Federal Court  Cour fédérale

Date: 20120807

Docket: IMM-5424-11

Citation: 2012 FC 972

Ottawa, Ontario, August 7, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

SARAH GUNE TALBOT

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*, SC 2001, c 27 (the Act) for judicial review of a decision by the Immigration Appeal Division (the Board), dated July 14, 2011, dismissing the applicant's family class sponsorship appeal of the decision refusing her son's permanent residence application.

[2] This decision was based on the Board's finding that the applicant's son was excluded as a member of the family class under paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) because he was not examined at the time of the applicant's application for permanent residence.

[3] The applicant requests that the Board's decision be quashed and the matter sent back for reconsideration by a differently constituted panel.

Background

[4] The applicant, Sarah Gune Talbot, is originally from Nigeria. In 1987, she married a Nigerian man named Bello Jaku Ladan. The couple had a child together; Jaku Bello Michael, born on March 24, 1988. After discovering that Mr. Ladan was still married to his previous wife, the applicant divorced him in 1988.

[5] According to Nigerian marriage customs for divorce, the father gains custody of the children if a bride price is paid to the wife's family at marriage. Mr. Ladan did pay this bride price and therefore had full control over their son after their divorce.

[6] On April 27, 1989, the applicant married Luc Talbot, a Canadian citizen. The couple met while Mr. Talbot was volunteering in Nigeria for the Canadian Universities Services Overseas. Mr. Ladan did not permit the applicant or Mr. Talbot to have any contact with Jaku.

[7] In 1990, while the couple were still in Nigeria, Mr. Talbot applied to sponsor the applicant to become a Canadian permanent resident. At the time, the applicant was pregnant. The previous year, the applicant had miscarried due to the poor medical facilities in Nigeria. To avoid similar complications, the couple wished to have the baby born in Canada.

[8] As the applicant was functionally illiterate in 1990, Mr. Talbot took responsibility over her application. The couple did not retain legal representation.

[9] To obtain the application forms and immigration advice, Mr. Talbot travelled to the High Commission in Lagos, Nigeria. Mr. Talbot spoke with an officer at the High Commission counter. He explained their circumstances, including his failing business, his expired residence permit, his expiring house lease, the applicant's pregnancy and the custody issues over Jaku. In response, the officer informed Mr. Talbot that there would be difficulties if Jaku could not be produced for examination. As her pregnancy rendered her application urgent, the officer allegedly suggested that Jaku not be declared on the applicant's application form and that it would still be possible to bring Jaku to Canada in the future as long as the couple could prove that Jaku was the applicant's son. Mr. Talbot did not question this advice or seek another opinion. This description of events was described by Mr. Talbot in his affidavit signed April 15, 2011. It was not included in his original affidavit signed December 14, 2011.

[10] Without informing her, Mr. Talbot omitted Jaku from his wife's application.

[11] The applicant's permanent residence application was ultimately denied because she could not undergo the required x-rays for a complete medical exam due to her pregnancy. However, as the applicant was issued a visitor's visa, she was nevertheless able to enter Canada in January 1991 where she gave birth.

[12] In Canada, Mr. Talbot filed an inland permanent resident application for his wife on humanitarian and compassionate (H&C) grounds. Again, he did not declare Jaku on the application. The applicant was granted permanent resident status on June 30, 1992 and became a Canadian citizen in 1995.

[13] Mr. Ladan died in 2002, after which the applicant and her husband were able to reconnect with Jaku. The couple sent Jaku money for financial support. However, they discovered that the money they were sending was not being used for Jaku's benefit. The couple therefore decided to bring Jaku, a Nigerian citizen, to Canada to live with them.

[14] On November 4, 2009, the couple assisted Jaku in filing his permanent resident application. The applicant was listed as Jaku's sponsor. On October 18, 2010, the couple received a letter from Citizenship and Immigration Canada notifying them that Jaku was not eligible for sponsorship because he was not declared in the applicant's original permanent residence application. Jaku's permanent residence application was denied on December 21, 2010.

[15] On February 21, 2011, the applicant filed a sponsorship appeal of the denial of Jaku's permanent residence application. The Board wrote to the applicant on March 22, 2011 asking for

written submissions on why the appeal should not be dismissed because Jaku was not a member of the family class. After accepting submissions, the Board dismissed the appeal on July 14, 2011 because Jaku was not a member of the family class. The current application is for judicial review of this appeal decision.

Board's Decision

[16] The Board first summarized the factual background. It noted that Jaku was never declared to Canadian immigration officials when the applicant first came to Canada.

[17] The Board then determined that pursuant to Rule 25 of the *Immigration Appeal Division Rules*, SOR/2002-230 (the IAD Rules) the matter could be determined in chambers.

[18] The Board defined the substantive issue as whether Jaku was a member of the applicant's family class and whether he could be sponsored by the applicant.

[19] The Board determined that Jaku was not a member of the family class as per paragraph 117(9)(d) of the Regulations, as he was never disclosed to immigration officials and therefore not examined when the applicant applied to immigrate to Canada.

[20] The Board also noted that Jaku was not covered by the exception in subsection 117(10) of the Regulations because an officer did not determine that he was not required to be examined.

[21] The Board found that counsel's submissions on the reason for Mr. Talbot's omission of Jaku from the applicant's permanent residence application were improper as they were given as first hand evidence of factual allegations and did not disclose the source of the information. Further, the Board held that counsel's submissions directly contradicted Mr. Talbot's first affidavit. The Board also found it difficult to believe that a Government of Canada employee would give such inaccurate advice. As a result, the Board did not accept the factual allegations included in counsel's submissions, finding instead that the facts set out in Mr. Talbot's initial affidavit were accurate.

[22] Nevertheless, the Board found that Jaku was not declared to visa or immigration officers when the applicant immigrated to Canada and was landed.

[23] The Board therefore found that the officer's refusal under paragraph 117(9)(d) of the Regulations was valid in law. It noted that under section 65 of the Act, it had no jurisdiction to allow the appeal on H&C grounds. As such, the appeal was dismissed.

Issues

[24] The applicant submits the following points at issue:

1. Did the Board err by not considering the totality of the evidence before it?

2. Did the Board fail to abide by the applicable standards of procedural fairness in an appeal setting?

[25] I would rephrase the issues as follows:

1. What is the appropriate standard of review?
2. Was the Board's decision unreasonable?
3. Did the Board deny the applicant procedural fairness?

Applicant's Written Submissions

[26] The applicant submits that an assessment of whether the applicant's son qualifies for sponsorship as a member of the family class is a question of mixed fact and law that attracts a standard of review of reasonableness.

[27] The applicant submits that the Board made four errors in dismissing the applicant's sponsorship appeal.

[28] First, the applicant submits that the Board erred by ignoring relevant evidence that contradicted its findings. Specifically, the Board erred by not referring to Mr. Talbot's affidavit sworn on April 15, 2011. The Board's reasons suggest that it completely ignored this affidavit. This finding is supported by the Board's criticism of counsel's submissions as hearsay evidence. Rather than being hearsay evidence, these submissions were clearly supported by Mr. Talbot's second affidavit.

[29] The applicant also submits that the Board's finding that counsel's written submissions conflict with Mr. Talbot's previous affidavit (sworn on December 14, 2010) is problematic. Rather

than being contradictory, the applicant submits that when read as a whole, the two submissions are complementary.

[30] The applicant also notes that IAD proceedings are *de novo*. As such, IAD boards are not limited to the evidence that was before the officer. The Board should therefore have considered both Mr. Talbot's first affidavit, which was before the officer and Mr. Talbot's second affidavit, which was not before the officer. As the Board's decision was silent as to the second affidavit, there was no evidence that it did take this affidavit into account.

[31] In addition, the applicant submits that the Board gave no evidence to support its assertion that it was hard to believe that an officer would give incorrect advice. The applicant submits that statements contained in a properly executed affidavit are presumed to be true. The Board erred by discounting Mr. Talbot's statements that were made under oath in favour of its own unsupported finding that immigration officers do not give incorrect advice. Further, where the totality of the documentary evidence did not reasonably support this conclusion, the Board had a minimum obligation to provide an explanation for discounting the evidence that contradicted its findings.

[32] Secondly, the applicant submits that the Board erred by not mentioning subsection 117(10) of the Regulations in its decision; a statutory exception to subsection 117(9)(d) of the Regulations. This provision was relied on extensively by applicant's counsel in his written submissions before the Board. It prevents the exclusion of family members who were determined by an immigration officer not to need examination at the time of the sponsor's permanent residence application. The applicant submits that it is arguable that the officer determined that Jaku need not be examined and

offered the advice accordingly. The applicant submits that if the Board accepted Mr. Talbot's version of events at the High Commission in Lagos, it should have addressed how subsection 117(10) of the Regulations did not apply in the circumstances.

[33] Third, the applicant submits that the Board erred by not considering the context of the law in 1990 when commenting on the reasonableness of the officer's advice at that time. The applicant highlights that twenty years ago, when her permanent resident application was filed, there was no exclusion equivalent to the current paragraph 117(9)(d) of the Regulations. This provision was first enacted in 2002. Further, although the old legislation required applicants to answer all questions truthfully, the consequences were very different. Previously, the non-disclosure of a family member was not necessarily fatal for future sponsorship applications. Therefore, the officer's advice was reasonable based on the law at the time.

[34] Finally, the applicant submits that the Board's decision to dismiss the applicant's appeal was based solely on written representations without an oral hearing. The Board's challenge of the accuracy of Mr. Talbot's second affidavit, specifically the statements pertaining to his discussion with the officer at the High Commission in Lagos, is an attack on Mr. Talbot's credibility. As such, the Board breached procedural fairness by not holding an oral hearing to properly assess Mr. Talbot's credibility and the disputed facts regarding the advice given by the officer in Lagos.

Respondent's Written Submissions

[35] The respondent submits that a foreign national is not a member of the family class where the sponsor fails to declare that person prior to obtaining permanent resident status. The duty to disclose all dependents runs from the time that an application for permanent residence is filed through to the date that the applicant is landed as a permanent resident in Canada.

[36] The respondent submits that subsection 117(10) of the Regulations has no application to this case. This provision deals with the situation where a family member is declared, but an officer determines that the family member need not be examined. In this case, Jaku was not declared and therefore it was not possible for an officer to determine that he need not be examined. In addition, the alleged statement was made in Nigeria, whereas the applicant's application was not filed until after her arrival in Canada.

[37] The respondent submits that the Board correctly found that Mr. Talbot's allegation that he was told not to declare Jaku stands in direct contrast to his December 2010 affidavit. This latter evidence does not indicate that he omitted Jaku for reason of advice from the officer, but rather because he honestly believed that Jaku's biological father would never allow Mr. Talbot or the applicant to have access to him. The respondent submits that it was entirely open for the Board to prefer the version of events set out in Mr. Talbot's initial affidavit over those set out in his second affidavit. Further, motive for non-disclosure is not relevant to the application of paragraph 117(9)(d) of the Regulations.

[38] The respondent also submits that under Rule 25 of the IAD Rules, the Board is not required to hold a hearing. In addition, under subsection 162(2) of the Act, the Board is to deal with all proceedings as quickly as the circumstances and the considerations of fairness and natural justice permit.

[39] The respondent concedes that the Board did not reference Mr. Talbot's affidavit sworn on April 15, 2011. Nevertheless, the Board did still consider the new version of events contained therein and found it not credible for cogent reasons.

Analysis and Decision

[40] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[41] In this case, the Board's decision concerns the application of paragraph 117(9)(d) of the Regulations to the facts. This is a question of mixed fact and law that attracts a reasonableness standard of review (see *Adjani v Canada (Minister of Citizenship and Immigration)*, 2008 FC 32, [2008] FCJ No 68 at paragraph 13; and *Savescu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 353, [2010] FCJ No 432 at paragraph 19).

[42] In reviewing the Board's decision on the standard of reasonableness, the Court should not intervene unless the Board came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at paragraph 59). As the Supreme Court held in *Khosa* above, it is not up to a reviewing court to substitute its own view of a preferable outcome, nor is it the function of the reviewing court to reweigh the evidence (at paragraphs 59 and 61).

[43] Conversely, the appropriate standard of review for issues of procedural fairness and natural justice is correctness (see *Khosa* above, at paragraph 43; and *Ha v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 49, [2004] 3 FCR 195 at paragraph 45). No deference is owed to officers on this issue (see *Dunsmuir* above, at paragraph 50).

[44] **Issue 2**

Was the Board's decision unreasonable?

The Board's decision in this case was ultimately based on paragraph 117(9)(d) of the Regulations. This provision excludes foreign nationals as members of the family class if two conditions are met. First, their sponsor must have previously applied for, and been granted, permanent residence. Secondly, at the time of the sponsor's permanent residence application, the foreign national must have been the sponsor's non-accompanying family member and must not have been examined.

[45] The purpose of paragraph 117(9)(d) of the Regulations "is to limit sponsorship rights in certain cases in order to dissuade visa applicants from making false or incomplete statements regarding the relevant facts about their dependants" (see *Bernard v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1121, [2011] FCJ No 1381 at paragraph 14). This provision plays an important role in the immigration regime because it permits Canadian authorities to examine, in advance, all the people likely to be members of the family class in the event that the prospective sponsor is granted permanent residence (see *Savescu* above, at paragraph 5).

[46] The clear wording of this provision reflects its intention "to exclude from the family class an applicant's family members who were not declared and who therefore were not examined, regardless of the reason for the omission" (see *Bernard* above, at paragraph 16). Motive is not important. As explained in *Savescu* above, at paragraph 31:

> […] An incorrect statement that leads to a foreign national not being examined excludes that foreign national from being considered as a member of the family class eligible for sponsorship, regardless of the reasons for the incorrect statement. Therefore, whether the incorrect statement was made in good faith or whether it resulted from exceptional circumstances, the exclusion of the foreign national from the family class of the sponsor will be maintained. [emphasis added]

[47] The simple fact is that "a failure to disclose which prevents examination of the dependent precludes future sponsorship of that person as a member of the family class" (see *Adjani* above, at paragraph 31).

[48] In this case, the applicant submits that the Board's decision was unreasonable for the following reasons:

1. The Board ignored Mr. Talbot's affidavit sworn on April 15, 2011;

2. The Board did not support its assertion that it was unlikely that an officer would give incorrect advice;

3. The Board did not address why subsection 117(10) of the Regulations did not apply; and

4. The Board did not consider the context of the immigration law in force in 1990.

[49] In its decision, the Board acknowledges counsel's submissions dated April 19, 2011, which included Mr. Talbot's second affidavit sworn in April 2011. However, although the Board referred specifically to Mr. Talbot's December 2010 affidavit, it never mentioned the April 2011 affidavit. Further, it questioned the source of the statements made by counsel in its April 2011 submissions. It is notable that the conclusion section of these submissions explicitly lists a number of supporting documents, including Mr. Talbot's April 2011 affidavit. However, the Board still found that the relevant section in counsel's submissions contradicted Mr. Talbot's initial affidavit. Collectively, these findings do suggest that the Board disregarded Mr. Talbot's second affidavit evidence in its decision.

[50] The applicant also submits that the Board erred by not supporting its assertion that it was unlikely that an officer would give incorrect advice. It is true that this finding contradicts Mr. Talbot's sworn statement that the officer did give such advice. However, this alleged advice does contradict the basic rule that applicants must provide truthful information in their applications. I therefore find that it was not wholly unreasonable for the Board to question the submission that an officer would make a statement contradicting such an important pillar of the immigration regime.

[51] The applicant also refers to the IAD decision in *Batish v Canada (Minister of Citizenship and Immigration)*, [2008] IADD No 1388. In that case, the applicant explained in his sworn testimony that the officer had waived the necessity of his wife being examined. This was supported by further evidence of the officer's hand-written correction of the applicant's marital status on his record of landing (at paragraphs 11, 12 and 15). No such evidence was provided in this case to support Mr. Talbot's affidavit. This is exacerbated by Mr. Talbot's initial affidavit, in which he does not indicate that his omission of Jaku stemmed from an officer's advice, but rather that it was based on his belief that Jaku would never be allowed to immigrate to Canada:

> 29. […] I honestly believed that we would never be able to see Jaku Bello Michael in view of the previous history of refusal by his father.
>
> 30. When I applied to sponsor Sarah, I unfortunately did not include Jaku Michaels name in the application as I was operating under the honest belief that his father would never agree to allow Sarah or I have access to him hence he would never be a member of our family. I never considered the possibility of his father dying or changing his mind and that it might become necessary to bring him to Canada some day.

[52] The applicant also submits that the Board erred by not considering subsection 117(10) of the Regulations. This provision provides a limited exception to the paragraph 117(9)(d) exclusion. However, it is only available where the foreign nation was not examined because an officer actually determined that such examination was not required under the Act or its predecessors.

[53] In this case, it is first notable that the Board, albeit briefly, did consider subsection 117(10). However, it found that this provision did not apply in the circumstances because an officer did not determine that Jaku was not required to be examined. This is supported by Mr. Talbot's second affidavit, in which he indicated that the officer "suggested" that, given the urgency of the applicant's

pregnancy, Jaku not be declared on the application form. There was no actual determination that no examination was required. Thus, I find that the Board correctly found that Jaku did not fall within the scope of subsection 117(10) of the Regulations.

[54] A somewhat similar decision to the case at bar was rendered by this Court in *Moudoodi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 761, [2010] FCJ No 932. In *Moudoodi* above, the applicant testified that he attended the Canadian Embassy in Moscow prior to his departure where he conversed with an employee about his marriage. This marriage was ultimately not disclosed in his permanent resident application and his wife was therefore later excluded from the family class. The IAD rejected the applicant's appeal, finding that the applicant's discussion with the Canadian Embassy employee did not amount to a waiver under subsection 117(10) of the Regulations. This Court upheld that decision.

[55] The applicant also submits that the Board erred by not considering the context of the immigration laws in force in 1990 when the applicant's permanent residence application was filed. However, as admitted by the applicant, the requirement to answer questions truthfully has not changed over time. Therefore, the applicant's reliance on changes in consequences between the different legislative frameworks is irrelevant (see *Collier v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1209, [2004] FCJ No 1445 at paragraphs 1, 3, 12, 13 and 17).

[56] In summary, although I find that the Board erred in apparently ignoring Mr. Talbot's second affidavit, I do not find that this error is sufficiently grave to render its ultimate decision unreasonable. It is established jurisprudence that motive is not relevant in the application of

paragraph 117(9)(d) of the Regulations. It matters not whether the incorrect statement was made in good faith or whether it resulted from exceptional circumstances (see *Savescu* above, at paragraph 31). What matters is that it was in fact made. Where a sponsor or the sponsor's representative makes such an incorrect statement, the foreign national that was not declared is rendered eligible for sponsorship by that sponsor under the family class.

[57] Finally, although the Board was precluded in this appeal from considering H&C grounds as per section 65 of the Act, an application under those grounds may still be made by the applicant under subsection 25(1) of the Act. In such an application, an immigration officer may take into account the circumstances surrounding the failure to declare a family member (see *Bernard* above, at paragraph 16).

[58] **Issue 3**

Did the Board deny the applicant procedural fairness?

The applicant submits that the Board breached the applicant's rights to procedural fairness by deciding the appeal based on written submissions. As the Board appeared to have questioned Mr. Talbot's credibility, the applicant submits that it should have held an oral hearing to properly assess Mr. Talbot's credibility and the events pertaining to the advice given by the officer in Lagos.

[59] Rule 25(1) of the IAD Rules permits boards to allow appeals based solely on written submissions, without an oral hearing, where two conditions are met: it would not be unfair to any party; and there is no need for the oral testimony of a witness.

[60] The omission of Jaku from the applicant's permanent resident application is not in dispute. Although the Board appears to have ignored Mr. Talbot's second affidavit, the sole added benefit of this evidence would have been a clearer understanding that an officer in Nigeria suggested to Mr. Talbot that the omission of Jaku from his wife's application would speed up the immigration process. Mr. Talbot clearly stated in his affidavit that he did not believe Jaku would ever be able to join them in Canada and therefore consciously omitted Jaku from the application. As discussed above, motive is irrelevant in the application of paragraph 117(9)(d) of the Regulations. I therefore do not find that Mr. Talbot's oral testimony, even if it enlightened the Board as to his second affidavit, would have led it to a different decision. As such, it was not unfair to the applicant to not require an oral hearing.

[61] The respondent's reference to subsection 162(2) of the Act is also pertinent. This provision requires boards to deal with all proceedings as quickly as the circumstances and the considerations of fairness and natural justice permit. In this case, I find that the Board correctly decided to deal with the appeal solely on written submissions, without incurring the time and resources for an oral hearing. As motive was irrelevant in this decision and Mr. Talbot's testimony did not suggest that the officer actually determined that an examination was not required, I do not find that the Board erred in deciding the matter solely on written submissions.

[62] In summary, I find the applicant has failed to show any reviewable error. As such, I would dismiss this judicial review.

[63] **Certified Question**

The respondent submitted that should I accept the applicant's interpretation of Regulation 117(10), the following question should be certified as a serious question of general importance:

> Can subsection 117(10) be applied in the absence of an application for permanent residence?

Since I did not adopt the applicant's interpretation of Regulation 117(10), I will not certify the proposed question.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"John A. O'Keefe"

Judge

ANNEX

Relevant Statutory Provisions

Interpretation Act, RSC 1985, c I-21

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.	12. Tout texte est censé apporter une solution de droit et s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

Immigration and Refugee Protection Act, SC 2001, c 27

25. (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, 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.	25. (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
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.	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.
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.	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.

67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,	67. (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :
(a) the decision appealed is wrong in law or fact or mixed law and fact;	a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;
(b) a principle of natural justice has not been observed; or	b) il y a eu manquement à un principe de justice naturelle;
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.
72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72. (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
74. Judicial review is subject to the following provisions:	74. Les règles suivantes s'appliquent à la demande de contrôle judiciaire :
. . .	. . .
(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.	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.
162.(2) Each Division shall deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.	162.(2) Chacune des sections fonctionne, dans la mesure où les circonstances et les considérations d'équité et de justice naturelle le permettent, sans formalisme et avec célérité.
175. (1) The Immigration Appeal Division, in any proceeding before it,	175. (1) Dans toute affaire dont elle est saisie, la Section d'appel de l'immigration :
(a) must, in the case of an appeal under	a) dispose de l'appel formé au titre du

subsection 63(4), hold a hearing;	paragraphe 63(4) par la tenue d'une audience;
(b) is not bound by any legal or technical rules of evidence; and	b) n'est pas liée par les règles légales ou techniques de présentation de la preuve;
(c) may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.	c) peut recevoir les éléments qu'elle juge crédibles ou dignes de foi en l'occurrence et fonder sur eux sa décision.

Immigration and Refugee Protection Regulations, SOR/2002-227

117.(9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if	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 :
(a) the foreign national is the sponsor's spouse, common-law partner or conjugal partner and is under 16 years of age;	a) l'époux, le conjoint de fait ou le partenaire conjugal du répondant s'il est âgé de moins de seize ans;
(b) the foreign national is the sponsor's spouse, common-law partner or conjugal partner, the sponsor has an existing sponsorship undertaking in respect of a spouse, common-law partner or conjugal partner and the period referred to in subsection 132(1) in respect of that undertaking has not ended;	b) l'époux, le conjoint de fait ou le partenaire conjugal du répondant si celui-ci a déjà pris un engagement de parrainage à l'égard d'un époux, d'un conjoint de fait ou d'un partenaire conjugal et que la période prévue au paragraphe 132(1) à l'égard de cet engagement n'a pas pris fin;
(c) the foreign national is the sponsor's spouse and	c) l'époux du répondant, si, selon le cas :
(i) the sponsor or the foreign national was, at the time of their marriage, the spouse of another person, or	(i) le répondant ou cet époux étaient, au moment de leur mariage, l'époux d'un tiers,
(ii) the sponsor has lived separate and apart from the foreign national for at least one year and	(ii) le répondant a vécu séparément de cet époux pendant au moins un an et, selon le cas :
(A) the sponsor is the common-law partner of another person or the sponsor has a conjugal partner, or	(A) le répondant est le conjoint de fait d'une autre personne ou il a un partenaire conjugal,
(B) the foreign national is the common-law	(B) cet époux est le conjoint de fait d'une

partner of another person or the conjugal partner of another sponsor; or	autre personne ou le partenaire conjugal d'un autre répondant;
(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.	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.
(10) Subject to subsection (11), paragraph (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.	(10) Sous réserve du paragraphe (11), l'alinéa (9)d) ne s'applique pas à l'étranger 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.
(11) Paragraph (9)(d) applies in respect of a foreign national referred to in subsection (10) if an officer determines that, at the time of the application referred to in that paragraph,	(11) L'alinéa (9)d) s'applique à l'étranger visé au paragraphe (10) si un agent arrive à la conclusion que, à l'époque où la demande visée à cet alinéa a été faite :
(a) the sponsor was informed that the foreign national could be examined and the sponsor was able to make the foreign national available for examination but did not do so or the foreign national did not appear for examination; or	a) ou bien le répondant a été informé que l'étranger pouvait faire l'objet d'un contrôle et il pouvait faire en sorte que ce dernier soit disponible, mais il ne l'a pas fait, ou l'étranger ne s'est pas présenté au contrôle;
(b) the foreign national was the sponsor's spouse, was living separate and apart from the sponsor and was not examined.	b) ou bien l'étranger était l'époux du répondant, vivait séparément de lui et n'a pas fait l'objet d'un contrôle.

Immigration Appeal Division Rules, SOR/2002-230

25. (1) Instead of holding a hearing, the Division may require the parties to proceed in writing if this would not be unfair to any party and there is no need for the oral testimony of a witness.	25. (1) La Section peut, au lieu de tenir une audience, exiger que les parties procèdent par écrit, à condition que cette façon de faire ne cause pas d'injustice et qu'il ne soit pas nécessaire d'entendre des témoins.

Federal Courts Immigration and Refugee Protection Rules, SOR/93-22

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.	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 74d) de la Loi.
(2) A party who requests that the judge certify that a serious question of general importance is involved shall specify the precise question.	(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

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