Federal Court Cour fédérale

Date: 20181207

Dockets: IMM-5601-17
IMM-5602-17

Citation: 2018 FC 1229

Ottawa, Ontario, December 7, 2018

PRESENT: The Honourable Mr. Justice Norris

Docket: IMM-5601-17

BETWEEN:

DARSHITH SMIT JANI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-5602-17

AND BETWEEN:

KSHITIJ SMIT JANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicants are brothers. Kshitij was born in Hyderabad, India in September 2008. Darshith was born there in December 2009. Their mother is Ujwala Reddy Pasla. Their father is Smit Ramesh Jani. Mr. Jani is married to Mitali Smit Jani. They have a daughter, Keya.

[2] Mr. Jani became a permanent resident of Canada on March 27, 2010. When he applied for permanent residence as a skilled worker, he included his wife and daughter as dependents. He did not include either Kshitij or Darshith.

[3] In April 2012, Mr. Jani applied to sponsor his sons for permanent resident visas. He initially tried to explain that he had left them off his original application because he did not know at the time that they were his sons. He only learned this a year after he moved to Canada. Eventually he admitted this was not true; he has always known Kshitij and Darshith are his sons.

[4] The sponsorship application was refused in June 2015 by an immigration officer at the High Commission of Canada in India. Since they had not been declared as dependents on Mr. Jani's original application for permanent residence, under section 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], Kshitij and

Darshith were excluded from the class of family members who are eligible for sponsorship. (The relevant statutory provisions and regulations may be found in Annex I to these reasons.)

[5] Kshitij and Darshith appealed this decision to the Immigration Appeal Division. Their appeals were dismissed in October 2015. They then filed separate applications for leave and judicial review. Different members of this Court considered the applications at the leave stage. Leave was granted to Kshitij but denied to Darshith. On a request for reconsideration, leave was also granted to Darshith and the two applications were joined. However, in February 2016, just before the hearing, the applications were discontinued because the parties had agreed that the matter should be reconsidered by a different immigration officer.

[6] In July 2016, Kshitij and Darshith submitted new applications for permanent residence to the Canadian High Commission in India. (Needless to say in view of their ages, they did not make these applications themselves. Their father made the applications on their behalf.) They sought exemptions from their inadmissibility on the basis of humanitarian and compassionate [H&C] considerations under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Their applications were refused by an immigration officer on December 6, 2017.

[7] They now apply for judicial review of this decision under section 72(1) of the *IRPA*. They submit that the decision is tainted by a reasonable apprehension of bias, that it breaches their parents' *Charter*-protected right to parental decision-making, and that the immigration officer's assessment of their best interests is unreasonable.

[8] For the reasons that follow, I am dismissing these applications.

II. BACKGROUND

[9] The family story behind this matter is not straightforward.

[10] Mr. Jani and Ms. Jani were married in India in 2001. Mr. Jani was 21 years old at the time; Ms. Jani was 25. Their daughter Keya was born in India in March 2003.

[11] At the same time as he was married to Ms. Jani, Mr. Jani had a romantic relationship with Ms. Pasla for several years. The two met online sometime between 2003 and 2006 (neither could recall the exact date, and the details of how they met are unclear). Ms. Pasla lived in Hyderabad and Mr. Jani was working there. In fact, the two worked in adjacent buildings. Meanwhile, Ms. Jani and Keya were staying in Gujarat, where Ms. Jani was caring for her parents and for Mr. Jani's parents as well.

[12] Mr. Jani and Ms. Pasla deny ever being legally married to one another but acknowledge that they have led people to believe that they are. In April 2008, they had a form of wedding ceremony in a temple. Ms. Pasla's parents attended. After the ceremony, they all lived together in the same house. This arrangement continued for about two years, during which time Kshitij and then Darshith were born.

[13] According to an affidavit sworn by Ms. Pasla in support of the 2016 applications, her parents still do not know that she and Mr. Jani are not, in fact, married.

[14] Mr. Jani, Ms. Jani and Keya moved to Canada as permanent residents in March 2010. Kshitij and Darshith remained in India with their mother.

[15] Since he has been in Canada, Mr. Jani returns to India regularly to see Kshitij and Darshith. He also provides regular financial support. Ms. Pasla, Kshitij and Darshith still live with her parents. Mr. Jani stays there when he visits. He and Ms. Pasla continue to present themselves as husband and wife, although they both maintain their intimate relationship ended when Mr. Jani moved to Canada. As far as anyone knows there, they are a married couple. Kshitij and Darshith believe their parents are married to one another.

[16] In April 2012, Mr. Jani swore a statutory declaration in support of his application to sponsor Kshitij and Darshith. In it he stated that it was only in March 2011 that he learned that they were his sons. Until then, Ms. Pasla had hidden the fact that he was the father of her two sons from him. When he learned this news, he and his family were "shocked and devastated." He stated that he had "never mispresented" to Citizenship and Immigration Canada about his family members "as [he] was not even informed" about his sons. Ms. Pasla swore an affidavit in March 2012 to the same effect, stating that she did not disclose to Mr. Jani that Kshitij and Darshith were his sons until after he had moved to Canada. She told him this news on one of his visits to India.

[17] The 2012 sponsorship application was also supported by an affidavit sworn jointly by Mr. Jani and Ms. Pasla in January 2012 stating that they agreed that Mr. Jani should have "complete custody" of Kshitij and Darshith and that Ms. Pasla had no objection to her sons

moving to Canada with their father. As well, an Order of the Ranga Reddy District Family Court from February 2012 granting Mr. Jani custody of Kshitij and Darshith on the basis of the parties' consent was provided.

[18] Mr. Jani's position on when he learned that Kshitij and Darshith were his sons changed in an interview with an immigration officer in New Delhi in April 2015. While initially maintaining his story, under questioning by the officer Mr. Jani eventually admitted that he had always known that Kshitij and Darshith were his sons. Ms. Pasla was interviewed the same day and, after Mr. Jani told her she should tell the truth, she confirmed that this was so. Mr. Jani explained that he had left Kshitij and Darshith off his original application because of poor advice he had been given at the time. He does not offer any explanation for why he had knowingly put forward false statements (including false statements made under oath) in the 2012 sponsorship application.

[19] Mr. Jani maintains that Ms. Jani did not know about his relationship with Ms. Pasla or learn of Kshitij and Darshith until sometime after Darshith was born, when she happened to see some electronic messages Mr. Jani had exchanged with Ms. Pasla. She remains committed to their marriage and is supportive of Kshitij and Darshith joining them in Canada.

[20] Kshitij and Darshith communicate regularly with Keya and Ms. Jani (whom they know as Mitali) over the internet or the phone. They do not know that Keya is their half-sister or that their father and Mitali are married.

III. DECISION UNDER REVIEW

[21] The applicants sought relief from the operation of section 117(9)(d) of the Regulations on H&C grounds in order to open up the possibility of sponsorship for permanent residence in Canada by their father. Their applications were based almost entirely on what was said to be in their best interests. Five main considerations were advanced. First, they were suffering the stigma of being the children of an unwed mother. Second, educational opportunities for them in India were limited compared to what their father could provide for them in Canada. Third, health care in India is inferior to that available in Canada. Fourth, Kshitij had been assessed by a psychologist and was showing signs of insecurity due to a lack of supportive authority figures in his life and appeared to be experiencing separation anxiety, depressive features and oppositional defiant disorder. Fifth, Darshith had also been assessed by a psychologist and he was potentially showing signs of attention deficit hyperactivity disorder.

[22] The officer was not satisfied that granting H&C relief was in Kshitij or Darshith's best interests. On the contrary, the officer concluded that it would be in their best interests to remain with their mother in India. The officer found that they were not suffering the stigma of being the children of an unwed mother because their parents are, in fact, married. The officer was particularly concerned about the impact on Kshitij and Darshith of separating them from their mother and the only family they have known and placing them in an entirely new environment. The officer found that the psychological assessment of Kshitij indicated that "remaining in India, with his mother and the support network to which he is accustomed, is in fact in the child's best interest." Similarly, the psychological assessment of Darshith "indicates that the child is well in

India, and is not currently suffering any hardship that would be alleviated by moving to Canada." The officer was not satisfied that, as a result of conditions in India, either Kshitij's or Darshith's education or health were suffering.

[23] The officer concluded as follows:

> I am alert, alive and sensitive to the best interests of the children affected by this decision. On balance, based on all of the information presented, I am not satisfied that the applicants moving to Canada with their father would be in the best interests of these children. By all appearances the applicants are smart, healthy, cared for children who have a strong community and family support here in India. They have had some interaction with their father (the sponsor), through his visits and time in their house when [they] were infant[s], but their primary caregiver has always been their mother. I am not satisfied, based on the information presented, that they are suffering academically or medically due to their environment in India. Given the conflicting accounts, and inconsistent arguments, I am not satisfied that the children suffer a stigma and [*sic*] as a result of their mother being unwed, or that they suffer abuse in their school as a result. The balance of facts weighs in favour of the children living in a community that recognizes them as the children born out of wedlock between their parents [*sic*?].
>
> As Kshitij is showing signs of separation anxiety from being separated from his biological father, I am not satisfied that separating him from his home, community, culture, mother, grandparents, and generally the environment to which he is accustomed would have a positive, rather than negative, effect on his emotional state. As the children are not currently aware that their father is married to another woman, or that they have a half-sister, I am not satisfied that becoming aware of this, on top of being in a completely new environment and away from the support system, would be in their best interests.
>
> Furthermore, given the information before me, I am not satisfied me [*sic*] that a sibling bond exists between the sponsor's child in Canada and these applicants, or that this decision would be contrary to that child's best interests.

[24] The applications for relief from the operation of section 117(9)(d) of the Regulations on H&C grounds were, therefore, refused.

IV. STANDARD OF REVIEW

[25] It is well-established that generally a denial of H&C relief under section 25(1) of the *IRPA* is reviewed on the reasonableness standard (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 18 [*Kisana*]; *Taylor v Canada (Citizenship and Immigration)*, 2016 FC 21 at para 16). This deferential standard of review reflects the fact that the provision creates a mechanism to deal with exceptional circumstances and decisions under it are highly discretionary (*Williams v Canada (Citizenship and Immigration)*, 2016 FC 1303 at para 4; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15 [*Legault*]).

[26] Reasonableness review "is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome" (*Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18). Such review "reinforces in the context of adjudicative tribunals the importance of reasons, which constitute the primary form of accountability of the decision-maker to the applicant, to the public and to a reviewing court" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 63 [*Khosa*]). The reviewing court examines the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determines "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and

law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). These criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). The reviewing court should intervene only if these criteria are not met. It is not the role of the reviewing court to reweigh the evidence or to substitute its own view of a preferable outcome (*Khosa* at paras 59 and 61).

V. ISSUES

[27] These applications raise the following issues:

a) Is the decision tainted by a reasonable apprehension of bias?

b) Does the decision breach the applicants' parents' *Charter*-protected right of parental decision-making?

c) Is the immigration officer's decision unreasonable?

VI. ANALYSIS

a) Is the decision tainted by a reasonable apprehension of bias?

[28] The applicants rely on the record of the interview on March 23, 2017, and their father's affidavit to support their submission that the decision denying their H&C applications is tainted by a reasonable apprehension of bias. Mr. Jani states that during the interview the officer's "manner and tone of questioning was quite hostile, as if she did not understand our situation at

all." He felt the officer was critical of him for not having discussed a potential move to Canada and separation from their mother with Kshitij or Darshith. Mr. Jani was of the view that the officer was biased towards himself and Ms. Pasla.

[29] There is a simple answer to the applicants' submission. The officer who conducted the interview is not the officer who made the decision. The case had been reassigned in the interim. The officer who conducted the interview asked Mr. Jani and Ms. Pasla a number of direct questions about their relationship and the parentage of the children, among other things. Given the unusual circumstances of this case, it was only fair for her to put her concerns squarely to Mr. Jani and Ms. Pasla and to give them an opportunity to address them before a decision was made. But even if there were a reasonable basis to conclude that the officer who conducted the interview did not approach the applications with an open mind, something I need not decide, there is no basis whatsoever to conclude that the officer who made the decision was influenced improperly by the views of the officer who conducted the interview.

b) Does the decision breach the applicants' parents' *Charter*-protected right of parental decision-making?

[30] The applicants submit that the officer "accorded herself the right" to override their parents' objectively reasonable choices about them and thereby not only over-stepped the bounds of her decision-making authority but also infringed their parents' *Charter*-protected right to parental decision-making.

[31] In my view, this ground is without merit. I say this for several reasons.

[32] First, the scope of any right of parental decision-making guaranteed by section 7 of the *Charter* is far from clear in the jurisprudence. The applicants rely on Justice LaForest's statement in *B(R) v Children's Aid Society of Metropolitan Toronto,* [1995] 1 SCR 315 that "parental decision making must receive the protection of the *Charter* in order for state interference to be properly monitored by the courts, and be permitted only when it conforms to the values underlying the *Charter*" (at 372). However, as Justice LaForest himself notes in a subsequent decision, the conception of autonomy he was advancing in *B(R)* is not "so wide as to encompass any and all decisions that individuals might want to make in conducting their affairs" (*Godbout v Longueuil (City)*, [1997] 3 SCR 844 at para 66). The applicants did not point to any authority for the proposition that parents have an unrestricted right guaranteed by the *Charter* to decide where their children will live.

[33] Second, it is far from clear to me that, given her lack of nexus to Canada, Ms. Pasla has parenting rights that could be guaranteed by the *Charter*. However, this issue was not argued before me so I make no further comment upon it. In any event, Mr. Jani undoubtedly has a sufficient nexus to Canada to claim the protections of the *Charter*, if it is engaged.

[34] Third, to the extent that there is a right to parental decision-making grounded in the liberty and security of the person guarantees of section 7 of the *Charter*, I am not satisfied that the *Charter* is even engaged in the circumstances of this case. The state has not prevented Mr. Jani or Ms. Pasla from making a fundamental personal choice about where their sons will live. Rather, their inability to make this choice now is a direct result of the free choice Mr. Jani himself made not to include his sons in his original application for permanent residence. While

this consequence follows because of Canadian immigration law, the antecedent condition that causes the bar to sponsorship to apply came about independently of Canadian law (*Preclaro v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1063 at paras 22-23).

[35] Finally, even if the *Charter* were engaged here and there had been an unjustified limitation on Mr. Jani's or Ms. Pasla's rights as a parent, I am not satisfied that this would be a ground upon which I could interfere with the officer's decision. Neither Mr. Jani nor Ms. Pasla is a party to these applications for judicial review. Even if their *Charter* rights were limited unjustifiably, which I do not accept, this would not provide a legal basis upon which to grant the personal relief Kshitij and Darshith are seeking in these applications. Put another way, I am not satisfied that the applicants have standing to rely on an infringement of the *Charter* rights of third-parties when seeking remedies for themselves.

c) Is the immigration officer's decision unreasonable?

[36] Section 25(1) of the *IRPA* authorizes the Minister to grant relief to a foreign national seeking permanent resident status who is inadmissible or otherwise does not meet the requirements of the Act. The Minister may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations under the Act. Relief of this nature will only be granted if the Minister "is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national." These considerations include matters such as children's rights, needs and best interests; maintaining connections between family members; and averting the hardship a person would suffer on being sent to a place where

he or she has no connections (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 41 [*Agraira*]).

[37] In *Kanthasamy*, the Supreme Court of Canada endorsed an approach to section 25(1) that is grounded in its purpose of offering "equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (at para 21, quoting *Chirwa v Canada (Minister of Citizenship and Immigration)*, (1970), 4 IAC 338). These misfortunes must warrant the granting of "special relief" from the usual operation of immigration law (*Kanthasamy* at para 13). The provision gives decision makers a discretion which allows for a "flexible and responsive exception to the ordinary operation of the *Act*" to mitigate the effects of a rigid application of the law in appropriate cases (*Kanthasamy* at para 19).

[38] Section 25(1) expressly requires a decision maker to take into account the best interests of a child directly affected by a decision made under that provision. The "best interests" principle is "highly contextual" because of the "multitude of factors that may impinge on the child's best interests" (*Kanthasamy* at para 35, quoting *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4 at para 11 and *Gordon v Goertz*, [1996] 2 SCR 27 at para 20). As a result, it must be applied "in a manner responsive to each child's particular age, capacity, needs and maturity" (*Kanthasamy* at para 35). Protecting children through the application of this principle means "[d]eciding what . . . appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has

the best opportunity for receiving the needed care and attention" (*Kanthasamy* at para 36, quoting *MacGyver v Richards* (1995), 22 OR (3d) 481 (CA) at p 489).

[39] Since Kshitij and Darshith are the ones who applied for relief under section 25(1), their interests could not be affected any more directly by the decision (*Kanthasamy* at para 41).

[40] Section 25(1) is commonly invoked in an effort to avoid the need for someone to leave Canada, whether in order to complete a step that is usually required to be taken from outside the country or sometimes even indefinitely because the person is inadmissible. Thus, *Agraira* speaks of "averting the hardship a person would suffer on being sent to a place where he or she has no connections" (at para 41). Similarly, Justice Abella observed in *Kanthasamy* that "[t]here will inevitably be some hardship associated with being required to leave Canada" (at para 23). In such circumstances, the best interests of the child are typically engaged by the prospect of being separated from a parent who is required to leave Canada or of having to leave Canada with that parent and live in a foreign land. While this appears to be the more common scenario, section 25(1) can also be invoked when, as is the case here, the goal is to bring a child to Canada (see *Kisana*, for example, which also concerned children who had been omitted from an application for permanent residence).

[41] This case is also unusual in that it does not turn on the principle that the best interests of the child is an important but not a determinative consideration under section 25(1) of the *IRPA* (*Legault* at para 12; *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 28). The officer did not refuse the applications because the best interests of Kshitij and Darshith were

outweighed by other relevant considerations. Rather, the officer refused the applications because he or she concluded that doing so was actually in their best interests.

[42] The respondent concedes that the officer's conclusion that Mr. Jani and Ms. Pasla are, in fact, married is unreasonable. The respondent submits, however, that this erroneous finding does not detract from the reasonableness of the officer's overall analysis or conclusion. I agree. The evidence was clear and consistent that, even though they were not married, Mr. Jani and Ms. Pasla have portrayed themselves as such in Ms. Pasla's community in India. There is no evidence that anyone has perceived Kshitij and Darshith to be the children of an unwed mother. As a result, there is no basis to conclude that they bear any such stigma or are suffering any hardship because of the true state of affairs.

[43] The applicants submit that the officer's decision is unreasonable because the officer ignored the fact that their father has legal custody of them. I do not agree.

[44] It is true that nowhere in the reasons does the officer mention the Order of the Ranga Reddy District Family Court from February 2012 granting Mr. Jani custody of Kshitij and Darshith on the basis of the parties' consent. The respondent suggested that this could be because of doubts about the genuineness and probative value of that document that had been noted in the record in December 2012 and January 2013, in connection with the original sponsorship application. We do not know whether the officer shared this view or not. Even if he or she did, this did not cause any unfairness to the applicants in the unusual circumstances of this case. Those notes were disclosed to the applicants in the Certified Tribunal Record provided in connection with their previous applications for judicial review (see page 14 of that Record).

Their current lawyer, Mr. Levinson, acted for them on those applications for judicial review. He also prepared the 2016 H&C applications. The applicants could have attempted to address any concerns about the Family Court Order in the 2016 H&C applications but they did not. In any event, the officer did not suggest that there was any impediment under Indian law to Kshitij and Darshith moving to Canada. Moreover, it would have been abundantly clear that Mr. Jani and Ms. Pasla both wanted Kshitij and Darshith to move to Canada because they believed it would be in their best interests. The officer was still obliged to make his or her own, independent determination of whether this was so.

[45] The applicants submit that the officer's assessment of their best interests is speculative and based on a selective reading of the record. I disagree. The officer's conclusions are well-grounded in the evidence and information presented.

[46] The applicants submit that the officer erred by considering the narrow issue of hardship as opposed to their best interests more broadly understood. I disagree. The H&C applications were framed in terms of how it would be beneficial for Kshitij and Darshith to live in Canada rather than India. The officer's reasons are responsive to the submission that Kshitij and Darshith were experiencing hardship in India. The officer found that they were not. The reasons address other relevant factors as well. There is no basis to conclude that the officer simply equated best interests with a hardship assessment.

[47] Having regard to the reasons given and the underlying record, I am satisfied that the officer reached a result that falls within the range of reasonable outcomes and that the decision is

justified, transparent and intelligible. The officer did far more than simply state that Kshitij's and Darshith's interests had been taken into account. The reasons were focused almost entirely on their interests. Those interests were "'well identified and defined' and examined 'with a great deal of attention' in light of all the evidence" (*Kanthasamy* at para 39, quoting *Legault* at paras 12 and 31 and referencing *Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165 at paras 9-12).

[48] This was a difficult case. The fates of two young boys have been determined in an important respect by the poor decisions of others. It is clear that the officer was concerned about what would be best for the boys. The officer gave a sound and intelligible explanation for finding that, in their particular circumstances, remaining in India with their mother and other supports was in the best interests of both of them. Undoubtedly, the officer's decision was a great disappointment for Kshitij's and Darshith's parents. There is, however, no basis to interfere with it.

VII. CONCLUSION

[49] For the foregoing reasons, these applications for judicial review are dismissed.

[50] The parties did not suggest any questions of general importance for certification. I agree that none arise.

JUDGMENT IN IMM-5601-17 AND IMM-5602-17

THIS COURT'S JUDGMENT is that

1. The applications for judicial review are dismissed.

2. No question of general importance is stated.

"John Norris"
Judge

ANNEX I

Immigration and Refugee Protection Act, SC 2001, c 27, section 25(1)

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**
25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, 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)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, 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.

Immigration and Refugee Protection Regulations, SOR/2002-227, section 117(9)(d)

Excluded relationships	**Restrictions**
(9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if	**(9)** Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :
…	…
(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.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5601-17
STYLE OF CAUSE:	DARSHITH SMIT JANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-5602-17
STYLE OF CAUSE:	KSHITIJ SMIT JANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 20, 2018
JUDGMENT AND REASONS:	NORRIS J.
DATED:	DECEMBER 7, 2018

APPEARANCES:

Yehuda Levinson	FOR THE APPLICANT
Sharon Stewart Guthrie	FOR THE RESPONDENT

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