CITIZENSHIP AND IMMIGRATION

EXCLUSION AND REMOVAL

Inadmissible Persons

Judicial review of Immigration and Refugee Board of Canada, Immigration Appeal Division (IAD) decision (2018 CanLII 131134) finding that applicant having no right of appeal under *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act), s. 64(2) of immigration officer's decision dismissing spousal sponsorship application — Applicant, Canadian citizen, married to Sri Lankan citizen — Spouse's refugee protection claim dismissed — Officer later dismissing spousal sponsorship on grounds, *inter alia*, marriage not genuine, spouse inadmissible for serious criminality under Act, s. 36(1)(c) — *Faster Removal of Foreign Criminals Act*, S.C. 2013, c. 16 (FRFCA) amending Act, s. 64(2), expanding scope of criminally inadmissible individuals not having right of appeal to IAD — Applicant nevertheless filing appeal with IAD — Arguing, *inter alia*, that right of appeal to IAD "crystallized" when filing sponsorship application before amendments entering into force — IAD holding rather that appeal rights crystallized not by filing of sponsorship application but by decision on sponsorship application — Concluding that under Act, ss. 63(1) through 63(5), right of appeal to IAD crystallizing when decision made by relevant immigration authorities on variety of matters — Also reasoning that lock-in date being about locking in assessment criteria relevant to processing, making determination on application rather than crystallizing appeal rights — Concluding that applicant barred from appealing to IAD since amendments to s. 64(2) taking effect before applicant's sponsorship refused — Whether IAD committing reviewable error in determining that applicant not having right to appeal — IAD correctly, reasonably concluding that applicant having no right of appeal in matter herein — Terms of Act, s. 63(1), FRFCA, s. 32 supporting IAD's conclusion that applicant not enjoying right of appeal day before FRFCA entering into force — FRFCA transitional provisions, applicable provisions in Act having to be interpreted following modern approach to statutory construction — Intent in enacting s. 63(1) to ensure parallel process: once person applying to sponsor foreign national in prescribed manner receiving negative decision, that person enjoying right to appeal officer's decision — Filing of application in prescribed manner requirement for validity of application itself — "Prescribed manner" requirement is condition to be considered an applicant under s. 63(1), rather than an individual requirement to enjoy right of appeal under Act — Appeal to IAD subject to negative decision rendered by relevant decision maker — Right of appeal cannot be said to accrue, arise, vest, or "crystallize" before decision subject to appeal made — Supreme Court in *R. v. Puskas*, [1998] 1 S.C.R. 1207 (P*uskas*) holding that right cannot accrue, be acquired, or be accruing until all conditions precedent to exercise of right fulfilled — Sponsorship applicants not having accrued or accruing rights until all conditions precedent to exercise of right hoping to obtain fulfilled — FRFCA, s. 32 ensuring that any decision by which officer refusing sponsorship application rendered before amendment entered into force (i.e. before June 19, 2013) subject to broader appeal rights set forth in previous version of Act, s. 64(2) even if IAD seized with appeal after June 19, 2013 — Common law not necessarily having this effect absent transitional provision, given Court's consistent finding that IAD having to hear matters *de novo* notwithstanding law in force at time officer rendering decision — Application of *Puskas* not providing enough clarity as to render transitional provision superfluous — Use of explicit language in FRFCA, s. 33 insufficient to create presumption that Parliament's intent was for phrase "person who had a right of appeal under subsection 63(1) of the [Act]" to refer to every person filing sponsorship application in prescribed manner —

Language of Act, s. 63(1) clear: right of appeal arising after decision not to issue visa rendered — Had Parliament intended to ensure that applicant's appeal right vested when sponsorship application filed, could have used language in line with that of FRFCA, s. 29 instead of referring to moment at which "right of appeal" arising under Act, s. 63(1) — Amendments herein applied by legislature retrospectively — In present matter, applicant's appeal rights not yet vested — Legislative amendments retrospectively altering appeal right to which applicant entitled — That said, no general requirement of legislative prospectivity existing so long as legislature indicating its desired retroactive or retrospective effects — Here, desired retrospective effects clearly set forth in transitional provisions at issue by allowing only those with accrued rights of appeal to IAD to rely on previous legislation — "Lock-in principle" discussed in *Hamid v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 217 of no assistance to applicant — No basis for concluding that appeal rights to IAD "locked in" once sponsorship application filed — Applicant could have applied to Federal Court for leave, judicial review within 60-day delay set forth in Act, s. 72(2)(b) since decision issued by officer outside Canada — Application dismissed.

LAWRENCE V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-5201-18, 2019 FC 1248, Ahmed J., reasons for judgment dated October 2, 2019, 32 pp.)