

Federal Court



Cour fédérale

Date: 20230322

Docket: IMM-128-22

Citation: 2023 FC 401

Ottawa, Ontario, March 22, 2023

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ASIF TUFAIL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a November 1, 2021 decision rendered by a Migration Officer at the Embassy of Canada, Family Reunification Unit, in London, UK refusing the Applicant's application for permanent residence under the family class as a dependent child of his father.

[2] Asif Tufail was a 30-year old citizen of Pakistan when his father applied to sponsor him for permanent residence in Canada as a member of the family class as a dependent child. Mr. Tufail suffers from polio. At the time of the application, he lived with his 60-year old mother in Pakistan.

[3] Pursuant to paragraph 117(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2022-227, a foreign national is a member of the family class if, with respect to a sponsor, the foreign national is a dependent child of the sponsor. That term is defined in section 2:

dependent child, in respect of a parent, means a child who **enfant à charge** L'enfant qui :

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| <p>(a) has one of the following relationships with the parent, namely,</p> <p>(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</p> <p>(ii) is the adopted child of the parent; and</p> | <p>a) d'une part, par rapport à l'un de ses parents :</p> <p>(i) soit en est l'enfant biologique et n'a pas été adopté par une personne autre que son époux ou conjoint de fait,</p> <p>(ii) soit en est l'enfant adoptif;</p> |
| <p>(b) is in one of the following situations of dependency, namely,</p> <p>(i) is less than 22 years of age and is not a spouse or common-law partner, or</p> <p>(ii) is 22 years of age or older and has depended substantially on the financial support of the parent since before</p> | <p>b) d'autre part, remplit l'une des conditions suivantes :</p> <p>(i) il est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait,</p> <p>(ii) il est âgé de vingt-deux ans ou plus et n'a pas cessé de dépendre, pour l'essentiel, du soutien financier de l'un ou l'autre</p> |

attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition. (*enfant à charge*)

de ses parents depuis le moment où il a atteint l'âge de vingt-deux ans, et ne peut subvenir à ses besoins du fait de son état physique ou mental. (*dependent child*)

[4] Accordingly, as Mr. Tufail was 30 years old at the time of the application, he was required to establish that he met two prerequisites in order to be found to be a dependant child under the Regulations. He had to establish that (1) he has depended substantially on the financial support of his father since before attaining the age of 22 and (2) he is unable to be financially self-supporting due to a physical or mental condition.

[5] The officer in the decision under review found that Mr. Tufail had established that he received his father's support only after he was older than 22. The officer also found that although he has some physical limitations, he had failed to establish that he could not support himself.

[6] Additionally, the officer noted that Mr. Tufail was excluded from the family class pursuant to paragraph 117(9)(d) of the Regulations because his "sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined." Mr. Tufail sought relief from this provision on humanitarian and compassionate grounds.

[7] I find the officer's decision to be reasonable on both issues that the officer was required to address.

[8] First, I agree with the Minister's submission that the evidence submitted failed to establish that Mr. Tufail's father supported him before he was 22 years old.

The Applicant's own evidence indicated that he has not been dependent on his father's financial support since before he turned 22. The Applicant's mother stated in her affidavit that the Applicant's father's support began in 2016, long after the Applicant turned 22. Indeed, the money transfer receipts submitted by the Applicant were all dated 2018 or later. There was evidence that the Applicant's father may have provided his mother 'maintenance payments' as early as 2004, but those payments were nominal—approximately \$16 CAD per month.

[9] I reject the submission of counsel that his mother was mistaken in her evidence as there is nothing before the Court from her to that effect. Moreover, it was reasonable for the officer to conclude that payments of \$16 CAD per month can hardly establish that Mr. Tufail "depended substantially" on his father's financial support.

[10] I further agree with the Minister that the onus is on the Applicant to establish that Mr. Tufail could not be financially self-sufficient in Pakistan.

[11] Mr. Tufail graduated high school and completed an auto-mechanic's diploma. His mobility issues may limit his ability to do certain jobs that require physical labour; however, as the officer noted, there are many jobs for which his mobility issues will be irrelevant. The medical evidence indicated that he is "mobile independently."

[12] Although counsel pointed to country conditions as impairing his self-sufficiency, he does not point to any specific country condition evidence to support this argument. The only country condition evidence contained in his application record discusses Pakistan's efforts to eradicate polio, but does not discuss the job prospects for those living with polio.

[13] Lastly, I find that the officer's analysis of H&C factors was reasonable. They did not overcome his exclusion from the family class.

[14] Counsel lists the H&C factors - the financial support from his father, his mother's age, his disability, and his purported inability to find employment - and submits that the officer erred. This amounts to an argument premised on dissatisfaction with the weighing of these factors by the officer.

[15] Mr. Tufail's physical condition should not materially limit his ability to support himself in Pakistan. As observed by the Minister, in his application form, he answered 'no' to the question asking whether he had any significant physical disorders. There is no reason why his father cannot continue to support him from abroad. Although it was claimed that his mother could no longer take care of him because she is old and ill, she is only 60 years old, and there is no evidence about the nature of any medical condition that affects her ability to care for her son as she has done for many years.

[16] Because the decision under review is reasonable and justified by a thorough analysis of the application, this application must be dismissed.

[17] No question was proposed for certification.

JUDGMENT in T-128-22

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-128-22

STYLE OF CAUSE: ASIF TUFAIL v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 20, 2023

JUDGMENT AND REASONS: ZINN J.

DATED: MARCH 22, 2023

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