

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Permanent Residents

Humanitarian and Compassionate Considerations

Judicial review of decision by respondent refusing to process applicants' application for permanent residence for biological mother on humanitarian, compassionate (H&C) grounds — Applicants, Canadian citizens, adopted by other family members after death of biological father, coming to Canada — Submitting H&C application for permanent residence from outside of Canada for biological mother pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), s. 25(1) — Application accompanied by application, forms for sponsoring biological mother for permanent residence as parent or grandparent — Reason for H&C application was that biological mother excluded from family class due to adoption of applicants — H&C application returned to applicants pursuant to *Ministerial Instructions with respect to the processing of applications for a permanent resident visa made by parents or grandparents of a sponsor as members of the family class and the processing of sponsorship applications made in relation to those applications* (MI-21) because applicants had not been invited by respondent to submit application — MI-21 requiring that sponsors must first have been selected to apply through randomized selection process or lottery established by respondent — Whether decision under review reasonable — Applicants challenging decision by requesting order of *mandamus* to compel respondent to accept application for consideration on its merits — Determinative issue whether respondent having public legal duty to consider applicants' H&C application, i.e. first element of test for *mandamus* set out in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742 (C.A.), aff'd [1994] 3 S.C.R. 1100 — Respondent having no public legal duty to accept applicants' H&C application — Not fettering discretion to consider an H&C application pursuant to Act, s. 25(1) — Applicants' arguments asserting that s. 25(1) should be considered in isolation from other provisions of Act, *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations), that those other provisions cannot limit respondent's discretion to consider H&C applications — Clear that applicants required to submit application in support of biological mother as application for permanent resident visa pursuant to Regulations, s. 66 — Sponsorship applications, requests under s. 25(1) subject to instructions issued by respondent pursuant to Act, s. 87.3(3) — MI-21 issued by respondent in reliance on s. 87.3(3), speaking specifically to request made under s. 25(1) from outside Canada — Applicants' situation addressed in MI-21 — Applicants did not submit request indicating their interest in making sponsorship application — Therefore, their application could not be processed — Parliament specifically contemplating use of instructions by respondent to regulate processing of H&C applications — Here, applicants not alleging bad faith on part of respondent or that MI-21 not responding to *bona fide* administrative requirement — Respondent not preventing an officer from assessing merits of applicants' H&C submissions — Consideration of merits of applicants' application simply postponed until their sponsorship application properly made in accordance with provisions of Act, Regulations, MI-21 — Respondent's decision not to accept applicant's application reasonable — Application dismissed.

DHILLON V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-1842-18, 2019 FC 391, Walker J., reasons for judgment dated April 1, 2019, 22 pp.)