

## CITIZENSHIP AND IMMIGRATION

### STATUS IN CANADA

#### *Permanent Residents*

Judicial review of Immigration and Refugee Board, Immigration Appeal Division (IAD) decision denying applicant's appeal of immigration officer's decision refusing application for permanent residence by applicant's niece — IAD appeal under review redetermination made after previously denied appeal to IAD overturned by F.C. (2016 FC 216) — Applicant Canadian citizen, applying to sponsor niece, citizen of Tanzania, as member of family class pursuant to *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR), s. 117(1)(h) — In first IAD decision, panel rejecting sponsorship application because applicant's parents both alive — Panel adding that as applicant's parents could be sponsored, niece falling outside family class membership by virtue of Regulations, s. 117(1)(h)(ii) — In decision under review, IAD finding, *inter alia*, that applicant likely not financially eligible to sponsor parents the year she applied to sponsor niece — Determining that if application to sponsor her parents had been made and denied, applicant could have appealed to IAD under *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 63(1) — IAD holding that applicant not meeting burden of proving officer's decision not legally valid — Whether IAD reasonably interpreting, applying legislation — Applicant arguing, *inter alia*, that existence of right to appeal to IAD in IRPA creating no obligation to appeal; that IAD failing to assess her financial eligibility, as directed in first IAD decision; that immigration officers, IAD, Court misinterpreting IRPR, s. 117 to create hierarchy of relatives who may be sponsored but such hierarchy not existing in legislation — IAD's interpretation of right to appeal reasonable — Appeal is another manner or means by which rejected sponsorship application might be overcome — That interpretation of "may otherwise sponsor" in IRPR, s. 117(1)(h)(ii) not falling outside range of possible, acceptable outcomes based on the facts and law — As to interpretation of IRPR, s. 117, s. 117(1)(h) enabling sponsorship of any relative, regardless of age (generic relative) — If one or more members of enumerated relatives in IRPR, s. 117(1)(h) already Canadian citizens, Indians, or permanent residents then no generic relative may be sponsored under s. 117(1)(h) — However, under IRPR, s. 117(1)(h)(i), s. 117(1)(h)(ii) in play if all enumerated relatives not Canadian citizens, Indians, or permanent residents — How word "or" found at end of s. 117(1)(h)(i) should be interpreted — Plain grammatical reading of s. 117 meaning that both subparagraphs applying to enumerated relatives — Proper interpretation is to read s. 117(1)(h)(i), s. 117(1)(h)(ii) inclusively as "A or B or both" — Words "whose application" in s. 117(1)(h)(ii) applying to sponsor's mother or father — Making it clear that if sponsor may otherwise sponsor mother or father then generic relative of sponsor not member of family class — Hierarchy to which applicant objecting part and parcel of legislation — Application dismissed<sup>1</sup>.

SENDWA V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-5367-16, 2018 FC 569, Elliott J., judgment dated June 1, 2018, 36 pp.)

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<sup>1</sup> Editor's Note : Question certified in 2018 FC 1091 with respect to present matter as to whether consideration of financial eligibility criteria in IRPR, s. 133(1)(j)(i)(B) required by IRPR, s. 117(1)(h) and if so, whether existence of right of appeal to IAD requiring sponsor to appeal denial in order to establish there are no relatives they may otherwise sponsor.