Federal Court Cour fédérale

**Date: 20220321**

**Docket: IMM-598-21**

**Citation: 2022 FC 375**

**Ottawa, Ontario, March 21, 2022**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**FRANCIS ADDAE**
**JOSEPHINE KONADU**
**BRIGHT FRIMPONG**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] This is the judicial review of the decision by an Immigration Officer [Officer] at the High Commission of Canada in Accra, Ghana, refusing to grant permanent residence to the two minor applicants.

**Background**

[2] Mr. Francis Addae [Principal Applicant] is a Canadian citizen. He sponsored his wife, Vida Ofori, who was a citizen of Ghana, for permanent residence in Canada. Ms. Ofori's application for permanent residence was received by Immigration, Refugees and Citizenship Canada [IRCC] on September 20, 2019. In that application, Ms. Ofori's two children from a previous relationship, Josephine Konadu and Bright Frimpong [together, the Minor Applicants], were listed as non-accompanying dependents. The stated reason for the non-accompaniment being because the "biological father not agreeable yet".

[3] On May 12, 2020, Ms. Ofori died suddenly in Accra, Ghana.

[4] On October 21, 2020, counsel for the Principal Applicant wrote to IRCC advising that there had been a family emergency, and asking IRCC to hold off on making a decision with respect to the application. Counsel advised that the application would be updated within 30 days.

[5] On November 24, 2020, unaware of her death, IRCC wrote to Ms. Ofori to follow-up on earlier requests for documents. IRCC stated that as it had not received a response to its request, it had concluded that Ms. Ofori had not met the criteria required to immigrate to Canada and that she was no longer interested in doing so. If they did not receive the requested documents within 30 days, they would initiate the refusal of her application for non-compliance.

[6] On December 14, 2020, the same counsel, identifying themselves as counsel for the Minor Applicants, wrote to the Officer informing them that Ms. Ofori had died and requesting that the Minor Applicants' application for permanent residence be processed under humanitarian and compassionate grounds pursuant to section 25(1) of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27. Counsel provided supporting documentation and submissions including that it was in the best interests of the children to be cared for in Canada by their *de facto* parent, Mr. Addae, the sponsor of his deceased wife in her application for permanent residence; family separation; and, hardship in Ghana. Counsel submitted that, if not for the death of their mother in May 2020, the Minor Applicants would have been eligible for permanent residence in Canada as members of the family class.

[7] The letter states that the Minor Applicants' biological father, Evans Frimpong, has not been involved either financially or emotionally in the children's upbringing and was preparing to provide a written authorization to allow the children to immigrate permanently to Canada to be raised by Mr. Addae. Further, that Mr. Addae was also seeking an opinion from an adoption expert in Ghana but understood that legal adoption from Ghana is difficult for single parents. The letter also states that the children were currently living with their 66-year-old maternal grandmother who had health issues and whose insistence that she continued to "see" the Minor Applicants' deceased mother caused the children mental distress. The attached documentation included a statutory declaration from Mr. Addae, as well as two notarized forms, entitled *Declaration from Non-Accompanying Parent/Guardian for Minors Immigrating to Canada* [Non-Accompanying Parent Declaration], apparently signed by Mr. Frimpong, the children's biological father, and dated June 25, 2020.

[8] By email of December 24, 2020, the Officer advised that the file had been closed as the applicant, Ms. Ofori, is deceased. The request for H&C considerations for the children had been considered but the children had been included on Ms. Ofori's application as non-accompanying dependants and their biological father had not consented to them accompanying their mother. A purported consent accompanying the December 14, 2020 request was not accompanied by signed identification from him. And, if the sponsor wished to continue with the sponsorship of the children new files would need to be created.

[9] On January 6, 2021, counsel for the Applicants requested reconsideration of the December 24, 2020 decision to close the file. Counsel included a notarized statutory declaration of Mr. Frimpong dated December 23, 2020 wherein Mr. Frimpong advised that he has not been involved in the children's lives, and that he was not financially or emotionally fit to be a care giver to them. He stated that Mr. Addae had been providing fatherly responsibilities to the children since he came into their lives, and acknowledged that Mr. Addae intended for the children to join him in Canada. Mr. Frimpong confirmed that he consented for Mr. Addae to take the children to stay with him in Canada. Also included was an attestation from a Deputy Judicial Secretary in Ghana, confirming that the notary who notarized Mr. Frimpong's Statutory Declaration, identification, and other documents, was a notary public in Ghana.

[10] On January 18, 2021, the Officer advised that the documentation provided with the request for reconsideration had been reviewed but that the December 24, 2020 stood.

**Relevant Legislation**

[11] The relevant provisions of the IRPA and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRP Regulations] are found in Annex A to these reasons.

**Decision under review**

[12] The December 24, 2020 email from the Officer states that the updated documentation had been reviewed and assessed, but that the file was closed because the applicant (Ms. Ofori) was deceased. The request for H&C considerations for the dependent children was reviewed, however, it was found that the children are not the sponsor's children, they were included in the application as non-accompanying dependents, and that their biological father had not given consent. The Officer states the consent forms purportedly signed by the Minor Applicants' biological father did not include signed identification. Further, if the sponsor, Mr. Addae, wished to continue with the sponsorship of the children, he would have to submit a new undertaking, new files would have to be created, and the children would need to be considered as members of the family class. The Officer notes that Mr. Addae had indicated that he was considering adopting the children. The Officer states that the Adoption Authority in Ghana reviews requests for adoption. The Officer then reproduced the definition of "Dependent Child" from the *IRP Regulations*, and stated that the file was closed.

[13] A Global Case Management System [GCMS] notes entry on December 24, 2020 is essentially the content of the email sent to Mr. Addae on that date. An earlier entry on the same date notes that Mr. Addae had known since May 23, 2020 of his spouse's death and referenced the documentation submitted with counsel's December 14, 2020 "update" letter requesting H&C consideration for the dependant children. The notes record that the children are not the sponsor's children nor his dependants. They were non-accompanying dependants of Ms. Ofori's and her application indicated that this was because their biological father had not consented to them travelling to Canada. The notes state that, in the future, if the sponsor decided to adopt the children – and the biological father would have to agree to this – then Mr. Addae could submit a sponsorship of the children. But for now they did not meet the definition of a dependant and are not members of the family class. The notes also state that the Officer was not satisfied that the biological father had given consent for the children to travel, noting that he had not done so previously and there was no explanation as to why he would now. The Officer states that they had concerns that the biological father did not sign the consent provided with the December 14 2020 update letter and "[a]t this point, I am not satisfied it is in the best interests of the children for them to be issued a visa. In addition, sponsor would need to make a separate sponsorship for them. The file is closed and sponsor advised".

[14] By letter dated January 18, 2021, the Officer states that the application "was considered on its substantive merits and was finalized by the reviewing officer". Further, that the letter notifying the Applicants of the file closure included the decision and the reasons for closing the application, thereby fully concluding the application. The Officer states that should there be different or new information, a new application could be submitted. The GCMS notes entry

indicates that the Officer reviewed the documentation but the decision would stand. The notes record that the biological mother of the children is deceased and:

> The dependents do not meet the definition of a dependent and are not members of the family class in respect of the sponsor. They are not his biological children and they have not been adopted by him. Sponsor does not have legal guardianship of the dependents. The children were non-accompanying dependents on the application for PR. Sponsor has provided a statutory declaration purportedly from the biological father however signed identification for the biological father of the dependants has not been submitted. The declaration purportedly from biological father makes no mention of the children being adopted by the sponsor or gives consent for them to be adopted.

**Issues and standard of review**

[15] The sole issue arising in this application for judicial review is whether the Officer's decision was reasonable.

[16] The parties submit and I agree that the standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23, 25). On judicial review, the Court "must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision…" (*Vavilov* at para 99).

**Was the Officer's decision reasonable?**

*Applicants' position*

[17] The Applicants submit that the Officer repeatedly states that the Minor Applicants are not members of the family class and cannot be sponsored by Mr. Addae but the Officer failed to engage with the basis of the Applicants' H&C request. The Applicants "asked for H&C processing pursuant to section 25 of the IRPA because the children could not be sponsored without their mother being alive or without the Applicant formally adopting them. The H&C online processing guidelines indicate that *de facto* family members can be processed under H&C and that adoption or legal guardianship is not required". The Applicants submit that the Officer did not engage with their evidence demonstrating that the children were emotionally and financially dependent on Mr. Addae and considered him to be their father. Further, the Officer erred in finding that the Minor Applicants' biological father had not provided his consent. According to the Applicants, the concern with the consent was the primary reason for the refusal to grant a permanent resident visa to the Minor Applicants.

*Respondent's position*

[18] The Respondent submits the death of the Applicant's spouse ended the processing of the spousal sponsorship application. The Officer correctly stated that a new sponsorship application must be submitted with respect to the children. The Minor Applicants are foreign nationals outside of Canada. Section 66 of the IRP Regulations requires that their request for H&C relief under s 25 of the IRPA must be made as an application in writing accompanied by an application

to become permanent residents. As the Officer noted, Mr. Addae could submit a family class sponsorship if the children became members of the family class through adoption or another means. It would be unintelligible and contrary to law for the Officer to process the request for H&C considerations of the children in the spousal sponsorship application.

[19] Further, even if a proper application for permanent residence was submitted, it would also be unintelligible and contrary to law if the Officer found the Minor Applicants to be members of the family class in the absence of sufficient evidence to demonstrate that the Principal Applicant is the legal guardian of the children. While the Applicants rely on the operational instructions and guidelines with respect to H&C assessment of *de facto* family members, they misstate it. The document states that *de facto* family members may include "children in a guardianship relationship when adoption as described in subsection 3(2) of the *Immigration and Refugee Protection Regulations* is not possible". There was no evidence before the Officer establishing that adoption is not possible in this case or that the biological father consented to adoption. Thus, in the context of this case, the children could not be considered *de facto* family members.

[20] The Respondent submits that the Officer meaningfully engaged with an assessment of whether the Minor Applicants could be considered members of the family class and correctly found that they could not.

[21] The Respondent also submits that the primary reason for refusing to grant a permanent resident visa was not, as the Applicants assert, because of the question regarding the consent

document of the biological father. Rather, the Officer could not grant a permanent resident visa to the Minor Applicants because there was no underlying application – this was the fatal flaw identified by the Officer. Further, the Minor Applicants could not be considered members of the family class, for all of the reasons given, including that there was no evidence that the biological father consented to a future adoption and his consent for the Principal Applicant to take the children to live with him in Canada was not accompanied by signed identification from the father.

*Analysis*

[22] Under the IRPA, a foreign national may be selected as a member of the family class on the basis of their relationship with the sponsor, including as the spouse, child or other prescribed family member of a Canadian citizen (IRPA s 12(1)). A Canadian citizen may sponsor a foreign national for purposes of obtaining permanent residence (IRPA s 13(1)).

[23] Under the IRP Regulations, a visa officer shall issue a permanent resident visa to a foreign national if it is established that the foreign national has applied in accordance with the regulations for a permanent resident visa as a member of a specified class referred to in s 70(2), one of which is the family class (IRP Regulations ss 70(1)(a), 70(2)(a)).

[24] For the purposes of s 12(1) of the IRPA, the family class is prescribed as a class of persons who may become a permanent resident on the basis of the requirements of Division 1, Family Class (IRP Regulations s 116). Section 117(1) of the IRP Regulations states that a foreign national is a member of the family class if, with respect to a sponsor, they are the sponsor’s

spouse (s 117(1)(a)), a dependent child of the sponsor (s 117(1)(b)) or a person under the age of 18 years of age whom the sponsor intends to adopt in Canada, including international adoptions if the specified requirements are met.

[25] Section 25 of the IRPA states that the Minister may, on request of a foreign national outside Canada who applies for a permanent resident visa, examine their circumstances and may grant them permanent resident status or an exemption from any applicable criteria or obligations of the IRPA if the Minister is of the opinion that it is justified by H&C considerations relating to the foreign national, taking into account the best interests of a child directly affected. Section 66 of the IRPA Regulations states that a request made by a foreign national under subsection 25(1) of the IRPA must be made as an application in writing accompanied by an application to remain in Canada as a permanent resident or, in the case of a foreign national outside Canada, an application for a permanent resident visa.

[26] This application for judicial review must be considered against the above regulatory backdrop. Here the submitted application for permanent residence was a spousal sponsorship application. The sponsor was Mr. Addae, a Canadian citizen, who sought to sponsor his spouse, Ms. Ofori, a foreign national. Ms. Ofori was the applicant. As Mr. Addae's spouse, Ms. Ofori was a member of the family class. As such, she was entitled to apply for permanent residence.

[27] The application listed her two children as non-accompanying dependents. It states that they were not accompanying her to Canada as their biological father was not, at the time of the application, agreeable to this.

[28] Unfortunately, before the processing of her application was complete, Ms. Ofori died. There was no separate or stand alone application to sponsor the children. Nor could there have been. That is because, as the Officer found, the Minor Applicants are not members of the family class. They do not fall within the definition of a dependent child. They are not the biological children of Mr. Addae and he has not adopted them. In these circumstances, Mr. Addae could not have sponsored the children for permanent residence before his spouse's death. And, as the Officer stated, if in the future Mr. Addae is able to adopt the children (which would require the consent of their biological father and the approval of the Ghana authorities), then at that time he could apply to sponsor them for permanent residence. But for now, because the children do not fall within the definition of dependents, they are not members of the family class and they cannot be sponsored as such.

[29] In that regard, in the December 14, 2020 letter to the Officer advising of Ms. Ofori's death, counsel states that they represent the Minor Applicants "in their ongoing application for permanent residence under the Family Class" and requests that "the Minor Applicants' application for permanent residence be processed under humanitarian and compassionate grounds". However, as indicated above, the children themselves were never sponsored for permanent residence nor could they have been as they were not members of the family class. There was no ongoing application by the children for permanent residence.

[30] In effect, counsel seeks to convert the spousal application of Ms. Ofori – after her death – into an application for permanent residence for the children based on H&C considerations. Or, as the Respondent puts it, the Applicants are trying to fit a square peg in a round hole.

[31] The circumstances of this matter are certainly somewhat unique. Unsurprisingly, the Applicants provide no authority to support the conversion of an application for permanent residence of a deceased sponsored spouse to an H&C application for her surviving dependent, non-accompanying (which was their status in her application and up to the time of her death) children. Indeed, neither party provided any authorities that address the fate of an application on the death of an applicant. Which may well be because the result is obvious on its face. Nor do the Applicants explain why a separate H&C application could not be made.

[32] Reading the reasons in whole and considering the regulatory regime, I am satisfied that the Officer could reasonably have refused the request for H&C considerations for the dependent children simply on the basis that Ms. Ofori's application for permanent residence closed upon her death. In that circumstance, there was no ongoing or any application for permanent residence in relation to which the H&C considerations could have been assessed. As the Officer stated, the file was closed because the applicant was deceased.

[33] However, it is not apparent that the closing of Ms. Ofori's file was in fact the determinative factor in the Officer's decision, as the Respondent submits. The Officer's reference to new applications was made in the context of the possibility of a future sponsorship application by Mr. Addae if he later adopts the children. The Officer did not refer to s 66 of the IRP Regulations or explicitly state that they had no authority to consider the request because the children had not made applications for permanent residence.

[34] The Officer also determined that the children were not the sponsor's dependents as they were not his biological children and had not been adopted by him. In making that finding, the Officer considered the statutory declaration of the biological father but noted that it did not mention the children being adopted by Mr. Addae or consent to them being adopted. That is, the statutory declaration did not serve to bring the children within the definition of dependents as it did not confirm that the children had been or would be adopted by Mr. Addae or that their biological father agreed to their adoption. Because they were not members of the family class, new sponsorship applications would be required should the children be adopted. This suggests, however, that had they been found to be dependents, then the existing application would have sufficed. Which brings us to the Non-Accompanying Parent Declarations.

[35] It is not clear to me why the Officer considered the Non-Accompanying Parent Declarations if the spousal sponsorship application was no longer in play because of Ms. Ofori's death.

[36] The *Declaration From Non-Accompanying Parent/Guardian for Minors Immigrating to Canada* forms accompanied counsel's December 14, 2020 update letter. This is an IRCC form which is to be submitted with a photocopy of a valid and legible identity document for processing with the permanent resident application. It must be filled out by the non-accompanying parent/guardian, former spouse or former common law partner and be witnessed by a notary public. In this case, the form is dated June 25, 2020, after Ms. Ofori's death, and identifies Mr. Addae as the travelling parent or guardian. It is purported to be signed by the children's biological father as witnessed by a notary public.

[37] The first GCMS entry on December 24, 2020, states “I am not satisfied the biological father has given consent for them to travel (he didn’t previously and there is no explanation as to why he would now). I have concerns the biological father of the child did not sign the consent form. *At this point, I am not satisfied that it is in the best interests of the children for them to be issued a visa. In addition, sponsor would need to make a separate sponsorship for them*”.

[38] This appears to suggest that a best interests of the child H&C analysis was conducted under the existing application – and despite that application having been closed because of Ms. Ofori’s death – but was restricted to the question of whether there was satisfactory proof of consent of the biological father to bring the children to Canada.

[39] In my view, reading the reasons in whole, the determinative factor was not that the file closed when Ms. Ofori died, but that the children were not members of the family class. The Officer did engage with that issue. However, having done so, the Officer was also required to engage with the main thrust of the Applicants’ submission, being that although the children were not dependents as defined by the regulatory regime, they should be assessed as *de facto* family members (*Cristobal v Canada (Citizenship and Immigration)*, 2020 FC 572 [*Cristobal*] at paras 19, 41; *Zafra v Canada (Citizenship and Immigration)*, 2018 FC 420 at para 21; *Okbai v Canada (Citizenship and Immigration)*, 2012 FC 229 at paras 18-19).

[40] The Applicants refer to the Guidelines which state that:

> *De facto* family members are persons who do not meet the definition of a family class member. They are in a situation of dependence that makes them a *de facto* member of a nuclear family that is either in Canada or applying to immigrate. Some

> example: a son, daughter (over age 19), brother or sister left alone in the country without family of their own; an elderly relative such as an aunt or uncle or an unrelated person who has resided with the family for a long time. Also included may be children in a guardianship relationship when adoption as described in subsection 3(2) of the *Immigration and Refugee Protection Regulations* is not possible."

[41] While the Officer stated that Mr. Addae does not have legal guardianship of the children, in my view, this does not engage with the detailed submissions made in support of establishing the existence of a *de facto* parental relationship for purposes of affording the children H&C consideration.

[42] The Respondent points out that Mr. Addae's statutory declaration included with the December 14, 2020 letter to the Officer states that Mr. Addae plans to meet with an adoption professional while in Ghana "but have [sic] been informed that as a single parent I may obstacles [sic] to adopting". The Respondent submits that this does not establish that adoption is not possible. I agree that Mr. Addae does not state who informed him of this. Nor does the record contain an opinion of an adoption professional. His counsel's letter refers to Mr. Addae's statement and adds a footnote reference to a website, hopscotchadoptions.org. It is unclear if this is the source of Mr. Addae's information. However, the Officer did not engage with that evidence to assess whether or not there was a *de facto* parental relationship because adoption is not possible. This may be because the Officer found that there was no consent to an adoption, but the Officer does not explain why an assessment of the *de facto* parent submission was not undertaken.

[43] More significantly, the Guidelines do not require that adoption be impossible in order to consider whether a person is a *de facto* family member. That circumstance is simply one example given of what might comprise a *de facto* family member. As described in the Guidelines, the defining feature of a *de facto* relationship is "a situation of dependence" (see also *Cristobal* at para 20). Therefore, even if the Officer implicitly found that adoption was possible (or that there was insufficient evidence to demonstrate that it was impossible), in my view, this would not eliminate the need to consider the children's dependence and *de facto* family factors.

[44] Here we are left to guess if the Officer actually concluded that the lack of an underlying application for permanent residence by the children was fatal – as the Respondent submits. If it was, it is not clear why the Officer focused on the Non-Accompanying Parental Declaration and the statutory declaration of the children's biological father to the exclusion of the *de facto* parent submissions made by the Applicants.

[45] For the above reasons, I am not persuaded that the Officer's decision is based on an internally consistent and rational chain of analysis and is justified in relation to the facts and the law that constrain it (*Vavilov* at para 85). Accordingly, it is not reasonable.

**JUDGMENT IN IMM-598-21**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is granted;

2. The decision is set aside and the matter shall be remitted to another officer for redetermination;

3. There shall be no order as to costs; and

4. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

## ANNEX A

*Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*")

**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.

**Selection of Permanent Residents**

**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.

**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.

**…**

**(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.

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

*Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRP Regulations]

**2** The definitions in this section apply in these Regulations.

***dependent child***, in respect of a parent, means a child who

(a) has one of the following relationships with the parent, namely,

(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or

(ii) is the adopted child of the parent; and

(b) is in one of the following situations of dependency, namely,

(i) is less than 22 years of age and is not a spouse or common-law partner, or

(ii) is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition. (enfant à charge)

**Division 5**

**Humanitarian and Compassionate Considerations**

**Request**

**66** A request made by a foreign national under subsection 25(1) of the Act must be made as an application in writing accompanied by an application to remain in Canada as a permanent resident or, in the case of a foreign national outside Canada, an application for a permanent resident visa.

**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.

**(2)** The classes are

> **(a)** the family class;
>
> **(b)** the economic class, consisting of the federal skilled worker class, the Quebec skilled worker class, the provincial nominee class, the Canadian experience class, the federal skilled trades class, the Atlantic immigration 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
>
> **(c)** the Convention refugees abroad class and the country of asylum class.

**Family class**

**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.

**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, the country in which the person resides is a party to the Hague Convention on Adoption and the Convention applies to their province of intended destination, the competent authority of the country and of the province have approved the adoption in writing as conforming to that Convention, and

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

**(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

**(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

**(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

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

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

**(2)** A foreign national who is the adopted child of a sponsor and whose adoption took place when the child was under the age of 18 shall not be considered a member of the family class by virtue of the adoption unless

**(a)** the adoption was in the best interests of the child within the meaning of the Hague Convention on Adoption; and

**(b)** the adoption was not entered into primarily for the purpose of acquiring any status or privilege under the Act.

**(3)** The adoption referred to in subsection (2) is considered to be in the best interests of a child if it took place under the following circumstances:

**(a)** a competent authority has conducted or approved a home study of the adoptive parents;

**(b)** before the adoption, the child's parents gave their free and informed consent to the child's adoption;

**(c)** the adoption created a genuine parent-child relationship;

**(d)** the adoption was in accordance with the laws of the place where the adoption took place;

**(e)** the adoption was in accordance with the laws of the sponsor's place of residence and, if the sponsor resided in Canada at the time the adoption took place, the competent

authority of the child's province of intended destination has stated in writing that it does not object to the adoption;

**(f)** if the adoption is an international adoption, the country in which the adoption took place is a party to the Hague Convention on Adoption and the Convention applies to the child's province of intended destination, the competent authority of the country and of the province have stated in writing that they approve the adoption as conforming to that Convention; and

**(g)** if the adoption is an international adoption and the country in which the adoption took place is not a party to the Hague Convention on Adoption or the Convention does not apply to the child's province of intended destination, there is no evidence that the adoption is for the purpose of child trafficking or undue gain within the meaning of that Convention.

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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