

Federal Court



Cour fédérale

**Date: 20181030**

**Docket: IMM-5367-16**

**Citation: 2018 FC 1091**

**Ottawa, Ontario, October 30, 2018**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**THECLA SENDWA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**SUPPLEMENTAL JUDGMENT AND REASONS**

[1] On June 1, 2018 my judgment, reported at 2018 FC 569, was released in this matter. In that decision I denied an application by Ms. Sendwa to set aside a decision of the Immigration Appeal Division (IAD) in which her appeal of a decision by an immigration officer was denied. The immigration officer had refused an application for permanent residence by Ms Sendwa's niece.

[2] The IAD decision itself was a redetermination of an earlier IAD decision that had been returned by Mr. Justice Shore for reasons set out at 2016 FC 216.

[3] At the hearing of this matter, counsel for Ms. Sendwa had indicated a possible desire to pose a question for certification. In the judgment I provided the parties with such an opportunity.

[4] Possible questions for certification were received from Ms. Sendwa. The Minister opposed certification on the basis that the issue had already been argued in a case brought by a Mr. Bousaleh. On July 26, 2018 the Federal Court of Appeal released its decision in *Bousaleh v. The Minister of Citizenship and Immigration* 2018 FCA 143 (*Bousaleh*) as a result of which I provided the parties with a further opportunity to provide a proposed certified question given the reasons in *Bousaleh* and the comment therein that there is a “split” in the case law concerning paragraph 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[5] The test for certification of a question was recently reaffirmed by the Federal Court of Appeal in *Lewis v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FCA 130. In that case, the Court enumerated the following requirements (at para 36) for a question to be properly certified under section 74 of the *Immigration and Refugee Protection Act*, SC 2001, c 27:

. . . the question certified by the Federal Court must be dispositive of the appeal, must transcend the interests of the parties and must raise an issue of broad significance or general importance.

[6] The proposed question was answered by the IAD and that decision was upheld in my judgment as being reasonable. It transcends the interests of the parties and, as there is a split in the Court, the case law is not settled so it raises a question of general importance.

[7] Having considered the positions of the parties and the Court of Appeal reasons in *Bousaleh*, the following question is certified:

In determining an application for permanent residence under section 117(1)(h) of the *Immigration and Refugee Protection Regulations* SOR/2002-227, (*IRPR*) is consideration of the financial eligibility criteria in section 133(1)(j)(i)(B) of the *IRPR* required by subparagraph 117(1)(h) of the *IRPR*?

If so, does the existence of a right of appeal to the Immigration Appeal Division require a sponsor to appeal the denial of an application to sponsor such a relative because of the financial ineligibility of the sponsor in order to establish that there are no relatives whom the sponsor may otherwise sponsor?

**SUPPLEMENTAL JUDGMENT in IMM-5367-16**

**THIS COURT’S JUDGMENT is that** the following question is certified:

In determining an application for permanent residence under section 117(1)(h) of the *Immigration and Refugee Protection Regulations (IRPR)* is consideration of the financial eligibility criteria in section 133(1)(j)(i)(B) of the *IRPR* required by subparagraph 117(1)(h) of the *IRPR*?

If so, does the existence of a right of appeal to the Immigration Appeal Division require a sponsor to appeal the denial of an application to sponsor such a relative because of the financial ineligibility of the sponsor in order to establish that there are no relatives whom the sponsor may otherwise sponsor?

“E. Susan Elliott”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5367-16

**STYLE OF CAUSE:** THECLA SENDWA v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 14, 2017

**JUDGMENT AND REASONS:** ELLIOTT, J.

**DATED:** OCTOBER 30, 2018

**APPEARANCES:**

M. Shannon Black

FOR THE APPLICANT

Kristina Dragaitis

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

M. Shannon Black  
Barrister & Solicitor  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT