements. Specifically, (a) is met because the appellant is a sole applicant and (c) is met because the appellant has separated from an abusive spouse.

However,

- (b) is not met because the appellant's child is not a Canadian citizen;
- (d) is not met because there is no evidence to show that the appellant has applied for status as a permanent resident; and
- (e) is not met because there is no evidence to show that the appellant could not readily leave British Columbia with the appellant's child for one of the listed reasons.

### Panel Analysis

In order to be eligible for income assistance under the EAR, a person must meet one of the citizenship requirements described in section 7 of the EAR or be exempt from those requirements by meeting all the requirements of described in section 7.1 of the EAR.

#### Section 7 Citizenship Requirements

To be eligible for income assistance a person must be **one** of the following:

- a Canadian citizen

- a permanent resident,
- a Convention refugee,
- in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act* or on a minister's permit issued under the *Immigration Act*,
- in the process of having a claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act*, or
- subject to a removal order under the *Immigration and Refugee Protection Act* that cannot be executed.

In this case, the appellant is not a Canadian citizen, a permanent resident, a Convention refugee or subject to a removal order. There is some indication, based on ministry records, that the appellant has sought a temporary resident permit, but there is no evidence that one has been obtained. The appellant states that she is working with a lawyer to obtain status in Canada based on humanitarian grounds and it seems likely that a claim or application under the *Immigration and Refugee Protection Act* may be forthcoming. However, there is no evidence confirming that such claim or application is "in the process" of being determined or decided, which has been reasonably interpreted by the ministry as requiring a claim to have been made or an application filed. In reaching this conclusion, the panel notes that the appellant believes that her immigration lawyer is still in the process of gathering information.

The panel notes that while the appellant has provided compelling information regarding the spousal abuse she has suffered and the resulting loss of financial support and the need to move to a shelter, such circumstances are not a consideration when determining eligibility for income assistance under section 7 of the EAR.

Based on the available evidence, the panel concludes that the ministry was reasonable in determining that the appellant's circumstances are not any of those described in section 7 of the EAR and therefore the appellant is not eligible for income assistance under section 7.

#### Section 7.1 Exemption from citizenship requirements

To be exempt from the citizenship requirements, **all** five of the circumstances described in section 7.1 must exist. The ministry accepted that two of the circumstances exist met because the appellant is a sole applicant and has separated from an abusive spouse. The panel concludes that the ministry was reasonable when determining that none of the remaining three circumstances apply to the appellant.

First, the appellant does not meet the requirement of having a dependent child who is a Canadian citizen.

Second, there is insufficient evidence to establish that the appellant has applied for status as a permanent resident under the *Immigration and Refugee Protection Act*, though that may happen in the future.

Third, the information provided by the appellant does not establish that the appellant cannot readily

leave British Columbia for any of the following reasons:

- (i) leaving would contravene a court order or other arrangement respecting the custody, guardianship or access rights regarding the appellant's child;
- (ii) there are unresolved issues of custody, guardianship or access respecting a person who resides in British Columbia and the appellant's child, or
- (iii) the appellant or her child is being treated for a medical condition and leaving British Columbia would result in imminent danger to the physical health of either of them.

As only two of the five circumstances described in section 7.1 exist, and again noting that **all** of the circumstances described in section 7.1 must exist in order to be exempt from the citizenship requirements of section 7, the panel concludes that the ministry was reasonable to determine that the appellant is not exempt from the citizenship requirements of section 7.

**Conclusion**

While the panel is sympathetic to the appellant's circumstances and understands that her priority is the well-being of herself and her child, the legislation only allows for the provision of income assistance if the requirements of section 7 or 7.1 of the EAR are met. For the reasons above, the panel concludes that the reconsideration decision denying the appellant income assistance because the requirements of section 7 or 7.1 of the EAR were met was a reasonable application of the legislation in the circumstances of the appellant.

Accordingly, the reconsideration decision is confirmed and the appellant is not successful on appeal.

## **Relevant Legislation**

### **Employment and Assistance Regulation**

#### **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 resident 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.

#### **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.



APPEAL NUMBER  
2020-00173

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)       UNANIMOUS       BY MAJORITY

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister  
for a decision as to amount?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Jane Nielse

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/07/21

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/21

PRINT NAME

Jeremy T. Scott

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/07/21