Federal Court  Cour fédérale

Date: 20170707

Docket: IMM-4730-16

Citation: 2017 FC 665

Ottawa, Ontario, July 7, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

MARILOU TAYLO ANATA
MARLON TAYLO ANATA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for judicial review of the decision of an immigration officer [Visa Officer] at the Case Processing Centre in Vegreville [CPCV], dated February 22, 2016 [Decision], which removed Marlon Taylo Anata [Male Applicant or Marlon] from Marilou Taylo Anata's

[Principal Applicant] application for permanent residence under the Live-in Caregiver Class [LCC].

II. BACKGROUND

[2] The Principal Applicant is a 49-year-old citizen of the Philippines who entered Canada on April 3, 2012 under a work permit as a Live-In Caregiver. On March 6, 2013, the Principal Applicant submitted an application for permanent residence that included the Male Applicant as a dependent. At the time of the application, the Male Applicant was 22-years-old and enrolled in university.

[3] After reviewing the application, the Visa Officer informed the Principal Applicant by a procedural fairness letter dated October 8, 2015 that the Male Applicant was not an eligible dependent family member because he had not been continuously enrolled as a student since turning 22-years-old. In the application, the Male Applicant had declared that he had finished school and had been employed since September 2013. The procedural fairness letter provided the opportunity to submit additional information within sixty days.

[4] On February 22, 2016, the Visa Officer noted that the Applicants had not responded to the procedural fairness letter and disassociated the Male Applicant from the application.

III. DECISION UNDER REVIEW

[5] A decision sent from the Visa Officer to the Applicants by letter dated October 8, 2015 determined that the Male Applicant did not qualify for immigration to Canada as an eligible dependent family member of the Principal Applicant.

[6] Based on the information in the declaration form submitted by the Male Applicant, the Visa Officer concluded that the Male Applicant was not eligible because he had not been continuously enrolled as a student since turning 22-years-old at the time of the application. Instead, the Male Applicant had worked as a Customer Account Executive for Transcom Asia. The letter provided the Applicants with an opportunity to respond with additional information within sixty days.

[7] In the Global Case Management System [GCMS] notes, the Visa Officer noted in an entry dated October 9, 2015 that the Male Applicant was 23-years-old at the time the application was received on March 6, 2013. Since the Male Applicant had declared he had been working since September 2013, the Visa Officer determined that he was not a student after turning 22-years-old and could not be considered a dependent of the Principal Applicant.

[8] Subsequent entries dated February 22, 2016 noted that the Applicants had not responded to the procedural fairness letter and the Male Applicant was disassociated from the application, effective February 21, 2016, on the basis that he was not an eligible family member.

[9] On the same day that the Male Applicant was disassociated from the application, the Applicants received a letter from Citizenship and Immigration Canada [CIC] addressed to the Principal Applicant and all of her dependents, including the Male Applicant, advising that their application for permanent residence was approved and instructing the Principal Applicant to attend a final interview on March 10, 2016.

[10] The Applicants claim that they did not receive the procedural fairness letter as it was sent to their representative in Canada and was not forwarded to them due to inadvertence. The Applicants allege they were informed about the Male Applicant's disassociation from the permanent residence application by a telephone call on August 25, 2016. Upon finding out that a procedural fairness letter had been issued, the Applicants' then-representatives contacted CIC to seek review of the decision to disassociate the Male Applicant.

IV. ISSUES

[11] The Applicants raise the following issue in this application:

> Is the Visa Officer's Decision to remove the Male Applicant as a dependent of the Principal Applicant unreasonable?

V. STANDARD OF REVIEW

[12] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a

satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[13] A visa officer's determination of whether an applicant meets the definition of a "dependent child" is reviewable on the reasonableness standard: *Shomali v Canada (Citizenship and Immigration)*, 2017 FC 1 at para 12 [*Shomali*].

[14] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at paragraph 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[15] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] are relevant in this proceeding:

Definition of family member

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

[…]

Interpretation

2 The definitions in this section apply in these Regulations

[…]

dependent child, in respect of a parent, means a child who

(a) has one of the following relationships with the parent, namely,

(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or

Définition de membre de la famille

1 (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 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).

[…]

Définitions

2 Les définitions qui suivent s'appliquent au présent règlement.

[…]

enfant à charge L'enfant qui :

a) d'une part, par rapport à l'un de ses parents :

(i) soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,

(ii) is the adopted child of the parent; and

(b) is in one of the following situations of dependency, namely,

(i) is less than 19 years of age and is not a spouse or common-law partner, or

(ii) is 19 years of age or older and has depended substantially on the financial support of the parent since before the age of 19 and is unable to be financially self-supporting due to a physical or mental condition. (*enfant à charge*)

[…]

Family members — requirement

114 The requirement with respect to a family member of a live-in caregiver applying to remain in Canada as a permanent resident is that the family member was included in the live-in caregiver's application to remain in Canada as a permanent resident at the time the application was made.

[…]

Conformity — applicable times

115 The applicable requirements set out in

(ii) soit en est l'enfant adoptif;

b) d'autre part, remplit l'une des conditions suivantes :

(i) il est âgé de moins de dix-neuf ans et n'est pas un époux ou conjoint de fait,

(ii) il est âgé de dix-neuf ans ou plus et n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre de ses parents depuis le moment où il a atteint l'âge de dix-neuf ans, et ne peut subvenir à ses besoins du fait de son état physique ou mental. (*dependant child*)

[…]

Exigence applicable aux membres de la famille

114 L'exigence applicable à la demande de séjour à titre de résident permanent d'un membre de la famille d'un aide familial est que l'intéressé était visé par la demande de séjour de ce dernier à titre de résident permanent au moment où celle-ci a été faite.

[…]

Application

115. Les exigences applicables prévues aux articles 112 à

sections 112 to 114.1 must be met when an application for a work permit or temporary resident visa is made, when the permit or visa is issued and when the foreign national becomes a permanent resident.	114.1 doivent être satisfaites au moment où la demande de permis de travail ou de visa de résident temporaire est faite, au moment de leur délivrance ainsi qu'au moment où l'étranger devient résident permanent.

VII. ARGUMENT

A. *Applicants*

[16] The Applicants submit the Decision is unreasonable and is based on a misapprehension of the evidence. The Visa Officer erred in finding that the Male Applicant had not been a student since turning 22-years-old and, consequently, was not an eligible dependent at the time of the application.

[17] The Applicants argue that, since the application is an application for permanent residence under the LCC and was filed prior to August 1, 2014, transitional provisions apply. Accordingly, the Male Applicant should have been considered under the previous definition of a dependent child, which, according to Operational Bulletin 588 [OB 588], includes a child who is over 22-years-old and a full-time student dependent on a parent. OB 588 also provides that the age locks-in on the date the application was received, which is March 6, 2013 in this case. Since the Male Applicant attended university from June 9, 2009 until September 2013, the Applicants submit that he qualified as a dependent child at the time of the application. The Visa Officer's

determination, which refers specifically to the time of the application and not the time of assessment, is incorrect.

[18] In support of this argument, the Applicants seek to distinguish *Canada (Citizenship and Immigration) v Hamid*, 2006 FCA 217 [*Hamid*] from the present case. They say that *Hamid* is not applicable because the circumstances in that case involved a child of a federal skilled worker, not a child of a live-in caregiver. Accordingly, the jurisprudence on whether student status is locked-in is distinguished. However, even if *Hamid* is applicable, there is a discrepancy between *Hamid* and OB 588. Consequently, the Applicants submit that the Decision is based upon a misapplication of the evidence and is unreasonable.

B. *Respondent*

(1) Definition of "Dependent Child"

[19] The Respondent submits that the Male Applicant did not meet the definition of a "dependent child" because he was not "actively pursuing a course of academic, professional or vocational training on a full-time basis" at the time the application was determined. Instead, as he declared in the permanent residence application, the Male Applicant was employed from September 2013 to October 2014.

[20] The jurisprudence confirms that the criteria under s 2(b) of the *Regulations* apply from the date the application is received to the date of the determination. In *Hamid*, above, the Federal Court of Appeal held that the age of a proposed dependent may be "locked-in" at the

time the application is filed, but the other criteria set out in the provision are not locked-in and must be assessed as of the date the decision is made. *Hamid* has been consistently applied to find that the status of a proposed dependent child is considered on the date of determination: *Dono v Canada (Citizenship and Immigration)*, 2015 FC 400 at para 7 [*Dono*] ; *Shomali*, above, at paras 17-18.

[21] The approach in *Hamid* is also consistent with the operations manual, which advises officers that "[c]hildren who were full-time students may no longer qualify at visa issuance because they have graduated or left school or because a parent no longer supports them." Due to the fact that the Male Applicant was employed in the months preceding the determination of the application and was not enrolled in full-time academic, professional, or vocational training, he did not meet the definition of a dependent child.

(2) Context of "Dependent Child"

[22] The Respondent takes issue with the Applicants' argument that the definition of a "dependent child" is different in the context of a permanent residence application under the LCC.

[23] First, the Applicants offer no authority or rationale that the statutory definition should be afforded a different meaning based on the type of application. Additionally, this argument runs counter to the basic principle of statutory interpretation that, within a piece of legislation, the same words are to be given the same meaning: *R v Zeolkowski*, [1989] 1 SCR 1378 at 1387 [*Zeolkowski*].

[24] Second, the jurisprudence indicates that the definition of a dependent child, as set out by the Federal Court of Appeal, is authoritative in the context of other types of permanent resident applications: *Miao v Canada (Citizenship and Immigration)*, 2009 FC 1288 at paras 16-20; *Martinez v Canada (Citizenship and Immigration)*, 2014 FC 109 at para 19.

[25] Therefore, the Respondent submits that there is no merit to the Applicants' argument that the definition of a dependent child differs under the LCC as opposed to the federal skilled worker class as considered in *Hamid*, above, so that the Male Applicant did not need to satisfy the requirements at the time of determination.

(3) Procedural Fairness

[26] The Respondent submits that there was no breach of procedural fairness.

[27] It was clear that the Male Applicant did not meet the requirements of the legislation according to his own declaration. He stated that he was employed, and not enrolled in full-time studies, at the time of the permanent residence application in a statement he declared to be accurate and complete. As such, there was no obligation for the Visa Officer to inquire further because the concern arose directly from the Male Applicant's own evidence and statutory requirements: *Dhillon v Canada (Citizenship and Immigration)*, 2009 FC 614 at para 30.

[28] There was also no obligation for the Visa Officer to provide further opportunities to clarify evidence that has been submitted since the onus was on the Applicants to file a complete

and clear application with supporting documentation: *Duc Tran v Canada (Citizenship and Immigration)*, 2006 FC 1377 at paras 25-35.

[29] Nonetheless, a procedural fairness letter was sent in the present case. Although the Applicants claim the letter was not received due to their counsel's error, this does not constitute a breach of procedural fairness by the Visa Officer. The onus to act is on those who apply for status in Canada: *Siddiqi v Canada (Citizenship and Immigration)*, 2012 FC 55 at paras 13, 17, 20.

(4) Redetermination

[30] The Respondent contends that there is, in any event, no point in having this matter re-determined.

[31] The Court has held that there is no purpose in sending an assessment back for determination if, after correcting the error, the application would still fail: *Ramenzanpour v Canada (Citizenship and Immigration)*, 2016 FC 751 at para 29.

[32] The Male Applicant cannot meet the definition of a dependent child given that he was employed and was not enrolled in full-time studies when the application was determined. Although the Male Applicant could have requested an exemption on the basis of humanitarian and compassionate [H&C] considerations, he did not do so. Accordingly, if the matter were sent back for determination, he would still not meet the definition and the application would still fail.

C. *Applicant's Further Argument*

(1) Misapprehension of Evidence

[33] The Applicants further submit that there is a clear misapprehension of the facts in this case.

[34] The Male Applicant's declaration form indicated that he attended university from June 2009 to September 2013, which is the relevant assessment period, as recognized by the Visa Officer. He did not become employed until September 2013, which was after the submission of the application. Accordingly, at the relevant assessment period, the Male Applicant was a student.

[35] Although the Visa Officer suggests that the consideration of whether the Male Applicant qualified as a dependent was assessed at the time of the application, the GCMS notes state otherwise:

> …HE HAS BEEN WORKING SINCE SEPT2013. AT THAT POINT THE APPLICANT WOULD HAVE BEEN 23 YEARS OF AGE. THE APR WAS RECEIVED AT CPCV ON 06MAR13. MARLON THEREFORE WOULD OF [*sic*] NOT BEEN A STUDENT SINCE TURNING 22 YEARS OF AGE. THEREFORE MARLON CANNOT BE CONSIDERED TO BE A DEPENDENT…

[36] Additionally, the procedural fairness letter indicates that the Visa Officer assessed the matter of the Male Applicant's qualification as a dependent at the date the application was submitted: "[The Male Applicant] cannot be included in your application because he has not

been continually enrolled as a student since turning 22-years of age at the time your application for Permanent Residence was submitted."

[37] Consequently, the issue is not whether the Male Applicant was a dependent at the date of assessment, as the record does not demonstrate this was in the mind of the Visa Officer or that the Decision was based upon it. The Visa Officer assessed the Male Applicant's qualification as a dependent on the date the application was received and erroneously found that he was not enrolled in full-time studies at the time.

(2) Inconsistency

[38] Alternatively, the Applicants submit that the application of *Hamid*, above, is inconsistent with OB 588. *Hamid* states that the other criteria for a determination of dependency are not "locked-in" and must be assessed at the time the decision is made. Subsequent jurisprudence has applied *Hamid* to other categories of permanent residence applications. However, OB 855 states that a child can be processed as a dependent if, on the date the application is received, he or she is over 22-years-old and a full-time student dependent on a parent. Moreover, the Applicants argue that there are no post-*Hamid* decisions that involve the issue presented by OP 855; that is, the instructions that children of applicants for permanent residency under LCC can be processed as dependents if they are over 22-years-old and a full-time student dependent on a parent at the time of the application.

[39] *Terente*, above, can be distinguished because in that case, the applicant's husband was subject to a removal order. In that context, family members may be included in a caregiver's

application and will become permanent residents if the caregiver becomes a permanent resident and the family members are not inadmissible. All requirements must be met at the time the application is made, when the visas are issued, and when the foreign nationals become permanent residents.

[40] Consequently, the Applicants take the position that *Hamid* and subsequent related jurisprudence indicates the term "lock-in" refers to age, not educational status. OB 855 supports the argument that educational status can be locked-in.

(3) Redetermination

[41] The Applicants submit that a re-determination of this matter would serve a useful purpose because it involves the interpretation of a qualification of a dependent included in an application for permanent residency pursuant to the LCC and there has been a misapprehension on facts.

VIII. ANALYSIS

[42] At the review hearing before me in Toronto, the Applicants raised some procedural fairness concerns in addition to the misapprehension of fact and law issues set out in their written submissions.

A. *Procedural Fairness*

[43] The Applicants say that the process that led to the Decision shows inconsistent findings about the Male Applicant's status as a dependent child and that, in the end, the Applicants were not provided with a final written decision.

[44] The record reveals that the Male Applicant, in his Background Declaration of 29 October, 2014, disclosed he had studied at West Visayas State University in the Philippines from June 2009 until September 2013. He was then employed in the BPO industry as a Customer Account Executive with Transcom Asia from September 2013 until October 2014. He declared that this information was true, complete and correct.

[45] The application for permanent residence submitted by the Principal Applicant on March 6, 2013 included the Male Applicant as a dependent child.

[46] A letter of February 22, 2016 advised the Applicants that their application had been approved and asked the Principal Applicant to attend an interview on March 10, 2016, at which the Male Applicant's name, at the request of the Principal Applicant, was inserted on the list of dependents.

[47] Clearly, the letter of February 22, 2016 which said that "Your application for permanent residence has been approved" meant that it was approved subject to final checks; otherwise there would have been no need for our interview or the request that the Applicants bring their

immigration documents. So, reasonably speaking, the Applicants cannot claim to have been misled by the letter of February 22, 2016.

[48] The Applicants attended the interview on March 10, 2016 and, at the request of the Principal Applicant, the Visa Officer inserted the Male Applicant's name on the list of dependents.

[49] The Principal Applicant may have believed that the permanent residence application had been finally approved and that the Male Applicant had been accepted as a dependent child, but in the full circumstances of the case, it is clear that the documentation had to be checked before a final decision could be made.

[50] Clearly, when the documentation was checked, the information contained in the Male Applicant's Background Declaration gave rise to a problem of whether he could be considered as a dependent child. And this is why CIC sent a procedural fairness letter to the Principal Applicant on October 8, 2015. That letter makes it clear that CIC was continuing to process the Application for Permanent Residence in Canada but, in order to complete that processing, further information was required regarding the Male Applicant to determine if he was an eligible family member.

[51] On the basis of the documentation submitted (which included the Male Applicant's Background Declaration) the Applicants were told that the Male Applicant:

> …cannot be included in your application because he has not been continually enrolled as a student since turning 22 years of age at

> the time your Application for Permanent Residence was submitted. As per the IMM-5669 Schedule A Background/Declaration form you submitted on his behalf, he was working a *(sic)* customer account executive for Transcom Asia at the time you submitted this Application for Permanent Residence.

[52] The Principal Applicant was given the usual 60 days to respond and was advised that "Failure to inform us may result in the refusal of your application." The Applicants did not respond.

[53] Clearly, this documentation alone gives the Applicants the reasons for the Decision: the Male Applicant did not qualify as a dependent child as evidenced by his own Background Declaration. On its face, the fairness letter contains an inaccuracy. The Male Applicant was not working as a customer account executive "at the time" the application was submitted, which was March 2013. He began working in September 2013. The procedural fairness letter should have said that he had been working "since" the application was submitted. If this was not understood by the Applicants, all they needed to do was to respond to the letter and the issued would have been clarified for them.

[54] They did not respond because their counsel at the time the letter was sent did not bother to open the letter or tell the Applicants of its existence. So the Applicants cannot say they were misled by anything in the letter. In any event, the facts are clear and the decision regarding the Male Applicant could have been made without the need for a fairness letter.

[55] As the GCMS notes show, the Principal Applicant was contacted on the 20th of August, 2016 and told that the Male Applicant had been removed from the Application and she was advised to direct any inquiries to CPCV for clarification.

[56] On November 1, 2016, then legal counsel emailed the Director of the CPCV to seek a review of the decision to remove the Male Applicant from the permanent residence application on the basis that the Visa Officer had applied the wrong lock-in date for determining that the Male Applicant was a dependent child. So the Applicants were well aware of the reasons for the Male Applicant's removal at that time. The request was denied on November 4, 2016.

[57] Rule 9 reasons were then requested which revealed the following:

> BF REVIEW. AS PER THE IMM5669 DATED 29OCT14 FOR THE O/S SON, MARLON ANATA, HE HAS BEEN WORKING SINCE SEP2013. AT THAT POINT THE APPICANT WOULD HAVE BEEN 23 YEARS OF AGE. THE APR WAS RECEIVED AT CPCV ON 06MAR13. MARLON THEREFORE WOULD OF NOT BEEN A STUDENT SINCE TURNING 22 YEARS OF AGE. THEREFORE MARLON CANNOT BE CONSIDRED TO BE A DEPENDENT. SENT THE PA A PROCEDURAL FAIRNESS LETTER INFORMING HER OF THIS DECISION. THE OTHER 2 DEPENDENTS APPEAR TO BE ELIGIBLE. IDENTITY AND RELATIONSHIP ESTABLISHED FOR THE 2 O/S DEPENDENTS ILOMA AND EDWIN. REFERRED TO THE SDS FOR SECURITY REVIEW X2. OUTSTANDING: SECURITY REVIEW X2. NOTE MED RESULTS FOR ILOMA AND EDWIN WILL REQUIRE EXTENSIONS. REFERRING TO THE SDS.

[58] These reasons make it abundantly clear why the Male Applicant cannot be considered as a dependent child and why he was removed from the application.

[59] In my view, then, the Applicants have not been dealt with unfairly. They must have understood that any provisional acceptance or approval was subject to final checks. Had they opened the procedural fairness letter, they would have understood that there was a problem with the Male Applicant's status as a dependent child and they would have been able to deal with it accordingly. And, once they obtained the GCMS notes, they must have fully understood the reasons for the Male Applicant's removal from the application.

[60] The Applicants argued verbally before me that the Visa Officer could have considered H&C factors. However, the application for permanent residence did not contain a request that H&C factors be considered, and no H&C arguments were included in the application. The Visa Officer was under no obligation to consider H&C issues without such a request. If the Applicants mean they could have made H&C submissions had they known that the Male Applicant had been removed from the application, the Applicants were alerted to the problems in the fairness letter prior to the Male Applicant's removal. Had they, or their representative at the time, bothered to open the letter they would have been fully aware (notwithstanding the odd wording) that CIC felt that the Male Applicant did not qualify as a dependent child, and they could have provided any response they wished to make before a final decision was rendered.

B. *Reasonableness*

[61] The GCMS notes reveal that the Male Applicant could not be considered as a dependent child because he had been working since September 2013 (at which time he would have been 23 years of age). The application for permanent residence was received on March 6, 2013.

[62] The Applicants argue that the record clearly shows that the Male Applicant was a dependent child and "did in fact meet the requirements during the relevant assessment period." The Applicants basis for this assertion is as follows:

> 28. In the present case, the Officer made a clear error of fact. On the IMM-5669 form, Schedule A – Background/Declaration, Marlon is declared to have attended a University from June 9, 2009 (he turned 22 on October 9, 2012) until September 2013. Specifically, the IMM 5669 form indicates that Marlon was "Studying in a University with a course of BS Hotel and Restaurant Service" in the Philippines, during the relevant assessment period, which is the date I filed my application for permanent residence. The Officer however stated in the GCMS notes that Marlon was working since September 2013 and that he was not a student since turning 22 years of age at the time the Principal Applicant submitted her application for permanent residence. In addition, as indicated on the form, the Applicant only commenced employment in September 2013.
>
> 29. The issue in this case is not whether or not the Applicant was dependent on the date the application for permanent residence was assessed or determined, as there is no indication from the record that this was an issue in the mind of the Officer or that the decision was based upon it. The Officer found only that the Applicant was not a dependent <u>on the date the Principal Applicant's application for permanent residency was filed</u>, being on March 6, 2013. Therefore, the jurisprudence on whether or not student status is locked in is distinguished. Moreover, the Federal Court of Appeal's decision in *Hamid v Canada (Minister of Citizenship and Immigration)*, does not apply here because the Court certified the question in the context of a child of a federal skilled work, and not in the context of a child of an application under the Live-In-Caregiver program. The Federal Court of Appeal answered the question certified as the following:
>
> *A child of a federal skilled worker who has applied for a visa, who was 22 years of age or over, and who was considered dependent on the skilled worker at the date of application by virtue of his or her financial dependence and full-time study, but who does not meet the requirements of a "dependent child" within the meaning of <u>subparagraph 2</u>(b)(ii) of the <u>Immigration and Refugee Protection Regulations, SOR/2002-227</u>, when the visa application is determined, cannot be included as part of his or her parent's application for permanent residence in Canada.*

> *Hamid v Canada (Minister of Citizenship and Immigration)*, [2007] 2 FCR 152, 2006 FCA 217.

[63] The Male Applicant completed and signed the Schedule A, Background/Declaration on October 29, 2014 in which he declared that he had finished his schooling and had been "employed in the BPO industry as a customer account executive with Transcom Asia" from September 2013 to October 2014. This does not mean, of course, that the Male Applicant was not a student when the permanent residence application was filed on March 6, 2013, but I see no misapprehension of the facts. The GCMS notes make it clear that the Male Applicant "has been working since September 2013," which accords with the evidence, so that he "would of (sic) not been a student since turning 22 years of age" and so "cannot be considered to be a dependent." He was a student when he turned 22, but he had not continuously been a student since last time, which seems to me to be the obvious meaning of the notes which accurately identify that he ceased to be a student and started working in September 2016.

[64] The Court has consistently applied *Hamid*, above, to the effect that the status of a proposed dependent child should be considered when the application is determined, and not when it is filed. See, for example, *Dono*, above, at para 7 which states that:

> [7] […] the applicant no longer met the definition of "dependent child" since he had ceased being enrolled in a post-secondary institution on an on-going basis between the time that the application was filed and the time that a decision was made.

[65] The Applicants' attempts to distinguish *Hamid* on the basis that theirs was a live-in caregiver application and not a skilled-worker application are unconvincing.

[66] There is nothing in the jurisprudence or the Rules or Guidelines relevant to a live-in caregiver application to suggest that "dependent child" in this context should have a different meaning, or should be assessed at the time the application is submitted, and should not take into account what happens between the time of the application and the time of the decision. The determination of "dependent child" as set out in *Hamid* has been consistently applied in a variety of contexts and the Applicants have put forward no principled reasons why it should differ in the context of a caregiver application. See, for example, *Dono v Canada (Minister of Citizenship and Immigration)*, 2015 FC 400, at para. 7; *Shomali v Canada (Minister of Citizenship and Immigration)*, 2017 FC 1, at paras. 17 – 18; *Sha v Canada (Minister of Citizenship and Immigration)*, 2010 FC 434, at para. 23; *Miao v Canada (Minister of Citizenship and Immigration)* 2009 FC at paras. 16 – 20; and *Martinez v Canada (Minister of Citizenship and Immigration)* 2014 FC 109 at para. 19.

[67] One principled reason why "dependent child" should be assessed in the same way irrespective of the kind of application at issue, is that, as a basic principle of statutory interpretation, the same words in a statute should be given the same meaning. See, *Zeolkowski*, above, and R Sullivan, *Statutory Interpretation*, Irwin Law, 2016, p. 147.

IX. Conclusion

[68] In short, I can find no reviewable error with the Decision. This is not to say, of course, that this case does not elicit a high degree of sympathy. The Principal Applicant and her other children have been accepted but the Male Applicant has now been left behind. However, although more onerous, there are other approaches to re-uniting this family.

[69] Counsel concur there are no questions for certification and the Court agrees.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed;

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4730-16
STYLE OF CAUSE:	MARILOU TAYLO ANATA AND MARLON TAYLO ANATA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 1, 2017
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	JULY 7, 2017

APPEARANCES:

Sumeya Mulla	FOR THE APPLICANTS
Catherine Vasilaros	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Nathalie G. Drouin Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT