

Federal Court



Cour fédérale

Date: 20090827

Docket: IMM-968-09

Citation: 2009 FC 847

Ottawa, Ontario, August 27, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

GJOVALIN DOKAJ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) for judicial review of a decision by an immigration officer at the Case Processing Centre (CPC) in Mississauga, dated February 10, 2009, wherein the immigration officer refused the Applicant's application to sponsor a member of the family class.

Issue

[2] Did the immigration officer err in fact and law in his determination that the Applicant did not meet the financial requirements to sponsor his family members?

[3] The application for judicial review shall be allowed for the following reasons.

Factual Background

[4] On August 16, 2006, the Applicant submitted a family class sponsorship application with supporting documentation. The application was to sponsor his parents and eligible siblings, a total of seven persons.

[5] Not having received any response from the Respondent, the Applicant submitted an updated application on June 30, 2008, where he indicated that he has been in a common-law relationship, as defined by the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations), since September 25, 2006. The Applicant's updated application included a sponsorship application and sponsorship undertaking signed by the Applicant's common-law spouse.

[6] On October 2, 2008, the Applicant was requested by the CPC in Mississauga to provide updated information with respect to his family class sponsorship application.

[7] By letter dated October 28, 2008, the requested information was submitted for both the Applicant and his common-law wife.

Impugned Decision

[8] On February 10, 2009, the immigration officer found that the Applicant's income for the assessment period was less than the Low Income Cut-off (LICO) requirement for sponsorship purposes.

[9] The officer also informed the Applicant that the applicable minimum necessary income (MNI) had been modified to include his common-law partner in the calculation of his family size. The Applicant's common-law partner was ineligible to co-sign his application because she could not be added once the application was originally received, and thus, her income was not to be considered towards the financial test.

[10] Under the Regulations that came into effect on June 28, 2002, all sponsors residing outside of Quebec are assessed using the same LICO requirement. Regardless of the size of the population base in which a sponsor resides, the MNI requirement is the same. The Applicant's income for the period of assessment was \$56,792.77 while the required income for a family of nine persons is \$69,012.

[11] To determine if the MNI requirement has been met, consideration is first given to the amount indicated on Line 150 of the Applicant's Notice of Assessment for the most recent tax year prior to the submission of his sponsorship application. If this amount is not equal to or greater than

the MNI, consideration is then given to income earned in the 12 month period immediately preceding the date in which the application was submitted.

[12] As the amount listed on the Notice of Assessment was less than the MNI, the Applicant's income was assessed on the 12 month period preceding the date the sponsorship application was received by the CPC.

[13] The Regulations require that along with all the eligibility requirements, sponsors must meet the MNI requirement from the day the sponsorship is filed until the day a final decision is rendered by the visa office.

[14] All sponsors must meet the low-income requirement unless they are sponsoring a spouse, common-law partner, conjugal partner and/or dependent children who have no dependent children. The MNI required for sponsorship is determined by the size of the family of each individual sponsor. The officer explained that in accordance with the Regulations, the size of the family is composed of the following individuals:

- a) The sponsor and his/her family members*;
- b) The sponsored family member, and his/her family members*, whether they are accompanying the sponsored family member or not;
- c) Every other person, and their family members*, for whom the sponsor has given or co-signed and the undertaking is still in effect;
- d) Every other person and their family members*, for whom the sponsor's spouse or common-law partner has given or co-signed, if the sponsor's spouse or common-law partner is serving as a co-signer on the current application.

* A family member is considered as any of the following individuals:

- i) A spouse or common-law partner;
- ii) A biological or adopted child less than 22 years of age who is not married or in a common-law relationship;
- iii) A biological or adopted child who is more than 22 years of age who has depended on the parent since before the age of 22 and has been continuously enrolled in and attending a post-secondary institution;
- iv) A child who is 22 years of age or older and has depended on the parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition.

[15] In the case at bar, the size of the Applicant's family and the applicable MNI required has been modified as it was necessary to include Eleftheria Petroulias, the Applicant's common-law partner, in the calculation of his family size, as he indicated that he was in a common-law relationship when the sponsorship application was received.

[16] The officer found the Applicant's co-signer was ineligible to co-sign his application, as she was not on the application when it was originally received. A co-signer cannot be added to the application once it has been received at the CPC. Therefore, her income cannot be considered towards the financial test and the officer also did not have the authority to consider income earned outside the stated twelve month period.

Relevant Legislation

[17] The relevant legislative provisions are contained in Appendix A at the end of this document.

Standard of Review

[18] In the recent decision of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada concluded that there are only two standards of review: correctness and reasonableness. The Court described the new standard of reasonableness at paragraph 47. Following *Dunsmuir*, the question of whether an immigration officer erred in their factual assessment of the application is reviewable according to the new standard of reasonableness.

[19] As a result, this Court will only intervene to review a visa officer's decision if it does not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir*, above, at paragraph 47). For a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process.

[20] The appropriate standard of review when a decision-maker is interpreting a statute is correctness (*Sivasamboo v. Canada (Minister of Citizenship and Immigration)*, [1995] 1 F.C. 741 (T.D.); *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982).

Analysis

[21] It is my opinion that the immigration officer at the CPC has erred in its determination of whether the Applicant could sponsor members of the family class.

[22] The Applicant’s initial application, submitted in August 2006, was to sponsor his parents and eligible siblings for a total of seven persons plus himself. When the immigration officer

rendered a final decision in February 2009, the LICO for the Applicant's family, which now included his common-law wife and totalled nine persons, was \$69,012. The Applicant's income for the period of assessment was \$56,792.77 without his common-law wife income.

[23] The officer found that the income of the Applicant's common-law spouse could not be included in the sponsorship undertaking because she was not his common-law spouse when the initial sponsorship application was remitted and therefore she could not be added once the application was received by the CPC.

[24] However, the Respondent argues that the common-law spouse must be considered in the calculation of the size of the Applicant's family, as she is now considered as a member of his family.

[25] If the Applicant's common-law spouse is to be considered in the calculation of the size of the Applicant's family, her income should also be included in the sponsorship undertaking as per subsection 132(5) and paragraph 134(1)(c) of the Regulations. The statutory provisions do not provide for the exclusion of the spouse's income while including her as a dependent member of the Applicant's family.

[26] Inclusive of his common-law spouse income, the Applicant met the LICO at the time the decision was made.

[27] No question of general importance was submitted and none arises.

JUDGMENT

THIS COURT ORDERS that the application for judicial review be allowed. The matter is remitted back for a redetermination by a newly appointed officer. No question is certified.

“Michel Beaudry”

Judge

APPENDIX A

Immigration and Refugee Protection Regulations, SOR/2002-227:

Division 3

Sponsors

Sponsor

130. (1) Subject to subsection (2), 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 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 an application referred to in subsection (1) by their spouse, common-law partner, conjugal partner or dependent child who has no dependent children if the sponsor will reside in Canada when the applicant becomes a permanent resident.

Sponsorship undertaking

131. The sponsor's undertaking shall be given

- (a) to the Minister; or
- (b) if the sponsor resides in a province that has

Section 3

Parrainage

Qualité de répondant

130. (1) Sous réserve du paragraphe (2), 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 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 une demande visée au paragraphe (1) faite par 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 le demandeur deviendra résident permanent.

Engagement de parrainage

131. L'engagement de parrainage est pris, selon le cas :

- a) envers le ministre;
- b) si la province de résidence du répondant a

entered into an agreement referred to in subsection 8(1) of the Act that enables the province to determine and apply financial criteria with respect to sponsorship and the administration of sponsorship undertakings, to the competent authority of the province.

Undertaking — duration

132. (1) Subject to subsection (2), the sponsor's undertaking obliges the sponsor to reimburse Her Majesty in right of Canada or a province for every benefit provided as social assistance to or on behalf of the sponsored foreign national and their family members during the period

(a) beginning

(i) if the foreign national enters Canada with a temporary resident permit, on the day of that entry,

(ii) if the foreign national is in Canada, on the day on which the foreign national obtains a temporary resident permit following an application to remain in Canada as a permanent resident, and

(iii) in any other case, on the day on which the foreign national becomes a permanent resident; and

(b) ending

(i) if the foreign national is the sponsor's spouse, common-law partner or conjugal partner, on the last day of the period of three years following the day on which the foreign national becomes a permanent resident,

(ii) if the foreign national is a dependent child of the sponsor or of the sponsor's spouse, common-law partner or conjugal partner or is a person referred to in paragraph 117(1)(g), and is less

conclu avec le ministre, en vertu du paragraphe 8(1) de la Loi, un accord l'habilitant à établir et à mettre en oeuvre les normes financières applicables à un tel engagement et à en assurer le suivi, envers les autorités compétentes de la province.

Engagement : durée

132. (1) Sous réserve du paragraphe (2), le répondant s'engage à rembourser à Sa Majesté du chef du Canada ou de la province en cause les prestations fournies à titre d'assistance sociale à l'étranger parrainé, ou pour son compte, ou aux membres de la famille de celui-ci, ou pour leur compte :

a) à compter, selon le cas :

(i) si l'étranger parrainé est entré au Canada muni d'un permis de séjour temporaire, du jour de son entrée,

(ii) si l'étranger parrainé est déjà au Canada, du jour où il obtient un permis de séjour temporaire à la suite d'une demande de séjour au Canada à titre de résident permanent,

(iii) dans tout autre cas, de la date à laquelle l'étranger devient résident permanent;

b) jusqu'à, selon le cas :

(i) si l'étranger est l'époux, le conjoint de fait ou le partenaire conjugal du répondant, la date d'expiration de la période de trois ans suivant la date où il devient résident permanent,

(ii) si l'étranger est l'enfant à charge du répondant ou de l'époux, du conjoint de fait ou du partenaire conjugal de ce dernier, ou est la personne visée à l'alinéa 117(1)(g), et est âgé de

than 22 years of age when they become a permanent resident, on the earlier of

(A) the last day of the period of 10 years following the day on which the foreign national becomes a permanent resident, and

(B) the day on which the foreign national reaches 25 years of age,

(iii) if the foreign national is a dependent child of the sponsor or of the sponsor's spouse, common-law partner or conjugal partner and is 22 years of age or older when they become a permanent resident, on the last day of the period of three years following the day on which the foreign national becomes a permanent resident; and

(iv) if the foreign national is a person other than a person referred to in subparagraph (i), (ii) or (iii), on the last day of the period of 10 years following the day on which the foreign national becomes a permanent resident.

Undertaking to province — duration

(2) In the case of an undertaking to a competent authority of a province referred to in paragraph 131(b), the period referred to in subsection (1) shall end not later than

(a) if the foreign national is a dependent child and is less than 22 years of age on the day on which they become a permanent resident, the later of

(i) the day on which they reach 22 years of age, and

(ii) the last day of the period of 10 years following the day they become a permanent resident; and

moins de vingt-deux ans lorsqu'il devient résident permanent, celle des dates suivantes qui est antérieure à l'autre :

(A) celle où expire la période de dix ans suivant la date où il devient résident permanent,

(B) le jour où il atteint l'âge de vingt-cinq ans,

(iii) si l'étranger est l'enfant à charge du répondant ou de l'époux, du conjoint de fait ou du partenaire conjugal de ce dernier et est âgé d'au moins vingt-deux ans au moment où il devient résident permanent, la date d'expiration de la période de trois ans suivant la date où il devient résident permanent,

(iv) si l'étranger n'est pas visé aux sous-alinéas (i), (ii) ou (iii), l'expiration de la période de dix ans suivant la date où il devient résident permanent.

Durée de l'engagement : province

(2) Dans le cas de l'engagement pris envers les autorités compétentes d'une province conformément à l'alinéa 131b), la période visée au paragraphe (1) prend fin au plus tard, selon le cas :

a) si l'étranger est un enfant à charge âgé de moins de vingt-deux ans au moment où il devient résident permanent, du dernier en date des événements suivants :

(i) le jour où il atteint l'âge de vingt-deux ans,

(ii) l'expiration de la période de dix ans suivant la date où l'étranger devient résident permanent;

(b) if the foreign national is a person other than a dependent child and is less than 22 years of age on the day on which they become a permanent resident, on the last day of the period of 10 years following the day on which the foreign national becomes a permanent resident.

Undertaking to province — alternate duration

(3) Notwithstanding subsection (2), the period referred to in subsection (1) shall end on the day provided for by the laws of the province if that day is earlier than the later of the days referred to in subsection (2).

Agreement

(4) Subject to paragraph 137(c), if the person is to be sponsored as a member of the family class or of the spouse or common-law partner in Canada class and is at least 22 years of age, or is less than 22 years of age and is the sponsor's spouse, common-law partner or conjugal partner, the sponsor, the co-signer, if any, and the person must, before the sponsorship application is approved, enter into a written agreement that includes

(a) a statement by the sponsor and the co-signer, if any, that they will provide for the basic requirements of the person and their accompanying family members during the applicable period referred to in subsection (1);

(b) a declaration by the sponsor and the co-signer, if any, that their financial obligations do not prevent them from honouring their agreement with the person and their undertaking to the Minister in respect of the person's application; and

(c) a statement by the person that they will make every reasonable effort to provide for their own basic requirements as well as those of their

b) dans tout autre cas, l'expiration de la période de dix ans suivant la date où il devient résident permanent.

Durée subsidiaire : province

(3) Malgré le paragraphe (2), la période prend fin le jour prévu par le droit provincial si ce jour survient avant celle des dates fixées au paragraphe (2) qui est postérieure à l'autre.

Accord

(4) Sous réserve de l'alinéa 137c), si le répondant parraine, au titre de la catégorie du regroupement familial ou de celle des époux ou conjoints de fait au Canada, une personne qui est âgée d'au moins vingt-deux ans ou qui, ayant moins de vingt-deux ans, est son époux, son conjoint de fait ou son partenaire conjugal, le répondant et le cosignataire, le cas échéant, doivent, avant que la demande de parrainage ne soit approuvée, conclure avec cette personne un accord écrit selon lequel, entre autres :

a) ils s'engagent à subvenir, pendant la période applicable visée au paragraphe (1), aux besoins fondamentaux de cette personne et des membres de sa famille qui l'accompagnent;

b) ils déclarent que leurs obligations financières ne les empêchent pas d'honorer l'accord en question et l'engagement qu'ils ont pris envers le ministre à l'égard de la demande de la personne;

c) la personne s'engage à faire tout son possible pour subvenir à ses besoins fondamentaux et à ceux des membres de sa famille qui

accompanying family members.

l'accompagnent.

Co-signature — undertaking

(5) Subject to paragraph 137(c), the sponsor's undertaking may be co-signed by the spouse or common-law partner of the sponsor if the spouse or common-law partner meets the requirements set out in subsection 130(1), except paragraph 130(1)(c), and those set out in subsection 133(1), except paragraph 133(1)(a), and, in that case,

(a) the sponsor's income shall be calculated in accordance with paragraph 134(1)(b) or (c); and

(b) the co-signing spouse or common-law partner is jointly and severally or solidarily bound with the sponsor to perform the obligations in the undertaking and is jointly and severally or solidarily liable with the sponsor for any breach of those obligations.

Cosignataire — engagement

(5) Sous réserve de l'alinéa 137c), l'engagement peut être cosigné par l'époux ou le conjoint de fait du répondant s'il satisfait aux critères prévus par le paragraphe 130(1), compte non tenu de l'alinéa 130(1)c), et par le paragraphe 133(1), compte non tenu de l'alinéa 133(1)a), auquel cas :

a) le revenu du répondant est déterminé conformément aux alinéas 134(1)b) ou c);

b) le cosignataire et le répondant sont solidairement responsables des obligations prévues par l'engagement et de leur exécution.

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

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

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

(c) is not subject to a removal order;

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

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

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

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

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

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

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

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

(i) d'une infraction d'ordre sexuel ou d'une tentative ou menace de commettre une telle

person, or

(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 following persons, namely,

(A) a relative of the sponsor, including a dependent child or other family member of the sponsor,

(B) a relative of the sponsor's spouse or of the sponsor's common-law partner, including a dependent child or other family member of the sponsor's spouse or of the sponsor's common-law partner, or

(C) the conjugal partner of the sponsor or a relative of that conjugal partner, including a dependent child or other family member of that conjugal partner;

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

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

(i) any undertaking, or

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

(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;

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

infraction, à l'égard de quiconque,

(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 :

(A) un membre de sa parenté, notamment un enfant à sa charge ou un autre membre de sa famille,

(B) un membre de la parenté de son époux ou de son conjoint de fait, notamment un enfant à charge ou un autre membre de la famille de son époux ou de son conjoint de fait,

(C) son partenaire conjugal ou un membre de la parenté de celui-ci, notamment un enfant à charge ou un autre membre de la famille de ce partenaire conjugal;

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

(i) soit à un engagement de parrainage,

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

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

(j) if the sponsor resides

j) dans le cas où il réside :

(i) in a province other than a province referred to in paragraph 131(b), has a total income that is at least equal to the minimum necessary income, and

(i) dans une province autre qu'une province visée à l'alinéa 131b), a eu un revenu total au moins égal à son revenu vital minimum,

(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

(ii) dans une province visée à l'alinéa 131b), 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) is not in receipt of social assistance for a reason other than disability.

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

Exception — conviction in Canada

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

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

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) 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).

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

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

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

(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 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 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).

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.

Income calculation rules

134. (1) For the purpose of subparagraph 133(1)(j)(i), the total income of the sponsor shall be determined in accordance with the following rules:

(a) the sponsor's income shall be calculated on the basis of the last notice of assessment, or an equivalent document, issued by the Minister of National Revenue in respect of the most recent

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 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 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).

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.

Règles de calcul du revenu

134. (1) Pour l'application du sous-alinéa 133(1)j)(i), le revenu total du répondant est déterminé selon les règles suivantes :

a) le calcul du revenu se fait sur la base du dernier avis de cotisation qui lui a été délivré par le ministre du Revenu national avant la date de dépôt de la demande de parrainage, à l'égard de

taxation year preceding the date of filing of the sponsorship application;

(b) if the sponsor produces a document referred to in paragraph (a), the sponsor's income is the income earned as reported in that document less the amounts referred to in subparagraphs (c)(i) to (v);

(c) if the sponsor does not produce a document referred to in paragraph (a), or if the sponsor's income as calculated under paragraph (b) is less than their minimum necessary income, the sponsor's Canadian income for the 12-month period preceding the date of filing of the sponsorship application is the income earned by the sponsor not including

(i) any provincial allowance received by the sponsor for a program of instruction or training,

(ii) any social assistance received by the sponsor from a province,

(iii) any financial assistance received by the sponsor from the Government of Canada under a resettlement assistance program,

(iv) any amounts paid to the sponsor under the Employment Insurance Act, other than special benefits,

(v) any monthly guaranteed income supplement paid to the sponsor under the Old Age Security Act, and

(vi) any Canada child tax benefit paid to the sponsor under the Income Tax Act; and

(d) if there is a co-signer, the income of the co-signer, as calculated in accordance with paragraphs (a) to (c), with any modifications that the circumstances require, shall be included in

l'année d'imposition la plus récente, ou tout document équivalent délivré par celui-ci;

b) si le répondant produit un document visé à l'alinéa a), son revenu équivaut à la différence entre la somme indiquée sur ce document et les sommes visées aux sous-alinéas c)(i) à (v);

c) si le répondant ne produit pas de document visé à l'alinéa a) ou si son revenu calculé conformément à l'alinéa b) est inférieur à son revenu vital minimum, son revenu correspond à l'ensemble de ses revenus canadiens gagnés au cours des douze mois précédant la date du dépôt de la demande de parrainage, exclusion faite de ce qui suit :

(i) les allocations provinciales reçues au titre de tout programme d'éducation ou de formation,

(ii) toute somme reçue d'une province au titre de l'assistance sociale,

(iii) toute somme reçue du gouvernement du Canada dans le cadre d'un programme d'aide pour la réinstallation,

(iv) les sommes, autres que les prestations spéciales, reçues au titre de la Loi sur l'assurance-emploi,

(v) tout supplément de revenu mensuel garanti reçu au titre de la Loi sur la sécurité de la vieillesse,

(vi) les prestations fiscales canadiennes pour enfants reçues au titre de la Loi de l'impôt sur le revenu;

d) le revenu du cosignataire, calculé conformément aux alinéas a) à c), avec les adaptations nécessaires, est, le cas échéant, inclus dans le calcul du revenu du répondant.

the calculation of the sponsor's income.

Change in circumstances

(2) If an officer receives information indicating that the sponsor is no longer able to fulfil the sponsorship undertaking, the Canadian income of the sponsor shall be calculated in accordance with paragraph (1)(c) on the basis of the 12-month period preceding the day the officer receives that information rather than the 12-month period referred to in that paragraph.

Default

135. For the purpose of subparagraph 133(1)(g)(i), the default of a sponsorship undertaking

(a) begins when

(i) a government makes a payment that the sponsor has in the undertaking promised to repay, or

(ii) an obligation set out in the undertaking is breached; and

(b) ends, as the case may be, when

(i) the sponsor reimburses the government concerned, in full or in accordance with an agreement with that government, for amounts paid by it, or

(ii) the sponsor ceases to be in breach of the obligation set out in the undertaking.

Suspension during proceedings against sponsor or co-signer

136. (1) If any of the following proceedings are brought against a sponsor or co-signer, the sponsorship application shall not be processed until there has been a final determination of the

Changement de situation

(2) Dans le cas où l'agent reçoit des renseignements montrant que le répondant ne peut plus respecter son engagement à l'égard du parrainage, le revenu canadien du répondant est calculé conformément à l'alinéa (1)c) comme si la période de douze mois était celle qui précède le jour où l'agent a reçu les renseignements au lieu de la période de douze mois visée à cet alinéa.

Défaut

135. Pour l'application du sous-alinéa 133(1)g(i), le manquement à un engagement de parrainage :

a) commence, selon le cas :

(i) dès qu'un paiement auquel le répondant est tenu au titre de l'engagement est effectué par une administration,

(ii) dès qu'il y a manquement à quelque autre obligation prévue par l'engagement;

b) prend fin dès que le répondant :

(i) d'une part, rembourse en totalité ou selon tout accord conclu avec l'administration intéressée les sommes payées par celle-ci,

(ii) d'autre part, s'acquitte de l'obligation prévue par l'engagement à l'égard de laquelle il y avait manquement.

Sursis — procédure introduite à l'égard du répondant ou du cosignataire

136. (1) Si l'une des procédures ci-après est introduite à l'égard du répondant ou du cosignataire, la demande de parrainage ne peut être traitée tant qu'il n'a pas été statué sur cette

proceeding:

- (a) an application for revocation of citizenship under the Citizenship Act;
- (b) a report prepared under subsection 44(1) of the Act; or
- (c) a charge alleging the commission of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.

Suspension during appeal by sponsor or co-signer

(2) If a sponsor or co-signer has made an appeal under subsection 63(4) of the Act, the sponsorship application shall not be processed until the period for making the appeal has expired or there has been a final determination of the appeal.

Undertaking — Province of Quebec

137. If the sponsor resides in the Province of Quebec, the government of which has entered into an agreement referred to in paragraph 131(b),

- (a) the sponsor's undertaking, given in accordance with section 131, is the undertaking required by An Act respecting immigration to Québec, R.S.Q., c.I-0.2, as amended from time to time;
- (b) an officer shall approve the sponsorship application only if there is evidence that the competent authority of the Province has determined that the sponsor, on the day the undertaking was given as well as on the day a decision was made with respect to the application, was able to fulfil the undertaking; and
- (c) subsections 132(4) and (5) and paragraphs

procédure en dernier ressort :

- a) l'annulation ou la révocation de la citoyenneté au titre de la Loi sur la citoyenneté;
- b) le rapport prévu au paragraphe 44(1) de la Loi;
- c) des poursuites pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

Sursis — appel interjeté par le répondant ou le cosignataire

(2) Si le répondant ou le cosignataire interjette appel au titre du paragraphe 63(4) de la Loi, la demande de parrainage ne peut être traitée tant que le délai d'appel n'a pas expiré ou que l'appel n'a pas été tranché en dernier ressort.

Engagement : cas de la province de Québec

137. Les règles suivantes s'appliquent si le répondant réside dans la province de Québec et que celle-ci a conclu l'accord visé à l'alinéa 131b) :

- a) l'engagement de parrainage pris conformément à l'article 131 est un engagement requis par la Loi sur l'immigration au Québec, L.R.Q., ch. I-0.2, compte tenu de ses modifications successives;
- b) l'agent n'accorde la demande de parrainage que sur preuve que les autorités compétentes de la province étaient d'avis que le répondant était en mesure, à la date à laquelle l'engagement a été pris et à celle à laquelle il a été statué sur la demande de parrainage, de se conformer à l'engagement;
- c) les paragraphes 132(4) et (5) et les alinéas

133(1)(g) and (i) do not apply.

133(1)(g) et i) ne s'appliquent pas.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

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and
THE MINISTER OF CITIZENSHIP
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APPEARANCES:

Yehuda Levinson FOR APPLICANT

Laoura Christodoulides FOR RESPONDENT

SOLICITORS OF RECORD:

Levinson & Associates FOR APPLICANT
Toronto, Ontario

John H. Sims, Q.C. FOR RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario