Federal Court  Cour fédérale

Date: 20180130

Docket: IMM-2763-17

Citation: 2018 FC 99

Ottawa, Ontario, January 30, 2018

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

KAWSAR JAHAN

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES & CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], for judicial review of the decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada [IAD or the Board], dated June 7, 2017 [Decision], which refused the Applicant's application for a permanent resident visa for her husband.

II. BACKGROUND

[2] The Applicant has been a permanent resident of Canada since arriving from Bangladesh on January 22, 2014.

[3] Shortly before leaving Bangladesh, the Applicant was introduced to her husband as part of a marriage proposal to her family. The couple discussed the possibility of marriage but made no decision. In March of 2014, after the Applicant arrived in Canada, her husband's family made a final marriage proposal which she accepted.

[4] Because of the Applicant's mother's declining health and the Applicant's inability to return to Bangladesh, the couple decided to conduct a proxy marriage via the internet through use of the Skype application. At the time, Canadian immigration law recognized proxy marriages. A Bangladeshi official conducted the ceremony on April 28, 2014 in Bangladesh in the presence of the Applicant's husband while the Applicant participated from Canada.

[5] The Applicant returned to Bangladesh on November 21, 2014 and the couple held a full religious ceremony and celebration of their marriage on December 5, 2014. The couple then cohabited for five months before the Applicant returned to Canada to maintain her residency requirement.

[6] On July 15, 2015, the Applicant applied to sponsor her husband for permanent residence in Canada in the family class. The Applicant says that a Canadian immigration official

interviewed her husband in Bangladesh in December of 2016. However, there are no notes of such an interview in the Certified Tribunal Record.

[7] In a letter dated December 14, 2016, an immigration officer refused the Applicant's husband's application. The officer found that the Applicant's husband could not be selected as a member of the family class because the Applicant was not physically present at their marriage ceremony, a requirement introduced by s 117(9)(c.1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[8] The Applicant appealed the immigration officer's decision to the IAD.

III. DECISION UNDER REVIEW

[9] The IAD found that the Regulations' transitional provisions are clear and unambiguous that s 117(9)(c.1) applies to applications received after that paragraph came into force. Since that paragraph came into force on June 11, 2015 and the Applicant's application was submitted on July 15, 2015, her husband cannot be considered as a member of the family class.

[10] The Decision references the undisputed facts relevant to the Applicant's appeal. The Applicant and her husband underwent a proxy marriage by internet, using Skype, on April 28, 2014. The Applicant was in Canada and her husband was in Bangladesh during the ceremony. Paragraph 117(9)(c.1) came into force on June 11, 2015. The Applicant filed her sponsorship application on July 15, 2015 but the Regulations' transitional provisions provide that only applications received before s 117(9)(c.1) came into force are not subject to its application.

[11] The Board accepts that the Applicant's husband is her spouse because of their marriage in 2014. Paragraph 117(9)(a) of the Regulations establishes that a member of the family class includes a spouse, common-law partner or conjugal partner. However, s 117(9)(c.1) states that a foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if "the foreign national is the sponsor's spouse and if at the time the marriage ceremony was conducted either one or both of the spouses were not physically present." The Board finds that it was irrelevant that the immigration officer did not consider the Applicant's husband's application under any other family class categories since, being her spouse, s 117(9)(c.1) excluded him from the family class.

[12] The Decision cites *Dragan v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 211 at para 35 [*Dragan*], to establish that Parliament may enact legislation with retroactive or retrospective effect, subject to limitations established by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11 [*Charter*]. The Board finds that the Applicant's argument that the retrospective application of s 117(9)(c.1) of the Regulations interferes with her accrued or vested rights was already rejected by this Court in *Gill v Canada (Citizenship and Immigration)*, 2012 FC 1522 at paras 39-40 [*Gill*]. And the Supreme Court of Canada in *Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at paras 46-47 [*Medovarski*], considered *Charter* arguments similar to those advanced by the Applicant but held that "any unfairness wrought by the transition to new legislation does not reach the level of a *Charter* violation."

[13] Considering the objectives of the Act and the amended Regulations with their transitional provisions, the Board concludes that Parliament intended s 117(9)(c.1) to apply to proxy marriages retrospectively and that this is supported by the express and unambiguous language of the amended Regulations. Given the options available to the Applicant under other provisions of the Act, the Board finds that she has not demonstrated that her rights to life, liberty or security of the person and equality rights are infringed by s 117(9)(c.1)'s retrospective application.

[14] The Board accepts that this may be a harsh result, but reiterates that the Applicant may have other options to pursue under the Act such as sponsorship of her husband in a different category or an application to the Minister on humanitarian and compassionate [H&C] grounds. But the Board finds that these options are beyond its jurisdiction and dismisses the Applicant's appeal.

IV. ISSUES

[15] The Applicant raises the following issues in this application:

1. Does s 117(9)(c.1) of the Regulations apply retroactively or retrospectively to an application for a permanent resident visa filed after that paragraph came into force but where the proxy marriage in question occurred before the paragraph came into force?
2. Is retroactive or retrospective application of s 117(9)(c.1) of the Regulations consistent with ss 7 and 15 of the *Charter*?
3. Did the immigration officer and the IAD breach the duty of fairness by not evaluating the application as a common-law partner or conjugal partner relationship?

V. STANDARD OF REVIEW

[16] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[17] In *Gill*, above, at para 18, Chief Justice Crampton held that even though the standard of reasonableness normally applies to the IAD's interpretation of the Regulations, a determination of which version of the Regulations applies to a particular fact situation engages principles of fairness and natural justice to which a correctness standard applies. See also *Patel v Canada (Citizenship and Immigration)*, 2016 FC 1221 at para 18 [*Patel*]. Therefore, whether s 117(9)(c.1) applies retroactively or retrospectively to the Applicant's husband's application will be reviewed on a correctness standard.

[18] Similarly, it is settled law that constitutional questions are reviewed under a correctness standard. See *Begum v Canada (Citizenship and Immigration)*, 2017 FC 409 at para 41 [*Begum*].

The IAD's determination that retrospective application of s 117(9)(c.1) did not breach ss 7 and 15 of the *Charter* will also be reviewed for correctness.

[19] The Applicant frames the decisions of the immigration officer and the IAD not to evaluate her husband's application as a common-law partner or conjugal partner relationship as a question of procedural fairness. But the question is properly understood as one of statutory interpretation: does s 117(9)(c.1) of the Regulations prevent consideration of a spouse's application as either a common-law partner or conjugal partner relationship when the marriage in question is a proxy marriage? Unless the situation is exceptional, the IAD's interpretation of the Act and its Regulations is presumed to be a question of statutory interpretation subject to deference on judicial review. See *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 34. Therefore, the IAD's determination that s 117(9)(c.1) bars the Applicant's husband's consideration in the family class will be reviewed under a reasonableness standard.

[20] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[21] The following provisions of the *Charter* are relevant in this application:

Rights and freedoms in Canada	**Droits et libertés au Canada**
1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.	1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
…	…
Life, liberty and security of person	**Vie, liberté et sécurité**
7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.
…	…
Equality before and under law and equal protection and benefit of law	**Égalité devant la loi, égalité de bénéfice et protection égale de la loi**
15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or	15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou

mental or physical disability.	ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

[22] The following provisions of the Act are relevant in this application:

Family reunification	**Regroupement familial**
12 (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.	12 (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.
…	…
Temporary resident permit	**Permis de séjour temporaire**
24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.	24 (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.
…	…
Right to appeal — visa refusal of family class	**Droit d'appel : visa**
63 (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member	63 (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial

of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	peut interjeter appel du refus de délivrer le visa de résident permanent.
…	…
Humanitarian and compassionate considerations	**Motifs d'ordre humanitaires**
65 In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.	65 Dans le cas de l'appel visé aux paragraphes 63(1) ou (2) d'une décision portant sur une demande au titre du regroupement familial, les motifs d'ordre humanitaire ne peuvent être pris en considération que s'il a été statué que l'étranger fait bien partie de cette catégorie et que le répondant a bien la qualité réglementaire.

[23] The following provisions of the Regulations are relevant in this application:

Interpretation	**Définitions**
2 The definitions in this section apply in these Regulations.	2 Les définitions qui suivent s'appliquent au présent règlement.
…	…
conjugal partner means, in relation to a sponsor, a foreign national residing outside Canada who is in a conjugal relationship with the sponsor and has been in that relationship for a period of at least one year.	***partenaire conjugal*** À l'égard du répondant, l'étranger résidant à l'extérieur du Canada qui entretient une relation conjugale avec lui depuis au moins un an.

…

Member

117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is

(a) the sponsor's spouse, common-law partner or conjugal partner;

…

Excluded relationships

(9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if

…

(c.1) the foreign national is the sponsor's spouse and if at the time the marriage ceremony was conducted either one or both of the spouses were not physically present unless the foreign national was marrying a person who was not physically present at the ceremony as a result of their service as a member of the Canadian Forces and the marriage is valid both under the laws of the jurisdiction where it took place and under Canadian law;

…

Regroupement familial

117 (1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :

a) son époux, conjoint de fait ou partenaire conjugal;

…

Restrictions

(9) Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :

…

c.1) l'époux du répondant si le mariage a été célébré alors qu'au moins l'un des époux n'était pas physiquement présent, à moins qu'il ne s'agisse du mariage d'un membre des Forces canadiennes, que ce dernier ne soit pas physiquement présent à la cérémonie en raison de son service militaire dans les Forces canadiennes et que le mariage ne soit valide à la fois selon les lois du lieu où il a été contracté et le droit canadien;

[24] The following provisions of the *Regulations Amending the Immigration and Refugee Protection Regulations*, SOR/2015-139 (10 June 2015), are relevant in this application:

5 (4) Paragraph 117(9)(c.1) of the *Immigration and Refugee Protection Regulations* applies only to applications received after the day on which these Regulations come into force.	5 (4) L'alinéa 117(9)c.1) du *Règlement sur l'immigration et la protection des réfugiés* ne s'applique qu'aux demandes reçues après l'entrée en vigueur du présent règlement.
…	…
6 These Regulations come into force on the day on which they are registered.	6 Le présent règlement entre en vigueur à la date de son enregistrement.

[25] The following provisions of the *Immigration Appeal Division Rules*, SOR/2002-230 [IAD Rules], are relevant in this application:

Notice of constitutional question	**Avis de question constitutionnelle**
52 (1) A party who wants to challenge the constitutional validity, applicability or operability of a legislative provision must complete a notice of constitutional question.	52 (1) La partie qui veut contester la validité, l'applicabilité ou l'effet, sur le plan constitutionnel, d'une disposition législative établit un avis de question constitutionnelle.
…	…
Time limit	**Délai**
(4) Documents provided under this rule must be received by their recipients no later than 10 days before the day the constitutional argument will be made.	(4) Les documents transmis selon la présente règle doivent être reçus par leurs destinataires au plus tard dix jours avant la date à laquelle la question constitutionnelle doit être débattue.

VII. ARGUMENT

A. *Applicant*

(1) Retroactivity or Retrospectivity

[26] The Applicant submits that s 117(9)(c.1) of the Regulations should not apply retroactively to change the legal character of her marriage.

[27] In *R v Dineley*, 2012 SCC 58 at 10 [*Dineley*], the Supreme Court of Canada applied the principle that "[n]ew legislation that affects substantive rights will be presumed to have only prospective effect unless it is possible to discern a clear legislative intent that it is to apply retrospectively." The Court also held that "[w]hen constitutional rights are affected, the general rule against the retrospective application of legislation should apply": *Dineley*, above, at para 21. And where a change in legislation contemplates gathering evidence required by the new legislation, the new legislation should be applied prospectively. See *Dineley*, above, at para 25, citing *R v Ali*, [1980] 1 SCR 221.

[28] The established approach to statutory interpretation "is to determine the intention of Parliament by reading the words of the provision, in context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act and the object of the statute": *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at para 27. Writing in dissent in *Dineley*, above, at para 44, Justice Cromwell observed that "presumptions against the alteration of the legal character or consequences of past acts and against the

interference with vested rights" are a manifestation of courts' posture that, when the words permit it, "courts will take the legislature not to have intended to work injustice or unfairness." Justice Cromwell then goes on to state that these presumptions "protect parties' reliance on the law as it was at the time of acting": *Dineley*, above, at para 46, citing *Angus v Sun Alliance Insurance Co*, [1988] 2 SCR 256 at 268-69 [*Angus*]; *Ciecierski v Fenning*, 2005 MBCA 52 at para 29; *Upper Canada College v Smith* (1920), 61 SCR 413.

[29] The Applicant submits that the retroactive or retrospective application of s 117(9)(c.1) of the Regulations removes her substantive right to sponsor her husband for a permanent resident visa in the family class and changes the legal character of her marriage. She says that this undermines her good faith reliance on Canada's immigration laws as they stood at the time of her marriage and that such a result creates an absurdity. It is an established principle of statutory interpretation that Parliament does not intend to produce absurd consequences. See *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 27. She also submits that the only policy objective s 117(9)(c.1) seems to pursue is operational or administrative expediency within Immigration, Refugees and Citizenship Canada [IRCC]. Such a rationale provides insufficient grounds to remove substantive rights or change her marriage's legal character. Since s 117(9)(c.1) can be interpreted in a manner that does not require retroactive or retrospective force, it should be interpreted in a manner that only gives it prospective force.

[30] The Applicant submits that *Dragan* is distinguishable because it was a case exclusively about the rights of foreign nationals, while the application of s 117(9)(c.1) of the Regulations could touch on the rights of Canadian citizens. She also says that the retroactive application of

the provision in question in *Dragan* was expressly addressed by s 190 of the Act. Since s 117(9)(c.1) is not clearly worded, the presumption against retrospective application has not been rebutted. The Applicant points out that the provision in *Dragan* was also subject to exceptions from retroactive application established by the Regulations. See *Dragan*, above, at para 36.

[31] The Applicant suggests that the IAD's assertion that Parliament may enact legislation that is retroactive, retrospective or interferes with vested rights is "judicial *fiat*" not supported by the jurisprudence. She says that "while Parliament has [the] right to enact retroactive legislation, it can not do so when substantive rights have been vested or to change the legal character of something retroactively" and points to *Angus*, above, in support of this position. In *Angus*, the Court held that "the legislature will not lightly be presumed to have intended a provision to have retrospective effect when the provision substantially affects the vested rights of a party": *Angus*, above, at 266-67.

[32] The Applicant submits that *Gill* does not stand for the general proposition that rights do not accrue until a final decision is rendered. This is acknowledged in *Gill* where the situation of a party to a legal proceeding is contrasted with that of a spousal sponsorship application. See *Gill*, above, at para 41. The Applicant also submits that *Gill* is distinguishable on a policy basis as concerns over the integrity of the immigration system that motivated the changes to the legislation at issue in *Gill* do not exist with respect to s 117(9)(c.1) of the Regulations. Furthermore, *Gill* was an instance where the retroactivity of the legislative change was apparent on the face of the legislation and there had been no reliance on the statute. She says that the cases

relied on in *Gill* to establish that an applicant does not have an accrued or accruing right until the final decision do not deal with instances of acts undertaken in reliance on the legislation.

[33] In particular, the Applicant says that *Scott v College of Physicians & Surgeons (Saskatchewan)* (1992), 95 DLR (4th) 706 (Sask CA) [*Scott*], supports her position that her marriage created an accruing right that s 117(9)(c.1) of the Regulations cannot interfere with. In *Scott*, the applicant did not submit his application for reinstatement until after legislation repealing his right to be reinstated came into effect. But the Saskatchewan Court of Appeal held that his right to reinstatement had started accruing within the meaning of s 23(1)(c) of *The Interpretation Act*, RSS 1978, c I-11, repealed, because he "had done all that he could do prior to the college quantifying the amount owed… [and there] was no question of the college determining whether the right existed": *Scott*, above, at 732. The Applicant says that interpreting *Gill* as holding that a right cannot accrue until an application has been decided leaves applicants in constant threat that their accrued rights will be subject to retroactive dismissal.

[34] The Applicant also submits that the case law relied upon by the Respondent all deals with questions of program integrity, while s 117(9)(c.1) "primarily deals with [the] administrative convenience of IRCC." And the Applicant says that the Respondent has only addressed the argument that retroactive application of the provision affects the Applicant's vested rights and has ignored the argument that it changes the legal character of her marriage *ex post facto*.

(2) *Charter* Arguments

[35] The Applicant further submits that s 117(9)(c.1) of the Regulations violates ss 7 and 15 of the *Charter* and requests that it either be struck down or read down to make it consistent with the *Charter*. In the alternative, the Applicant requests that s 117(9)(c.1) be applied in a manner consistent with the *Charter*.

[36] Section 7 of the *Charter*'s guarantee of security of the person concerns not only physical security but also protects against serious state-imposed psychological stress. See *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 57 [*Blencoe*]. The Applicant says that the loss of companionship caused by not allowing her husband to immigrate to Canada rises to the level of serious state-imposed psychological stress and engages her s 7 right to security of the person. She also submits that her s 7 liberty interest is engaged as s 117(9)(c.1) prevents her from making important and fundamental life choices. See *Blencoe*, above, at para 49. When an interest protected by s 7 of the *Charter* is engaged, a law violates s 7 if it is not in accordance with the principles of fundamental justice. The Applicant points out that one of the principles of fundamental justice is that a law cannot be arbitrary. In *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519 at 619-20, arbitrariness was described as a limit that "bears no relation to, or is inconsistent with, the objective that lies behind the legislation." The Applicant submits that s 117(9)(c.1) of the Regulations impacts her rights in an arbitrary manner that is punitive in nature.

[37] The Applicant also submits that her s 15 right to equality has been violated because she is being discriminated against based on her particular form of marriage. She says that she should be treated the same as "genuine married couple[s] who [marry in each other's] physical presence." She asserts that her form of marriage is a personal characteristic that is immutable or changeable only at unacceptable cost to personal dignity and therefore qualifies as an analogous ground under s 15. See *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at para 13.

[38] The Applicant submits that these infringements cannot satisfy the *Oakes* test for justification under s 1 of the *Charter*. See *R v Oakes*, [1986] 1 SCR 103 [*Oakes*]. She submits that the objective of s 117(9)(c.1) is to prevent immigration fraud. However, even if one accepts that this is a pressing and substantial objective under the first step of the *Oakes* test, the Applicant says that the prospective application of s 117(9)(c.1) would be sufficient to achieve that objective. Thus, the Applicant says there is no rational connection between the retroactive application of s 117(9)(c.1) and the provision's objective because retroactivity undermines public confidence in the Canadian judicial system.

[39] The Applicant submits in the alternative that preventing immigration fraud or preserving program integrity do not qualify as pressing and substantial objectives as these objectives are already achieved by other provisions of the Act.

[40] The Applicant also submits that the retroactive application of s 117(9)(c.1) of the Regulations is grossly disproportionate and fails the third part of the second step in *Oakes*. She

says that, even if the provision is completely effective in preventing fraud and maintaining program integrity, no balance has been struck between the benefit of that objective and its deleterious effect of retroactively excluding her marriage from the family class.

[41] The Applicant says that the IAD should have evaluated her *Charter* arguments with an understanding that the rights of Canadian citizens and permanent residents are implicated in the application of s 117(9)(c.1) of the Regulations. She points to *McDoom v Canada (Minister of Manpower & Immigration)*, [1978] 1 FCR 323 at para 12 (TD), to support the proposition that the retroactive effect of an immigration regulation can be evaluated from the perspective of a sponsor as well as a foreign national applicant.

[42] The Applicant also says that the Board's reliance on *Medovarski*, above, for the proposition that non-citizens do not have unqualified rights to enter and remain in Canada implies that non-citizens have qualified *Charter* rights. She cites numerous cases to establish that the *Charter* applies to non-citizens. See e.g. *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177; *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 [*Charkaoui*]. She submits that *Medovarski* was not a situation where the rights of a Canadian citizen were implicated. Furthermore, the Supreme Court of Canada's comments in *Medovarski* must be read in the light of later clarifications in *Charkaoui*, above, at paras 17-19, that while deportation itself does not engage s 7 of the *Charter*, other features associated with deportation may.

[43] The Applicant submits that *Medovarski* supports the proposition that where two or more readings of a statute are possible, *Charter* values should inform which reading is preferable. While a *Charter* compliant reading was not possible in *Medovarski*, the Applicant says that it is possible in the case of s 117(9)(c.1) of the Regulations. She also submits that while the unfairness in *Medovarski* did not reach the level of a *Charter* violation, it does in this instance.

[44] The Applicant also says that the possibility of an application on H&C grounds cannot cure a *Charter* infringement as an H&C application is a highly discretionary remedy not equivalent to the right to sponsor a spouse for permanent residence. She notes that an application on H&C grounds can be made with respect to all immigration matters under the Act. Therefore, accepting the Respondent's argument that the availability of H&C relief mitigates the severity of any interference with *Charter* rights will effectively immunize the Act from *Charter* scrutiny. She submits that the Respondent's position does not have any support in Canadian immigration law and must be rejected.

[45] The Applicant also notes that *Gill*, above, was not a *Charter* case and says that the Board was incorrect to suggest in the Decision that *Gill* considered the application of the *Charter*.

[46] The Applicant submits that she was not required to provide notice of a constitutional question under Rule 52(1) of the IAD Rules as the IAD dealt with the matter entirely in writing. She points to Rule 52(4) which states that notice of a constitutional question must be provided to the required parties ten days before the day the constitutional argument will be made. She says

that in this instance, there was no argument before the IAD, nor a date set for argument, and therefore no need to provide a notice of constitutional question.

(3) Evaluation of Common-law Partner or Conjugal Partner Relationship

[47] The Applicant says that the reason why Immigration, Refugees and Citizenship Canada [IRCC] Operational Bulletin 613 – June 11, 2015, "Instructions – Excluded relationship – Proxy, telephone, fax, internet or similar marriage forms where one or both parties not physically present" [OB 613], was not followed by the immigration officer needs to be explained.

[48] Section 3.6 of OB 613 instructs IRCC staff that:

> Before making the decision to refuse any application, if the marriage ceremony was conducted by proxy, telephone, fax, internet or a similar form where one or both parties were not physically present, the officer should determine whether the applicant meets the definition of common-law partner and can be processed as such (see section 3.8.1).

[49] Section 3.8.1 reads as follows:

> If an individual applying under any of the immigration streams is determined by an officer to be in a marriage that was conducted by proxy, telephone, fax, internet or a similar form where one or both parties was not physically present but the individual meets the definition of common-law partner, the officer will continue processing the application with the relationship status category as common-law partner in lieu of spouse. The officer can assess whether the applicant meets the definition of common-law partner by requesting that the applicant submit an IMM 5409 (Statutory Declaration of Common-Law Union) and other relevant documentation to support the existence of a common-law relationship.

[50] The Applicant accepts that IRCC operational bulletins are not legislative in nature but submits that they can provide "useful insight on the background, purpose and meaning of legislation": *Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275 at para 28 [*Farhat*]. And following guidelines can contribute to consistent decision-making within IRCC. See *Cheng v Canada (Secretary of State)* (1994), 83 FTR 259 at para 7 (TD).

[51] The Applicant submits that her attempts to follow the law as it existed at the time of her marriage are compelling circumstances within the contemplation of OB 613 that deserve evaluation as a common-law partner or conjugal partner relationship and on humanitarian and compassionate grounds. She says that the immigration officer failed to conduct this analysis despite her husband's questions about how he could satisfy the requirements of the common-law partner category. The Applicant says that the immigration officer should have had her husband fill out a statutory declaration of common-law union or considered her husband for a temporary resident permit under s 24 of the Act.

[52] In the Applicant's application to sponsor her husband, she listed her relationship to her husband as "spouse." But she also answered "yes" to the question "[a]re you sponsoring a member of the family class or a member of the spouse or common-law partner in Canada class?" The Applicant says that this suggests that such applications are evaluated together and that the application should have been evaluated in the common-law partner category.

[53] The Applicant submits that the lack of evidence of a common-law relationship pointed to by the Respondent is a function of the unfairness of not being given an opportunity to present

such evidence. She says that she and her husband could have verified their common-law partner or conjugal partner status if the immigration officer had asked for the information and evaluated the application on that basis.

B. *Respondent*

(1) Retroactivity or Retrospectivity

[54] The Respondent submits that the Applicant filed her sponsorship application after s 117(9)(c.1) of the Regulations came into force and that the transitional provisions and case law are clear that her sponsorship application is subject to that provision.

[55] The Respondent says that the Applicant's argument requires the Court to ignore the plain meaning of s 117(9)(c.1) of the Regulations and that the provision should not be construed counter to its plain language. Altering legislation is a matter for Parliament, not the Court. See *D'Souza v Canada (Minister of Employment & Immigration)* (1982), [1983] 1 FCR 343 at para 5 (CA).

[56] The Respondent submits that Parliament may, subject to *Charter* restrictions, enact legislation that is retroactive, retrospective, or interferes with vested rights. See *Dragan*, above, at para 35. The Respondent says that the Applicant has no accrued or vested rights that are being retroactively or retrospectively affected by the application of s 117(9)(c.1) of the Regulations. In *Gill*, the Regulations changed the test applicable to spousal sponsorships after an applicant's sponsorship application had been incorrectly rejected under the old test. In the appeal before the

IAD, the IAD applied the new version of the Regulations. Despite this, Chief Justice Crampton held that the IAD was correct to apply the new version of the Regulations because "persons who make such applications have no accrued or accruing rights until all of the conditions precedent to the exercise of the right they hope to obtain under the application have been fulfilled": *Gill*, above, at para 40. Consequently, the applicant's mere hope that the application will be successful meant that "[t]here are no rights that may be retroactively or retrospectively affected by a change in the test applicable to spousal sponsorship applications." This approach has been followed in *Burton v Canada (Citizenship and Immigration)*, 2016 FC 345 at para 24 [*Burton*]; *Patel*, above, at paras 31-38; and *Begum*, above, at paras 148-52.

(2) *Charter* Arguments

[57] The Respondent submits that the IAD was correct that *Medovarski* provides a complete answer to the Applicant's *Charter* arguments. Further, the Respondent says that the options available to the Applicant to pursue re-sponsorship of her husband under a different category or an application on H&C grounds sufficiently mitigate the impact of retrospective application of s 117(9)(c.1). Given these options, the impact does not rise to the level of a *Charter* violation.

[58] The Respondent also submits that the Applicant did not provide a notice of constitutional question before the IAD, as required by s 52(1) of the IAD Rules.

(3) Evaluation of Common-law Partner or Conjugal Partner Relationship

[59] The Respondent submits that the instruction in OB 613 that the immigration officer could continue to process the application as a common-law partner relationship instead of as a spousal relationship is not a legal requirement. See *Farhat*, above, at para 28. The Respondent also says that there was no evidence of a common-law partner relationship in this case.

[60] The Respondent also says that there was no procedural unfairness in the IAD's decision not to hold an oral hearing because there was no dispute over the facts relevant to the Applicant's appeal. See *Yen v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1236 at para 29.

VIII. ANALYSIS

[61] The Applicant's sponsorship application was refused because, pursuant to s 117(9)(c.1) of the Regulations, her husband in Bangladesh cannot be considered a member of the family class because, at the time of the marriage ceremony, she was not present. It was a proxy marriage.

[62] Paragraph 117(9)(c.1) was added to the Regulations by SOR/2015-139, s 2(2), on June 10, 2015. The reason for removing spouses from the family class in the case of proxy marriages was not mere administrate convenience as the Applicant argues, but to protect vulnerable women:

> The Government of Canada has made it a priority to address the vulnerability of women in the immigration context and has taken steps to address the issue of forced marriage. The nature of proxy,

> telephone, fax, Internet and other similar forms of marriage can help to facilitate forced marriages because one or both spouses are not physically present, making it more difficult to determine that they consent to the marriage.
>
> Explicitly identifying a marriage where one or both parties were not physically present as an "excluded relationship" through regulatory amendments to section 5 and subsections 117(9) and 125(1) of the Immigration and Refugee Protection Regulations (IRPR), strengthens the tools to deny all such marriages for immigration purposes, given their possible connection to early and forced marriage.
>
> [OB 613, s 1.]

[63] The Applicant is not a vulnerable woman and the Respondent concedes that the concerns that lay behind s 117(9)(c.1) of the Regulations do not arise in this case. Nevertheless, the Applicant, who is in a genuine marriage, filed her sponsorship application on July 15, 2015. The transitional provisions in SOR/2015-139, s 5(4) state that "[p]aragraph 117(9)(c.1) of the *Immigration and Refugee Protection Regulations* applies only to applications received after the day on which these Regulations [e.g. SOR/2015-139] come into force." The coming into force provision in SOR/2015-139, s 6, states that "[t]hese Regulations come into force on the day on which they are registered." SOR/2015-139 was registered on June 10, 2015.

[64] In order to avoid the consequences of the regulation, the Applicant has raised various grounds of review in this application. She says that s 117(9)(c.1) should not be given retroactive application and should only be read to cover proxy marriages that took place after June 11, 2015. She also says that, if s 117(9)(c.1) does have retroactive force, then it is contrary to ss 7 and 15 of the *Charter* and should be declared unconstitutional.

[65] It seems to me that the Applicant has failed to establish a case on these grounds. The Applicant is not someone who had submitted a sponsorship application before the regulation came into force. She is someone who, when the regulation came into force, had no rights or even expectations with regard to her sponsorship application, which had not even been submitted. When she submitted her sponsorship application, the law had already changed so that her application had to be considered and processed in accordance with the law in force at the time of the application. The Applicant is, in effect, asserting that her sponsorship application should have been dealt with in accordance with the previous law that had ceased to exist. When she got married by proxy, the Applicant may have felt that she would be able to sponsor her husband as a member of the family class. The marriage took place on April 28, 2014. But when she eventually got around to making the application on [of after] July 15, 2015, the law had changed. There was no application from the Applicant in the system on June 11, 2015. Clearly, it could not have been the intention of Parliament to allow sponsorship applications not made until after the June 11, 2015 deadline to be processed under the previous law. The Applicant could have no rights or legitimate expectations until after her sponsorship application was filed. As the Supreme Court of Canada made clear in *Medovarski*, above, at para 47, "[t]here can be no expectation that the law will not change from time to time…." The Applicant's application to sponsor is dated July 15, 2015 but it is not certain that it was submitted on that date as there is no copy of the application in the Certified Tribunal Record [CTR]. The Respondent's submissions before the IAD note that "[t]he appellant also acknowledges that the sponsorship application was filed on or about July 15, 2015. The Minister's information shows the lock-in date of the application to be August 14, 2015. Given this information, it is clear that the application was

received after the new regulations came into effect June 11, 2015" (CTR at 29). The IAD then proceeded on the basis that the application had been filed on July 15, 2015.

[66] So, although the Applicant has characterized her situation as one where prior rights and expectations have been thwarted and denied by retroactive legislation, this is not the case. In my view, the Applicant could have no right or expectation that her spousal application would be processed and decided in accordance with a prior regulation that did not exist at the time her application was submitted. It was up to the Applicant and her counsel to ensure that the application complied with the law at the time of submission. This is not a case where an application was made and then the law changed. And even if it was, the jurisprudence does not support the Applicant's position. In *Burton*, above, at para 20, Justice McDonald states the question this way: "the real question is if by the act of filing an application to sponsor a spouse, the Applicants acquired rights which attract the presumption [against retrospectivity]" (emphasis added). She concludes that "[s]ince *Gill*, this Court has repeatedly held that the right to sponsor a family member does not vest, accrue, or begin to accrue until an affirmative decision is made in respect of the application": *Burton*, above, at para 24. The Applicant's argument that her rights had vested before an application to sponsor was even filed is not contemplated.

[67] The Applicant's *Charter* challenges to s 117(9)(c.1) must also fail. To begin with, the Applicant has not filed and served the requisite notice of constitutional question to make such as challenge. The Applicant's argument that notice was not required because it was unclear whether the IAD would hold an oral hearing was rejected in *Gitxsan Treaty Society v Hospital Employees Union*, [2000] 1 FCR 135 at para 9 (CA): "When it is not known whether an oral hearing will be

held, any party wishing to raise a constitutional challenge to the validity, applicability or operability of a statute must still notify the attorneys general of its intention to do so." However, it seems to me that the question of whether the Applicant was required to give notice of constitutional question before the IAD is now moot because the IAD considered and decided against the Applicant's *Charter* arguments. In this application for judicial review, if the Applicant was merely asking the Court to interpret s 117(9)(c.1) in a manner consistent with the *Charter*, no notice of constitutional question under the *Federal Courts Act*, RSC 1985, c F-7, s 57(1), would be required. See *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at paras 94-97 [*Najafi*]. The *Charter*, however, cannot be used as an interpretive tool to create ambiguity where Parliament's intent is clear: *Najafi*, above, at para 107. Here, the Applicant has expressly asked that s 117(9)(c.1) "be read down or struck down to make it consistent with [the *Charter*]." In the absence of compliance with the notice of constitutional question requirement, the Court lacks jurisdiction to strike down legislation or regulations: *Canada (Attorney General) v Misquadis*, 2003 FCA 473 at para 38. Secondly, the Applicant has not provided the evidentiary base that is required before the Court can undertake an analysis of a s 7 or s 15 challenge. As regards s 7 of the *Charter*, the Applicant has submitted no evidence that would support the serious state-imposed psychological stress required for a breach of security of the person. See *Blencoe*, above. The Applicant appears to take the position that the Court should simply assume that the refusal of her sponsorship application is sufficient. But she provides no evidentiary particulars or objective evidence. All she says in her affidavit is that,

> 30. My husband and I were missing each other. My application to sponsor my husband was taking time.
>
> …

> 42. I am [a] forty two [year] old female living in Canada without any moral or mental support from my husband. I request the Court to consider my application with compassion.

[68] As regards s 15 of the *Charter*, the Applicant says she is being discriminated against on the grounds of marital status but, as per this application, the Applicant has not even established that the fact of her proxy marriage prevents her from sponsoring her husband. As I will come to later, s 117(9)(c.1) may have prevented her from sponsoring her husband as a member of the family class, but there are other avenues available to her to bring him to Canada that the Applicant has simply not pursued. In *Quebec (Attorney General) v A*, 2013 SCC 5 [*Quebec v A*], Abella J.'s majority reasons on s 15 at para 331, speak of "a flexible and contextual inquiry into whether a distinction has the effect of perpetuating arbitrary disadvantage on the claimant because of his or her membership in an enumerated or analogous group." This inquiry is rooted in "our awareness that certain groups have been historically discriminated against, and that the perpetuation of such discrimination should be curtailed": *Quebec v A*, above, at para 332. Even if entering a marriage by proxy is captured within the analogous ground of marital status, the Applicant has not established that a Canadian immigration law that does not recognize proxy marriages perpetuates a historical disadvantage.

[69] Notwithstanding that her principal grounds for review have not been established, the Applicant's situation does seem somewhat incongruous. The IAD has recognized the genuineness of her proxy marriage and she appears to think that, notwithstanding this finding, she has no way of being able to sponsor her genuine husband under the present regulatory regime. The IAD acknowledged that this appears to be a harsh result but has the following to say:

> [10] Paragraph 117(9)(c. 1) of the *Regulations* clearly states a "foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if the foreign national is the sponsor's spouse…." Section 117 of the Regulations sets out the categories of individuals who, for sponsorship purposes, can he considered a "member of the family class" and includes a spouse, common-law partner or conjugal partner under paragraph 117(9)(a) of the *Regulations*. There is no dispute the applicant, who is a foreign national, is the appellant's, who is the sponsor, spouse by virtue of their proxy marriage in 2014. As such, pursuant to the clear wording of paragraph 117(9)(c.l) of the *Regulations*, the applicant shall not be considered a "member of the family class". The fact that the immigration officer did not consider the applicant in one of the other categories is irrelevant as the applicant is excluded by virtue of being the spouse of the appellant and that is the category under which he was sponsored.
>
> …
>
> [18] While this may appear to be a harsh result, given the appellant's proxy marriage occurred prior to the amendment to paragraph 117(9)(c. 1) of the *Regulations*, the appellant may have other options she may pursue. Parliament has provided other options such as: re-application to sponsor the applicant under a different category or an application to the Minister under section 25 of the *Act* on humanitarian and compassionate grounds. However, these options are outside the scope of the IAD's jurisdiction.

[70] The harshness recognized by the IAD has obviously been acknowledged in guidelines that are found in OB 613. For example, OB 613 has the following to say on point:

> **3.6 Considerations**
>
> For sponsorship applications, before making the decision to refuse an application, the officer should consider whether the exemption for Canadian Armed Forces Personnel applies.
>
> Before making the decision to refuse any application, if the marriage ceremony was conducted by proxy, telephone, fax, internet or a similar form where one or both parties were not physically present, the officer should determine whether the applicant meets the definition of common-law partner and can be processed as such (see section 3.8.1).

Before making the decision to refuse any application, if the relationship is found to be genuine despite the marriage having been conducted by proxy, telephone, fax, internet or similar means and the applicant does not meet the definition of common-law partner, Humanitarian and Compassionate (H&C) considerations may be applied to overcome the regulation, if sufficiently compelling circumstances exist (see section 3.8.2), including situations where the best interests of the child is a consideration.

CBSA BSOs should also review all considerations in section 3.6 and process accordingly before deciding to refuse an application based on the excluded relationship.

3.7 Refusal

If the officer determines that the applicant or spouse was not physically present during the marriage ceremony and they do not qualify as common-law partners and the use of H&C is not warranted, the officer may refuse the application based on the marriage meeting the definition of an excluded relationship under R5, R117(9)(c.1) or 125(1)(c.1).

Upon refusal of the application, the officer will inform the applicant that their relationship is considered an excluded relationship under the IRPR, with reference to the applicable regulations [R5, R117(9)(c.1) and/or 125(c.1) and that only marriages in which both parties were physically present at the ceremony are considered valid, given that the relationship meets all other requirements.

Family class applications will continue to have comprehensive *bona fides* assessments (R4(1)); therefore, relationships that are not genuine should still be detected and refused on R4(1).

If the applicant did not disclose that the marriage was conducted by proxy, telephone, fax, internet or similar means with the intention of withholding this information, the officer may find that the applicant has misrepresented a material fact or withheld a material fact and therefore, an A44 report based on A40(1) may be written.

3.8 Genuine marriages conducted by proxy, telephone, fax, internet or similar means

The following options exist to mitigate the impact of the new provisions on individuals in genuine marriages conducted by these means:

3.8.1 Processing of common-law partners

If an individual applying under any of the immigration streams is determined by an officer to be in a marriage that was conducted by proxy, telephone, fax, internet or a similar form where one or both parties was not physically present but the individual meets the definition of common-law partner, the officer will continue processing the application with the relationship status category as common-law partner in lieu of spouse. The officer can assess whether the applicant meets the definition of common-law partner by requesting that the applicant submit an IMM 5409 (Statutory Declaration of Common-Law Union) and other relevant documentation to support the existence of a common-law relationship.

If a visa-exempt individual at a POE applies for temporary resident status that is dependent upon their relationship with their spouse and the CBSA BSO determines that he or she was married by proxy, telephone, internet, fax, or similar means, the BSO will determine whether the applicant meets the definition of common-law partner. If the applicant does not have the proof of common-law relationship with them at the POE, the BSO may issue a temporary resident permit (TRP).

3.8.2 Humanitarian and compassionate (H&C) considerations

H&C is designed to be a flexible discretionary tool that enables exceptions to be made in compelling cases, with a statutory obligation to consider the best interests of any children affected.

In order to provide flexibility to respond to individuals in vulnerable situations, the H&C provisions under paragraphs 25 and 25.1(1) of the Immigration and Refugee Protection Act (IRPA) can be used to accommodate exceptional cases and facilitate family unity in all immigration streams. Officers should remain alert and sensitive to the best interests of the child (BIOC) when undergoing an H&C assessment through identification and examination of all factors related to the child’s life.

One example of an exceptional case where there may be sufficiently compelling circumstances to warrant an exemption is if an individual could not travel to attend the marriage ceremony due to medical reasons and has lived with their spouse for less than one year and therefore cannot meet the definition of a common-law partner.

> An interview with the applicant may be required to assess H&C considerations.
>
> [Emphasis added.]

[71] It seems clear from the evidence before me that neither the immigration officer nor the IAD went on to consider the Applicant's application under the common-law or conjugal partner class. The Respondent concedes that this should have been done but says the facts would not have supported a common-law relationship. A "*common-law partner* means, in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year": Regulations, s 1(1). I cannot see how the Applicant and her husband could meet the cohabitation requirement. Unfortunately, as part of this judicial review application, the Applicant has made no effort to show that her husband could, at the time the sponsorship was decided, have qualified as a common-law partner or conjugal partner, or that there would be any point in sending the matter back for reconsideration on those grounds.

[72] There is no dispute that the factors used to evaluate the existence of a "conjugal relationship" are set out in the Supreme Court of Canada's decision in *M v H*, [1999] 2 SCR 3 [*M v H*]: "shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple." See e.g. *Njoroge v Canada (Citizenship and Immigration)*, 2017 FC 261 at para 18. After referencing *M v H*, IRCC manual OP 2, "Processing Members of the Family Class", (14 November 2006) at 5.25 [OP 2], states that "the following characteristics should be present to some degree in all conjugal relationships" (emphasis in original): mutual commitment to a shared life; exclusive – cannot be in more than one conjugal relationship at a time; intimate – commitment to sexual exclusivity;

interdependent – physically, emotionally, financially, socially; permanent – long-term, genuine and continuing relationship; present themselves as a couple; regarded by others as a couple; and caring for children (if there are children). OP 2 also explains that,

> This category was created for exceptional circumstances – for foreign national partners of Canadian or permanent resident sponsors who would ordinarily apply as common-law partners but for the fact that they have not been able to live together continuously for one year, usually because of an immigration impediment.
>
> [OP 2, at 5.45.]

It seems to me that the IAD's interpretation of s 117(9)(c.1) precludes the Applicant's husband from consideration in the family class. And OB 613 only mentions consideration of a genuine proxy marriage as a common-law partnership, not consideration as a conjugal partnership.

[73] The Respondent points out that the Applicant did not, in her sponsorship application, indicate other categories that she wanted considered and did not attempt to satisfy the criteria in those categories. The Applicant's sponsorship application is not included in the CTR. The material that she included in her record only shows the sponsorship form and does not include submissions. Her further affidavit, however, suggests that submissions were included in her husband's application: "2. I have reviewed my husband's immigration application submitted to the Immigration Refugee and Citizenship Canada (IRCC). I have found numerous photos that I am attaching…" So it is unclear whether the Applicant requested consideration and assessment in other categories.

[74] It seems to me that the IAD was correct to point out that s 65 of the Act prevented the IAD from considering H&C grounds on the facts of this case but, as the IAD also points out, this does not prevent the Applicant from making an application under s 25(1) to the Minister on H&C grounds. In the present application before me, the Respondent concedes that a s 25(1) application is available to the Applicant and says that she has yet to exercise the means available to her under the governing legislation to achieve the result she desires. The Applicant has not explained why she has not made such an application. Guideline 3.8.2 (cited above) makes it clear that there may be a sufficiently compelling circumstance where a sponsor cannot meet the definition of common-law partner and could not travel to a marriage ceremony because of illness. Other grounds might include a lack of financial resources although, on the evidence before me, the Applicant has been back to Bangladesh twice for five-month periods since the proxy marriage. It may be that, given the circumstances of this case, a s 25(1) application is the only means available to the Applicant to sponsor her husband based upon what appears to be – in the evidence before me – a genuine proxy marriage that the Applicant was not coerced into. The change in the Regulations regarding proxy marriages has left her in a kind of legal limbo that she has no way of exiting other than by way of s 25(1). This would appear to be a significant hardship for the Applicant and her husband and one that should be given serious consideration in any H&C application that she chooses to make.

[75] I can find no reviewable error with the Decision.

IX. CERTIFICATION

[76] Counsel agree there is no question for certification and, on these facts, the Court concurs.

JUDGMENT IN IMM-2763-17

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Khurshed Chowdhury	FOR THE APPLICANT
Marcia Jackson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Chowdhury Law Prof. Corp. Regina, Saskatchewan	FOR THE APPLICANT
Attorney General of Canada Regina, Saskatchewan	FOR THE RESPONDENT