Federal Court of Appeal | Cour d'appel fédérale

**Date: 20180726**

**Docket: A-237-17**

**Citation: 2018 FCA 143**

**CORAM:** **PELLETIER J.A.**
**GAUTHIER J.A.**
**DE MONTIGNY J.A.**

**BETWEEN:**

**AKRAM BOUSALEH**

**Appellant**

**And**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

Heard at Toronto, Ontario, on May 9, 2018.

Judgment delivered at Ottawa, Ontario, on July 26, 2018.

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: PELLETIER J.A.
DE MONTIGNY J.A.

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## REASONS FOR JUDGMENT

**GAUTHIER J.A.**

[1] Akram Bousaleh appeals a decision of Fothergill J. of the Federal Court (2017 FC 716). The Federal Court dismissed Mr. Bousaleh's application for judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board (the IAD). The IAD had confirmed Citizenship and Immigration Canada's (CIC) decision to reject Mr. Bousaleh's application to sponsor his brother as a member of the family class (the Application) on the basis

that the said brother did not satisfy the requirements set out in paragraph 117(1)(*h*) of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 (the Regulations). The IAD decision is reported as *Bousaleh v. Canada (Immigration and Citizenship)* (January 24, 2017), IAD decision TB6-15340, 2017 CanLII 7587 (the IAD reasons).

[2] The Federal Court certified the following question:

> Does determination of a person's eligibility to sponsor a relative under s 117(1)(*h*) of the [Regulations] require consideration of whether an application to sponsor a person enumerated in s 117(1)(*h*) has a reasonable prospect of success?
>
> (My emphasis) (Federal Court reasons at para. 34)

[3] For the following reasons, I would dismiss the appeal without costs.

## I. CONTEXT

[4] Mr. Bousaleh is a Canadian citizen of Lebanese origin. Between 2002 and 2012, he lived with his ex-wife and since then, he has lived alone. He does not have other relatives in Canada.

[5] In December 2015, Mr. Bousaleh filed the Application to sponsor his brother as a member of the family class. CIC rejected the Application on two grounds. First, Mr. Bousaleh's brother, who had a pregnant wife, did not satisfy all the criteria to qualify as a brother under paragraph 117(1)(*f*) of the Regulations (under 18 years old, both parents deceased and never married or in a common-law relationship). Second, Mr. Bousaleh could not sponsor his brother under paragraph 117(1)(*h*) because he may otherwise sponsor his mother and father, who resided in Lebanon at the time, under paragraph 117(1)(*c*).

[6] Despite CIC's view that Mr. Bousaleh's brother did not qualify as a member of the family class, the application for permanent residence of his brother was forwarded to a visa officer attached to the Embassy of Canada in Lebanon. Allegedly, this was done to preserve Mr. Bousaleh's right to appeal. His brother was also invited to request that the application be assessed on humanitarian and compassionate grounds (section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27) (the IRPA).

[7] On August 4, 2016, Mr. Bousaleh and his brother sent to the visa officer medical evidence in support of their contention that an application to sponsor his parents was illusory as his father was probably inadmissible because of his health and his mother would not abandon him. The visa officer was also asked to examine the possibility of granting a permanent residence visa to Mr. Bousaleh's brother (he would be accompanied by his wife and child) on the basis of humanitarian and compassionate grounds.

[8] On September 28, 2016, the visa officer refused the application for permanent residence on two grounds. First, since Mr. Bousaleh "may otherwise sponsor" under paragraph 117(1)(*c*) his mother and father, who still lived in Lebanon, his brother did not qualify as a member of the family class pursuant to paragraph 117(1)(*h*). Second, the visa officer found no humanitarian and compassionate grounds that would justify waiving the requirements of paragraph 117(1)(*h*); the officer was not satisfied that the parents would be inadmissible to Canada, as they had not been examined by a panel of physicians for the purpose of an immigration medical exam (Appeal Book, tab 11 at 183).

[9] On October 14, 2016, Mr. Bousaleh's brother made a request for reconsideration of the visa officer's decision following the death of his father and submitted additional medical reports pertaining to the medical condition of his mother. It appears that Mr. Bousaleh's mother suffers from high intensity paroxysmal positional vertigo and high blood pressure, making it difficult for her to walk and fearful of leaving her house. Her doctor recommended that she should not travel without supervision (Appeal Book, tab 11 at 166-167). On November 4, 2016, the visa officer maintained his refusal.

[10] Mr. Bousaleh appealed to the IAD from the refusal to grant his brother a permanent resident visa. On January 24, 2017, the IAD confirmed the visa officer's refusal and dismissed the appeal. The IAD interpreted *Sendwa v. Canada (Citizenship and Immigration)*, 2016 FC 216 (*Sendwa*), on which Mr. Bousaleh relied, as meaning that "once the eligibility to sponsor is established [in accordance with section 130 of the Regulations], it is the question of whether or not the eligible sponsor meets the requirements of sponsorship that the IAD must consider (section 133), not whether or not the family member is otherwise inadmissible" (IAD reasons at para. 15). In other words, according to this authority, only the requirements applicable to the sponsor are relevant, not those of the potential person to be sponsored.

[11] In this particular case, there was no evidence that Mr. Bousaleh did not satisfy the requirements of sections 130 and 133 of the Regulations. The IAD found that he was entitled and able to sponsor a family member under paragraph 117(1)(*c*). His mother was alive and irrespective of whether or not she was admissible, he could not sponsor another family member under paragraph 117(1)(*h*). It is clear from paragraph 17 of the IAD's reasons that it construed

the words “whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor” as meaning that it is a prerequisite to being able to sponsor a family member under paragraph 117(1)(*h*) that the sponsor has no listed family members who are otherwise sponsorable as a member of the family class under paragraphs 117(1)(*a*) to (*g*). Although Mr. Bousaleh questioned the use of the word “sponsorable” before us, I note that he used this expression in his affidavit and in his correspondence with CIC.

[12] The Federal Court dismissed the application for judicial review, as it found that the IAD’s interpretation was reasonable, being based on the plain language of the provision as construed by the jurisprudence of the Federal Court, namely *Sendwa* and *Jordano v. Canada (Citizenship and Immigration),* 2013 FC 1143 (*Jordano*). The Federal Court added that whatever harsh result might arise from a strict reading of paragraph 117(1)(*h*), it is not the role of the Court to redraft that provision, especially considering that humanitarian and compassionate grounds remain another way to circumvent such results (section 25 of the IRPA).

## II. ISSUES

[13] The issues before us are as follows:

1. Is the IAD decision reasonable?

2. Certified Question:
   A) Should the certified question be reformulated?
   B) How should it be answered?

[14] In respect of these issues, Mr. Bousaleh relies heavily on *Sendwa*. He says that it stands for the proposition that "the determination of…whether a sponsor may otherwise sponsor…an application for permanent residence by a relative [pursuant to paragraph 117(1)(*h*)] has to take into account more than just whether a relative enumerated in paragraphs (*a-g*) is alive" (Appellant's Memorandum of Fact and Law at para. 53). The admissibility of the sponsored person or the likelihood that the sponsored application will not be granted, for example, because of the sponsored person's health condition must also be taken into consideration.

[15] Mr. Bousaleh submits that prior decisions of the Federal Court such as *Nguyen v. Canada (Citizenship and Immigration)*, 2003 FCT 325 (*Nguyen*), and the line of jurisprudence relying thereon, which interprets more restrictively a previous version of this provision as meaning that sponsorship under paragraph 117(1)(*h*) is available only if the sponsor has no living relatives described in paragraphs 117(1)(*a-g*), should not be followed.

[16] It is not necessary at this stage to go into further detail into Mr. Bousaleh's arguments, as they will be reviewed while discussing the statutory interpretation of the provision at issue.

[17] The respondent essentially relies on the interpretation adopted in *Nguyen*, but states that, in any event, considering *Sendwa*, the interpretation adopted by the IAD in this matter is reasonable and within the range of outcomes justifiable on the modern principle of statutory interpretation.

## III. STATUTORY FRAMEWORK

[18] Paragraph 117(1)(*h*) of the Regulations, which is at issue in this appeal, reads as follows:

| | |
|---|---|
| **DIVISION 1** | **SECTION 1** |
| **FAMILY CLASS** | **REGROUPEMENT FAMILIAL** |
| […] | […] |
| **Member** | **Regroupement familial** |
| 117(1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is | 117(1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants : |
| […] | […] |
| (*h*) a relative of the sponsor, regardless of age, if the sponsor does not have a spouse, a common-law partner, a conjugal partner, a child, a mother or father, a relative who is a child of that mother or father, a relative who is a child of a child of that mother or father, a mother or father of that mother or father or a relative who is a child of the mother or father of that mother or father | *h*) tout autre membre de sa parenté, sans égard à son âge, à défaut d'époux, de conjoint de fait, de partenaire conjugal, d'enfant, de parents, de membre de sa famille qui est l'enfant de l'un ou l'autre de ses parents, de membre de sa famille qui est l'enfant d'un enfant de l'un ou l'autre de ses parents, de parents de l'un ou l'autre de ses parents ou de membre de sa famille qui est l'enfant de l'un ou l'autre des parents de l'un ou l'autre de ses parents, qui est |
| (i) who is a Canadian citizen, Indian or permanent resident, or | (i) soit un citoyen canadien, un Indien ou un résident permanent, |
| (ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor. | (ii) soit une personne susceptible de voir sa demande d'entrée et de séjour au Canada à titre de résident permanent par ailleurs parrainée par le répondant. |
| … | […] |
| (My emphasis) | (Je souligne) |

[19] Because the schemes of the IRPA and of the Regulations are relevant to the purposive analysis of paragraph 117(1)(*h)*, I have reproduced in the Appendix the most relevant provisions of the IRPA and the Regulations (s. 3(1)(*d*), 11, 12, 13, 25(1), 38, 63(1) and (2), 65 of the IRPA; s. 70(1) and (2), 116, 117(1) and (9), 130, 133 of the Regulations).

[20] It is also useful to briefly describe the statutory framework to better understand the purpose of the definition of "family class." I will deal further with the overall scheme, the purpose and the object of the IRPA and of the Regulations later on in my analysis.

[21] Section 12 of the IRPA establishes three classes in which a foreign national may seek to be selected as a permanent resident: (1) family class (2) economic class and (3) Convention refugee and persons in similar circumstances.

[22] These three classes each correspond to distinct objectives which are reflected at section 3 of the IRPA. As noted in the marginal note to subsection 12(1) of the IRPA, the family class is meant to promote family reunification (see also paragraph 3(1)(*d*) of the IRPA), and a foreign national is selected in that class on the basis of his or her relationship "as the spouse, common-law partner, child, parent, or other prescribed family member of a Canadian citizen or permanent resident."

[23] Subsection 70(1) of the Regulations, found in Division 6 of Part 5 entitled "Permanent Resident Visa," sets out the requirements for the issuance of a permanent resident visa. One of those requirements is that the foreign national be a member of the class under which he or she

applied (paragraph 70(1)(*c*) and subsection 70(2)). It also provides, among other things, that the foreign national and their family members, whether accompanying or not, not be inadmissible (paragraph 70(1)(*e*)).

[24] Part 3 of the Regulations deals with inadmissibility while Part 7 of the Regulations deals with issues related to the family class.

[25] In Division 1 of Part 7, and as noted in section 116 of the Regulations, the family class referred to in subsection 12(1) of the IRPA is defined on the basis of the requirements of that Division. Subsection 117(1) defines the members of the family class on the basis of their relationship with the sponsor. It is to be noted that a member included in the family class at subsection 117(1) may well be excluded if his or her relationship falls within the ambit of subsection 117(9).

[26] Section 118 deals with a special requirement for an adopted dependent child or a member of the family referred to in paragraphs 117(1)(*f*) or (*g*).

[27] Sections 119 and 120 deal with the impact of the withdrawal of the sponsorship application on the application for permanent residence and what must be confirmed before the visa is issued. Sections 121 and 122 pertain to the requirements for an accompanying family member of the person who made the application for permanent residence as a member of the family class.

[28] Division 2 creates a subclass called the “spouse and common-law partner in Canada” class. Members of that subclass may apply for permanent residence while already in Canada. This is an exception to the general rules set out at subsections 11(1) of the IRPA and 11(1) of the Regulations that an application for landing and permanent residence must be filed from abroad and a visa issued before entering Canada.

[29] Division 3 deals with sponsors of a member of the family class, including the subclass mentioned above. It defines who may act as a sponsor. It also prescribes details with respect to the sponsorship undertaking and the requirements to be met by the sponsor on the day the sponsorship application is filed and from that day up to the date a decision is made on the sponsorship application.

[30] A sponsorship application must be filed before or with an application for permanent residence (subsection 10(4) of the Regulations). However, the application for permanent residence by a member of the family class is still subject to subsection 11(1) of the IRPA. This means that, as mentioned in paragraph 70(1)(*e*) of the Regulations, the officer reviewing it must be satisfied that the applicant is not otherwise inadmissible to Canada under any of the general provisions of the IRPA that may apply such as sections 34 to 39 (inadmissibility based on grounds such as health, criminality, security, etc.). This is where Part 3 of the Regulations comes into play.

[31] The close link between the sponsor and a member of the family class is reaffirmed by the fact that the sponsor may appeal a visa officer's decision not to issue the foreign national a permanent resident visa pursuant to subsection 63(1) of the IRPA.

[32] Finally, it is important to note that with respect to family class members, the IAD has not only the right to review the visa officer's decisions under appeal (section 63 of the IRPA), but it also has the right to exempt a family class member from certain requirements of the IRPA and the Regulations on the basis of humanitarian and compassionate considerations (section 65 of the IRPA).

[33] With respect to foreign nationals who may not qualify as members of the family class or when a sponsor may not qualify as a sponsor within the meaning of the Regulations, the Minister of Citizenship and Immigration (the Minister) may waive certain requirements set out in the IRPA or the Regulations by virtue of subsection 25(1) of the IRPA on the basis of humanitarian and compassionate considerations.

## IV. ANALYSIS

### A. *Preliminary comments*

[34] As it will be explained later on in this analysis, the wording of the provision that is at issue and that is now found at subparagraph 117(1)(*h*)(ii) is substantially the same it has been since about 1974 (the wording of the French version has changed over time, without corresponding changes being made in the English version). Still, Mr. Bousaleh, who has

presented a well-researched argument before us, has not been able to find any decision of an administrative decision maker or of the Federal Court concluding that the inadmissibility of a mother or of another listed relative was relevant to the determination of whether a sponsor could rely on paragraph 117(1)(*h*) to sponsor a relative of his choice. Thus, although Mr. Bousaleh argued before us that there is a split in the case law on the interpretation of paragraph 117(1)(*h*), there is no such split in respect of the only determinative issue before us: whether one must consider the potential inadmissibility of a listed relative to determine if another relative is a member of the family class pursuant to paragraph 117(1)(*h*).

[35] The only split in the case law that could be identified is a relatively new one (since *Sendwa* in 2016). It relates to whether a person can sponsor a relative of his or her choice under paragraph 117(1)(*h*) in a situation where this person may not meet the increased financial requirements set out in clause 133(1)(*j*)(i)(B) of the Regulations to sponsor his or her mother or father, but could meet the "regular" financial requirements set out in clause 133(1)(*j*)(i)(A) to sponsor other relatives. However, this issue has nothing to do with the case of Mr. Bousaleh before the IAD and cannot therefore be determinative of this appeal.

[36] That said, I agree that there is not much case law where a full statutory interpretation was required (see *Nguyen* and to some extent *Jordano* and *Sendwa*). The scarcity of the case law can easily be explained by the fact that cases involving this provision appear to be relatively rare. As mentioned by the IAD in *Ende v. Canada (Citizenship and Immigration)* (July 6, 2017), IAD decision MB6-07260, 2017 CanLII 42825 (*Ende*), there were only 298 cases involving this provision in the 13 years preceding that decision, despite the fact that many thousands of appeals

were filed during that period before the IAD (*Ende* at para. 37). The 10 000-case backlog currently faced by the IAD gives an idea of how many thousands of appeals were heard during this period (*Ende* at para. 53).

[37] The Court is aware that the IAD is having issues with the interpretation of subparagraph 117(1)(*h*)(ii) adopted by the Federal Court in *Sendwa* and that the IAD intended to settle this question. As such, the Chairperson of the Immigration and Refugee Board had initially ordered the constitution of a panel of three members for this purpose in another case (see the case referred to in *Sendwa v. Canada (Citizenship and Immigration)* (December 2, 2016), IAD decision TB4-06660, 2016 CanLII 97227 at para. 9) (*Sendwa in reconsideration*), but the appeal was declared abandoned before the hearing.

[38] Also, the Court has knowledge that the IAD completed the reconsideration of the matter in *Sendwa* and dismissed the appeal against the decision of the immigration officer refusing the application for permanent residence of the appellant's adult niece (*Sendwa in reconsideration*). This decision has been challenged and the Federal Court has recently dismissed the judicial review application (*Sendwa v. Canada (Citizenship and Immigration)*, 2018 FC 569). Following the decision on the merits, the parties have submitted questions for certification and the Federal Court should decide this issue shortly. Thus, the Court should be careful that its decision in the present appeal does not prejudice the right of appeal in that case, especially considering that it did not have the benefit of arguments on the particular factual situation at play in *Sendwa.*

B. *Standards of Review*

[39] Where our Court is reviewing a decision of the Federal Court on an application for judicial review, it must determine whether the Court below identified the appropriate standard of review and applied it correctly (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para. 45). This means that our Court steps into the shoes of the Court below and focuses on the IAD's decision.

[40] Although this Court has yet to decide which standard of review applies to the interpretation and application of this particular provision of the Regulations by the IAD, the jurisprudence of the Federal Court concluding that reasonableness applies is quite satisfactory. It is consistent with the presumption of deference applicable when the IAD is interpreting its home statute and, as noted by the Supreme Court of Canada in *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61 at paragraph 44 (*Kanthasamy*), a certified question in respect of paragraph 117(1)(*h*) of the IRPA does not belong to any category of questions that may attract the application of the stricter standard of correctness.

C. *Is the IAD Decision Reasonable?*

[41] It is trite law that paragraph 117(1)(*h*) must be construed by all decisions makers, including the IAD, in accordance with the modern principle of statutory interpretation; that is, the words of this provision are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Regulations and the IRPA, the object of the

IRPA and the Regulations, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21).

[42] Before us, Mr. Bousaleh focused on the meaning of the words and expressions "may" and "susceptible de," which are found in the English and French versions of subparagraph 117(1)(*h*)(ii). He said that the IAD did not give the proper meaning to those words.

[43] As is well-known, "may" is a word that can have different meanings according to its context. In the ordinary sense, for example:

> **may** [… ] **1** […] expressing possibility (*it may be true*; *I may have been wrong*; *you may well lose your way*). **2** expressing permission (*you may not go*; *may I come in?*). Both *can* and *may* are used to express permission; in more formal contexts *may* is usual since *can* also denotes capability […]. **3** expressing wish (*may he live to regret it*). **4** expressing uncertainty or irony in questions […]
>
> (*Canadian Oxford Dictionary*, 2004 ed.)

[44] In its legal sense, "may" is defined as follows:

> **may**, *vb.* (bef. 12c) **1.** To be permitted to <the plaintiff may close>. **2.** To be a possibility <we may win on appeal>. […]
>
> (*Black's Law Dictionary*, 9th ed.)

[45] Section 11 of the Federal *Interpretation Act*, R.S.C. 1985, c. I-21, provides that "may" is permissive. As noted, in *Sullivan on Construction of statutes*, 5th ed. (Toronto: LexisNexis Canada, 2008) at page 68, this provision is of limited assistance and context is still important. This author's conclusion at pages 69-70 can be briefly summarized as follows: "may" is used i) to confer an authority or a power or ii) to confer an entitlement that may or not be subject to

conditions precedent or to procedural limitations, and iii) it can indicate that the legislature authorized a person or class of persons to do something but acting is discretionary.

[46] The word "may" is used in many of the provisions which are part of the statutory context relevant to this analysis such as subsections 12(1) (selection of permanent residents on the basis of classes, particularly the family class) and 13(1) (who may sponsor foreign nationals) of the IRPA. In these provisions, the meaning of "may" appears to fall within the range of meanings referred to in paragraph 45 above. It is notable that section 116 of the Regulations also states that it prescribes the family class as a class of persons who "may" become permanent residents.

[47] In French, the expression "susceptible de" means:

> **SUSCEPTIBLE DE**… […] Qui a la capacité de, une capacité latente, une possibilité latente d'utilisation occasionnelle […]
>
> (*Le Petit Robert 1*, 1992 ed., *s.v.* "susceptible")
>
> **SUSCEPTIBLE DE**… […] Qui peut éventuellement
>
> (*Le Petit Robert*, 2018 ed., *s.v.* "susceptible"

[48] Although Mr. Bousaleh referred us to the translation of "susceptible de" in other statutes, I do not believe that it is necessary, or even appropriate, to consider these particular statutes. We have enough context looking at the IRPA and the Regulations to come to a conclusion as to whether the construction adopted by the IAD is within the range of possible interpretations which are defensible in respect of the law. Particularly, I am satisfied that this expression is not used throughout the IRPA and the Regulations in one particular sense only, as it is used in

respect of English versions that differ significantly. This expression is not used in any other provision that is part of the most relevant context.

[49] As mentioned, it appears from the legislative evolution of the provision now found at paragraph 117(1)(*h*) that, on occasion, part of the French version of this provision changed when the English did not. For example, while the English wording at issue remained constant, the French version of subparagraph 117(1)(*h*)(ii) changed as follows:

| | | |
|---|---|---|
| **1978 Version**<br><br>(subparagraph 4(*h*)(iii) of the *Immigration Regulations, 1978*, S.O.R./78-172) | whose application…he may otherwise sponsor | dont il puisse par ailleurs parrainer la demande […] |
| **1993 Version**<br><br>(subsection 1(5) of the *Immigration Regulations, 1978, amendment*, S.O.R./93-44) | whose application…the sponsor may otherwise sponsor | soit dont il peut par ailleurs parrainer la demande […] |
| **2003 Version To Date**<br><br>(subparagraph 117(1)(*h*)(ii) of the Regulations) | whose application…the sponsor may otherwise sponsor | soit une personne susceptible de voir sa demande […] par ailleurs parrainée par le répondant |

[50] Mr. Bousaleh suggested that because the Regulatory Impact Analysis Statement (the RIAS) attached to the publication of the S.O.R./2004-167 version mentioned that the modifications in the French version were meant to correct discrepancies with the English version

(C. Gaz. 2004.II at 1098), the absence of such a notice in the RIAS attached to the other versions where modifications occurred implies that these modifications were necessarily meant to change the ambit of the provision. I do not believe that the legislator needs to provide such notice every time it makes formalistic modifications. The French version was, at best, awkward and I understand the latest iteration as an attempt to clarify that the focus is on the relatives or persons listed in paragraph 117(1)(*h*) rather than on the application for permanent residence *per se*. This could not change the ambit of the provision.

[51] Mr. Bousaleh argues that because the French version uses a wider expression than the English version, namely "susceptible de," the Court should construe the common meaning of the two versions of subparagraph 117(1)(*h*)(ii) in the wider possible sense so that the criterion would be whether an application for permanent residence is likely to succeed; the fact that this interpretation is or is not within the ordinary and grammatical meaning of the word "may" read in its context is, in his view, irrelevant. I cannot agree; when one of two versions has a narrower meaning, it is this meaning that is preferred as the common meaning, unless proven otherwise by the ordinary rules of interpretation (Pierre-André Côté with the collaboration of Stéphane Beaulac and Mathieu Devinat, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Thomson Reuters, 2011) at 344-348). This somewhat extraordinary proposition is based almost entirely on the fact that the expression "susceptible de" is used in section 203 of the Regulations as the French version of the expression "likely to" which is found in the English version. I note that because of the length of that provision, the expression "susceptible de" is used seven times but that does not give it any more weight than any other case where it is used in the Regulations.

In my view, the IAD could reasonably construe the words “susceptible de” and “may” as having a common meaning.

[52] It is not disputed that the word “otherwise” found in subparagraph 117(1)(*h*)(ii) means or refers to provisions other than paragraph 117(1)(*h*). In this case, the IAD construed it as including a reference to the other paragraphs found in subsection 117(1) such as paragraph 117(1)(*c*) and, on the basis of *Sendwa*, to sections 130 and 133 of the Regulations.

[53] Subsection 117(1) enumerates precisely what relationship a foreign national must have with the sponsor in order to qualify as a member of the family class. The only exception to this is paragraph 117(1)(*h*). I will thus refer to the relatives referred to in paragraphs 117(1)(*a*) to (*g*) as enumerated relatives and to the relatives to which only paragraph 117(1)(*h*) applies to as the non-enumerated relatives.

[54] I will now turn to the other wording of paragraph 117(1)(*h*) that is part of the context and is, in my view, quite clear.

[55] Pursuant to subparagraph 117(l)(*h*)(i), a non-enumerated relative will not be a member of the family class if the sponsor has a mother or other relatives listed in the introduction of paragraph 117(1)(*h*) (listed relative) who is a Canadian citizen, an Indian or a permanent resident.

[56] Under subparagraph 117(1)(*h*)(i), the only thing to consider is whether or not such a listed relative exists. It is not relevant to consider whether that relative has, in fact, any actual relationship with the sponsor, i.e. do they speak to each other or live in the same part of the country?, or whether such listed relative even still lives in Canada. I say this to respond to some arguments made before us at the hearing in respect of how one should attain the particular purpose of paragraph 117(1)(*h*).

[57] Thus, when Mr. Bousaleh says the IAD's interpretation of subparagraph 117(1)(*h*)(ii) does not ensure the attainment of the purpose of family reunification set out in paragraph 3(1)(*d*) of the IRPA, and is thus absurd, one must consider to what extent the clear condition set out in subparagraph 117(1)(*h*)(i) is also meant to advance the general aim of family reunification or the specific objective of paragraph 117(1)(*h*) (see paragraph 66 below).

[58] It is important to understand that the members of the family class have always been defined by the legislator in a way that did not include every person that one would normally consider as a "family member" in other contexts or in different cultures. It is evident that, since the late 60s, the legislator has gradually widened its definition of the family class but, at the same time, included exclusions such as those found in subsection 117(9) of the Regulations.

[59] For example, in 1978, a father, mother, grandfather or grandmother had to be 60 years of age or over to qualify as an enumerated family member. If they were below that age, they were only considered as enumerated members of the family class if they were incapable of gainful

employment or if they were widowed (paragraphs 4(*c*) and (*d*) of the *Immigration Regulations, 1978,* S.O.R./78-172). There is no longer such restrictions in paragraphs 117(1)(*c*) and (*d*).

[60] Another example is that a brother or sister is only an enumerated member of the family class if they are orphans, under the age of 18 and unmarried or without a common-law partner (paragraph 117(1)(*f*) of the Regulations).

[61] This may be explained by the fact that Parliament must balance the priority given to applications by family members under the goal of family reunification with the other goals set out in subsection 3(1) of the IRPA. One must recall that members of the family class do not have to qualify by meeting the criteria applicable to the economic class and that when admitted as permanent residents under that class, they may be accompanied by members of their own immediate family who also receive a permanent residence visa unless they fall under specific exclusions or are inadmissible.

[62] In 1976, the goal of family reunification was included as an objective of the legislation (see Canada, Department of Employment and Immigration, *Immigration Act Regulations: Information Kit* (March 8, 1978) at 3, 5, and section 3 of the *Immigration Act, 1976*, S.C. 1976-77, c. 52). But at the same time, and since then, the legislator has consistently explained what it meant by “family reunification” by defining who is a member of the family class within the meaning of the IRPA and the Regulations. With this objective in mind, the definition of family class has evolved throughout the years. The legislator reviewed it regularly, and conducted intense consultations from the very beginning (see the *Information Kit* above).

[63] This, in my view, indicates that the cautionary note struck by Justice Cullen of the Federal Court in 1995 and echoed by Justice Gibson in *Nguyen* is still particularly apposite: "It is not the role of this Court to expand the scope of the family for immigration purposes beyond that which parliament has determined to be appropriate" (*Rafizade v. Canada (Minister of Citizenship and Immigration)* (1995), 92 F.T.R. 55 at para. 13 (F.C.T.D.); *Nguyen* at para. 15).

[64] This is especially so considering that the legislature is presumed to have been aware of how this provision was applied (see e.g. *Mlinarich v. Canada (Minister of Citizenship and Immigration)* (2000), 10 Imm. L.R. (3d) 58; *Sarmiento v. Canada (Minister of Citizenship and Immigration)* (2002), 26 Imm. L.R. (3d) 235); it chose to continue to use the expression "whose application…the sponsor may otherwise sponsor" in subparagraph 117(1)(*h*)(ii) when it amended the Regulations.

[65] Also, it is relevant to consider that the objective of paragraph 117(1)(*h*) (and its previous iterations) is somewhat different than the rest of that subsection.

[66] In 1967, when the first version of what is now subsection 117(1) was adopted, it applied only to the next closest relatives when the sponsor did not have relatives enumerated in the then paragraphs 31(*c*) to (*f*) (paragraph 31(1)(*h*) of the *Immigration Regulations, Part I, amended*, S.O.R./67-434). In 1974, this provision was amended to encompass any listed relative (list wider than the relatives enumerated in the other paragraphs of 31(1)) that could be either a Canadian or a permanent resident, or whose admission to Canada the sponsor may otherwise sponsor (paragraph 31(1)(*h*) of the *Immigration Regulations, Part I, amended*, S.O.R./74-113). Although,

on the one hand, there was no longer a need for the non-enumerated relative to be the closest relative, the wider list of listed relatives and the additional subparagraphs in 31(1)(*h*) (now found in subparagraphs 117(1)(*h*)(i) and (ii)) restricted who could qualify as a non-enumerated member of the family class.

[67] As noted by Justice Evans in *Mahmood v. Canada (Minister of Citizenship and Immigration)*, [2001] 1 F.C. 563 (T.D.), the policy underlying that provision, which was then found in paragraph 2(1)(*h*) of the *Immigration Regulations, 1978, amended*, S.O.R./92-101, "seem[s] to be geared principally to ameliorating the position of a person with no relative in Canada" (at para. 16). In *Ende*, the IAD refers to paragraph 117(1)(*h*) as the "lone Canadian" provision (at para. 32). Still, as explained in the previous discussion pertaining to subparagraph 117(1)(*h*)(i), it is not meant to guarantee that a person will never be alone in Canada, even though he may have other relatives that he considers family and would like to sponsor. This is why Justice Evans spoke of ameliorating a person's condition and not of ensuring that a person would never be alone in Canada.

[68] Furthermore, the application of this provision, which has been included in some form in the statutes and regulations dealing with immigration for more than 40 years, has always been subject to the fact that the sponsor did not have another listed family member.

[69] Mr. Bousaleh's argument that there is no hierarchy among family members is correct as between family members enumerated in paragraphs 117(1)(*a*) to (*g*). It is not correct as between enumerated and non-enumerated family members. A non-enumerated relative can only be a

member of the family class if the sponsor does not have another relative listed in the introduction of paragraph 117(1)(*h*) who is a Canadian citizen, an Indian or a permanent resident or who he or she may otherwise sponsor.

[70] The wording in issue before us identifies those relatives which Mr. Bousaleh must not have if his brother is to be a member of the family class pursuant to paragraph 117(1)(*h*).

[71] I understand from the RIAS published in 2002 with the new Regulations that Part 7 entitled "Family Classes" was intended to provide officers with an objective basis to identify which foreign nationals can be selected as members of the family class (C. Gaz. 2002.II. at 255 (Extra published on June 11, 2002)).

[72] It is also clear from the scheme of the IRPA and of the Regulations (see paragraphs 23-25 above) that selecting the class under which one applies and assessing whether one falls within that class is a distinct step from the assessment of whether an applicant for a permanent resident visa is inadmissible or not.

[73] Having considered this purposive analysis, in my view, it was reasonable for the IAD to conclude that subparagraph 117(1)(*h*)(ii) is meant to establish an objective criterion to determine if the relative selected by the sponsor is a member of the family class. Subparagraph 117(1)(*h*)(ii) speaks of a characteristic of the listed relatives. This characteristic is whether the listed relative is a person who may file an application for permanent residence as a family class member as it is only the application of such a member that a sponsor may otherwise sponsor

under Part 7 of the Regulations. As it appears clearly from the French version, the focus is not on the merits of the application for a permanent residence but on the person who may file it.

[74] I can find little support in the wording of subparagraph 117(1)(*h*)(ii) read in its context harmoniously with the scheme of the IRPA and the Regulations, and their purpose for Mr. Bousaleh's proposition that "may otherwise sponsor" (or its French version) means that an officer should consider whether an alleged health condition might render a listed relative inadmissible if he or she were to apply for a permanent resident visa to determine whether a non-enumerated relative can apply as a member of the family class. Therefore, I cannot conclude that the construction suggested by Mr. Bousaleh is the only one that could be reached applying the modern principle of statutory construction. He argued the IAD's decision was unreasonable on the basis that there was only one possible acceptable outcome. I simply cannot agree.

[75] As found by the IAD in this case, and in the vast majority of cases before the IAD, subparagraph 117(1)(*h*)(ii) speaks of whether a sponsor has a listed relative that he has otherwise the right to sponsor as a member of the family class pursuant to paragraphs 117(1)(*a*) to (*g*), taking into consideration subsection 117(9). Thus, if *Sendwa* stands for the proposition that such an interpretation is unreasonable, it is wrong.

[76] But, as already mentioned, it is not for this panel to determine whether, as found in *Sendwa*, it is reasonable to construe subparagraph 117(1)(*h*)(ii) as also requiring consideration of the criteria found in section 133 of the Regulations, which are essential to the approval of a

sponsorship application. This matter will likely be the subject of another appeal involving Ms. Sendwa.

[77] I also note that it is apparent that had Mr. Bousaleh's mother been declared inadmissible by an officer reviewing her application for permanent residence, the IAD would have had jurisdiction to waive the requirement with respect to her health condition on appeal for humanitarian and compassionate considerations (section 65 of the IRPA).

[78] In the same manner, it appears that the visa officer in the present matter would have considered Mr. Bousaleh's brother's request under section 25 of the IRPA had it been established that the mother was indeed inadmissible. From my review of the scant medical evidence on file, it is not evident that such a conclusion could have been reached. In any event, the right to seek an exemption from the Minister pursuant to section 25 of the IRPA is not an empty or unjust remedy, especially considering the latest teachings of the Supreme Court of Canada in *Kanthasamy*.

D. *Certified Question*

[79] Mr. Bousaleh proposed to reformulate the certified question as follows:

> When determining whether the sponsor has recourse to s 117(1)(*h*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 must the Minister consider, when assessing whether a sponsor "may otherwise sponsor" a relative as set out in s 117(1)(*h*), whether an application for permanent residence made by a living relative enumerated in s 117(1)(*a-g*) is likely?
>
> (Appellant's Memorandum of Fact and Law at para. 103)

[80] In my view, the question proposed by Mr. Bousaleh does not simply modify the language to be more in accordance with the wording used in the Regulations, as he suggested. Rather, it changes the focus of the question as to what the Minister must consider. In the question as certified by the Federal Court, the main idea is whether an application for sponsorship of one of the other relatives listed in paragraph 117(1)(*h*) has a reasonable prospect of success whereas, in the reformulated question, the focus of the inquiry is on whether or not it is likely that such a person would file an application for permanent residence.

[81] This means that the question proposed would encompass, for example, whether the IAD should consider if it is likely that Mr. Bousaleh's mother would file an application for permanent residence because she does not want to move away from her husband, as was apparently the case before the death of Mr. Bousaleh's father (and in other similar matters heard by the IAD and the Federal Court where listed relatives had no desire to immigrate to Canada). Moreover, in his further memorandum before the Federal Court, Mr. Bousaleh even mentions that the fact that a sponsor does not have a close relationship with his parents or a listed relative should also be considered (Appeal Book, tab 9 at paras. 5, 7). This presumably could mean that, in his view, the wording should also be construed as requiring consideration of whether a listed relative has any interest in coming to Canada (for example, because he or she prefers to give that chance to another younger relative with a larger immediate family who would also like to immigrate) or even whether the sponsor has any interest in sponsoring a listed relative (for example, because he likes another non-enumerated relative better or this other relative is more likely to work and be financially independent).

[82] The respondent objected to this reformulation of the question, stating that this was not in accord with the case as it was presented before the Federal Court, where the only possibly determinative issue was that Mr. Bousaleh had no real possibility of sponsoring his mother under paragraph 117(1)(*c*) because of her medical condition. In the respondent's view, this explains why the Federal Court deliberately chose to include in the certified question a reference to the "reasonable prospect of success" of the application.

[83] However, the application to which the Federal Court refers to in its certified question is the sponsorship application, and as mentioned, there was no evidence or even argument that Mr. Bousaleh's application to sponsor his mother would not be approved given that he appears to meet all the requirements of sections 130 and 133 of the Regulations. Did the Federal Court assume that approval of the sponsorship application depends somehow on the success of the application for permanent residence? If what it meant was whether the Minister has to consider whether a visa for permanent residence would eventually be granted, the certified question would be too general and wide. It would include consideration of anything that could happen before such a visa is issued, for example, the withdrawal of the undertaking or the failure of the sponsor to meet the financial requirements when the decision is made to grant the visa. How could the Minister have any idea of what could happen to the sponsor in the months it takes to make a decision in respect of such visa? This is especially so if, for example, issues with respect to admissibility are raised and a negative decision results in an appeal and a judicial review.

[84] In such circumstances, this Court has discretion to modify the certified question (*Khan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345 at para. 17; *Lunyamila v.*

*Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para. 47). Here, the only certifiable question given the factual matrix of this appeal is:

> In order to determine if an applicant is a member of the family class pursuant to paragraph 117(1)(*h*) of the Regulations, does the Minister have to consider the likelihood of success of a hypothetical application for permanent residence that could be made by a relative listed in that provision in light of an alleged health condition that could render that person inadmissible?

[85] The answer mandated by the standard of review, as set out in *Kanthasamy*, is: on the reasonable interpretation of paragraph 117(1)(*h*) made by the IAD, the answer is no.

## V. CONCLUSION

[86] In light of the foregoing, I would dismiss the appeal without costs.

"Johanne Gauthier"
J.A.

"I agree
J.D. Denis Pelletier J.A."

"I agree
Yves de Montigny J.A."

## APPENDIX

*Immigration and Refugee Protection Act*, S.C. 2001, c. 27

**Objectives – immigration**

3(1) The objective of this Act with respect to immigration are

…

(*d*) to see that families are reunited in Canada;

…

**Objet en matière d'immigration**

3(1) En matière d'immigration, la présente loi a pour objet :

[…]

(*d*) de veiller à la réunification des familles au Canada;

[…]

**DIVISION 1**

**REQUIREMENTS AND SELECTION**

**REQUIREMENTS**

**Application before entering Canada**

11(1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

**Electronic travel authorization**

(1.01) Despite subsection (1), a foreign national must, before entering Canada, apply for an electronic travel authorization required by the regulations by means of an electronic system, unless the regulations provide that the application may be made by other means. The application may be examined by an officer and, if the officer determines that the foreign national is not inadmissible and meets the requirements of this Act, the authorization may be issued by the

**SECTION 1**

**FORMALTÉS ET SÉLECTION**

**FORMALITÉS**

**Visa et documents**

11(1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

**Autorisation de voyage électronique**

(1.01) Malgré le paragraphe (1), l'étranger doit, préalablement à son entrée au Canada, demander l'autorisation de voyage électronique requise par règlement au moyen d'un système électronique, sauf si les règlements prévoient que la demande peut être faite par tout autre moyen. S'il décide, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi, l'agent peut délivrer l'autorisation.

officer.

**Restriction**

(1.1) A designated foreign national may not make an application for permanent residence under subsection (1)

(*a*) if they have made a claim for refugee protection but have not made an application for protection, until five years after the day on which a final determination in respect of the claim is made;

(*b*) if they have made an application for protection, until five years after the day on which a final determination in respect of the application is made; or

(*c*) in any other case, until five years after the day on which they become a designated foreign national.

**Réserve**

(1.1) L'étranger désigné ne peut présenter une demande de résidence permanente au titre du paragraphe (1) que si cinq années se sont écoulées depuis l'un ou l'autre des jours suivants :

*a*) s'il a fait une demande d'asile sans avoir fait de demande de protection, le jour où il a été statué en dernier ressort sur sa demande d'asile;

*b*) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande;

*c*) dans les autres cas, le jour où il devient un étranger désigné.

**Suspension of application**

(1.2) The processing of an application for permanent residence under subsection (1) of a foreign national who, after the application is made, becomes a designated foreign national is suspended

(*a*) if the foreign national has made a claim for refugee protection but has not made an application for protection, until five years after the day on which a final determination in respect of the claim is made;

(*b*) if the foreign national has made an application for protection, until five years after the day on which a final determination in respect of the

**Suspension de la demande**

(1.2) La procédure d'examen de la demande de résidence permanente présentée au titre du paragraphe (1) par un étranger qui devient, à la suite de cette demande, un étranger désigné est suspendue jusqu'à ce que cinq années se soient écoulées depuis l'un ou l'autre des jours suivants :

*a*) si l'étranger a fait une demande d'asile sans avoir fait de demande de protection, le jour où il a été statué en dernier ressort sur la demande d'asile;

*b*) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande;

application is made; or

(*c*) in any other case, until five years after the day on which the foreign national becomes a designated foreign national.

*c*) dans les autres cas, le jour où il devient un étranger désigné.

**Refusal to consider application**

(1.3) The officer may refuse to consider an application for permanent residence made under subsection (1) if

(*a*) the designated foreign national fails, without reasonable excuse, to comply with any condition imposed on them under subsection 58(4) or section 58.1 or any requirement imposed on them under section 98.1; and

(*b*) less than 12 months have passed since the end of the applicable period referred to in subsection (1.1) or (1.2).

**Refus d'examiner la demande**

(1.3) L'agent peut refuser d'examiner la demande de résidence permanente présentée au titre du paragraphe (1) par l'étranger désigné si :

*a*) d'une part, celui-ci a omis de se conformer, sans excuse valable, à toute condition qui lui a été imposée en vertu du paragraphe 58(4) ou de l'article 58.1 ou à toute obligation qui lui a été imposée en vertu de l'article 98.1;

*b*) d'autre part, moins d'une année s'est écoulée depuis la fin de la période applicable visée aux paragraphes (1.1) ou (1.2).

**If sponsor does not meet requirements**

(2) The officer may not issue a visa or other document to a foreign national whose sponsor does not meet the sponsorship requirements of this Act.

**Cas de la demande parrainée**

(2) Ils ne peuvent être délivrés à l'étranger dont le répondant ne se conforme pas aux exigences applicables au parrainage.

**SELECTION OF PERMANENT RESIDENTS**

**SÉLECTION DES RÉSIDENTS PERMANENTS**

**Family reunification**

12(1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

**Regroupement familial**

12(1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

**Economic immigration**

(2) A foreign national may be selected

**Immigration économique**

(2) La sélection des étrangers de la

as a member of the economic class on the basis of their ability to become economically established in Canada.

catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

**Refugees**

(3) A foreign national, inside or outside Canada, may be selected as a person who under this Act is a Convention refugee or as a person in similar circumstances, taking into account Canada's humanitarian tradition with respect to the displaced and the persecuted.

**Réfugiés**

(3) La sélection de l'étranger, qu'il soit au Canada ou non, s'effectue, conformément à la tradition humanitaire du Canada à l'égard des personnes déplacées ou persécutées, selon qu'il a la qualité, au titre de la présente loi, de réfugié ou de personne en situation semblable.

**SPONSORSHIP OF FOREIGN NATIONALS**

**RÉGIME DE PARRAINAGE**

**Sponsorship of foreign nationals**

13(1) A Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province or an unincorporated organization or association under federal or provincial law — or any combination of them — may sponsor a foreign national, subject to the regulations.

**Parrainage de l'étranger**

13(1) Tout citoyen canadien, résident permanent ou groupe de citoyens canadiens ou de résidents permanents ou toute personne morale ou association de régime fédéral ou provincial — ou tout groupe de telles de ces personnes ou associations — peut, sous réserve des règlements, parrainer un étranger.

(2) and (3) [Repealed, 2012, c. 17, s. 7]

(2) et (3) [Abrogés, 2012, ch. 17, art. 7]

**Instructions of Minister**

(4) An officer shall apply the regulations on sponsorship referred to in paragraph 14(2)(*e*) in accordance with any instructions that the Minister may make.

**Instructions**

(4) L'agent est tenu de se conformer aux instructions du ministre sur la mise en œuvre des règlements visés à l'alinéa 14(2)*e*).

…

[…]

**Humanitarian and compassionate considerations — request of foreign national**

25(1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for

**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**

25(1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada

permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

…

[…]

**Health grounds**

38(1) A foreign national is inadmissible on health grounds if their health condition

(a) is likely to be a danger to public health;

(*b*) is likely to be a danger to public safety; or

(*c*) might reasonably be expected to cause excessive demand on health or social services.

**Motifs sanitaires**

38(1) Emporte, sauf pour le résident permanent, interdiction de territoire pour motifs sanitaires l'état de santé de l'étranger constituant vraisemblablement un danger pour la santé ou la sécurité publiques ou risquant d'entraîner un fardeau excessif pour les services sociaux ou de santé.

**Exception**

(2) Paragraph (1)(*c*) does not apply in the case of a foreign national who

(*a*) has been determined to be a member of the family class and to be the spouse, common-law partner or child of a sponsor within the

**Exception**

(2) L'état de santé qui risquerait d'entraîner un fardeau excessif pour les services sociaux ou de santé n'emporte toutefois pas interdiction de territoire pour l'étranger :

*a*) dont il a été statué qu'il fait partie de la catégorie « regroupement familial » en tant qu'époux, conjoint de fait ou enfant d'un répondant dont il a été

meaning of the regulations;

(*b*) has applied for a permanent resident visa as a Convention refugee or a person in similar circumstances;

(*c*) is a protected person; or

(*d*) is, where prescribed by the regulations, the spouse, common-law partner, child or other family member of a foreign national referred to in any of paragraphs (*a*) to (*c*).

statué qu'il a la qualité réglementaire;

*b*) qui a demandé un visa de résident permanent comme réfugié ou personne en situation semblable;

*c*) qui est une personne protégée;

*d*) qui est l'époux, le conjoint de fait, l'enfant ou un autre membre de la famille — visé par règlement — de l'étranger visé aux alinéas *a*) à *c*).

**DIVISION 7**

**RIGHT OF APPEAL**

…

**SECTION 7**

**DROIT APPEL**

[…]

**Right to appeal — visa refusal of family class**

63(1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.

**Droit d'appel : visa**

63(1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

**Right to appeal — visa and removal order**

(2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision to make a removal order against them made under subsection 44(2) or made at an admissibility hearing.

**Droit d'appel : mesure de renvoi**

(2) Le titulaire d'un visa de résident permanent peut interjeter appel de la mesure de renvoi prise en vertu du paragraphe 44(2) ou prise à l'enquête.

…

[…]

**Humanitarian and compassionate considerations**

65 In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the

**Motifs d'ordre humanitaires**

65 Dans le cas de l'appel visé aux paragraphes 63(1) ou (2) d'une décision portant sur une demande au

Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.

titre du regroupement familial, les motifs d'ordre humanitaire ne peuvent être pris en considération que s'il a été statué que l'étranger fait bien partie de cette catégorie et que le répondant a bien la qualité réglementaire.

*Immigration and Refugee Protection Regulations, S.O.R./2002-227*

**PART 5**

**Permanent Residents**

…

**DIVISION 6**

**PERMANENT RESIDENT VISA**

**Issuance**

70(1) An officer shall issue a permanent resident visa to a foreign national if, following an examination, it is established that

(a) the foreign national has applied in accordance with these Regulations for a permanent resident visa as a member of a class referred to in subsection (2);

(b) the foreign national is coming to Canada to establish permanent residence;

(c) the foreign national is a member of that class;

(d) the foreign national meets the selection criteria and other requirements applicable to that class; and

(*e*) the foreign national and their family members, whether accompanying or not, are not inadmissible.

**PARTIE 5**

**Résidents permanents**

[…]

**SECTION 6**

**VISA DE RÉSIDENT PERMANENT**

**Délivrance du visa**

70(1) L'agent délivre un visa de résident permanent à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :

a) l'étranger en a fait, conformément au présent règlement, la demande au titre d'une des catégories prévues au paragraphe (2);

b) il vient au Canada pour s'y établir en permanence;

c) il appartient à la catégorie au titre de laquelle il a fait la demande;

d) il se conforme aux critères de sélection et autres exigences applicables à cette catégorie;

*e*) ni lui ni les membres de sa famille, qu'ils l'accompagnent ou non, ne sont interdits de territoire.

| Classes | Catégories |
| --- | --- |
| (2) The classes are | (2) Les catégories sont les suivantes : |
| (a) the family class; | a) la catégorie du regroupement familial; |
| (b) the economic class, consisting of the federal skilled worker class, the transitional federal skilled worker class, the Quebec skilled worker class, the provincial nominee class, the Canadian experience class, the federal skilled trades class, the Quebec investor class, the Quebec entrepreneur class, the start-up business class, the self-employed persons class and the Quebec self-employed persons class; and | b) la catégorie de l'immigration économique, qui comprend la catégorie des travailleurs qualifiés (fédéral), la catégorie des travailleurs qualifiés (fédéral — transitoire), la catégorie des travailleurs qualifiés (Québec), la catégorie des candidats des provinces, la catégorie de l'expérience canadienne, la catégorie des travailleurs de métiers spécialisés (fédéral), la catégorie des investisseurs (Québec), la catégorie des entrepreneurs (Québec), la catégorie « démarrage d'entreprise », la catégorie des travailleurs autonomes et la catégorie des travailleurs autonomes (Québec); |
| (c) the Convention refugees abroad class and the country of asylum class. | c) la catégorie des réfugiés au sens de la Convention outre-frontières et la catégorie de personnes de pays d'accueil. |
| … | […] |
| **PART 7** | **PARTIE 7** |
| **FAMILY CLASSES** | **REGROUPEMENTS FAMILIAUX** |
| **DIVISION 1** | **SECTION 1** |
| **FAMILY CLASS** | **REGROUPEMENT FAMILIAL** |
| **Family class** | **Catégorie** |
| 116 For the purposes of subsection 12(1) of the Act, the family class is hereby prescribed as a class of persons who may become permanent residents on the basis of the requirements of this Division. | 116 Pour l'application du paragraphe 12(1) de la Loi, la catégorie du regroupement familial est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents sur le fondement des exigences prévues à la présente section. |

**Member**

117(1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is

(*a*) the sponsor's spouse, common-law partner or conjugal partner;

(*b*) a dependent child of the sponsor;

(*c*) the sponsor's mother or father;

(*d*) the mother or father of the sponsor's mother or father;

(*e*) [Repealed, SOR/2005-61, s. 3]

(*f*) a person whose parents are deceased, who is under 18 years of age, who is not a spouse or common-law partner and who is

(i) a child of the sponsor's mother or father,

(ii) a child of a child of the sponsor's mother or father, or

(iii) a child of the sponsor's child;

(*g*) a person under 18 years of age whom the sponsor intends to adopt in Canada if

(i) the adoption is not being entered into primarily for the purpose of acquiring any status or privilege under the Act,

(ii) where the adoption is an international adoption and the country in which the person resides and their province of intended destination are parties to the Hague Convention on Adoption, the competent authority of the country and of the province have approved

**Regroupement familial**

117(1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :

*a*) son époux, conjoint de fait ou partenaire conjugal;

*b*) ses enfants à charge;

*c*) ses parents;

*d*) les parents de l'un ou l'autre de ses parents;

*e*) [Abrogé, DORS/2005-61, art. 3]

*f*) s'ils sont âgés de moins de dix-huit ans, si leurs parents sont décédés et s'ils n'ont pas d'époux ni de conjoint de fait :

(i) les enfants de l'un ou l'autre des parents du répondant,

(ii) les enfants des enfants de l'un ou l'autre de ses parents,

(iii) les enfants de ses enfants;

*g*) la personne âgée de moins de dix-huit ans que le répondant veut adopter au Canada, si les conditions suivantes sont réunies :

(i) l'adoption ne vise pas principalement l'acquisition d'un statut ou d'un privilège aux termes de la Loi,

(ii) s'il s'agit d'une adoption internationale et que le pays où la personne réside et la province de destination sont parties à la Convention sur l'adoption, les autorités compétentes de ce pays et celles de cette province ont déclaré, par écrit, qu'elles

the adoption in writing as conforming to that Convention, and

estimaient que l’adoption était conforme à cette convention,

(iii) where the adoption is an international adoption and either the country in which the person resides or the person’s province of intended destination is not a party to the Hague Convention on Adoption

(iii) s’il s’agit d’une adoption internationale et que le pays où la personne réside ou la province de destination n’est pas partie à la Convention sur l’adoption :

(A) the person has been placed for adoption in the country in which they reside or is otherwise legally available in that country for adoption and there is no evidence that the intended adoption is for the purpose of child trafficking or undue gain within the meaning of the Hague Convention on Adoption, and

(A) la personne a été placée en vue de son adoption dans ce pays ou peut par ailleurs y être légitimement adoptée et rien n’indique que l’adoption projetée a pour objet la traite de l’enfant ou la réalisation d’un gain indu au sens de cette convention,

(B) the competent authority of the person’s province of intended destination has stated in writing that it does not object to the adoption; or

(B) les autorités compétentes de la province de destination ont déclaré, par écrit, qu’elles ne s’opposaient pas à l’adoption;

(*h*) a relative of the sponsor, regardless of age, if the sponsor does not have a spouse, a common-law partner, a conjugal partner, a child, a mother or father, a relative who is a child of that mother or father, a relative who is a child of a child of that mother or father, a mother or father of that mother or father or a relative who is a child of the mother or father of that mother or father

*h*) tout autre membre de sa parenté, sans égard à son âge, à défaut d’époux, de conjoint de fait, de partenaire conjugal, d’enfant, de parents, de membre de sa famille qui est l’enfant de l’un ou l’autre de ses parents, de membre de sa famille qui est l’enfant d’un enfant de l’un ou l’autre de ses parents, de parents de l’un ou l’autre de ses parents ou de membre de sa famille qui est l’enfant de l’un ou l’autre des parents de l’un ou l’autre de

ses parents, qui est :

(i) who is a Canadian citizen, Indian or permanent resident, or

(i) soit un citoyen canadien, un Indien ou un résident permanent,

(ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.

(ii) soit une personne susceptible de voir sa demande d'entrée et de séjour au Canada à titre de résident permanent par ailleurs parrainée par le répondant.

…

[…]

**Excluded relationships**

**Restrictions**

(9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if

(9) Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :

(*a*) the foreign national is the sponsor's spouse, common-law partner or conjugal partner and is under 18 years of age;

*a*) l'époux, le conjoint de fait ou le partenaire conjugal du répondant s'il est âgé de moins de dix-huit ans;

(*b*) the foreign national is the sponsor's spouse, common-law partner or conjugal partner, the sponsor has an existing sponsorship undertaking in respect of a spouse, common-law partner or conjugal partner and the period referred to in subsection 132(1) in respect of that undertaking has not ended;

*b*) l'époux, le conjoint de fait ou le partenaire conjugal du répondant si celui-ci a déjà pris un engagement de parrainage à l'égard d'un époux, d'un conjoint de fait ou d'un partenaire conjugal et que la période prévue au paragraphe 132(1) à l'égard de cet engagement n'a pas pris fin;

(*c*) the foreign national is the sponsor's spouse and

*c*) l'époux du répondant, si, selon le cas :

(i) the sponsor or the foreign national was, at the time of their marriage, the spouse of another person, or

(i) le répondant ou cet époux étaient, au moment de leur mariage, l'époux d'un tiers,

(ii) the sponsor has lived separate and apart from the foreign national for at least one year and

(ii) le répondant a vécu séparément de cet époux pendant au moins un an et, selon le cas :

(A) the sponsor is the

(A) le répondant est le

common-law partner of another person or the sponsor has a conjugal partner, or

(B) the foreign national is the common-law partner of another person or the conjugal partner of another sponsor; or

(*c.1*) the foreign national is the sponsor's spouse and if at the time the marriage ceremony was conducted either one or both of the spouses were not physically present unless the foreign national was marrying a person who was not physically present at the ceremony as a result of their service as a member of the Canadian Forces and the marriage is valid both under the laws of the jurisdiction where it took place and under Canadian law;

(*d*) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

…

**DIVISION 3**

**SPONSORS**

**Sponsor**

130(1) Subject to subsections (2) and (3), a sponsor, for the purpose of sponsoring a foreign national who makes an application for a permanent resident visa as a member of the family class or an application to remain in Canada as a member of the

conjoint de fait d'une autre personne ou il a un partenaire conjugal,

(B) cet époux est le conjoint de fait d'une autre personne ou le partenaire conjugal d'un autre répondant;

*c.1*) l'époux du répondant si le mariage a été célébré alors qu'au moins l'un des époux n'était pas physiquement présent, à moins qu'il ne s'agisse du mariage d'un membre des Forces canadiennes, que ce dernier ne soit pas physiquement présent à la cérémonie en raison de son service militaire dans les Forces canadiennes et que le mariage ne soit valide à la fois selon les lois du lieu où il a été contracté et le droit canadien;

*d*) sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.

[…]

**SECTION 3**

**PARRAINAGE**

**Qualité de répondant**

130(1) Sous réserve des paragraphes (2) et (3), a qualité de répondant pour le parrainage d'un étranger qui présente une demande de visa de résident permanent au titre de la catégorie du regroupement familial ou une demande de séjour au Canada au

spouse or common-law partner in Canada class under subsection 13(1) of the Act, must be a Canadian citizen or permanent resident who

(*a*) is at least 18 years of age;

(*b*) resides in Canada; and

(*c*) has filed a sponsorship application in respect of a member of the family class or the spouse or common-law partner in Canada class in accordance with section 10.

**Sponsor not residing in Canada**

(2) A sponsor who is a Canadian citizen and does not reside in Canada may sponsor a foreign national who makes an application referred to in subsection (1) and is the sponsor's spouse, common-law partner, conjugal partner or dependent child who has no dependent children, if the sponsor will reside in Canada when the foreign national becomes a permanent resident.

**Five-year requirement**

(3) A sponsor who became a permanent resident or a Canadian citizen after being sponsored as a spouse, common-law partner or conjugal partner under subsection 13(1) of the Act may not sponsor a foreign national referred to in subsection (1) as a spouse, common-law partner or conjugal partner, unless the sponsor has been a permanent resident, or a Canadian citizen, or a combination of the two, for a period of at least five years immediately preceding the day on which a sponsorship application referred to in

titre de la catégorie des époux ou conjoints de fait au Canada aux termes du paragraphe 13(1) de la Loi, le citoyen canadien ou résident permanent qui, à la fois :

*a*) est âgé d'au moins dix-huit ans;

*b*) réside au Canada;

*c*) a déposé une demande de parrainage pour le compte d'une personne appartenant à la catégorie du regroupement familial ou à celle des époux ou conjoints de fait au Canada conformément à l'article 10.

**Répondant ne résidant pas au Canada**

(2) Le citoyen canadien qui ne réside pas au Canada peut parrainer un étranger qui présente une demande visée au paragraphe (1) et qui est son époux, son conjoint de fait, son partenaire conjugal ou son enfant à charge qui n'a pas d'enfant à charge à condition de résider au Canada au moment où l'étranger devient résident permanent.

**Exigence — cinq ans**

(3) Le répondant qui est devenu résident permanent ou citoyen canadien après avoir été parrainé à titre d'époux, de conjoint de fait ou de partenaire conjugal en vertu du paragraphe 13(1) de la Loi ne peut parrainer un étranger visé au paragraphe (1) à titre d'époux, de conjoint de fait ou de partenaire conjugal à moins d'avoir été un résident permanent, un citoyen canadien ou une combinaison des deux pendant au moins les cinq ans précédant le dépôt de sa demande de parrainage visée à l'alinéa (1)*c*) à

paragraph (1)(*c*) is filed by the sponsor in respect of the foreign national.

l'égard de cet étranger.

**Requirements for sponsor**

133(1) A sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor

**Exigences : répondant**

133(1) L'agent n'accorde la demande de parrainage que sur preuve que, de la date du dépôt de la demande jusqu'à celle de la décision, le répondant, à la fois :

(*a*) is a sponsor as described in section 130;

*a*) avait la qualité de répondant aux termes de l'article 130;

(*b*) intends to fulfil the obligations in the sponsorship undertaking;

*b*) avait l'intention de remplir les obligations qu'il a prises dans son engagement;

(*c*) is not subject to a removal order;

*c*) n'a pas fait l'objet d'une mesure de renvoi;

(*d*) is not detained in any penitentiary, jail, reformatory or prison;

*d*) n'a pas été détenu dans un pénitencier, une prison ou une maison de correction;

(*e*) has not been convicted under the *Criminal Code* of

*e*) n'a pas été déclaré coupable, sous le régime du *Code criminel* :

(i) an offence of a sexual nature, or an attempt or a threat to commit such an offence, against any person,

(i) d'une infraction d'ordre sexuel ou d'une tentative ou menace de commettre une telle infraction, à l'égard de quiconque,

(i.1) an indictable offence involving the use of violence and punishable by maximum term of imprisonment of at least 10 years, or an attempt to commit such an offence, against any person, or

(i.1) d'un acte criminel mettant en cause la violence et passible d'un emprisonnement maximal d'au moins dix ans ou d'une tentative de commettre un tel acte à l'égard de quiconque,

(ii) an offence that results in bodily harm, as defined in section 2 of the *Criminal Code*, to any of the following persons or an attempt or a threat to commit such an offence against any of the

(ii) d'une infraction entraînant des lésions corporelles, au sens de l'article 2 de cette loi, ou d'une tentative ou menace de commettre une telle infraction, à l'égard de l'une ou l'autre des personnes suivantes :

following persons:

| | |
|---|---|
| (A) a current or former family member of the sponsor, | (A) un membre ou un ancien membre de sa famille, |
| (B) a relative of the sponsor, as well as a current or former family member of that relative, | (B) un membre de sa parenté, ou un membre ou ancien membre de la famille de celui-ci, |
| (C) a relative of the family member of the sponsor, or a current or former family member of that relative, | (C) un membre de la parenté d'un membre de sa famille, ou un membre ou ancien membre de la famille de celui-ci, |
| (D) a current or former conjugal partner of the sponsor, | (D) son partenaire conjugal ou ancien partenaire conjugal, |
| (E) a current or former family member of a family member or conjugal partner of the sponsor, | (E) un membre ou un ancien membre de la famille d'un membre de sa famille ou de son partenaire conjugal, |
| (F) a relative of the conjugal partner of the sponsor, or a current or former family member of that relative, | (F) un membre de la parenté de son partenaire conjugal, ou un membre ou ancien membre de la famille de celui-ci, |
| (G) a child under the current or former care and control of the sponsor, their current or former family member or conjugal partner, | (G) un enfant qui est ou était sous sa garde et son contrôle, ou sous celle d'un membre de sa famille ou de son partenaire conjugal ou d'un ancien membre de sa famille ou de son ancien partenaire conjugal, |
| (H) a child under the current or former care and control of a relative of the sponsor or a current or former family member of that relative, | (H) un enfant qui est ou était sous la garde et le contrôle d'un membre de sa parenté, ou d'un membre ou ancien membre de la famille de |

or

(I) someone the sponsor is dating or has dated, whether or not they have lived together, or a family member of that person;

ce dernier,

(I) une personne avec qui il a ou a eu une relation amoureuse, qu'ils aient cohabité ou non, ou un membre de la famille de cette personne;

(*f*) has not been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence referred to in paragraph (*e*);

*f*) n'a pas été déclaré coupable, dans un pays étranger, d'avoir commis un acte constituant une infraction dans ce pays et, au Canada, une infraction visée à l'alinéa *e*);

(*g*) subject to paragraph 137(*c*), is not in default of

(i) any sponsorship undertaking, or

(ii) any support payment obligations ordered by a court;

*g*) sous réserve de l'alinéa 137*c*), n'a pas manqué :

(i) soit à un engagement de parrainage,

(ii) soit à une obligation alimentaire imposée par un tribunal;

(*h*) is not in default in respect of the repayment of any debt referred to in subsection 145(1) of the Act payable to Her Majesty in right of Canada;

*h*) n'a pas été en défaut quant au remboursement d'une créance visée au paragraphe 145(1) de la Loi dont il est redevable à Sa Majesté du chef du Canada;

(*i*) subject to paragraph 137(*c*), is not an undischarged bankrupt under the *Bankruptcy and Insolvency Act*;

i) sous réserve de l'alinéa 137*c*), n'a pas été un failli non libéré aux termes de la *Loi sur la faillite et l'insolvabilité*;

(*j*) if the sponsor resides

(i) in a province other than a province referred to in paragraph 131(*b*),

(A) has a total income that is at least equal to the minimum necessary income, if the sponsorship application was filed in respect of a foreign national other than a foreign national

*j*) dans le cas où il réside :

(i) dans une province autre qu'une province visée à l'alinéa 131*b*) :

(A) a un revenu total au moins égal à son revenu vital minimum, s'il a déposé une demande de parrainage à l'égard d'un étranger autre que l'un des étrangers visés à la division (B),

referred to in clause (B), or

(B) has a total income that is at least equal to the minimum necessary income, plus 30%, for each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application, if the sponsorship application was filed in respect of a foreign national who is

(I) the sponsor's mother or father,

(II) the mother or father of the sponsor's mother or father, or

(III) an accompanying family member of the foreign national described in subclause (I) or (II), and

(ii) in a province referred to in paragraph 131(*b*), is able, within the meaning of the laws of that province and as determined by the competent authority of that province, to fulfil the undertaking referred to in that paragraph; and

(*k*) is not in receipt of social assistance for a reason other than disability.

**Exception — conviction in Canada**

(2) Despite paragraph (1)(*e*), a sponsorship application may not be refused

(B) a un revenu total au moins égal à son revenu vital minimum, majoré de 30 %, pour chacune des trois années d'imposition consécutives précédant la date de dépôt de la demande de parrainage, s'il a déposé une demande de parrainage à l'égard de l'un des étrangers suivants :

(I) l'un de ses parents,

(II) le parent de l'un ou l'autre de ses parents,

(III) un membre de la famille qui accompagne l'étranger visé aux subdivisions (I) ou (II),

(ii) dans une province visée à l'alinéa 131*b*), a été en mesure, aux termes du droit provincial et de l'avis des autorités provinciales compétentes, de respecter l'engagement visé à cet alinéa;

*k*) n'a pas été bénéficiaire d'assistance sociale, sauf pour cause d'invalidité.

**Exception : déclaration de culpabilité au Canada**

(2) Malgré l'alinéa (1)*e*), la déclaration de culpabilité au Canada n'emporte pas rejet de la demande de parrainage dans les cas suivants :

(*a*) on the basis of a conviction in Canada in respect of which a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal; or

(*b*) if a period of five years or more has elapsed since the completion of the sentence imposed for an offence in Canada referred to in paragraph (1)(*e*).

*a*) la réhabilitation — sauf révocation ou nullité — a été octroyée au titre de la *Loi sur le casier judiciaire* ou un verdict d'acquittement a été rendu en dernier ressort à l'égard de l'infraction;

*b*) le répondant a fini de purger sa peine au moins cinq ans avant le dépôt de la demande de parrainage.

**Exception — conviction outside Canada**

(3) Despite paragraph (1)(*f*), a sponsorship application may not be refused

(*a*) on the basis of a conviction outside Canada in respect of which there has been a final determination of an acquittal; or

(*b*) if a period of five years or more has elapsed since the completion of the sentence imposed for an offence outside Canada referred to in that paragraph and the sponsor has demonstrated that they have been rehabilitated.

**Exception : déclaration de culpabilité à l'extérieur du Canada**

(3) Malgré l'alinéa (1)*f*), la déclaration de culpabilité à l'extérieur du Canada n'emporte pas rejet de la demande de parrainage dans les cas suivants :

*a*) un verdict d'acquittement a été rendu en dernier ressort à l'égard de l'infraction;

*b*) le répondant a fini de purger sa peine au moins cinq ans avant le dépôt de la demande de parrainage et a justifié de sa réadaptation.

**Exception to minimum necessary income**

(4) Paragraph (1)(*j*) does not apply if the sponsored person is

(*a*) the sponsor's spouse, common-law partner or conjugal partner and has no dependent children;

(*b*) the sponsor's spouse, common-law partner or conjugal partner and has a dependent child who has no

**Exception au revenu minimal**

(4) L'alinéa (1)*j*) ne s'applique pas dans le cas où le répondant parraine l'une ou plusieurs des personnes suivantes :

*a*) son époux, conjoint de fait ou partenaire conjugal, à condition que cette personne n'ait pas d'enfant à charge;

*b*) son époux, conjoint de fait ou partenaire conjugal, dans le cas où cette personne a un enfant à charge

dependent children; or

(*c*) a dependent child of the sponsor who has no dependent children or a person referred to in paragraph 117(1)(*g*).

qui n’a pas d’enfant à charge;

*c*) son enfant à charge qui n’a pas lui-même d’enfant à charge ou une personne visée à l’alinéa 117(1)*g*).

**Adopted sponsor**

(5) A person who is adopted outside Canada and whose adoption is subsequently revoked by a foreign authority or by a court in Canada of competent jurisdiction may sponsor an application for a permanent resident visa that is made by a member of the family class only if the revocation of the adoption was not obtained for the purpose of sponsoring that application.

**Répondant adopté**

(5) La personne adoptée à l’étranger et dont l’adoption a été annulée par des autorités étrangères ou un tribunal canadien compétent ne peut parrainer la demande de visa de résident permanent présentée par une personne au titre de la catégorie du regroupement familial que si l’annulation de l’adoption n’a pas été obtenue dans le but de pouvoir parrainer cette demande.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

| | |
|---|---|
| **APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE FOTHERGILL DATED JULY 24, 2017, NO. 2017 FC 716** | |
| **DOCKET:** | A-237-17 |
| **STYLE OF CAUSE:** | AKRAM BOUSALEH v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MAY 9, 2018 |
| **REASONS FOR JUDGMENT BY:** | GAUTHIER J.A. |
| **CONCURRED IN BY:** | PELLETIER J.A.<br>DE MONTIGNY J.A. |
| **DATED:** | JULY 26, 2018 |

**APPEARANCES:**

| | |
|---|---|
| Shannon Black | FOR THE APPELLANT |
| Ian Hicks | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
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| Shannon Black<br>Toronto, Ontario | FOR THE APPELLANT |
| Nathalie G. Drouin<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |