Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

OP 4

Processing of Applications under Section 25 of the IRPA

Canada

OP 4 The processing of applications under section 25 of the IRPA

Updates to chapter

Listing by date:

Date: 2005-09-15

- Section 5.4 has been amended to refer to a public policy established to facilitate the immigration to Canada of a group of Vietnamese in the Philippines. Appendix E has been added and provides the full text of this policy.

- Section 8.3 has been amended to clarify the principle of the best interests of the child and who may be considered a *de facto* family member.

Date: 2004-09-28

Minor changes and clarifications have been made throughout OP 4, the main document describing overseas H&C processing under section 25 of IRPA. The major changes to this chapter consist of:

- Section 4.1, Specific delegation instruments, has been updated to clarify H&C delegations overseas.

- Section 5.7, Concurrent processing, is a new section. This section explains that, in accordance with the technical revisions to the Regulations, family members who are outside Canada cannot be processed for permanent resident visas concurrently with the principal applicant in Canada. However, this change does not apply to H&C applications received at a CIC office prior to August 11, 2004.

- Section 8.3, Best interests of the child, has been expanded.

1. What this chapter is about

This chapter explains how to process applications for permanent residence in which the applicant has made a request for consideration under A25 and R66, R67, and R69. This request would be on humanitarian and compassionate (H&C) grounds or under public policy.

This information is intended for Citizenship and Immigration Canada staff at Canadian visa offices abroad.

For information regarding the processing of applications under section 25 of the Act (IRPA) at inland offices of Citizenship and Immigration Canada, see IP 5.

2. Program objectives

2.1. Intent of section 25(1) of the Act

This section gives the Minister the authority to apply judgment and flexibility in cases that do not meet the requirements of the Act, but which are justified by humanitarian and compassionate considerations. More specifically, it does the following:

- allows, either upon request by the foreign national who is inadmissible or otherwise does not meet the requirements of the Act, or on the Minister's own initiative, for an examination of the circumstances of the foreign national with the possible outcome of granting a permanent resident visa to them on humanitarian and compassionate considerations;
- allows for the processing of applications for permanent residence on public policy grounds as may be set out by the Minister; and
- takes into account in so doing, in both instances, the best interests of a child directly affected.

2.2. Discretion versus consistency

A challenge exists: Delegated persons (see Section 4, below) have full authority to make decisions concerning H&C applications. At the same time, to be fair to clients and to avoid just criticism, as much consistency as possible is needed in the use of discretion in these cases.

This chapter is structured to strike a balance between the two seemingly contradictory aspects of discretion and consistency. As much guidance as possible is given. However, in the end, the discretion and judgment of the decision-maker take precedence.

3. The Act and Regulations

Table 1: Legislative references relevant to H&C and public policy processing:

For information about	Refer to this section
H&C considerations	A25(1) R66 R67 R69

Public policy	A25(1)
Best interests of the child	A25(1)

3.1. Forms required

Note: No special forms exist for the processing of cases under A25(1).

To make their initial submission, applicants must use existing departmental forms for the three classes of immigration applications (family, economic, or refugee). To receive H&C consideration, they must apply in one of these three classes. They can also provide additional written information in support of their request for consideration under section A25(1), should they so choose, or should an officer request it.

For the public policy regarding applications under A25(1) from persons who lost their Canadian citizenship as minors, applicants in Canada will submit their application using the form "Request for Exemption from Permanent Resident Visa Requirement, [IMM 5001]" (see Appendix D).

For the public policy under A25(1) to facilitate immigration to Canada of certain members of the Vietnamese community in the Philippines without permanent residence who have close family members in Canada, sponsors should use the forms sent to them by the Case Processing Centre (CPC) in Mississauga or (if they reside in Quebec) by the Quebec *Ministère de l'Immigration et des Communautés culturelles* and applicants should use the forms sent to them by the visa office in Manila.

4. Instruments and Delegations

A6 authorizes the Minister to designate officers to carry out specific duties and powers, and to delegate authorities. It also states those ministerial authorities which may not be delegated, specifically those relating to security certificates or national interest.

In general:

Under the authority of sections R66, R67, and R69(1) of the Regulations, the Governor in Council has given the Minister full authority to exercise the powers found in section A25(1) of the Act.

4.1. Specific delegation instruments

Officers have the delegated authority to **assess** all applications on H&C grounds, including when the applicant is inadmissible on grounds of security, human or international rights violations, serious criminality, organized criminality, or health. Officers may refuse these applications or make a recommendation to the Minister's delegate for a **waiver** of inadmissibility.

For applications where the sole ground of inadmissibility is non-compliance [A41], the delegated level of authority for the waiver of inadmissibility is the Immigration Program Manager (IPM) or Deputy Program Manager.

IPMs and Deputy Program Managers may also, on very rare occasions, waive such serious grounds of inadmissibility as criminality [A36(2)], financial reasons [A39], misrepresentation [A40], or inadmissible family member [A42], but applicants should normally obtain relief (rehabilitation, etc.) as provided within the inadmissibility provisions. Where the inadmissibility is based on A36(1) or A38, the delegated level of authority for waiver remains the Director, Case Review/Case Management Branch. There is no delegation for waiver of inadmissibility on grounds of security [A34], human or international rights violations [A35], or organized crime [A37]. These cases are decided by the Minister.

These authorities can be found in instrument IL 3, Module 1 – Permanent residence and the sponsorship of foreign nationals – Items 43, 43.1, and 45. IL 3 includes lists of delegates/designated officials in a series of annexes by region. Officers should consult Annex F for delegations specific to the International Region.

5. Departmental Policy

5.1. Guidelines and authorities

Officers must follow the guidelines outlined in this chapter as well as the Act and Regulations.

5.2. Eligibility

Who is eligible for consideration under section A25(1)?

Any foreign national who:

- does not meet the requirements for eligibiilty as a member of one of the existing three categories for immigration applications; AND
- advises the visa office that they wish to be considered on H&C grounds (see Section 5.3 below); OR
- complies with the criteria established for public policy considerations, if any exist.

5.3. Consideration on humanitarian and compassionate grounds

A request for consideration on humanitarian and compassionate grounds must be made in writing and must accompany an application for permanent residence made under one of the existing three classes. A determination must first be made that the applicant does not comply with one of these three classes before such a request is reviewed or considered.

5.4. Consideration under public policy

The Minister may, from time to time, establish categories of foreign nationals whose applications for permanent residence may be considered for processing as “public policy” cases, provided they do not fit the definition or comply with the criteria for one of the three existing immigration classes. A public policy on resumption of citizenship under A25(1) can be found in Appendix D.

Pursuant to A25(1), a public policy has been established to facilitate the immigration to Canada of certain members of the Vietnamese community in the Philippines without permanent residence who have close family members in Canada. Details of this public policy may be found in Appendix E.

5.5. Two distinct decisions: exemption from R70(1)(a), (c), and (d) and visa issuance

First assessment: the H&C decision

First, the decision-maker assesses the eligibility of the applicant under one of the existing three immigration classes. If the applicant does not meet the requirements of the class in which the application was made, the decision-maker can proceed to review the case under H&C.

The decision-maker then assesses H&C grounds and decides whether the applicant should be exempted from these sections of the Regulations. The applicant bears the onus of satisfying the decision-maker that the H&C factors present in their individual circumstances are sufficient to

warrant an exemption. The decision-maker considers the applicant's submissions in light of all the information known to the Department.

Note: See Sections 7 and 8 for details on procedures to follow.

Second assessment: the decision to issue a visa

After a positive H&C decision is made, the applicant must still satisfy the remaining requirements for a permanent resident visa and must not be inadmissible.

In cases where the applicant intends to reside in the province of Quebec and is not a member of the family class, they must meet the requirements of R67(a).

5.6. Inadmissibility

Foreign nationals who are inadmissible may submit an application for H&C consideration. However, a positive H&C decision does not overcome their inadmissibility. Therefore, notwithstanding the positive decision, the application for permanent residence would normally result in a refusal.

Note: *The Minister's authority to waive inadmissibility requirements related to security, human or international rights violations, and organized criminality is not delegated.*

Note: *If the officer considers recommending a temporary resident permit to overcome inadmissibility, reference should be made to the guidelines in OP 20.*

Foreign nationals who believe they may be inadmissible on grounds of criminality should complete an application for criminal rehabilitation or, if the conviction was in Canada, an application for a pardon. If they are eligible for rehabilitation or a pardon, once they have completed that process, they would regain their "admissible" status prior to submitting an H&C application.

5.7. Concurrent processing

Effective with the technical revisions to the Regulations, amendments to R69 clarify that family members who are in Canada may become permanent residents concurrently with the principal applicant in Canada. **They also clarify that family members who are outside Canada cannot be processed for permanent resident visas concurrently with the principal applicant in Canada.** However, if the principal applicant is outside of Canada, applications from their family members outside of Canada can be processed concurrently.

Transitional guidelines clarify that applicants in Canada will continue to benefit from the ability to concurrently process family members overseas if their H&C application was received at a CIC office prior to August 11, 2004. This benefit applies whether or not assessment of the H&C application has started. Applications received at a CIC office on or after August 11, 2004 will not be able to benefit from concurrent processing.

6. Definitions

FCH/	Family class applications being processed on humanitarian and compassionate grounds under A25(1).
HC1/	Applications started in the economic or refugee class that are determined eligible to proceed on humanitarian and compassionate grounds under A25(1).
PP1/	Applications pursuant to A25(1) based on public policy processed in accordance with Ministerial guidelines.

7. General procedures for processing A25(1) cases

7.1. Roles and responsibilities

Please see Section 4 for delegations of authority.

Visa offices

Officers at Canadian visa offices abroad are responsible for the processing of any cases arising under A25(1), both as public policy and as H&C applications. See Section 8 for detailed procedures.

Applications in Canada

Please see IP 5.

Case Processing Centre (CPC) Mississauga

- CPC Mississauga plays a role in family class sponsorship cases that might become requests for consideration under H&C. See Section 8.2 below for specific instructions on FC cases.

7.2. CAIPS category changes required for processing under A25(1)

ALL cases must be opened in CAIPS at the paper screening (step 1) stage in one of the three existing classes of immigration applications (family, economic, or refugee) found in R70(2) (a), (b) and (c).

For applicants that have been determined not to meet the requirements of any of the three classes AND who request (or on whose behalf the Minister or their delegate initiates) processing under A25(1), officers MUST CHANGE THE CATEGORY AT THE selection (step 2) stage of processing as outlined in the following table.

Table 2: CAIPS category changes at selection (step 2) stage

Category	Use for:
Family Class Humanitarian (FCH)	Family class applications with a sponsorship from CPC Mississauga where the sponsor is ineligible because they are on social assistance MAY be processed under A25(1). The criteria for such applications under H&C are outlined in Section 8.2. For ALL such cases, the category must be changed to FCH at the selection (step 2) stage and finalized as such.
HC1	Applications started at the paper screening (step 1) stage in the economic or refugee class and which are determined eligible to proceed under A25(1) considerations MUST have their category changed to HC1 at the selection (step 2) stage, and be finalized as such.
PP1	Applications pursuant to A25(1) based on public policy processed in accordance with Ministerial guidelines.

7.3. Cost recovery

The collection of cost recovery fees applies to all cases processed under section A25(1) of the Act.

Table 3: Cost recovery information

For more information about	Refer to

Latest fees	Part 19, *Immigration and Refugee Protection Regulations*
Exemptions	IR 8
Cost recovery codes	IR 8 Help screens on FOSS.

8. Processing humanitarian and compassionate cases

8.1. General guidelines

H&C applications must be reviewed on a case-by-case basis. Applicants are free to make submissions on any aspect of their personal circumstances that they feel would warrant being granted the exemption requested.

Officers may wish to review the administrative law principles outlined in Appendix A, the guidelines for note-taking in Appendix B, and the guidelines for recording the reasoning behind their H&C decision in Appendix C.

8.2. Family class

In some instances, sponsors may not meet eligibility requirements (e.g., because they are in receipt of social assistance). In these cases, applicants may request consideration on H&C grounds.

H&C consideration/review will be granted only upon the request of the sponsor and prospective permanent resident. Therefore, the sponsor must indicate in the appropriate box on their sponsorship application that, should they be found ineligible, they would like CPC Mississauga to forward their application to the visa office for final processing.

The prospective permanent resident must request, with their application for permanent residence, that the designated officer examine the circumstances concerning the reason that they do not meet a requirement of the Act (e.g., have an eligible sponsor). They must seek an exemption from the applicable criteria or obligation of the Act or Regulations.

In such cases, for example, the prospective permanent resident would in effect be asking the designated officer to waive the requirement for the sponsor not to be on social assistance. In reviewing such cases, the designated officer would consider factors which could include whether the prospective permanent resident would be able to help the sponsor to get off social assistance.

In these cases, the sponsorship is **not** refused; rather, H&C consideration is used as a tool to overcome the eligibility requirement.

Similarly, in cases where a sponsor is eligible but the prospective permanent resident is not, e.g., pursuant to R117(9)(d), the latter would have to request consideration on H&C grounds in writing.

Note: *Where it is decided by the visa office to proceed with such family class cases on H&C grounds, the category MUST be changed to FCH at the selection (step 2) stage, to satisfy the requirement that the Minister report to Parliament annually on the processing of cases under A25(1).*

8.3. All other classes

The following guidelines describe some situations where positive consideration might be warranted. They may be helpful when deciding whether the circumstances presented by the applicant are sufficiently compelling to warrant an exemption from R70(1)(a), (c), and (d). They will not answer all eventualities, nor can they be framed to do so. These guidelines are to assist officers in assessing H&C situations. Officers cannot be restricted by guidelines; they are obliged to consider all the information they have.

Note: *Where it is decided by the visa office to proceed with such cases on H&C grounds, the category MUST be changed to HC1 at the* selection (step 2) *stage, to satisfy the requirement that the Minister report to Parliament annually on the processing of cases under A25(1)*.

De facto family members

De facto family members are persons who do not meet the definition of a family class member. They are, however, in a situation of dependence that makes them a *de facto* member of a nuclear family that is either in Canada or that is applying to immigrate. Some examples: a son, daughter, brother or sister left alone in the country of origin without family of their own; an elderly relative such as an aunt or uncle or an unrelated person who has resided with the family for a long time. Also included may be children in a guardianship relationship where adoption as described in R3(2) is not an accepted concept. Officers should examine these situations on a case-by-case basis and determine whether humanitarian and compassionate reasons exist to allow these children into Canada.

Consider:

- whether dependency is *bona fide* and not created for immigration purposes;
- the level of dependency;
- the stability of the relationship;
- the length of the relationship;
- the impact of a separation;
- the financial and emotional needs of the applicant in relation to the family unit;
- ability and willingness of the family in Canada to provide support;
- applicant's other alternatives, such as family (spouse, children, parents, siblings, etc.) outside Canada able and willing to provide support;
- documentary evidence about the relationship (e.g., joint bank accounts or real estate holdings, other joint property ownership, wills, insurance policies, letters from friends and family);
- any other factors that are believed to be relevant to the H&C decision.

Note: Provincial approval is required for foreign nationals residing in a province with an agreement for selection.

Best interests of the child

The *Immigration and Refugee Protection Act* introduces a statutory obligation to take into account the best interests of a child who is directly affected by a decision under A25(1), when examining the circumstances of a foreign national under this section. This codifies departmental practice into legislation, thus eliminating any doubt that the interests of a child will be taken into account.

Officers must always be alert and sensitive to the interests of children when examining A25(1) requests. However, this obligation only arises when it is sufficiently clear from the material submitted to the decision-maker that an application relies, in whole or at least in part, on this factor. An applicant has the burden of proving the basis of their H&C claim. If an applicant

provides insufficient evidence to support the claim, the officer may conclude that it is baseless. As with all H&C decisions, the officer has full discretion to decide the outcome of a case.

It is important to note that the codification of the principle of **best interests of a child** into the legislation does not mean that the interests of the child outweigh all other factors in a case. The best interests of a child are one of many important factors that officers need to consider when making an H&C or public policy decision that directly affects a child.

For more detailed guidelines on the best interests of the child in an inland H&C context, see chapter IP 5, section 5.19.

For more information	Refer to
A summary of the case of *Baker v. M.C.I.*, [1999] 2 S.C.R. 817. which was a landmark decision for “best interests of the child”.	Appendix A
A summary of the Federal Court of Appeal decision in *M.C.I. v. Legault* of March, 2002, that dealt similarly with “best interests of the child” and made reference to the *Baker* decision.	Appendix A

Former Canadian citizens

Situations may arise where former Canadian citizens request permanent residence on H&C grounds. When processing an application from a former citizen, officers should first determine whether the applicant meets the criteria of the public policy on resumption of citizenship. This public policy can be found in Appendix D.

This public policy applies to foreign nationals who ceased to be citizens under subsection 20(1) of the Canadian Citizenship Act, in force from January 1, 1947 to February 14, 1977. This provision stipulated that when a responsible parent ceased to be a Canadian citizen under certain circumstances, the minor children also ceased to be citizens if they became citizens of another country at the same time as the parent or if they already had citizenship of another country at the time the parent ceased to be a Canadian citizen.

Where the applicant meets the criteria of the public policy, the officer will process the application in accordance with the guidelines described in this public policy. If the officer determines that the applicant lost his/her Canadian citizenship in circumstances other than those described in the public policy, this public policy does not apply and the H&C application must be considered on its own merit.

Although not exhaustive, the following guidelines may be helpful.

Table 4: Assessing former Canadian citizens

Step 1	Make sure the applicant was a Canadian citizen. Verify that loss of citizenship has occurred. Ensure that the applicant has contacted CPC Sydney to obtain written confirmation.
Step 2	Consider why and how the applicant lost their Canadian citizenship. Verify if they would have lost it under the present Act.
Step 3	Assess the hardship that the applicant would experience if the application were refused: ¥ close family members in Canada; ¥ strong cultural and/or emotional ties to Canada;

	¥ close family, friends and support in another country.
Step 4	Determine if there is a significant degree of continuing links to Canada. Consider any other factors that are believed to be relevant to the H&C decision.

Other cases

The listing of general case types cannot answer all eventualities and they are not framed to do so. Reasons for granting a positive H&C decision will also occur outside the general case types described.

8.4. Interview

See Appendix A and Appendix C for suggested guidelines on interviews.

8.5. Convention refugees and H&C

For foreign nationals who submit an initial application in the refugee class, and are found not to be Convention refugees, but whose case has been reviewed positively under H&C, the officer must change the category to HC1 at the selection (step 2), and proceed to finalize the case using the procedures for H&C outlined in this chapter. Such applicants must not be inadmissible on any other grounds.

Appendix A Administrative law principles to guide decision-making

Before processing an H&C application, officers should review the administrative law principles that are summarized below. It is to be noted that this section is an overview only and does not constitute an exhaustive presentation of legal principles applicable to H&C decision-making.

1. Delegated authority

As a holder of decision-making authority delegated from the Minister, the officer cannot exceed the scope of the delegation granted.

2. Duty to consider

The officer is under a duty to consider formal applications under A25(1) on H&C grounds on behalf of the Minister. They must remember that the onus is on the applicant to satisfy them that there are grounds for an exemption. They are not required to satisfy applicants that such grounds do not exist.

3. Onus on applicant

The officer does not have to elicit H&C factors; the onus is on applicants to put forth any H&C factors that they feel exist in their case. Although the officer is not expected to delve into areas that are not presented, they may clarify possible H&C grounds if these are not well articulated.

4. All the evidence

The officer must consider and weigh all the relevant evidence and information, that is, what the applicant sees as important and what the officer considers to be important. The officer cannot ignore evidence or place too much emphasis on one factor to the exclusion of all other factors. They must look at the whole picture. If there is information or evidence that they do not feel is relevant or should be given much weight, they should document this appropriately.

5. The right to be “heard”

One of the fundamental components of natural justice or fairness is the right to be heard. This means that applicants must have a fair opportunity to present their case. For the purpose of assessing an H&C application, the applicant's written submissions may contain the information the officer needs to make their decision. The right to be heard does not require an absolute right to a personal interview or hearing.

If the officer provides the applicant with a particular period of time within which to provide information or make further submissions, they cannot make a decision on the application until after this time period has gone by.

6. The “case to be met”

There is no particular “case to be met”. Applicants determine what they feel are the H&C factors of their particular circumstances and make submissions on them. While the officer does not have to elicit H&C factors (i.e., delve into areas that are not presented in the applicants' submissions), it is a good practice to clarify possible H&C grounds if these are not well articulated.

Situations may arise where the officer has adverse information or evidence from a source other than the applicant (extrinsic evidence). If they wish to rely upon it when making their H&C decision, they **have an obligation to share the information with the applicant** and allow submissions to be made on this information.

In instances where the source of the information is confidential, the obligation remains to share the gist of the information with the applicant, so that they are aware of the oficer's concerns. There is no need to release the identity of the confidential source. This is a sensitive situation where the officer must exercise discretion and seek advice from their Program Manager.

In cases where the information on file is not relevant to the officer's decision, that is, where they do not rely on it, they will note in the file that they did not take the information into consideration at all.

Intrinsic information

- is provided by or readily available to the applicant, and
- the applicant is aware it will be used in the officer's decision.

For example, information provided by an applicant's spouse at an interview to determine *bona fides* of a marriage is considered intrinsic because the applicant has access to it and would reasonably expect the officer to use it in their decision.

Extrinsic information

- is from a source other than the applicant, and
- the applicant is not aware that it is being used in the officer's decision or does not have access to it.

For example, information received from an anonymous source that the officer relies upon in making the H&C decision.

Or, the officer may ask an office in Canada or elsewhere about the authenticity of documents submitted as part of the H&C application. If the office replies that the documents are not authentic, and the officer wishes to rely upon this information, they will have to share this extrinsic evidence with the applicant and allow them to make submissions on it.

7. Bias

The second major component of natural justice or fairness is the right to have a fair and impartial decision-maker. In other words, the officer must approach the case with an open mind and be free to come to their own decision in light of all the facts known and the submissions made. Their decision-making must be carried out in an impartial and objective manner.

Examples of a failure to approach the case with an open mind could be:

- too much reliance on the factors set out in the H&C guidelines, to the exclusion of any other submissions made by the applicant;
- "pre-judgment" by the decision-maker; each individual case must be determined on its own merits.

As a decision-maker, the officer may consult with colleagues and supervisors in relation to cases they are considering. However, the final decision must be their own.

8. Right to a decision

Decisions must be rendered within a reasonable time period and applicants informed of their decision in writing.

9. Right to reasons

The established rule is that formal, written reasons are not required unless the statute requires it. Because there is no statutory right to reasons in relation to H&C decision-making, the written decision need only state that there were or were not sufficient H&C grounds for exercising discretion. However, **it is a good practice to record the reasoning behind the H&C decision** in the officer's CAIPS notes on the file.

10. Legal decisions

A. Supreme Court of Canada decision in *Baker v. M.C.I.*, [1999] 2 S.C.R. 817.

This was a landmark ruling for CIC. The appeal was against a negative decision on an application for permanent residence made in Canada on humanitarian and compassionate grounds.

Among the main points for purposes of this chapter were:

Consideration of children's interests – While the best interests of children must always be taken into account as an important factor that is given substantial weight, this does not mean that they will necessarily outweigh other factors of the case. There may be grounds for refusing an H&C application even after considering the best interests of children.

Canada's international obligations – Although Canada may be a signatory to international treaties and conventions, they are not part of Canadian law unless they have been implemented by statute; they have no direct application within Canadian law. They may, however, help inform the context of statutory interpretation and judicial review. In the instance of the *Convention on the Rights of the Child*, it is an indicator of the importance of considering the interests of children when making H&C decisions.

Written reasons for decision and impact on note-taking – The Court's willingness to accept notes to file as reasons for decision does not mean that note-taking practices have to change or become more elaborate. Adhering fully to the principles of note-taking as in all applications for permanent residence is all that is required.

Appropriate standard of review for discretionary H&C decisions: reasonableness simpliciter – The rule of administrative law relating to review of discretionary decisions has traditionally been on limited grounds, such as decisions made in bad faith or for improper purpose or where irrelevant considerations were used or, from time to time, if the decision was considered "unreasonable." Discretion must be exercised in a manner that is within a reasonable interpretation of the statute, in accordance with general principles of rule of law and administrative law governing discretion, reflective of the fundamental values of Canadian society and consistent with the *Canadian Charter of Rights and Freedoms*.

The Court concluded that significant deference should be accorded to immigration officers exercising discretionary H&C authority. However, the standard of reviewing H&C decisions should be reasonableness *simpliciter*. This means that decisions must be supported by reasons that can withstand a "somewhat probing examination"; that is, there must be a solid foundation of evidence and conclusions drawn must be logical.

The complete text of the Supreme Court's decision in *Baker* can be found at http://www.lexum.umontreal.ca/csc-scc/en/pub/1999/vol2/html/1999scr2_0817.html

B. Federal Court of Appeal Decision in *M.C.I. v. Legault,* [2002] 4 F.C. 358

This followed on a judicial review of a refusal by an immigration officer of a request made under subsection 114(2) of the Act to obtain permanent residence from within Canada on humanitarian and compassionate grounds.

The case involved six Canadian-born children. The Minister's appeal was allowed and the decision of the immigration officer was restored.

A number of elements from *Baker* were included in the Federal Court's reasoning in this case.

It was concluded:

- that the immigration officer had examined the interests of the children with a great deal of attention;
- that she weighed that factor in the light of other factors, related, *inter alia*, to the past conduct of Mr. Legault; and
- that she made a decision that was reasonable in the circumstances.

In addition, this case brought out the following information relevant to H&C and "best interests of the child":

- In reviewing such applications, the mere mention of the children is not sufficient; the interests of the children are a factor that must be examined with care and weighed with other factors; to mention is not to examine and weigh.
- *Baker* does not create a *prima facie* presumption that the children's best interests should prevail, subject only to the gravest countervailing grounds.
- Citing another Supreme Court ruling (*Suresh v. M.C.I.*, [2002] S.C.R. 72) this case points out that, in *Suresh*, the Supreme Court clearly indicated that *Baker* did not depart from the traditional view that the weighing of the relevant factors is the responsibility of the Minister or his delegate. The interests of the children are one factor that an immigration [or visa] officer must examine with a great deal of attention, but it is up to the officer to determine the appropriate weight to be accorded to this factor in the circumstances of the case. It is not the role of the courts to re- examine the weight given to the different factors by the officers.

Appendix B Notes to file

Guidelines for note-taking

Be objective:

- record facts not opinions or interpretation of the facts.

Be clear and concise:

- use common language and avoid jargon;
- use complete words
- avoid extraneous comments.

Point form is fine in most cases; there will be times when notes will need to be more fully recorded (e.g., using Q & A format).

Examples of when notes should be expanded may include the following situations:

- strong reactions by the applicant;
- interference from others present at the interview;
- marriage interview;
- the issue(s) discussed is(are) crucial to the decision.

Organize your notes with self-explanatory headings. Make it easier for readers to follow the case history by using headings for your entries such as:

- Paper file review
- Interview
- Decision
- Pending or Information outstanding
- Representation
- Interpreter information

Record who was present during the interview:

- make sure that it is clear who said what.

Record your notes at the first available opportunity:

- review your notes after the interview to make sure they are clear;
- make revisions where required;

- you may wish to expand on parts you feel are particularly important;
- revisions are acceptable and should be done at the first opportunity while the information is fresh in your mind.

Notes should include:

- how the decision was made
  - i.e. based on paper file review or interview;
- if an interpreter was used
  - include the name of the interpreter and relationship to the applicant, language of interpretation and instructions given to the interpreter;
- summary of correspondence and communication
  - contents of all non-routine correspondence, form numbers of routine correspondence sent and summary of any telephone conversations; FOSS notes should represent a complete record of all action taken in the case – there should be no information that appears only on the paper file;
- tone of the interview
  - e.g., if the applicant was angry or upset, record this in your notes;
- if you left your office during the interview, record this and explain it;
- record the start and finish times of the interview;
- date and initial your notes.

Appendix C Recording the reasoning behind your H&C decision

Guidelines:

- Record all the factors you considered in making your decision, both positive and negative.
- Explain your thought process. Make no assumptions; fill in the gap between the facts listed and your decision.
- Avoid absolute statements like “there is no evidence” or “there would be no hardship”; usually what we really mean is that there is insufficient evidence or insufficient hardship.
- Use neutral terms.
    - For example, it is preferable to say, “he states” rather than “he claims” or “he admitted”.
- Where possible, avoid strong comments on the credibility of the information.
    - For example, if you write “I do not believe”, this suggests that you are questioning credibility. In this case, you need to demonstrate that you have fully investigated the issue (e.g., interviewed applicant). If you use the phrase “I am not satisfied”, it is less contentious and keeps the onus on the applicant to satisfy you.
- Comment on the evidence rather than the inference you draw from the evidence.
    - For example, don't comment on whether or not a common-law couple has a close relationship; comment on whether sufficient evidence has been submitted to satisfy you that there is a genuine relationship.
- Once you are satisfied that you have adequately addressed an issue, don't go any further by trying to reinforce your decision.
- Your notes should be written in simple, straightforward and dispassionate language.
- Record how the applicant was given the opportunity to be heard, i.e., was provided with an opportunity to satisfy you of the H&C considerations in relation to their case.

Appendix D Applications under subsection 25(1) of the IRPA from persons who lost their Canadian citizenship as minors

1. Purpose

The Minister has established a public policy under subsection A25(1), setting the criteria under which former citizens will be assessed for permanent residence.

Specifically, this policy applies to persons who ceased to be citizens under subsection 20(1) of the *Canadian Citizenship Act*, in force from January 1, 1947 to February 14, 1977. This provision stipulated that when a responsible parent ceased to be a Canadian citizen under certain circumstances, the minor children also ceased to be citizens if they became citizens of another country at the same time as the parent or if they already had citizenship of another country at the time the parent ceased to be a Canadian citizen.

The objective of this policy is to facilitate the reintegration into Canadian society of people who ceased to be citizens as minors and as a result of actions taken by their responsible parents.

2. Acts and Regulations

IRPA, subsection 25(1)

Citizenship Act, subsection 11(1)

3. Instruments and Delegations

Officers should consult the chapter IL 3, Module 1, items 43, 43.1, and 45 for information specific to their region concerning the delegation of authority to process an application pursuant to subsection 25(1) of the IRPA, based on public policy.

The authority to issue a permanent resident visa or grant permanent resident status to a person who is inadmissible has not been delegated to officers. In cases where the applicant or a family member is determined to be inadmissible on the ground of excessive demand on health or social services, officers should refer the case to the Director of Case Review, Case Management branch, with a request for a waiver.

4. Policy

As is the case for any former citizen, people who fall within the scope of this policy may resume citizenship after meeting certain requirements, one of which is living in Canada for one year as a permanent resident. Resumption (subsection 11(1) of the *Citizenship Act*) is a grant of citizenship that is effective the date the applicant takes the oath of citizenship.

To facilitate the acquisition of permanent residence for those who ceased to be citizens as minors, the Minister has established a public policy to grant permanent resident status or issue a permanent resident visa pursuant to subsection A25(1).

5. Public interest

The Minister has determined that it is in the public interest to grant permanent resident status to a person who meets the following conditions:

- It is confirmed that the person ceased to be a citizen as a result of subsection 20(1) of the *Canadian Citizenship Act* (1947) as a minor and as a result of actions taken by a responsible parent.

- This person is not inadmissible, with the exception of health grounds when there is a risk that their health condition will cause excessive demand on health or social services.

6. Definitions

Definitions under the *Canadian Citizenship Act*, in force January 1, 1947 to February 14, 1977	
Responsible Parent	Means the father, unless the father was dead or custody of the child had been awarded by court order to the mother or the child was born out of wedlock and resided with the mother
Minor	Before February 15, 1977, minor was defined as being under 21 years of age

7. Procedures

APPLICATIONS:

In order for an application to be processed under this public policy, the person must make an application pursuant to A25(1) . Pursuant to R66, the application must be made in writing and accompanied by an application to remain in Canada as a permanent resident or, for those outside of Canada, an application for a permanent resident visa. Applicants outside of Canada will submit their application in the skilled worker class. Applicants in Canada will submit their application using the form IMM 5001. Applications made under this public policy must be processed as quickly as possible.

CONFIRMATION OF LOSS OF CITIZENSHIP:

When a person requests to be considered under this policy, it must first be determined if the applicant has ceased to be a citizen under subsection 20(1) of the *Canadian Citizenship Act* (1947). Program support officers at CPC Sydney make the final determination of loss of citizenship. Sometimes, a person will already have received written confirmation of loss of citizenship from CPC Sydney. If not, the visa or immigration officer will work with CPC Sydney to ensure there is sufficient information and evidence to allow a definitive ruling.

If it is determined the person did not cease to be a citizen, an application for permanent resident visa or to remain in Canada as a permanent resident is not necessary, and any fees taken will be refunded. The officer should recommend to the person that he or she apply for a certificate of Canadian citizenship, to prevent any questions in the future.

If it is determined the person ceased to be a citizen under any other provision of former or current legislation, this public policy does not apply.

IMMIGRATION REQUIREMENTS:

Once CPC Sydney has confirmed loss of citizenship under 20(1) of the *Canadian Citizenship Act*, the officer will continue processing the application for a permanent resident visa or to remain in Canada as a permanent resident. The officer will then determine whether the applicant and any family members are inadmissible.

The Minister is waiving inadmissibility based on excessive demand on health and social services for the applicant and family members who qualify under this public policy. Where the applicant or a family member is determined to be inadmissible pursuant to A38(1)(c), the officer will refer the case to Case Review, Case Management branch, with a request for a waiver.

Other inadmissibility grounds of the IRPA continue to apply. Criminal and security prohibitions are not waived under this public policy, nor is the public health risk assessment. The applicant must intend to reside in Canada and be able and willing to support themselves and any accompanying family members.

If the applicant and any family members are determined not to be inadmissible, the application for a permanent resident visa or to remain in Canada as a permanent resident will be approved, subject to A25(2).

Applicants who intend to reside in the province of Quebec must meet the province's applicable selection criteria A25(2). If a *Certificat de sélection du Québec* (CSQ) has not already been issued, the officer should forward the file to the appropriate office within the *Service d'immigration du Québec*. The officer should continue processing the file once the province of Quebec has made a decision regarding the issuance of the CSQ.

Cost recovery fees are applicable.

8. Codes

Applications processed under this public policy must be coded in FOSS and CAIPS as PP1.

9. Questions

Questions on A25(1) may be directed to Selection Branch.

Questions on loss of citizenship or subsection 11(1) of the *Citizenship Act* may be directed to the Integration Branch e-mail address: Nat-Citizenship-Policy@cic.gc.ca.

Appendix E – Public policy under A25(1) to facilitate the immigration to Canada of certain members of the Vietnamese community in the Philippines without permanent residence who have close family members in Canada

1. Purpose:

There remains in the Philippines a residual group of approximately 2,000 Vietnamese who were part of the exodus from Vietnam following the fall of Saigon in 1975. These persons were not accepted for resettlement elsewhere and have not been granted permanent resident status in the Philippines. To allow persons in Canada to sponsor certain close family members in the Philippines who are part of this group, the Minister has established a public policy pursuant to A25(1).

2. Criteria

Criteria for inclusion in the public policy are as follows:

The persons:

- must be part of the group of approximately 2000 Vietnamese residing in the Philippines without permanent resident status.

- must be on the list of families provided to CIC by representatives of the Vietnamese community in the Philippines or referred to Canada by the U.S. for consideration if the U.S. determines, during the course of its processing, that an applicant has a sibling, parent or child in Canada and wishes to come to Canada.

- must be the sibling or adult child of a Canadian citizen or permanent resident who is 18 years of age or older who is residing in Canada. Parents, grandparents and others who can be sponsored under existing rules will also benefit from priority processing. (See section 3(F) below on *de facto* family members.)

- must have a valid sponsorship submitted by that relative in Canada (A25 will be used to exempt these individuals from having to belong to an enumerated category of the family class).

- undertakings will be for a period of either three years or 10 years (see section 3(G) below).

- sponsors with insufficient income to meet the minimum necessary income (MNI) may submit evidence of other financial support available to them which would enable them to fulfill their undertaking. This will be taken into account by the visa office when assessing their relative's application for permanent residence, but it is not a guarantee of approval. The visa office must be satisfied that the assistance provided to the sponsor will be sufficient to enable the sponsor to fulfill their undertaking. Only a sponsor's spouse or common-law partner may be a co-signer.

- applicants must provide evidence of their identity and relationship to sponsor that is satisfactory (on a balance of probabilities) to the visa officer; and

- applicants must be admissible on all grounds, including criminality, security and medical grounds.

3. Procedures

3.1. Identifying the individuals to be included in the public policy

A preliminary list of eligible participants was provided to CIC in April 2005 by representatives of the Vietnamese community in the Philippines and a final list of eligible participants will be provided by September 1st 2005.

U.S referrals:

The United States will interview all of the residual Vietnamese in the Philippines. It is anticipated that during the course of their interviews, the U.S. will become aware of individuals with close relatives in Canada who may be eligible for inclusion in the Canadian public policy and who may wish to be considered under the Canadian public policy. The U.S.will refer any interested and eligible individuals to Canada for assessment. The Canadian Embassy in Manila will liaise with the U.S. authorities to ensure they are aware of the criteria for the program and will establish channels of communication with regard to these referrals. The Canadian Embassy in Manila will forward the names of these individuals to CIC NHQ.

3.2. Contacting potential sponsors

In cases where an eligible relative in Canada has been identified, CIC will convey the necessary details to the Case Processing Centre in Mississauga (CPC(M)) who will send the potential sponsors a sponsorship kit. If they are interested in sponsoring their relative, the sponsors will submit the sponsorship no later than December 31st 2005. The kit will contain an identifier so that the application will be reviewed as a matter of priority at the CPC(M). The latter will advise sponsors whose income may not meet the MNI to include, in addition to their own financial information, evidence of other means of support available to them which would assist them in fulfilling their undertaking. (See details in section 3(D) below).

3.3. Fees

The usual fee structure applies, namely:

- $75 for the sponsor;
- $475 for the principal applicant;
- $550 for each accompanying family member who is 22 years of age or older, or who is a spouse or common-law partner, regardless of their age;
- $150 for each accompanying family member who is under 22 years of age and not a spouse or common-law partner.

Right of Permanent Residence Fee

For successful applicants, the $975 Right of Permanent Residence Fee (RPRF) may also be payable before the visas are issued. Because dependent children do not have to pay the RPRF and the definition of “dependent child” has been expanded for the purposes of this public policy, some applicants and family members will not have to pay the RPRF.

The following directives will apply:

- Those being sponsored by siblings will be required to pay the RPRF, as will their spouses or common-law partners. Their children will not have to pay the RPRF.

- Adult children sponsored by parents will not be required to pay the RPRF, but their spouses or common-law partners will. Their children or their spouse or common-law partner's children will not have to pay the RPRF.

- Loans to pay the RPRF may be available for those who qualify (they can demonstrate need and ability or potential ability to repay the loan) as per the "Guiding principles" found at section 5.1 of chapter OP17 Loans will be made to the principal applicant and will be administered by the visa office in Manila.

3.4. Minimum necessary income (MNI) and co-signing rules

Sponsors who are sponsoring a child (regardless of the child's age or marital status) will not be required to meet the MNI. However, if their child has any dependent children, they will need to meet the MNI.This mirrors the usual procedures for FC3 sponsorships. For those sponsoring siblings or any other relatives, the MNI must be met.

Only the spouse or common-law partner of a sponsor can co-sign the undertaking. However, if the MNI is not met, sponsors may include evidence of other sources of financial support available to them which would assist them in meeting their obligations as a sponsor. This support may be from other relatives, friends or members of the community. Sponsors must be satisfied that the support offered to them will allow them to fulfill their undertaking as the sponsors remain wholly liable. Individuals or community organizations providing additional support will not be co-signers. While providing evidence of additional support does not guarantee that the sponsored relative's application will be approved, the visa office will take this financial evidence into consideration when assessing the application. The visa office will need to be satisfied that the financial support available to the sponsor will enable them to fulfill the undertaking so the sponsored individuals will not need to apply for social assistance.

Evidence of financial support could take the form of "Option C Printouts" from the Canada Revenue Agency, evidence of employment and earnings over the previous twelve months such as pay stubs for employees or a statement of business activities for the self-employed, bank statements, investment certificates, etc.

The evidence of the ability to provide financial assistance should be accompanied by a declaration of willingness by the friend or relative to provide this support. This could be in the form of a sworn affidavit.

3.5. Who principal applicants may include in the application for permanent residence

Principal applicants may include the following persons in their application for permanent residence:

- a spouse or common-law partner;

- their children or their spouse or common-law partner's children of any age or marital status;

- any dependent children of these children.

The spouse or common-law partner of a principal applicant's child should be listed on the permanent residence application form of their spouse or common-law partner (and must be examined) but they would need the discretionary approval of the visa office to go forward.

Alternatively, they could be sponsored later in the family class once their spouse or common-law partner has become a permanent resident. (See also section 3 (F) below.)

3.6. *De facto* family members

There may be some relatives who are not covered by the public policy but who could be considered *de facto* family members and as such, they fall under CIC's policy for these individuals as outlined in section 8.3 of this chapter (approval requires discretionary authority under A25(1)). *De facto* family members are persons who do not meet the definition of a family class member. However, they are in a situation of dependence, which makes them *de facto* members of a nuclear family that is either in Canada or that is applying to immigrate; for example, the spouses or common-law partners of the children of a principal applicant who are not eligible to be included as accompanying family members.

An important consideration is the extent to which the applicant would have difficulty in meeting financial or emotional needs without the support and assistance of the family unit. Separation of persons in such a genuine relationship may be grounds for a positive decision.

Applications for *de facto* family members should be supported by an undertaking from a relative in Canada. This should be a separate undertaking from the one submitted for the rest of the family. The visa office would need to examine the particular circumstances of the applicant's situation of dependency vis-à-vis the immigrating family.

3.7. Assessment of the sponsorship by the CPC(M)

The CPC(M) will assess the sponsorship on a priority basis against the usual sponsorship criteria. Because the sponsored relative is not a member of the family class, the CPC(M) will have to enter a "Not Met" recommendation and will indicate both electronically and on the paper file the reason why requirements have not been met They will send the file to the visa office where it will be assessed against the criteria for this public policy and will advise the sponsor that the application has been forwarded to the visa office for assessment and processing.

If the "Not Met" recommendation is because the sponsor does not meet the MNI and the sponsor has not indicated a desire to proceed if found ineligible, the CPC(M) should contact the sponsor and seek clarification on this point, advising of the consequences of not proceeding (obtaining refund of applicable fees) or proceeding (consideration of the application under the public policy still being given to the relative by the visa office notwithstanding the fact that the MNI has not been met).

If the sponsor is found ineligible for reasons other than the MNI not being met or the sponsored individual is not a relative eligible to be sponsored under this public policy:

If a sponsor is found ineligible for other reasons and has indicated a desire to proceed if found ineligible, the undertaking will be forwarded to the visa office in Manila but the applicant will be refused under the public policy. However, the visa office can consider any H&C request made according to the guidelines for such cases (see section 8 of this chapter.)

If the CPC(M) determines that the sponsor is ineligible and the sponsor has opted not to proceed if found ineligible, (and in the case of a "Not Met" recommendation based on not meeting the MNI and the CPC(M) has confirmed that the sponsor does not wish to proceed), the CPC(M) will advise the sponsor by letter that the requirements have not been met and will refund any money owed.

The CPC(M) should forward the names of these ineligible sponsors who have opted not to proceed (along with the name of the relative in the Philippines) to CIC NHQ International Region for record-keeping purposes. They should also provide to CIC NHQ International Region the details of sponsored applications forwarded to Manila for continued processing.

Duration of an undertaking

For applicants sponsoring siblings, the length of the undertaking will be 10 years for them and for all their accompanying family members. For applicants sponsoring adult children, the length of the undertaking will be three years. For their spouses, common-law partners and dependent children, the undertaking will be for 10 years.

Sponsors residing in Quebec:

Given the stipulations contained in the Canada-Quebec Accord regarding the selection of foreign nationals wishing to settle either permanently or temporarily in Quebec, the above arrangements do not apply for those destined to Quebec. See Annex 2 below for details of procedures established by the Quebec *ministère de l'Immigration et des Communautés culturelles*.

3.8. Processing permanent residence applications

The CPC(M) will advise Manila by email when recommendations on the sponsorship application have been made and will send the sponsorship application to Manila via courier. Upon receipt of the email, Manila will send out application packages to the applicants in the Philippines. When these are received, an acknowledgment of receipt will be sent to the applicants as per the usual practice and Manila will begin processing these cases, assessing them against the criteria of the public policy. Given the Minister's commitment to deal with the majority of these cases within a year, these cases will be given a high priority.

Because the CPC(M) will have entered a "Not Met" recommendation on each of these sponsorship applications, the visa office will have to verify from the CPC(M) download notes and the paper file which sponsorship criteria had not been met in order to determine the applicant's eligibility for consideration under the public policy.

If the ineligibility is because the sponsored relative is not a member of the family class but the sponsored relative is an adult child or sibling, the applicant is eligible for inclusion under the public policy.

Note: As this is a public policy, the Minister has used his discretion and waived this particular criterion of the family class—officers are therefore not required to exercise discretion on the family relationship in these cases.

In cases where the CPC(M) has rendered a "Not Met" recommendation on the sponsorship because the sponsor did not meet the MNI, the visa officer has discretion to consider other means of financial support available to the applicant. If the visa officer is satisfied that the sponsor will be able to fulfill the undertaking, then the case may be put to the program manager (or other person with delegated authority to approve H&C cases using discretion).

If CPC(M) has rendered a "Not Met" recommendation for any reason other than the two outlined above, the applicant should be refused pursuant to the public policy. The visa office may consider any H&C factors presented, in accordance with the regular guidelines.

The visa office must ensure that the Sponsorship Agreement form [IMM1344B] is signed by the principal applicant. Normally, this form is signed by the applicant and the sponsor prior to the sponsor submitting the sponsorship application but for the purpose of saving time, this will not have been done in these cases. The visa office must ensure that there is a signed agreement (signed by both the sponsor and the applicant) for every principal applicant who is over the age of 22.

Noting the exceptions to the need to pay the RPRF, the visa office must ensure that the RPRF is paid for everyone who is required to pay it. The visa office will administer the issuance of loans to applicants who are eligible as per the "Guiding principles" found at section 5.1 of chapter OP 17 Loans.

Where the RPRF has not been paid up front and an applicant is not eligible for a loan or has not requested one, the RPRF is payable by the sponsor. The instructions in section 7.25 of chapter IR 5 under "**Procedures for back-end collection of RPRF"** should be followed.

Coding:

The immigration category (IMMCAT) for these applications should be FC7 at the paperscreening stage for sponsored siblings and FC3 for sponsored children. At the selection-decision stage**, the code should be changed to FCH and the special program code "VPH" is to be used**

For coding for parents and grandparents, see section below relating to this group.

Documentation:

It is anticipated that verifying the identity of and relationships to family members in Canada may be problematic for this group. While applicants must provide verifiable evidence of their identity and relationship to the sponsor that is satisfactory (on a balance of probabilities) to the visa officer, visa officers are advised to use their knowledge of local documentation, to seek the assistance of the office in Hoi Chi Minh City in determining what Vietnamese documentation is available and to rely on information provided in the sponsor questionnaire and obtained from interviews with applicants. DNA tests are to be used to verify relationships only as a last resort.

Examination and priority processing:

The visa office will issue medical instructions. Persons applying as sponsored children (and all of their eligible family members) are exempt from the legislative provisions pertaining to excessive demand. All other applicants are not.

All applicants must pass the usual criminality and security checks.

The Minister has made a commitment to deal with the majority of these cases within a year; therefore, they should be given priority processing.

Parents, grandparents and other family class applicants

There may be some applicants who are already eligible to be sponsored under the regular family class criteria. These applicants are part of the public policy insofar as they will receive expedited processing. They should be coded as per the normal family class codes and the special program code "VPH" should be entered. The exception to this is if the MNI has not been met (where it is required that it be met). Visa officers are urged to consider additional financial support available to the applicant, in addition to that provided by the sponsor. If the officer is satisfied that adequate financial support is available to the sponsor to enable them to fulfill the undertaking and the case has been approved by the person with the delegated authority, the case should be finalized as FCH and the special program code "VPH" should be entered.

Passports/travel documents

It is expected that many applicants will not be in possession of a valid passport or travel document. The visa office in Manila will liaise closely with the International Committee of the Red Cross to obtain Red Cross travel documents for those without passports or other acceptable travel documents.

U.S. Cooperation

Manila will liaise closely with the U.S. authorities in order to share information on this group to ensure that any applicants eligible for inclusion in the Canadian public policy are identified and provided with an opportunity to be included if they so wish. This may include individuals who were not on the original list provided to CIC. If eligible applicants are made known to Manila, the visa office will obtain the name, address and telephone number of the potential sponsor in Canada and forward this information to the CPC(M), (copying CIC NHQ International Region) who will

then send the relevant letter and application kit to the sponsor .Processing as described in these guidelines will then proceed.

Annex 1

Public policy for Vietnamese in the Philippines –Summary of requirements

1) Requirements for persons sponsored by parents

	Eligible under the public policy?	Sponsor required to meet the MNI?	Excessive-demand exempt?	RPRF exempt?
1) Principal Applicant (Pr App)	Yes	No, if pr app or spouse has no accompanying children Yes, if pr app does.	Yes	Yes
2) Accompanying spouse or common-law partner	Yes	No unless there are accompanying children.	Yes	No
3) Children of Pr App or accompanying spouse or common-law partner	Yes	Yes	Yes	Yes
4) Spouse or common-law partner of above	No (but may be approved on discretionary H&C if warranted)	No (but sponsor should submit separate sponsorship if they want relative considered under H&C)	No	No
5) Dependent children of #3	Yes	Yes	Yes	Yes

2) Requirements for those sponsored by siblings

	Eligible under public policy?	Sponsor required to meet the MNI?	Excessive-demand exempt?	RPRF exempt?
1) Principal applicant (Pr App)	Yes	Yes	No	No
2) Accompanying spouse or common-law partner	Yes	Yes	No	No
3) Children of Pr App or	Yes	Yes	No	Yes

accompanying spouse or common-law partner				
4) Spouse or common-law partner of above	No (but may be approved on discretionary H&C if warranted)	No (but sponsor should submit separate sponsorship if they want relative considered under H&C)	No	No
5) Dependent children of #3	Yes	Yes	No	Yes

Annex 2

Procedures of the ministère de l'Immigration et des Communautés culturelles (MICC)

Vietnamese nationals in the Philippines described in the public policy adopted by Citizenship and Immigration Canada (CIC) are subject to the Quebec selection process.

The MICC will examine the applications under subparagraph 18(*c*)(i) of the Quebec *Regulation respecting the selection of foreign nationals* which stipulates:

"… his physical, mental or moral well-being and that of his family legally in Québec would be seriously affected if he could not remain in or come to Québec."

,The examination of the applications will take into consideration that a permanent resident or a Canadian citizen residing in Quebec can provide a five-year undertaking.

An undertaking must be provided for each principal applicant (according to the Quebec Regulations) and the accompanying members of their family (under the public policy). On a discretionary basis, an application may be accepted without an undertaking depending on the distressful situation of the people in Quebec or in the Philippines.

Procedures implemented by the MICC

Using the list provided by CIC, the MICC contacts the family members in Quebec by telephone.

This conversation will enable the MICC to:

- confirm and correct personal information.
- inform the family members of the MICC's special measures and to set up an interview. If necessary, an interview may be held outside Montréal.

- tell the potential guarantor that the interview will involve an informal examination to determine whether they have sufficient financial resources to commit to a five-year undertaking and to provide a list of documents to bring to the interview. The relationship between the guarantor and the applicant abroad will also be reviewed during the interview.

If the family member in Quebec is not able to sponsor the applicant (determined through informal evaluation), they are informed that the file may be reviewed in light of the distressful situation (of the person in Quebec or of the applicant abroad). The interview proceeds in this manner. The distress factors that could justify using subparagraph 18(*c*)(i) of the Quebec *Regulation respecting the selection of foreign nationals*, without an undertaking, are entered into the MICC's report.

The family links form completed by the guarantor, as well as the decision regarding the undertaking and, if necessary, the notes from the interview are sent to the visa office in Manila and the visa office is asked to meet with and interview the applicant.

The purpose of the interview conducted by the visa officer is to confirm the family links. If required, in cases where the undertaking cannot be accepted, the visa officer is asked to note the distress factors that could justify the acceptance of the application without an undertaking. The visa officer sends their interview notes to the MICC with the Application for Permanent Residence in Canada [IMM 0008].

After confirming the family links, the MICC makes its decision on selection, informs the visa office of it, and, if necessary, sends the visa office a copy of the *Certificat de sélection du Québec* (CSQ). The client copy of the CSQ is sent to the guarantor in Quebec.

If the application is rejected, a letter is sent to the guarantor for the client in the Philippines, and a carbon copy is sent to the visa office.