

January 27, 2021

**Attention:** HOUSE OF COMMONS – Standing Committee on Citizenship and Immigration

**Subject:** Mis-Interpretation and Mis-application of Para 117(1)(h) of Immigration and Refugee Protection Regulations (IRPR) by the Department of Immigration.

Can Canadian Citizens **force** their parents residing abroad to be sponsored and **force** them to come to Canada against their physical ability or free will?

In fact, this is how Immigration Canada interpreted and applied the above-mentioned regulations and is spending thousands of dollars defending that!

**Esteemed Committee Chair, Vice-Chairs and Members,**

I am writing to you as a Canadian citizen who immigrated to Canada in 2002, and has been living alone since 2012 with no family or relatives in Canada (people in my situation are commonly referred to as Lonely-Canadians).

Canada's Parliament has recognised the hardship faced by Lonely Canadians -people who has no family or relatives in Canada- and drafted the above-mentioned paragraph, S 117(1)(h) of the IRPR in order to help them reunite with a blood related relative (which could be parents or a sibling or even another distant blood-related relative).

Immigration laws allow Canadian citizens and permanent residents (not only Lonely-Canadians) to apply to sponsor their spouses, common-law partners, children, parents and/or grand-parents to immigrate to Canada. Parliament obviously made a distinction between Lonely-Canadians and normal citizens by drafting S 117(1)(h) and made it applicable ONLY to Lonely-Canadians.

**Summary of the issue:** Immigration Canada has mis-interpreted this regulation and has chosen to segregate family members by mandating that the sponsorship process has to start with parents, and ONLY if parents are dead, then the Lonely-Canadian is allowed to use this regulation and apply to sponsor a sibling or another relative. S 117(1)(h) itself does not state that parents have to be dead in order for it to be applicable.

Immigration Canada has obliged Lonely-Canadians who want to be reunited with a family member, to either sponsor their parents - if they are still alive; otherwise, they can't sponsor anyone else as long as their parents are alive. The problem here is that Immigration Canada did not differentiate between a Lonely-Canadian and other Canadians, and this goes against the intention of Parliament which is to help Lonely-Canadians and that's why drafted S117(1)(h) and made it applicable only to them.

This has resulted in a harsh situation, even the Federal Court has recognised that (see decision below by the Federal Court, the **Honourable Mr. Justice Fothergill**, where he suggested that

this is a matter for Parliament, not the courts, and therefore, I am raising this matter to your attention).

Based on that, I conclude that there is a clear disconnect between what Parliament has intended when drafting S117(1)(h) and, how this paragraph has been applied, which does not help the lonely Canadians reunite with a family member in Canada.

If my conclusion is incorrect, could you please clarify why this paragraph was drafted in the first place and what is the purpose of it? - Knowing full well that any Canadian (whether Lonely or not) is allowed to sponsor parents/grandparents, so I assume that this paragraph was drafted to give some extra privileges to Canadians with no family or relatives in Canada (that's why they are called Lonely-Canadians). Immigration Canada obviously did not recognise this difference.

**The Following are more arguments to elaborate on few points:**

1- The reality is, as a lonely Canadian, if I can't sponsor my parents and bring them to Canada regardless of the reason, that means I am still a Lonely-Canadian. The reason that I may not be able to sponsor my parents could simply be that they don't want to move to Canada or they can't move to Canada. By asking me to sponsor my parents if they are alive, that means I have to force my parents to be sponsored and move to Canada. Can we really sponsor someone by force?

2- I have tried to challenge this issue in the Federal Court (**Docket: IMM-475-17 Citation: 2017 FC 716**), **The Honourable Mr. Justice Fothergill** wrote:

Reference: Docket: IMM-475-17 Citation: 2017 FC 716) - quote

*"[29].....The availability of relief on H&C grounds moderates any injustice that may result from a strict application of s 117(1)(h) of the Regulations.*

*[30] Nevertheless, Mr. Bousaleh's arguments raise valid questions from a policy perspective. As this Court has previously noted, a strict reading of s 117(1)(h) of the Regulations may lead to harsh results (Sendwa at para 11). Is it reasonable to require a citizen with no relatives in Canada to sponsor an estranged parent before he or she may sponsor a close sibling? Is it reasonable to require a citizen with no relatives in Canada to sponsor a parent who is almost certainly inadmissible or who cannot realistically travel to Canada before he or she may sponsor a brother?*

*[31] The Respondent argues that unusual and difficult circumstances, such as the ones that arise in this case, are well-suited to consideration on H&C grounds. While Mr. Bousaleh objects that H&C determinations are highly discretionary, I agree with the Respondent that this is the scheme mandated by Parliament. Any change to the scheme is a matter for Parliament, not the courts. "*

The Honourable Mr. Justice Fothergill highlighted that any change to the current application of the scheme is a matter for Parliament and not the courts. Therefore, I am kindly requesting the Esteemed HOUSE OF COMMONS – Standing Committee on Citizenship and Immigration to review and clarify what parliament has intended from S 117(1)(h).

3- Humanitarian and Compassionate (H&C) grounds are NOT the proper solution to this problem.

In my sponsorship application I have asked for H&C Considerations, however the Canadian Embassy assessed those H&C grounds for the sponsored person and not the Sponsor (which is me).

This was a mistake because If I am applying for H&C considerations under S 117(1)(h), that means my hardship should be assessed because I am the Lonely Canadian and the reason I am applying to sponsor a family member is to help myself and not to help the person being sponsored.

The Embassy declined my application stating that I can sponsor my LIVING mother. So, the same argument was used, which is because my mother was alive, I am not allowed to sponsor anyone else. So, there is a clear disconnect between what the Department of Immigration argued in court and how H&C grounds are assessed in the embassy.

4- This brings another bigger argument, that is Immigration Canada assumes that when we apply to sponsor someone, we only do this in order to help them. This is a wrong assumption because regulation S 117(1)(h) was drafted to help the Lonely Canadian and the sponsorship should be assessed and viewed from this angle and not from the angle of helping the person being sponsored. Sponsoring someone under S117(1)(h) is not a typical sponsorship where we try to help someone move to Canada.

5- Can I sponsor someone by force and bring them to Canada against their free will?

By denying me the eligibility to sponsor my brother, just for the fact that my mother is alive, Immigration Canada is practically asking me to sponsor my mother by force and against her ability or free will. The way S 117(1)(h) is being applied raised serious policy issues as stated by the Honorable Mr. Justice Fothergill, and this point is one of them.

Akram Bousaleh