Federal Court  Cour fédérale

**Date: 20230920**

**Docket: IMM-9235-22**

**Citation: 2023 FC 1254**

**Ottawa, Ontario, September 20, 2023**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**IGNACIO JR ORTIZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# REASONS FOR JUDGMENT AND JUDGMENT

## I. Overview

[1] The Applicant seeks judicial review of the refusal of his application to sponsor his son as a dependent child. I dismiss the application because the Applicant failed to exercise his right of appeal to the Immigration Appeal Division [IAD] under section 63(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Pursuant to paragraph 72(2)(a) of the *IRPA*, an

appeal to the IAD must be exhausted before an application for judicial review will be entertained.

## II. **Analysis**

[2] By letter dated July 18, 2022, an officer of Immigration, Refugees and Citizenship Canada [the Officer] refused the Applicant's sponsorship application because his son did not meet the statutory definition of a "dependent child" under the *Immigration and Refugee Protection Regulations* [*IRPR*]. The son was 22 years old when the Applicant submitted the undertaking in October 2020 and he was financially self-supporting. As a result, the Officer determined that the son was not a member of the family class under paragraph 117(1)(b) of the *IRPR* and was ineligible for sponsorship.

[3] Despite being advised that he had the right to appeal the Officer's decision to the IAD pursuant to subsection 63(1) of the *IRPA*, the Applicant did not do so. Instead, he sought judicial review challenging the Officer's decision on grounds of procedural fairness and reasonableness.

[4] I agree with the Respondent that this application must be dismissed because the Applicant failed to exercise the statutorily prescribed right to appeal under the *IRPA*. Judicial review is an avenue of last resort and should not be brought until all available and adequate administrative remedies have been pursued: *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 15 at para 51; *Lin v Canada (Public Safety and Emergency Preparedness)*, 2021 FCA 81 at para 5; *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paras 30-33.

[5] In this case, as the sponsor of a foreign national as a member of the family class, the Applicant had a right to appeal the Officer's refusal to issue a permanent resident visa to the IAD: *IRPA*, s 63(1). Paragraph 72(2)(a) of the *IRPA* provides that an application for judicial review "may not be made until any right of appeal that may be provided by this Act is exhausted".

[6] The jurisprudence is clear that a sponsor must exhaust their right of appeal under subsection 63(1) before applying for judicial review: *Somodi v Canada (Citizenship and Immigration)*, 2009 FCA 288 at paras 21-23, 29 [*Somodi*]; *Watzke v Canada (Citizenship and Immigration)*, 2022 FC 323 at paras 6-7; *Zheng v Canada (Citizenship and Immigration)*, 2015 FC 796 at paras 15-17; *Landaeta v Canada (Citizenship and Immigration)*, 2012 FC 219 at paras 24, 27-28; *Sadia v Canada (Citizenship and Immigration)*, 2011 FC 1101 at para 11.

[7] The Applicant's argument that he was precluded from appealing to the IAD because the Officer found that his son was outside of the family class is without merit. This Court rejected the very same argument in *Canada (Public Safety and Emergency Preparedness) v Martinez-Brito*, 2012 FC 438 [*Martinez-Brito*].

[8] In that case, the Minister challenged the IAD's jurisdiction to hear the appeal relying on the same jurisprudence as the Applicant does in this application: *Martinez-Brito* at paras 23-25, 33-35, 38-39. After a comprehensive analysis of the legislation and the jurisprudence, Justice Noël concluded that the IAD had jurisdiction to determine whether the visa officer erred in law

or fact or breached procedural fairness in finding that the foreign national was not a member of the family class: *Martinez-Brito* at paras 19-41.

[9] The Applicant further misinterprets this Court's decision in *Samra* v *Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16129 [*Samra*]. That decision does not stand for the proposition that the IAD has no jurisdiction to determine whether a foreign national is a member of the family class. Rather, in that case, the IAD refused the applications for permanent residence after it had determined the applicants were not members of the family class: *Samra* at para 2; *Martinez-Brito* at para 35. The jurisdictional issue arose because section 65 of the *IRPA* precludes the IAD from proceeding to consider humanitarian and compassionate grounds once it determines the sponsored foreign nation is outside the family class: *Samra* at para 11; *Martinez-Brito* at paras 27, 35.

[10] Under subsection 67(1) of the *IRPA*, the IAD has the requisite jurisdiction to consider all the Applicant's arguments advanced in this application, including: the Officer failed to respect the principle of family reunification, and the determination process was unfair. As this Court has held, it is the IAD's mandate to determine the validity of the sponsorship, not that of the Court: *Manesh v Canada (Citizenship and Immigration)*, 2014 FC 765 at para 43.

[11] Notably, in arguing the merits of the judicial review application, the Applicant relies on the IAD decision of *Vincent v Canada (Citizenship and Immigration)*, 2009 CanLII 84599 [*Vincent*]: Applicant's Memorandum of Fact and Law, at paras 16, 26. In that case, the IAD did not refuse jurisdiction of a sponsor's appeal of a visa officer's refusal to issue a permanent

resident visa. The IAD determined that the visa officer's decision was legally valid and that there had been no breach of procedural fairness in deciding that the sponsor's son was not a member of the family class: *Vincent* at paras 17, 23-31. This decision further undermines the Applicant's position that the IAD had no jurisdiction in this case.

## III. **Conclusion**

[12] Based on the foregoing, the application is dismissed because the Applicant failed to exercise his right of appeal in accordance with subsection 63(1) of the *IRPA.* As Justice Martineau aptly stated: "A party must not unduly appeal to the precious resources of the Court where another remedy is available and has not been exercised": *Huot v Canada (Citizenship and Immigration)*, 2011 FC 180 at para 16.

[13] The parties did not raise a question for certification and none arises in this case.

**JUDGMENT in IMM-9235-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Anne M. Turley"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-9235-22 |
| **STYLE OF CAUSE:** | IGNACIO JR ORTIZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | SEPTEMBER 13, 2023 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | TURLEY J. |
| **DATED:** | SEPTEMBER 20, 2023 |

**APPEARANCES:**

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| Asha Gafar | FOR THE RESPONDENT |

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