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"Qui bene interrogat bene docet" "He who questions well teaches well"

Is Now the Time to Expand the Family Class to Include Siblings?

Mario D. Bellissimo

(Part Two of Two)

Should Direct Sponsorship Be Included Under The Family Class Stream?

It was not always the case that siblings were excluded under the definition of "family class". This exclusion dates back to the early 90's. Under the Conservative government between the years 1988

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Should Sharia Divorces Be Recognized by Canada?

Edward C. Corrigan

On April 15, 2009, Mr. Justice Russell of the Federal Court of Canada issued his Reasons for Judgment in *Canada (Minister of Citizenship & Immigration) v. Hazimeh* (IMM-3162-08; Federal Court citation 2009 FC 380). The Federal Court overturned a decision of the Immigration Appeal Division which allowed an Appeal of a rejected spousal sponsorship application on the basis of recognizing a Lebanese divorce. The Department of Justice

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Focus—Family Class

Please send your questions to *ImmQuest* care of Mario D. Bellissimo at mdb@obr-immigration.com. If you have any questions you would like asked of either Citizenship and Immigration Canada or the Canada Border Services Agency, send it along and we will ask on your behalf.

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respectfully submitted that a holistic immigration program that looks to social as well as economic fusion and functionality should include the sponsorship of siblings with the proper checks and balances in place to ensure it enhances and does not overburden our Canadian immigration program.

Should Sharia Divorces Be Recognized by Canada?

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applied for judicial review of the decision, arguing that the Lebanese Divorce should not be recognized.

The Toronto Sun newspaper reported, "[F]ederal [C]ourt Justice James Russell ruled the talaq divorce is not recognized in Canada. 'A talaq divorce has no legal effect in Canada but may have legal effect in jurisdictions which operate under Sharia law,' Russell said."[1]

This important decision deals with a complex and confusing issue. The mixing of religious divorce and Lebanese government along with religious court procedure is not accustomed in the Western legal tradition. The ruling rejecting the Muslim divorce has the potential to impact many Canadian citizens and permanent residents of Muslim origin. There are more than one million Muslims in Canada, and many of those who have "substantial and real connections" to their home country, get married and also divorced in their home country.

The ruling also has the potential to impact many Canadians and permanent residents of the Jewish, Hindu and Sikh religions who have had religious divorces accepted and registered in their home countries.

At paragraph 63 of the Reasons, the Court writes: "[t]hat talaq divorce recognized by Lebanon, is not a divorce that Canada recognizes."

This statement of law could be interpreted as rendering every talaq divorce in Lebanon "not recognized" as a legal divorce by Canada and has the potential of affecting thousands of Lebanese Canadians and permanent residents of Canada. This statement could potentially invalidate thousands of Muslim divorces, many of which are already recognized by Canada, and could also affect current divorces and sponsorship proceedings.

The writer mentions one sponsorship appeal in which the talaq divorce took place in London, Ontario and was duly recognized and registered by the sponsor's home country. The Court's decision has the effect of rendering the sponsor's divorce "invalid" and of jeopardizing the sponsorship of his spouse.

At minimum, this statement needs to be clarified if the intent is to limit this decision to this particular fact situation. An explanation as to how the Lebanese documents are deficient, along with an explanation as to what is required before the Lebanese documents would be recognized as valid documents for a divorce under Canadian law, should be included. Given the sparse details given on a Canadian Certificate of Divorce, explanation is needed to show how the Canadian Certificate of Divorce is to be accepted, and why the three divorce documents from Lebanon are not to be accepted.

Every country in the Middle East (with the exception of Syria, which does allow civil divorce procedures) has only religious divorce proceedings.

This includes: Israel, Lebanon, Egypt, Saudi Arabia, Iraq, United Arab Emirates, Qatar, Bahrain, Oman, Yemen, Libya, Tunisia, Morocco, Mauritania, Algeria, Sudan, Iran and Turkey. Afghanistan and Pakistan also have religious divorces. In India, family matters and marriage are governed under Hindu law, which again, is religiously based. Muslims in India and Sikhs in India have similar religious and related civil procedures.

If religious divorces are not recognized, this has the potential to harm the interests of Jewish, Muslim, Sikh and Hindu residents of Canada, who have religious divorces recognized by their respective home countries.

It is respectfully submitted that the Immigration Appeal Division ("IAD") Reasons for Decisions recognizing the religious part of the divorce as being analogous to making a sworn examination for discovery, is based on sound law. The analogy of using an

1 Tom Godfrey, "Sharia divorce law rejected, Woman's request to sponsor new husband refused" *The Toronto Sun* (30 April 2009), online: http://www.torontosun.com/news/torontoandgta/2009/04/30/9299566-sun.html.

examination of discovery from another country is valid. Another analogy would be using proxy marriage out of the country to create a legal marriage in the country issuing a Marriage Certificate.

The divorce in question was duly considered and registered with the Lebanese authorities and not "merely registered", as argued by the Department of Justice. However, it is the Federal Court that will adjudicate this issue, but I expect that the Government of Lebanon, most Muslims, and many others will not agree that the procedure governing the registration of Lebanese divorces is a "mere registration" and not legally valid in Canada.

It was the respondent's former husband who obtained the religious annulment/divorce from his wife on November 5, 1993 in Toronto, Ontario. This religious divorce was subsequently considered and affirmed, with the consent of both parties, by a duly constituted Lebanese Sharia Court. To quote the Reasons and Decision of the IAD; since the Appellant:

> ...was represented by a proxy who signed the official registration of the talaq in 1999, this is clearly not a case where recognition of the divorce would be unfair to either party to the marriage. As well, the public policy concerns with respect to protecting vulnerable Muslim women from unilateral divorces are not apparent in this situation."[2]

The appropriate Lebanese legal documents were then issued.

The Supreme Court of Canada decision of *Schwebel v. Ungar* (1965) S.C.R. 148, which was presented to the Federal Court and recognized a Jewish religious divorce under almost the exact same circumstances, was not applied or distinguished in this case.

The Reasons of the Federal Court also did not consider the Citizenship and Immigration Manual for Overseas Processing OP2, *Processing Members of the Family Class.*[3] At paragraph 5.33 which deals with the "Legality of foreign divorces", it is stated:

> ...If the real and substantial connection is made, and that party obtains a legal divorce in that country, it is valid in Canada.

The Overseas Processing Manual is part of the official Citizenship and Immigration guidelines for decision makers. These manuals are not considered to be law, however, they are "officially issued guidelines" prepared by the Ministry of Citizenship and Immigration. As the Manual states: "[i]f the real and substantial connection is made, and that party obtains a legal divorce in that country, it is valid in Canada."

This issue should be considered a serious legal question of general importance since the "official" CIC guidelines for evaluating the legality of foreign divorces direct that if the divorce is recognized by another jurisdiction as legal, it should be recognized by Canada. This Decision of the Federal Court renders a contrary conclusion.

Lebanon recognized the divorce, so Canada should recognize the divorce according to the Official CIC Guidelines. There is no distinction made between religious or civil divorces, only that the divorce is recognized by the jurisdiction concerned and should be recognized by Canada.

It is up to the Federal Court to make a final determination on these questions. However, given the importance of the decision that could affect many individuals of the Muslim faith, these questions should be seen as serious issues of legal concern and certified as questions of general legal importance and to be considered by the Federal Court of Appeal.

The Federal Court, after receiving submissions on the matter, certified the following question to be referred to the Federal Court of Appeal:

> Is a talaq divorce that took place in Canada, but which has been recognized and registered in Lebanon, a legal or foreign divorce that Canada should recognize under the Divorce Act?

This is an important case and there are a number of serious legal issues of general importance to the Muslim community of Canada and by extension to other groups that have faith-based divorces. This decision of the Federal Court of Canada has the potential to have a major impact on the Canadian Muslim community and also other Canadian religious communities that have religious divorces. The Federal Court of Appeal, and other Canadian courts, need to get it right and consider all the consequences before not recognizing Islamic Divorces that are recognized by the legal processes of other countries. However, if this case is not taken to the Federal Court of Appeal, this decision will be the precedent-setting case for all Sharia divorces and could

2 *Canada (Minister of Citizenship & Immigration) v. Hazimeh*, 2009 FC 380 (CanLII), Docket IMM-3162-08, IAD File Number TA6-07632, Reasons and Decision at p. 9, online: http://www.canlii.org/en/ca/fct/doc/2009/2009fc380/2009fc380.html.

3 To view online: Citizenship and Immigration Canada http://www.cic.gc.ca/english/resources/manuals/op/index.asp.

negatively impact many Muslims in Canada who have obtained a Sharia divorce that is recognized by a foreign country as a legal divorce.

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The Anatomy of an LMO Application Post Recession

Mihaela Boeriu

On June 16, 2009 in a press release, Immigration and Multiculturalism Minister Jason Kenney, speaking about the assistance required in guiding employers through the hiring process for internationally trained workers, reiterated that "the Government of Canada is committed to improving the labour market integration of internationally trained workers – this is essential to building a strong Canada: socially, culturally and economically", and further still "employers are key partners in helping internationally trained workers find jobs in their areas of training, and this resource makes it easier for employers to assess their qualifications."[1] Has this held true in a recession?

Pursuant to section 196 of the *Immigration and Refugee Protection Regulations* (IRPR), "a foreign national must not work in Canada unless authorized to do so by a work permit or these Regulations". In most of the cases (there are also exceptions), before applying for a work permit, the foreign worker must obtain a favourable Labour Market Opinion (LMO) issued by HRSDC/Service Canada. As the economy is fluid and changes continually, so does the labour market. Service Canada attempts to follow and adapt its policies accordingly. In recent months, more than ever before, we have witnessed more drastic changes in procedure, length of time and decision making – recession driven.

1 Jason Kenney, Citizenship, Immigration and Multiculturalism Minister, Press Conference, Ottawa (16 June 2009).

Employment Regulation/LMO Process

In Canada, ninety percent of occupations are regulated by provincial and territorial governments that set the employment and labour standards, (employment contracts, termination, housing, health and safety, employee rights, etc.). Ten percent of occupations are regulated by the federal government. These standards vary by province and/or territories and occupation.[2] Employers must be aware that all foreign workers have the same rights as Canadian workers and job offers should comply with these standards, although in reality this is not always the case.

Pursuant to section 203(1) and 203(3) of the *Immigration and Refugee Protection Regulations* (IRPR), prior to issuing a work permit, CIC requires that HRSDC/Service Canada issues an opinion on the effects of the foreign worker on the Canadian labour market. Service Canada applies certain criteria when assessing an LMO application:

1. The occupation must be clearly identified. The employer must determine the National Occupational Classification (NOC) and become fluent with the requirements of the occupation including educational requirements, duties and prerequisites to fill the position. The employer should also be aware that each NOC level requires different recruitment efforts. Therefore, it is important to correctly identify the NOC code for the position advertised. NOC levels are as follows: level 0 encompasses all the managerial occupations; level A includes occupations that usually require university education; level B includes occupations that require college education or apprenticeship training; level C is for occupations that usually require high school education and/or occupation specific training; level D occupations usually require on-the-job training.
2. Advertising for the position to be filled by the foreign worker has new connotations as of January 1, 2009, when Service Canada replaced the list of occupations under stress with new requirements for advertising in all occupations, at all levels (NOC 0, A, B, C & D).[3] As a common denominator, for all

2 Human Resources and Skills Development Canada - Temporary Foreign Worker Program, Fact Sheets – Labour Market Opinions, "Who is Responsible for Labour Standards?", online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/eitfw/lmitfw.shtml.

3 Human Resources and Skills Development Canada - Temporary Foreign Worker Program, "Minimum Advertising Requirements", online: http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/communications/advertrecrutment.shtml.