

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Permanent Residents

Sponsorship

Appeal from Federal Court (F.C.) decision (2018 FC 569) dismissing judicial review of Immigration and Refugee Board, Immigration Appeal Division (IAD) redetermination decision upholding immigration officer's decision refusing application for permanent residence by appellant's niece — Application refused on ground that appellant, Canadian citizen, having parents living in Tanzania whom she could "otherwise sponsor" — Appellant therefore barred from sponsoring niece, Tanzanian citizen, as family class member under *Immigration and Refugee Protection Regulations*, S.O.R./2002-2007 (Regulations), s. 117(1)(h) — IAD dismissing appeal on basis appellant's parents alive, could therefore be sponsored — Holding that no requirement relatives enumerated in paragraph 117(1)(h) be actually admissible — In *Sendwa v. Canada (Citizenship and Immigration)*, 2016 FC 216 (*Sendwa 1*), involving judicial review of IAD's first decision in this matter, F.C. finding that IAD's decision unreasonable because dismissing appellant's appeal simply because parents alive, without considering whether appellant eligible or in position to sponsor parents — F.C. allowed judicial review, set aside IAD's decision, ordered that appeal be redetermined — On redetermination, IAD finding, *inter alia*, impugned decision of immigration officer valid in law; rejecting appellant's argument that self-assessment of not meeting financial requirements to sponsor enumerated relatives sufficient to allow her to sponsor niece; not legislative intent that officer's determination of sponsor's financial eligibility should be determinative decision on sponsor's ability, nor that applicant's self-assessment should be determinative — On judicial review of IAD's redetermination decision, F.C. holding, *inter alia*, clear from plain grammatical reading of Regulations, s. 117 that non-enumerated relative can only be sponsored when no enumerated relative may be sponsored — Finding that hierarchy of relatives to which appellant objecting part and parcel of legislation — Concluding that IAD's interpretation, application of Regulations, s. 117(1) reasonable — Whether IAD's interpretation of s. 117, upheld by F.C., reasonable — F.C. properly applying standard of review to find that IAD's decision on redetermination reasonable — IAD'S decision valid in law — Federal Court of Appeal in *Bousaleh v. Canada (Citizenship and Immigration)*, 2018 FCA 143, [2019] 2 F.C.R. 787 finding that where sponsor having enumerated relative, cannot use s. 117(1)(h) to sponsor non-enumerated relative — *Sendwa 1* wrongly decided to extent that decision standing for proposition that sponsor with living enumerated relatives may have resort to s. 117(1)(h) to sponsor non-enumerated relative — IAD's redetermination decision focusing analysis on finality of determination that applicant ineligible for failure to satisfy financial requirements set out in Regulations, s. 133(1)(j)(i)(B) — IAD interpreting legislative scheme to find that neither appellant's self-assessment of not meeting financial requirements for sponsorship of parent, nor assessment of hypothetical visa officer to that effect, enabled appellant to access last-resort s. 117(1)(h) — This interpretation reasonable given circumstances requiring IAD to follow guidance provided by *Sendwa 1* — Fact that appellant's parents alive when appellant sponsoring niece itself determinative of appellant's inability to sponsor niece under s. 117(1)(h), dispositive of present appeal — Thus, not necessary to make any findings regarding appellant's financial eligibility under s. 133(1)(j)(i)(B) — Therefore, in determining application for permanent residence under Regulations, s. 117(1)(h), consideration of financial eligibility criteria in s. 133(1)(j)(i)(B) not required by s. 117(1)(h) — Appeal dismissed.

SENDWA V. CANADA (CITIZENSHIP AND IMMIGRATION) (A-384-18, 2019 FCA 314, Near J.A.,
amended reasons for judgment dated January 13, 2020, 10 pp.)