

**Memoir presented by l'Association Québécoise des Avocates et
Avocats en Droit de l'Immigration**

AQAADI

**On the Family reunification issue, during the revised cross Canada hearings
of the House of Common Standing Committee on Citizenship and
immigration**

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PREFACE

AQAADI IS A NON PROFITABLE ORGANISATION FOUNDED IN 1992 AND FORMED OF LAWYERS, MEMBERS IN GOOD STANDING OF THE QUEBEC BAR AND EXPERTS IN IMMIGRATION MATTERS; WHETHER IN BUSINESS IMMIGRATION OR REFUGEE PROTECTION. THE SCOPE OF OUR MANDATE IS TO REPRESENT OUR MEMBERS' BEST INTERESTS, BUT ALSO TO MAKE SURE THAT THE FEDERAL AND PROVINCIAL IMMIGRATION PROGRAMS ARE STRONG, EQUITABLE AND REACH THE CANADIANS' GOALS.

FAMILY REUNIFICATION

Family reunification is one of the objectives set out in section 3 of the *Immigration and Refugee Protection Act*. Not only does Canadian society attach, to a certain extent, a humanitarian value to this objective of the law, it also recognizes the importance of the family as a social and economic motor of development in the sense that a reunited family is a unit that can more easily integrate itself into the host community both socially and economically.

The Québec Immigration Lawyers Association (l'Association québécoise des avocats et avocates en droit de l'immigration or l'AQAADI) is of the opinion that the relationships that unite a family, whether they are conjugal or parental, must receive particular attention in the analysis of the humanitarian considerations for any application for immigration, whether permanent or temporary.

L'AQAADI is of the opinion that the immigration process must take into account, in cases of family reunification, the negative impact of the separation on the marriage relationship and the phenomenon of parental alienation in cases where children are involved in the reunification project. The goal should be to protect this vulnerable unit by speeding up the process for dealing with these applications.

L'AQAADI is of the opinion that the exclusion of one person from the family member category by means of section 117(9)d) of the *Immigration and Refugee Protection Regulations* must be carried out with great caution.

However, this goal of family reunification which is crucial for the immigrant whose application for permanent residence in Canada is being dealt with as part of a claim for asylum or as part of an application based on significant humanitarian considerations, does not seem to be a priority simply because of the length of the time period between the filing of the application and the issuing of the visas.

Delays in the reunification of refugee families

L'AQAADI is deeply concerned by the long periods of time required for the processing of applications for refugee family reunification that, irrespective of the region of origin, vary from 12 months (for just 50% of the applications) to 25 months or more than two years (for 80% of the applications) according to data from Immigration Canada.¹ These figures enable us to conclude that 20% of the applications for refugee family reunifications take more than 25 months to process.

Canada's recognition of refugee status or of persons requiring protection involves the risk of an individual being the recipient of serious physical or psychological persecution if he or she must

¹ Data compiled under the heading Application Processing Times – Applications Processed Outside of Canada – Family Class: Spouses and Partners 2004 from the Immigration Canada Web site located at the following address: www.cic.gc.ca

leave Canada to return to his or her country of origin. This risk is, admittedly, a personal risk, since it is only recognized for the person who has obtained refugee status. On the other hand, it is legitimate to think that the conditions of life and the risk for the claimant's family members will be difficult to the point of putting at least their psychological integrity in danger. The department must be extremely sensitive to the situation and to the protection of the most vulnerable groups such as children, women and elderly people. Our government must, therefore, commit itself to advocate the most effective possible protection for refugees and extend this protection to the members of their immediate family by issuing visas in acceptable time frames. The quickest time frame of 12 months is long and unacceptable when it is a question of an application for permanent residence for a woman and children living in camps or coming from countries where a woman cannot move freely or work decently in the absence of her spouse. What are we to think when the time frame is 25 months and longer!

The time periods for dealing with family reunification applications are also too long in the cases of spousal reunification (from 11 to 17 months irrespective of region of origin), and child sponsorship (from 18 to 26 months irrespective of region of origin). The shortest time period indicated is the time that it took for 50% of the applications to be processed and the longest time period indicates the time it took for 80% of the applications to be dealt with. We can conclude that 20% of these applications are dealt with in a time frame that exceeds two years.

It seems to us that the goal of family reunification is being very poorly served by such long waiting periods. Such lengthy waiting periods would lead one to believe that family reunification is not a priority for Canada.

The goals of the *Immigration and Refugee Protection Act* and the application of section 117(9)d of the regulations

L'AQAADI is also concerned by how section 117(9)d) of the *Immigration and Refugee Protection Regulations* is presently being applied. The reunification of families, of bona fide parents and innocent children, is being compromised by the application of section 117(9)d) of the regulations. Canada must, admittedly, remain vigilant with regard to those who, by all possible means, attempt to take advantage of our immigration programs. On the other hand, intransigence in the application of 117(9)d) has been leading, since the implementation of the Act in June 2002, to injustices in the administration of the family reunification category.

The goal of section 117(9)d) is to exclude from the family reunification category the person who has not been declared a member of the family and who, therefore, has not been subject to examination. This goal is important because it gives Immigration Canada the tools to refuse the sponsorship of a person who was not knowingly declared by the sponsor when the sponsor's application for permanent residence was being processed.

The application of this section also produces results that are not only contrary to the goal of family reunification but which serve no interest since the inquiry the sponsor undergoes allows for the discovery that the omission made in good faith was not intended to deceive the authorities and the examination of the non-declared individuals enables the authorities to observe that there would have been no impediment to immigration in any case.

Consequently, the only way for these families to be reunited is to try to apply, by virtue of section 25 of the *Immigration and Refugee Protection Act (IRPA)*. The time period for a final decision to be made in these cases is approximately three to four years (between the initial processing and refusal of the sponsorship request, the decision of the Immigration Appeal Division (IAD) if any, and the processing of the humanitarian application made abroad) without factoring in the fact that this decision is based on the very broad discretion of immigration authorities that leaves the sponsor and his or her family in a state of uncertainty that is almost unbearable.

L'AQAADI suggests the following addition to section 117(9)d): "*for the primary purpose of acquiring a status or a privilege under the act.*" The section would then read as follows:

117(9) *No foreign national may be considered a member of the family class by virtue of their relationship to a sponsor if:*

(d) 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 or a former spouse or former common-law partner of the sponsor and was not examined, "for the primary purpose of acquiring a status or a privilege under the act."

This addition would allow authorities to detect the false declarations made with a view to deceive, and the omissions made in good faith. Several bona fide people report to our lawyers'

offices in complete despair because they began an application when they were unmarried, thinking in good faith that a change in their civil status had little importance since their spouse did not wish to be an immediate part of the immigration project. What can be said about the child who is born after the issuing of visas but before arrival in Canada? There is a large grey area of situations in which our clients are clearly acting in good faith. Section 117(9)d) does not make provision for these situations and immigration authorities do not, at the present time, seem to be exercising their discretion to separate the wheat from the chaff.

This attitude that is presently found in the Canada visa department and in the application processing centres in Canada is of concern since bona fide family reunification is being compromised by an intransigence that no longer has any relation to the omission committed and is not justified in comparison with the laudable goals that were initially sought after by the application of section 117(9)d).

In conclusion

L'AQAADI is concerned by the negative impacts of the waiting periods of more than one year that prevail in the processing of applications of immigrants in the family member category, and more specifically by those who are accompanying a person who is recognized as a refugee or a person to be protected in spite of the department's agreements.

L'AQAADI is wondering about the real consequences of the commitments announced by the Minister on April 18 of this year dealing with measures aimed at accelerating the processing of

applications for sponsoring parents and grandparents. These measures do not involve the sponsorship of spouses and children for whom the waiting periods are already long and worrying in all of the missions abroad. L'AQAADI proposes that measures be adopted and implemented in order that the time for processing family reunification applications for spouses and children be quickly reduced to less than 12 months.

L'AQAADI is of the opinion that the exclusion of a person from the family member category by means of section 117(9)d) of the *Immigration and Refugee Protection Regulations* must be carried out with great circumspection.

BY : L'ASSOCIATION QUÉBÉCOISE DES AVOCATES ET AVOCATS EN DROIT DE
L'IMMIGRATION
