

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Permanent Residents

Judicial review of Officer's decision declining family sponsorship application based on failure to satisfy minimum necessary income (MNI) requirements of *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 134 (IRPR) — Sponsorship application filed in January 2014 — Pursuant to IRPR, s. 134(1.1)(a), sponsor's income calculated on basis of income earned as reported in notices of assessment, or equivalent document, issued by Minister of National Revenue in respect of each of three consecutive taxation years immediately preceding date of filing sponsorship application — Officer citing Citizenship and Immigration Canada, *Operational Bulletin 561* (OB 651) in concluding relevant taxation years for MNI requirement were 2010, 2011, and 2012 — Application rejected for failure to satisfy MNI requirement for taxation year 2010 — Issue: Whether Officer's interpretation of IRPR incorrect, unreasonable — Officer erred in concluding that 2010 taxation year fell within meaning of one of the "three consecutive taxation years immediately preceding the date of filing of the sponsorship application" under IRPR, s. 133(1)(j)(i)(B) — IRPR, s. 133(1)(j)(i)(B) using precise, unequivocal language in defining taxation years to be considered as "the three consecutive taxation years immediately preceding the date of filing" [emphasis added] — Grammatical, ordinary meaning of "immediately" not supporting respondent's position that taxation year prior to the year of application is to be excluded from consideration of MNI in favour of earlier taxation year if National Revenue or CRA document is not available for taxation year prior to year of application — Regulatory Impact Analysis Statements not overriding grammatical, ordinary sense of the words as they are used within the scheme of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 and the Regulations — Officer's determination that 2010, 2011 and 2012 taxation years were the "three consecutive taxation years immediately preceding the date of filing" unreasonable — IRPR required Officer to consider taxation years 2011, 2012, and 2013 — — Officer also had the right, as a result of the delay in the processing of the application, to request, consider information relating to 2014 and 2015 taxation years when determining in 2016 whether MNI was met at the time of application and continued to be met — Respondent wrong to argue that failure to include CRA-issued documentation establishing income for 2013 at time of application leading to only one reasonable outcome, i.e. that application incomplete — Prior to final decision, applicant placing before decision maker the very evidence that was absent in the initial application — May well have been reasonably open to Officer to conclude that application complete and could be processed — Officer's failure to address this question and reach a conclusion on CRA-issued documentation submitted by applicant undermining transparency, reasonableness of the decision — Application allowed.

NEMATOLLAHI V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-4233-16, 2017 FC 755, Gleeson J., judgement dated August 4, 2017, 22 pp.)