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CITIZENSHIP AND IMMIGRATION

Related subject: Administrative Law

Appeal from Federal Court decision (2021 FC 348) dismissing appellant's application for judicial review of Immigration and Refugee Board (IRB), Immigration Appeal Division's (IAD) determination that it lacked jurisdiction to consider appellant's appeal from removal order against her — Appellant came to Canada in March 2018 while in possession of permanent resident visa as accompanying dependent child of her father — Married after visa issued, before coming to Canada — On her arrival, advised point of entry officer of her marriage — Appellant admitted for further examination, not landed — Visa having September 16, 2018, expiry date — At conclusion of admissibility hearing before IRB, Immigration Division (ID), ID issued exclusion order against appellant listing her as foreign national inadmissible for misrepresentation under *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), s. 40(1)(a) — Appellant appealed ID's decision to IAD — IAD concluded that appellant had no right to appeal under IRPA, s. 63(2) because, when removal order issued, her visa had expired, was no longer valid — As result, IAD determined it lacked jurisdiction to consider appeal — Federal Court concluded that ID had not breached appellant's right to procedural fairness, that ID's decision to issue removal order reasonable — Certified question for appeal whether, for purposes of determining its jurisdiction to hear appeal pursuant to IRPA, s. 63(2), IAD having to assess validity of permanent resident visa at time of arrival in Canada, at time report under IRPA, s. 44(1) made, at time it is referred to ID, or at time exclusion order issued — IAD not faced with question of jurisdictional boundaries between administrative tribunals, applicable standard of review of IAD decision being reasonableness — Federal Court properly applying that standard of review — Appellant submitted that IAD unreasonably interpreted IRPA, s. 63(2) as providing right of appeal only to person who holds valid permanent resident visa at time removal order is issued — Asserted that it is sufficient that visa is valid at time of entry or of IRPA, s. 44 report — IAD undertook textual, contextual, purposive analysis in interpreting IRPA, s. 63(2) — Reviewed, adopted precedents bearing on issue before it — In circumstances, reasonable for IAD not to undertake its own statutory interpretation analysis — Certified question posed in appeal not reflecting reasonableness standard of review applicable in this case — Reformulated as whether it is reasonable for IAD to find that it does not have jurisdiction to hear appeal pursuant to IRPA, s. 63(2) if permanent resident visa expired at time removal order issued — Answer is yes — Appeal dismissed.

PEPA V. CANADA (CITIZENSHIP AND IMMIGRATION) (A-136-21, 2023 FCA 102, Monaghan J.A., reasons for judgment dated May 12, 2023, 6 pp.)