

CITIZENSHIP AND IMMIGRATION

EXCLUSION AND REMOVAL

Inadmissible Persons

Judicial review of decisions by immigration officer concluding that five-year inadmissibility period, prohibition applying, deeming applicant's new application for permanent resident status withdrawn — Applicant citizen of China, marrying Canadian citizen in 2005 — Applicant's first marriage found to be marriage of convenience — Immigration and Refugee Board (IRB), Immigration Division (ID) finding applicant inadmissible for misrepresentation in 2012 pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), s. 40(1)(a) — At time of inadmissibility, that period continuing for two years from date of enforcement of removal order — Applicant remarrying in 2014, having child — IRB, Immigration Appeal Division dismissing applicant's appeal of ID's inadmissibility finding in September 2014, issuing exclusion order against applicant — Amendments to Act, s. 40 coming into force on November 21, 2014, changing from two-year period referred to in s. 40(2)(a) to five years, adding new subsection prohibiting applications for permanent resident status during inadmissibility period — Applicant again applying for permanent residence, seeking discretionary issuance of Authorization to Return to Canada (ARC) — Immigration officer concluding applicant could not apply for permanent resident status, obtain ARC owing to five-year inadmissibility period, associated prohibition — Applicant arguing, *inter alia*, only two-year inadmissibility period applying; application of amended version of Act, s. 40 herein inappropriately giving amendments retrospective effect — Citing *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50, [2017] 2 S.C.R. 289 for principle that laws only having retrospective effect where such intent clearly stated in legislation — Respondent arguing that presumption having no application, as applicant having no vested or acquired right to have his new application considered under old provisions of Act — Whether new longer period applying to individuals found inadmissible before amendments — Applying five-year inadmissibility period to foreign national found inadmissible for misrepresentation, subject to removal order before November 21, 2014, amounting to retrospective application of amendments to Act, s. 40 — Inadmissibility period continuing to be two years whether or not exclusion order enforced before or after November 21, 2014 — Presumption against retrospectivity different interpretive presumption from presumption against interference with acquired or vested rights — Retrospective statute attaching new consequences to event having occurred prior to its enactment — Applying amendments herein attaching new adverse consequence in form of longer inadmissibility period — Situation therefore not simply issue of applying current law to new application for permanent residence — Question of retrospectivity ultimately turning on whether Parliament having signaled its intention that new legislation applying — Presumption against retrospective legislation relevant herein; question becoming whether legislation having retrospective effect; if so, whether such effect expressly or by necessary implication required by language of Act — Respondent not pointing to any authority to support proposition that acquired right to particular consequence only arising when that consequence being enforced — Statute having retrospective effect if attaching new consequences to event occurring prior to its enactment — "Event" to which Act attaching consequences of inadmissibility is determination of misrepresentation not enforcement of resulting exclusion order — Nothing in legislation providing clear signal that Parliament intending five-year inadmissibility period to apply to individuals subject to removal orders for misrepresentation made prior to its coming into force — Amendments to s. 40 designed to further deter fraudulent applications by increasing adverse consequences of finding of misrepresentation — No new "deterrence" of past conduct; thus, suggesting non-retrospective application of changes — No indication of intent to impose "partial retrospectivity" — Application allowed.

ZENG V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-6508-18, 2019 FC 1586, McHaffie J., reasons for judgment dated December 11, 2019, 24 p.)