



[2022] 4 F.C.R. D-1

## CITIZENSHIP AND IMMIGRATION

### STATUS IN CANADA

#### *Permanent Residents*

##### Adopted children

Application for judicial review of decision rendered by immigration officer refusing application for permanent residence of applicant's adopted child (child) — Applicant citizen of Democratic Republic of Congo (DRC) — Before legal status of adoption completed, applicant had to leave DRC after being arrested by Congolese government agents — After applicant's departure, adoption proceedings took their course, adoption decree issued in 2012 — In 2016, applicant applied for permanent residence, included wife, children — In 2018, application for permanent resident status in protected persons class deemed eligible — Officer advised applicant of certain concerns regarding establishment of genuine bond between applicant, child — Officer rejected child's application for permanent residence concluding, *inter alia*, no evidence that child lived with applicant two months after his birth; nothing in documents submitted demonstrated emotional or financial interdependence or evidence of living together with child — These findings led officer to overall conclusion that applicant had not met burden of proving that adoption not primarily for purpose of acquiring status or privilege pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), nor that he had actually created genuine parent-child emotional bond with child — Whether officer's decision reasonable — Officer's decision unreasonable — Under *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR), s. 4(2), foreign national not considered adopted child of person if adoption (1) entered into primarily for purpose of acquiring status or privilege under IRPA; or (2) did not create genuine parent-child relationship between adoptee, adopter — While decision maker presumed to have considered all evidence submitted, and is not required to refer to every piece of evidence contrary to its conclusion, decision maker must at very least deal with relevant evidence that directly contradicts their conclusions — Officer did not mention or evaluate any aspects of file that provide evidence of emotional, financial dependence — Evidence submitted referred to applicant's financial support of his family, through his sister, explained why applicant could not provide evidence of his relationship with child — Only evidence in file is that child always lived with his adoptive mother, brother, sister — Officer asked no questions about child's best interests, even though decision particularly affected him — Officer's decision also unreasonable because she did not consider whether child qualified as "family member" under IRPR, s. 1(3)(b), since he is a "dependent child" of applicant's wife, having been adopted by her within meaning of IRPR, s. 2 — Parties agreeing that marriage between applicant, wife genuine, that adoption of child by applicant, wife also legal and genuine — Officer provided no analysis of relationship between child, applicant's wife — It is for officer, not Court, to define scope of s. 1(3)(b), whether child would qualify as "family member" under ss. 1(3)(b), 2 — In other words, child may qualify under ss. 1(3)(b), 2, because of his adoptive relationship with applicant's wife, even though he would have no relationship, legal or emotional, with applicant himself — Although another reasonable interpretation of ss. 1(3)(b), 2 might be possible, officer had to determine whether child could qualify in this respect, which she did not do — Officer should have analyzed this element, provided justification if she was not satisfied that relationship between adoptive mother, child not sufficient — If she had analyzed this element, officer could have reached different conclusion on application of IRPR, s. 4(2) — Application

allowed.

NYEMBO V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-2238-22, 2023 FC 1336, Régimbald J., reasons for judgment dated October 6, 2023, 18 pp.)