Date: 200080110

Docket: IMM-2033-07

Citation: 2008 FC 32

Ottawa, Ontario, January 10, 2008

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

JOSHUA TAIWO ADJANI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMITGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicant, Joshua Taiwo Adjani, seeks judicial review of the decision of the Immigration and Refugee Board; Immigration Appeal Division (the Board) dated April 2, 2007, denying the his appeal of a visa officer's refusal of his son's sponsorship. The Application is brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA).

II. Factual Background

[2] The Applicant was born on May 1, 1960, in Accra in Ghana. He holds Ghanaian and Canadian citizenships. He was recognized as a refugee in Canada in 1996. He then applied for and obtained permanent residence in Canada. He became a Canadian citizen in 1999.

[3] The Applicant visited Nigeria on several occasions and had a casual relationship with a girlfriend there in the late eighties.

[4] During a trip to Nigeria in 2003, the Applicant's sister informed him that his former girlfriend had a son who looked like him. He then discovered that he had a son with the girlfriend he was with in the eighties and a DNA test confirmed that he was the father of the child.

[5] The Applicant developed a relationship with the child and sponsored him as member of the family class. His son applied for a permanent resident visa. The visa officer refused to grant a permanent visa to his son on October 19, 2006, because he did not meet the requirements for immigration to Canada. Specifically, because the Applicant, as the sponsor, had not declared the child as his dependant at the time of his processing or landing in Canada contrary to paragraph 117(9)(*d*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, (the Regulations). The visa officer concluded that since the son was not declared and examined at that time, he could not then, be considered a member of the family class.

[6] On December 18, 2006, the Applicant filed an appeal of the visa officer's decision with the Board pursuant subsection 63(1) of the IRPA.

[7] On April 2, 2007, the Board dismissed the Applicant's appeal for lack of jurisdiction. The Board concluded that "… the appellant's non-disclosure of the applicant when he applied for landing prohibit him from sponsoring him in the future because section 117(9)(*d*) of the Regulations is meant to preclude an appellant from sponsoring family members who were not examination [*sic*] at the time the application for permanent residence was made."

[8] The Board acknowledged that the Applicant did not know he was the father until recently, well after he was landed in Canada. The Board nevertheless found that, "… knowingly or not, the appellant precluded not only the visa officer from having him examined, but it also precluded him from sponsoring the applicant at a later date."

[9] The Board further observed that humanitarian and compassionate considerations, if any, should have been raised with the visa officer pursuant to s. 25(1) of the IRPA.

[10] On May 17, 2007, the Applicant filed the within application for judicial review.

IV. Issues

[11] The Applicant raises the following issues in this application:

A. Does the application of paragraph 117(9)(*d*) of the Regulations violate the Applicant's Charter rights as provided for under s. 15(1) of the *Canadian Charter of Rights and Freedoms*, Schedule B, Part I to the *Canada Act 1982 (U.K.)* 1982 c. 11 (the *Charter*)?

B. Is paragraph 117(9)(*d*) of the Regulations *ultra vires* the IRPA?

C. Was the decision rendered by the Board unreasonable?

V. Standard of Review

[12] It is unclear if the *Charter* arguments raised on this application were before the Board. In the circumstances, and to the extent that the determination of a standard of review is required, the two first issues involve the interpretation of paragraph 117(9)(*d*) of the Regulations and related provisions of the IRPA including a constitutional question. The applicable standard of review for such questions is correctness. See *Azizi v. Canada (Minister of Citizenship and Immigration)* 2005 FCA 406 at paragraph 7.

[13] The third issue concerns the application of paragraph 117(9)(*d*) of the Regulations to the facts. This is a question of mixed fact and law reviewable on the standard of reasonableness *simpliciter*. (*Woldeselassie v. Canada (Minister of Immigration and Citizenship)*, 2006 FC 1540 at para. 14; *Dave v. Canada (Minister of Citizenship and Immigration)* at para. 4 and *Ly v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 527 at paras. 17-20). An unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination (*Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748 at para. 56).

VI. Legislative provisions

[14] The pertinent legislative provisions have been reproduced in Annex.

VII. Analysis

A. *Does the application of paragraph 117(9)(d) of the Regulations violate the Applicant's Charter rights as provided for under s. 15(1) of the Canadian Charter of Rights and Freedoms Schedule B, Part I to the Canada Act 1982 (U.K.) 1982 c. 11 (the Charter)?*

[15] The Applicant submits that because his son was born out of wedlock and that he was unaware of the child's existence; his son is being treated differently than other children applying for permanent residence. He argues that such discrimination is a violation of his s. 15(1) *Charter* right; namely the right to be treated equally. The Applicant claims that as a member of a specific group, his son will be excluded by Canadian law based on his age and lineage. The Applicant contends that the impugned provision reflects a demeaning and prejudicial view of the child's worth simply because he was born out of wedlock.

[16] The Respondent claims that the Applicant's s. 15(1) *Charter* argument must fail because paragraph 117(9)(*d*) of the Regulations makes no distinction between a dependent child born out of wedlock or not. Rather, it contemplates timely disclosure versus non-disclosure of members of the family class and whether these members may be examined by the immigration authorities.

[17] In order to determine whether an enactment violates a s. 15 *Charter* right, the Supreme Court teaches that the following three broad inquiries as outlined in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at paragraph 39, be conducted:

> …Does the impugned law (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics or (b) fail to take into account the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics? If so, there is

> differential treatment for the purpose of s. 15(1). Second, was the claimant subject to differential treatment on the basis of one or more of the enumerated and analogous grounds? And third, does the differential treatment discriminate in a substantive sense, bringing into play the purpose of s. 15(1) of the *Charter* in remedying such ills as prejudice, stereotyping, and historical disadvantage? The second and third inquiries are concerned with whether the differential treatment constitutes discrimination in the substantive sense intended by s. 15(1).

[18] The Applicant contends that the inevitable result that would flow from these inquiries would be that the impugned provision violates his s. 15 *Charter* rights and that the provision would not be justified under section 1 of the *Charter.*

[19] As the Supreme Court teaches in *Law,* the first step in the required analysis to determine whether Charter rights have been violated is to identify the comparator group. The equality guarantee is a comparative concept. Identifying the appropriate comparator is necessary in assessing differential treatment and the grounds of the distinction. Several factors are considered to locate the appropriate comparator. For example, the subject matter of the legislation, the biological, historical and sociological similarities or dissimilarities may be relevant in establishing the relevant comparator in particular, and whether the legislation effects discrimination in a substantive sense more generally.

[20] The Applicant contends that the comparator group at issue here would be those children born out of wedlock versus legitimate children. There is simply no basis for this assertion. The regulatory scheme makes clear that a dependent child of a sponsor may be a member of a family class. There is no requirement that the child be born from parents that are married. There is no

prohibition relating to a child born out of wedlock in the applicable regulations. Paragraph 117(1)(*a*) of the Regulations speaks only of "a dependent child of the sponsor". Here, there is no dispute; the child at issue is the dependent child of the Applicant, the sponsor. The proper comparator group is rather the accompanying family members of the sponsor that may be examined. The differential treatment at issue here has no nexus with whether the child was born out of wedlock or not. On the basis of this stated characteristic, there is simply no differential treatment that would flow from the application of the impugned legislation. In short, the arguments advanced by the Applicant and the circumstances here do not support a foundation for a claim of infringement of the Applicant's s. 15 *Charter* rights. Consequently, the Applicant's s. 15 *Charter* argument must fail.

B. *Is paragraph 117(9)(d) of the Regulations ultra vires the IRPA*

[21] The Applicant contends that the Board's decision does not respect the stated objectives of the IRPA, in particular the objective "to see that families are reunited in Canada." The Applicant further contends that the principle of the protection of the family and the best interest of the child concerned are violated by a mechanical application of the impugned regulation. As I understand the Applicant's argument, the impugned regulation and its application are in direct conflict with the above stated objective and the purpose of the IRPA, and is consequently *ultra vires* the IRPA.

[22] Parliament has the right to adopt immigration policy and to enact legislation prescribing the conditions under which non-citizens will be permitted to enter and remain in Canada. This it has done by enacting the IRPA: *Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711 at paragraph 27. The IRPA and Regulations made pursuant to paragraphs 14(2)(*b*) and (*d*) thereof, set out a regulatory scheme that essentially controls the admission of foreign nationals to

Canada (*Canada (Minister of Citizenship and Immigration) v. de Guzman*, 2004 FC 1276 at paragraph 35).

[23] Family reunification and the best interest of children are recognized as valid purposes under the IRPA and are to be considered when relevant. The legislation also has other purposes, one of which is the maintenance of the integrity of the Canadian refugee protection system. The Federal Court of Appeal had to consider whether paragraph 117 (9)(d) of the regulations was *ultra vires* the IRPA in *Azizi v. Canada (Minister of Citizenship and Immigration)* 2005 FCA 406. Justice Rothstein, writing for the majority stated the following at paragraphs 28-29 of his reasons:

> [28] Paragraph 117(9)(*d*) does not bar family reunification. It simply provides that non-accompanying family members who have not been examined <u>for a reason other than a decision by a visa officer</u> will not be admitted as members of the family class. A humanitarian and compassionate application under section 25 of the IRPA may be made for Mr. Azizi's dependants or they may apply to be admitted under another category in the IRPA.
>
> [29] Mr. Azizi says these are undesirable alternatives. It is true that they are less desirable from his point of view than had his dependants been considered to be members of the family class. But it was Mr. Azizi's misrepresentation that has caused the problem. He is the author of this misfortune. He cannot claim that paragraph 117(9)(*d*) is *ultra vires* simply because he has run afoul of it. (My emphasis)

[24] The Court of Appeal has therefore decided that the impugned regulation is not *utltra vires* the IRPA particularly in cases where there is a misrepresentation to immigration authorities. Here, however, the Applicant did not know of his son's existence at the time of his application for permanent residence. He cannot, therefore, be said to have concealed this information or to have misrepresented his circumstances. In my view, it matters not whether non-disclosure is deliberate or

not. The regulation is clear, paragraph 117(9)(*d*) makes no distinction as to the reason for which an non-accompanying family member of the sponsor was not disclosed in his application for permanent residence. What matters, is the absence of examination by an officer that necessarily flows from the non-disclosure. This interpretation is consistent with the findings of my Colleague, Justice Mosley in *Hong Mei Chen v. M.C.I.,* 2005 FC 678, where the scope and effect of the impugned regulation were found not to be limited to cases of fraudulent non-disclosure. At paragraph 11 of his reasons, my learned colleague wrote, "… Whatever the motive, a failure to disclose which prevents the immigration officer from examining the dependent precludes future sponsorship of that person as a member of the family class."

[25] The provisions of paragraph 117(9)(*d*) of the Regulations are not inconsistent with the stated purposes and objectives of the IRPA. I am in agreement with the view expressed by Justice Kelen at paragraph 38 of his reasons in *de Guzman,* above, that "The objective of family reunification does not override, outweigh, supersede or trump the basic requirement that the immigration law must be respected, and administered in an orderly and fair manner." Further, in exceptional circumstances where humanitarian and compassionate factors are compelling, an applicant can seek, pursuant to s. 25(1) of the IRPA, a ministerial exemption to the statutory and regulatory requirements for admission to Canada. Such an application remains open to the Applicant. If successful, the Applicant could be reunited with his son. (*Chen,* above, at para. 18).

[26] For the above reasons, I find that the impugned regulation is not *ultra vires* the IRPA nor inconsistent with its stated objectives or purposes.

C. Was the decision rendered by the Board unreasonable?

[27] The Applicant challenges the reasonableness of the Board's decision. The only arguments raised on this application are in respect to the s. 15 *Charter* rights and the *vires* of the impugned regulation. Both of these arguments were dealt with above.

[28] As stated earlier, the impugned regulation, in the circumstances of this case, does not violate the Applicant's s. 15 *Charter* rights and is not *ultra vires* the IRPA. Given the mandatory nature of the regulation and its imperative language, the Board had no option but to dismiss the sponsorship application and in so doing committed no reviewable error. For the above reasons, this judicial review application will be dismissed.

VIII. Question for certification

[29] The Applicant has submitted the following question for certification:

> Does subsection 117(9)(d) of the IRPR apply to exclude non-accompanying family members from membership from the family class in circumstances where the sponsor was unaware of their existence at the time of his/her application for Permanent Residence and Landing in Canada?

[30] The proposed question suggests that the impugned regulation be interpreted to read in an element of subjective knowledge by the Sponsor regarding the non-disclosure so that deliberate or fraudulent non-disclosure be required for a finding under paragraph 117(9)(*d*) of the Regulations.

[31] In my view the impugned provision does not allow for such an interpretation. The language is clear and unambiguous, subjective knowledge of the misrepresentation or non-disclosure is not contemplated in the regulation. The Court of Appeal in *Azizi*, above, at paragraph 28 of its reasons, interpreted the provision as follows: "It simply provides that non-accompanying family members who have not been examined for a reason other than a decision by a visa officer will not be admitted as members of the family class." (My emphasis) This interpretation is consistent with decisions of the Federal Court. As stated above, in *Chen* at paragraph 11, the motive is unimportant, a failure to disclose which prevents examination of the dependent precludes future sponsorship of that person as a member of the family class. See also *Jean-Jacques v. M.C.I.*, 2005 FC 104 at paragraph 9.

[32] In my view, the meaning, scope, purpose and application of the impugned regulation have been comprehensively dealt with in the jurisprudence. The scope of the regulation is not limited to deliberate or fraudulent non-disclosure but to any non-disclosure which may prevent examination of a dependent. Non-disclosed, non-accompanying family members cannot be admitted as members of the family class. The proposed question has been answered, and is consequently inappropriate for certification.

IX. Conclusion

[33] This application for judicial review will be dismissed. I do not propose to certify a question.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed.

2. No question is certified.

"Edmond P. Blanchard"
Judge

ANNEX

The *Canadian Charter of Rights and Freedoms*

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

The *Immigration Refugee Protection Act.*

Objectives — immigration

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

(*a*) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;

(*b*) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;

(*b*.1) to support and assist the development of minority official languages communities in Canada;

(*c*) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;

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

(*e*) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;

(*f*) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the

Objet en matière d'immigration

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

a) de permettre au Canada de retirer de l'immigration le maximum d'avantages sociaux, culturels et économiques;

b) d'enrichir et de renforcer le tissu social et culturel du Canada dans le respect de son caractère fédéral, bilingue et multiculturel;

b.1) de favoriser le développement des collectivités de langues officielles minoritaires au Canada;

c) de favoriser le développement économique et la prospérité du Canada et de faire en sorte que toutes les régions puissent bénéficier des avantages économiques découlant de l'immigration;

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

e) de promouvoir l'intégration des résidents permanents au Canada, compte tenu du fait que cette intégration suppose des obligations pour les nouveaux arrivants et pour la société canadienne;

f) d'atteindre, par la prise de normes uniformes et l'application d'un traitement efficace, les objectifs fixés pour l'immigration par le gouvernement fédéral après

provinces;

(*g*) to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;

(*h*) to protect the health and safety of Canadians and to maintain the security of Canadian society;

(*i*) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and

(*j*) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

consultation des provinces;

g) de faciliter l'entrée des visiteurs, étudiants et travailleurs temporaires qui viennent au Canada dans le cadre d'activités commerciales, touristiques, culturelles, éducatives, scientifiques ou autres, ou pour favoriser la bonne entente à l'échelle internationale;

h) de protéger la santé des Canadiens et de garantir leur sécurité;

i) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;

j) de veiller, de concert avec les provinces, à aider les résidents permanents à mieux faire reconnaître leurs titres de compétence et à s'intégrer plus rapidement à la société.

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.

Right to sponsor family member

13. (1) A Canadian citizen or permanent resident may, subject to the regulations, sponsor a foreign national who

Droit au parrainage : individus

13. (1) Tout citoyen canadien et tout résident permanent peuvent, sous réserve des règlements, parrainer l'étranger de la

is a member of the family class.

Regulations

14. (1) The regulations may provide for any matter relating to the application of this Division, and may define, for the purposes of this Act, the terms used in this Division.

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.

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 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.

Application

(2) The following provisions govern an application under subsection (1):

(*b*) subject to paragraph 169(*f*), notice of the application shall be served on the other party and the application shall be filed in the Registry of the Federal Court (“the Court”) within 15 days, in

catégorie « regroupement familial ».

Application générale

14. (1) Les règlements régissent l’application de la présente section et définissent, pour l’application de la présente loi, les termes qui y sont employés.

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.

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 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.

Application

(2) Les dispositions suivantes s’appliquent à la demande d’autorisation :

b) elle doit être signifiée à l’autre partie puis déposée au greffe de la Cour fédérale — la Cour — dans les quinze ou soixante jours, selon que la mesure

the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;	attaquée a été rendue au Canada ou non, suivant, sous réserve de l'alinéa 169*f*), la date où le demandeur en est avisé ou en a eu connaissance;
(*c*) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;	*c*) le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;

The *Immigration Refugee Protection Regulations*.

Examination — permanent residents	Contrôle : résident permanent
51. A foreign national who holds a permanent resident visa and is seeking to become a permanent resident at a port of entry must	**51.** L'étranger titulaire d'un visa de résident permanent qui, à un point d'entrée, cherche à devenir un résident permanent doit :
(*a*) inform the officer if	*a*) le cas échéant, faire part à l'agent de ce qui suit :
(i) the foreign national has become a spouse or common-law partner or has ceased to be a spouse, common-law partner or conjugal partner after the visa was issued, or	(i) il est devenu un époux ou conjoint de fait ou il a cessé d'être un époux, un conjoint de fait ou un partenaire conjugal après la délivrance du visa,
(ii) material facts relevant to the issuance of the visa have changed since the visa was issued or were not divulged when it was issued; and	(ii) tout fait important influant sur la délivrance du visa qui a changé depuis la délivrance ou n'a pas été révélé au moment de celle-ci;
(*b*) establish, at the time of examination, that they and their family members, whether accompanying or not, meet the requirements of the Act and these Regulations.	*b*) établir, lors du contrôle, que lui et les membres de sa famille, qu'ils l'accompagnent ou non, satisfont aux exigences de la Loi et du présent règlement.

74. Judicial review is subject to the following provisions:

(*a*) the judge who grants leave shall fix the day and place for the hearing of the application;

(*b*) the hearing shall be no sooner than 30 days and no later than 90 days after leave was granted, unless the parties agree to an earlier day;

(*c*) the judge shall dispose of the application without delay and in a summary way; and

(*d*) an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question.

74. Les règles suivantes s'appliquent à la demande de contrôle judiciaire :

a) le juge qui accueille la demande d'autorisation fixe les date et lieu d'audition de la demande;

b) l'audition ne peut être tenue à moins de trente jours — sauf consentement des parties — ni à plus de quatre-vingt-dix jours de la date à laquelle la demande d'autorisation est accueillie;

c) le juge statue à bref délai et selon la procédure sommaire;

d) le jugement consécutif au contrôle judiciaire n'est susceptible d'appel en Cour d'appel fédérale que si le juge certifie que l'affaire soulève une question grave de portée générale et énonce celle-ci.

Excluded relationships

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

(*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.

Exception

(10) Subject to subsection (11), paragraph

Restrictions

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

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.

Exception

(10) Sous réserve du paragraphe (11), l'alinéa (9)*d*) ne s'applique pas à l'étranger

(9)(*d*) does not apply in respect of a foreign national referred to in that paragraph who was not examined because an officer determined that they were not required by the Act or the former Act, as applicable, to be examined.

qui y est visé et qui n’a pas fait l’objet d’un contrôle parce qu’un agent a décidé que le contrôle n’était pas exigé par la Loi ou l’ancienne loi, selon le cas.

The *Federal Courts Immigration and Refugee Protection Rules*.

18. (1) Before rendering a judgment in respect of an application for judicial review, a judge shall give the parties an opportunity to request that the judge certify that a serious question of general importance is involved as referred to in paragraph 74(*d*) of the Act.

(2) A party who requests that the judge certify that a serious question of general importance is involved shall specify the precise question.

18. (1) Le juge, avant de rendre jugement sur la demande de contrôle judiciaire, donne aux parties la possibilité de lui demander de certifier que l’affaire soulève une question grave de portée générale, tel que le prévoit l’alinéa 74*d*) de la Loi.

(2) La partie qui demande au juge de certifier que l’affaire soulève une question grave de portée générale doit spécifier cette question.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2033-07
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