Federal Court  Cour fédérale

Date: 20090904

Docket: IMM-3045-08

Citation: 2009 FC 875

Ottawa, Ontario, September 4, 2009

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

JANOS ROBERT GUNTHER,
JANOSNE (MARIA) GUNTHER,
ANITA GUNTHER and
MELINDA GUNTHER

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION and
THE ATTORNEY GENERAL
OF CANADA

Respondents

and

LOW INCOME FAMILIES TOGETHER
and CHARTER COMMITTEE ON
POVERTY ISSUES

Interveners

REASONS FOR JUDGMENT AND JUDGMENT

I. Background

[1] The Applicants are a family of two adults, one daughter and one granddaughter who are all Hungarian citizens. The family first arrived in Canada in 1997. After an unsuccessful claim for refugee protection, they returned to Hungary in April 2000. In August 2000, the family entered Canada once more.

[2] After the refusal of their application for pre-removal risk assessment in June 2004, all legal avenues for remaining in Canada had been exhausted but for an application to apply, pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*), for an exemption from certain requirements of *IRPA* on the basis of humanitarian and compassionate (H&C) considerations. Specifically, they wanted to be: (a) exempted from the requirement in s. 11 of *IRPA* that they apply for permanent residence status before entering Canada; and (b) to be granted permanent residence from within Canada on H&C grounds. The Applicants allege that they could not afford the $1400 fee required for the processing of the s. 25 in-Canada application. No H&C application was ever made.

[3] On March 30, 2006, the Applicants were removed from Canada. They now reside in Hungary. It is undisputed that the Applicants could apply for permanent resident status from Hungary. However, they assert that they would be required to pay $1400 for the processing of their application, an amount that they assert they cannot afford.

[4] In this application for judicial review, the Applicants do not challenge a decision or order made by the Minister. Rather, the Applicants challenge the validity of the fees required for the Minister to process their application under s. 25 of *IRPA*, which fees are established by s. 89 of

IRPA and s. 307 of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 (*IRP Regulations* or the *Regulations*).

[5] In this application for judicial review, the Applicants seek a number of remedies. The key remedies sought by the Applicants can be stated as follows:

- An order compelling the Governor General in Council (GIC) to make a regulation providing for the waiving of the fees in the case of the Applicants, Social Assistance Recipients and other indigent persons, seeking to access the procedure under s.25(1) of *IRPA*;

- A declaration that ss. 307, 295 and 10(1)(d) of the *IRP Regulations*, which require the payment of a fee as a condition of accessing the procedure under s.25(1) of *IRPA* is *ultra vires* in that it fetters the Minister's discretion under s. 25(1) of *IRPA*;

- A declaration that ss. 307, 295 and 10(1)(d) are inoperative as being contrary to s. 15(1) and s. 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (*Charter*); and

- A declaration that ss. 307, 295 and 10(1)(d) are in breach of the "foundational constitutional principles of the Rule of Law" and thus invalid.

[6] By Order of Prothonotary Aalto, the Charter Committee on Poverty Issues (CCPI) and Low Income Families Together (LIFT) were granted intervener status in this application for judicial review.

II. History of this Application for Judicial Review

[7] In May 2006, the Applicants and the Krena family (see Court File No. IMM-2926-08) commenced separate actions in the Ontario Superior Court of Justice (OSCJ) challenging the H&C application fees on substantially the same grounds as alleged in this judicial review application. On February 27, 2007, Justice Himel of the Ontario Superior Court of Justice granted a motion to stay the Krena and Gunther actions on the basis that the Federal Court was the appropriate forum to pursue these matters. Since the parties had already taken steps in the OSCJ actions, Justice Himel ordered that the pleadings, examinations, expert reports and other documentary discovery exchanged in those actions could be relied upon in any Federal Court proceedings.

[8] On May 4, 2007, the Krena family and the Gunther family filed a joint statement of claim (Court File No. T-749-07). The defendant in the Federal Court action brought a motion to direct the plaintiffs to proceed by way of judicial review. The motion was adjourned pending the outcome of the Federal Court of Appeal in *Hinton v. Canada (Minister of Citizenship and Immigration),* 2008 FC 7, rev'd 2008 FCA 215, [2009] 1 F.C.R. 476, in which a number of questions were certified relating to the appropriate procedural steps for constitutional challenges to fee regulations of the *IRPA*. The Federal Court of Appeal's decision in *Hinton* upheld the procedure of challenging the fee regulations by way of an application for leave and judicial review, and then having the application be converted to an action and certified as a class action once leave was granted.

[9] The Applicants, therefore, commenced the present application for leave and judicial review following the Court of Appeal's decision in *Hinton*.

III. Legislative Framework

[10] Immigration law requires that all applications for permanent residence in Canada be made from outside Canada (*IRPA*, s. 11(1)). However, s. 25 of *IRPA* gives the Minister of Citizenship and Immigration (the Minister) the discretion to exempt persons from that requirement on the basis of H&C considerations. Applicants who seek permanent residence on this basis are required to pay a processing fee. Section 89 of the *IRPA* allows the Minister to prescribe fees for the services provided in the administration of *IRPA* and s. 307 of the *IRP Regulations* specifically sets out a fee for an in-Canada H&C application under s. 25 of *IRPA*. Section 10(1)(d) of the *IRP Regulations* states, in effect, that an application may not be processed unless the applicable processing fee is paid.

[11] Foreign nationals who are not in Canada may also access s. 25(1). However, they do so in a different fashion. Under s. 66 of the *IRP Regulations*, a foreign national outside Canada may make an application for a permanent resident visa. Fees for processing this application are set out in s. 295 of the *IRP Regulations*. At the same time as an application for permanent resident visa is made, the foreign national may also seek an exemption from any of the requirements under *IRPA*, on H&C grounds. However, for the H&C application in those circumstances, there would be no fee payable. Section 307 of the *IRP Regulations* provides that a fee for the s. 25(1) processing is only payable where no fees are already payable.

[12] The full text of these relevant provisions is set out in Appendix A to these reasons.

IV. Do the Applicants have standing to bring this judicial review?

[13] The threshold question to be addressed is whether the Applicants have standing to bring this application for judicial review. In my view, they do not.

[14] The entire underpinning of this application for judicial review is the Minister's discretion under s. 25 of *IRPA* to exempt an applicant from the requirement to make application for permanent residence from outside Canada. The fee in question is the fee provided for in the *IRP Regulations* for an in-Canada application under s. 25.

[15] The Applicants are no longer in Canada and, thus, do not need such an exemption. They may make an application for permanent residence in the same manner as any other foreign national. If and when the Applicants apply for permanent resident visas outside Canada under s. 66 of the *IRP Regulations*, they will be required to pay the fees required by s. 295 of the *IRP Regulations*. At the same time the Applicants may also seek an exemption, under s. 25(1) of *IRPA*, from any of the requirements under *IRPA*, on H&C grounds, that may otherwise have prevented approval of their application for permanent resident visas. However, as noted above, no fee would be payable under s. 25(1) in those circumstances.

[16] In response, the Applicants assert that they still wish to access s. 25 to seek an exemption from the payment of fees for their applications for permanent resident visas. In effect, they argue that their current judicial review application is broad enough to capture any request for relief of any

obligation under *IRPA*, including a request for fee waiver for their offshore permanent resident visa applications. I do not agree.

[17] A review of the record before me in this judicial review indicates that the Applicants have not sought judicial review of the general ability of the Minister to waive fees for access to any procedure in *IRPA*. Rather, the remedies sought by the Applicants, their grounds for the judicial review and the evidentiary record before me all relate solely to fees payable under s. 25(1) of *IRPA* for an in-Canada H&C application. The Applicants would not be required to pay any fee under s. 25(1) to have their applications considered on H&C grounds.

[18] The Applicants are no longer "directly affected by the matter in respect of which relief is sought", as required by s. 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. In the present case, the Applicants seek judicial review of the Minister's discretion to grant permanent resident status to a foreign national in Canada. As previously pointed out, since the Applicants have left Canada, they do not violate s. 11 of the *IRPA*. Thus, they cannot and need not make an in-Canada H&C application, where fees are mandated. Thus, the remedy of requiring the Minister to waive application fees for in-Canada H&C is no longer applicable, or relevant

[19] Further, with respect to any application they may make from outside Canada, no fee would be payable under s. 307 of the *Regulations* to access the procedures of s. 25(1).

[20] The question of standing in an application for judicial review was recently considered in the case of *League for Human Rights of B'Nai Brith Canada v. Canada*, 2008 FC 732, 334 F.T.R. 63. In that decision, Justice Dawson reviewed the concept of "directly affected" as the terminology was used in s.18.1 of the *Federal Courts Act*. At paragraphs 24-25, she wrote:

> The jurisprudence establishes that, for a party to be considered to be "directly affected," the decision at issue must be one which directly affects the party's rights, imposes legal obligations on it, or prejudicially affects it directly. See: *Rothmans of Pall Mall Canada Ltd. v. Canada (Minister of National Revenue)*, [1976] 2 F.C. 500 (C.A.).
>
> In *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607, an appeal from the Federal Court of Appeal, the Supreme Court of Canada quoted with approval at page 623 the following passage from *Australian Conservation Foundation Inc. v. Commonwealth of Australia* (1980), 28 A.L.R. 257, when considering the existence of direct standing:
>
> > A person is not interested within the meaning of the rule, unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of grievance or a debt for costs, if his action fails.
> >
> > [Emphasis added]

[21] The reasons underlying the Applicants' judicial review application disappeared when they left Canada in 2006. The Applicants could not gain any benefit or advantage from this judicial review, beyond the "satisfaction of righting a wrong, upholding a principle or winning a contest".

[22] In the alternative, the Applicants' judicial review application would fail for reasons of mootness. As the parties have not raised this issue, I will deal with it briefly. The Supreme Court of Canada in *Borowski v. Canada (Attorney General)* [1989] 1 S.C.R. 342, [1989] S.C.J. No. 14 set out the principles for mootness: "The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case" (at para.15). Thus, "a case is moot if it fails to meet the 'live controversy' test" (at para.16).

[23] *Borowski* set out a two-step analysis for mootness. First, the question is whether a tangible and concrete dispute has become academic. Second, if the answer to the first part is affirmative, one asks whether the court should nonetheless exercise its discretion to hear the case based on several factors: (a) an adversarial relationship between the parties still exists; (b) the expenditure of limited court resources is justified; and (c) in exercising its jurisdiction, the court stays within its adjudicative role rather than intruding into the role of the legislature.

[24] Applying this to the case at bar, the Applicants' judicial review of the Minister's decision to enforce the requisite fee for the H&C application is moot. A decision by this Court would have no practical effect on the rights of the Applicants. In other words, there is no "live controversy" that remains. This is exemplified in paragraph 23 of *Borowski*: "the inapplicability of a statute to the party challenging the legislation renders a dispute moot".

[25] Second, even if an adversarial relationship still exists between the parties, and the expenditure of limited court resources is justified, a decision by this Court on the payment or not of fees would overstep our adjudicative function and reach into the realm of political decision-making. The blurring of roles is particularly evident from the remedy sought by the applicant: an order compelling the GIC to make a regulation about H&C fees under s. 25(1) of *IRPA*. Furthermore, under s. 89 of *IRPA*, the government has exclusive powers to establish or waive fees by regulation. Thus, it is clear that Parliament's intention is to waive fees by legislative decisions or regulations – not by judicial pronouncements under s. 25(1) of *IRPA*.

[26] Finally, I decline to exercise my discretion to consider the now-hypothetical questions posed by the Applicants.

V. Conclusion

[27] In summary, I conclude that this application for judicial review will be dismissed on the basis that:

a) the Applicants have no standing; or

b) the matter is now moot.

[28] The Applicants ask that I certify the following question:

> Where the Minister has represented that he has neither the obligation nor discretion to waive the humanitarian and compassionate applications fee, do indigent persons who are removed from Canada when they could not afford to pay the fee, lose standing to challenge the propriety of the fee for persons in their circumstances?

[29] In my view, this question is not appropriate for certification. The underlying assumption of the proposed question is that the Applicants were removed from Canada because they could not afford to pay the fee. The actual situation is that they were removed from Canada because of the existence of a valid removal order. It is pure speculation that, had they made a s. 25 in-Canada application on H&C grounds, they would have been successful. Further, the statement that they could not afford to pay the fee is the subject of contradictory evidence in the record. Finally, I cannot conclude that this is a question of general importance since I have no evidence as to how many others (if any) are in a similar situation.

[30] Having determined that no question will be certified, however, I observe that many of the issues raised by the Applicants in their submissions have been considered in the companion file of *Toussaint v. Canada (Minister of Citizenship and Immigration)*, Court File No. IMM-326-09 and that questions have been certified in that judgment.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"
Judge

APPENDIX "A"

Immigration and Refugee Protection Act, S.C. 2001, c, 27

Application before entering Canada

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

Humanitarian and compassionate considerations

25. (1) The Minister shall, upon request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative or on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

Provincial criteria

(2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.

Loi sur l'immigration et la protection des réfugiés, L.C. 2001, c. 27

Visa et documents

11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

Séjour pour motif d'ordre humanitaire

25. (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative ou sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

Critères provinciaux

(2) Le statut ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.

Fees

Regulations

89. The regulations may govern fees for services provided in the administration of this Act, and cases in which fees may be waived by the Minister or otherwise, individually or by class.

Immigration and Refugee Protection Regulations, SOR/2002-227

Form and content of application

10. (1) Subject to paragraphs 28(*b*) to (*d*), an application under these Regulations shall

. . .

(*d*) be accompanied by evidence of payment of the applicable fee, if any, set out in these Regulations;

Division 5

Humanitarian and Compassionate Considerations

Request

66. A request made by a foreign national under subsection 25(1) of the Act must be made as an application in writing accompanied by an application to remain in Canada as a permanent resident or, in the case of a foreign national outside Canada, an application for a permanent resident visa.

Frais

Règlement

89. Les règlements peuvent prévoir les frais pour les services offerts dans la mise en oeuvre de la présente loi, ainsi que les cas de dispense, individuellement ou par catégorie, de paiement de ces frais.

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Forme et contenu de la demande

10. (1) Sous réserve des alinéas 28*b*) à *d*), toute demande au titre du présent règlement :

. . .

d) est accompagnée d'un récépissé de paiement des droits applicables prévus par le présent règlement;

Section 5

Circonstances d'ordre humanitaire

Demande

66. La demande faite par un étranger en vertu du paragraphe 25(1) de la Loi doit être faite par écrit et accompagnée d'une demande de séjour à titre de résident permanent ou, dans le cas de l'étranger qui se trouve hors du Canada, d'une demande de visa de résident permanent.

Fees for Applications for Visas and Permits

Permanent resident visa

295. (1) The following fees are payable for processing an application for a permanent resident visa:

(*a*) if the application is made by a person as a member of the family class

(i) in respect of a principal applicant, other than a principal applicant referred to in subparagraph (ii), $475,

(ii) in respect of a principal applicant who is a foreign national referred to in any of paragraphs 117(1)(*b*) or (*f*) to (*h*), is less than 22 years of age and is not a spouse or common-law partner, $75,

(iii) in respect of a family member of the principal applicant who is 22 years of age or older or is less than 22 years of age and is a spouse or common-law partner, $550, and

(iv) in respect of a family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner, $150;

(*b*) if the application is made by a person as a member of the investor class, the entrepreneur class, the self-employed persons class, the transitional federal investor class, the transitional federal entrepreneur class or the transitional federal self-employed persons class

Frais des demandes de visa et de permis

Visa de résident permanent

Frais

295. (1) Les frais ci-après doivent être acquittés pour l'examen de la demande de visa de résident permanent :

a) si la demande est faite au titre de la catégorie du regroupement familial :

(i) dans le cas du demandeur principal autre que celui visé au sous-alinéa (ii), 475 $,

(ii) dans le cas du demandeur principal qui est un étranger visé à l'un des alinéas 117(1)*b*) ou *f*) à *h*), est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait, 75 $,

(iii) dans le cas d'un membre de la famille du demandeur principal qui est âgé de vingt-deux ans ou plus ou qui, s'il est âgé de moins de vingt-deux ans, est un époux ou conjoint de fait, 550 $,

(iv) dans le cas d'un membre de la famille du demandeur principal qui est âgé de moins de vingt-deux ans et qui n'est pas un époux ou conjoint de fait, 150 $;

b) si la demande est faite au titre de la catégorie des investisseurs, de celle des entrepreneurs, de celle des travailleurs autonomes, de celle des investisseurs (fédéral — transitoire), de celle des entrepreneurs (fédéral — transitoire) ou de celle des travailleurs autonomes (fédéral — transitoire) :

(i) in respect of a principal applicant, $1,050,

(ii) in respect of a family member of the principal applicant who is 22 years of age or older or is less than 22 years of age and is a spouse or common-law partner, $550, and

(iii) in respect of a family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner, $150; and

(*c*) if the application is made by a person as a member of any other class or by a person referred to in section 71

(i) in respect of a principal applicant, $550,

(ii) in respect of a family member of the principal applicant who is 22 years of age or older or is less than 22 years of age and is a spouse or common-law partner, $550, and

(iii) in respect of a family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner, $150.

Exception — refugees

(2) The following persons are not required to pay the fees referred to in subsection (1):

(*a*) a person who makes an application as a member of the Convention refugees abroad class and the family members included in the member's application; and

(i) dans le cas du demandeur principal, 1 050 $,

(ii) dans le cas du membre de la famille du demandeur principal qui est âgé de vingt-deux ans ou plus ou qui, s’il est âgé de moins de vingt-deux ans, est un époux ou conjoint de fait, 550 $,

(iii) dans le cas du membre de la famille du demandeur principal qui est âgé de moins de vingt-deux ans et qui n’est pas un époux ou conjoint de fait, 150 $;

c) si la demande est faite au titre de toute autre catégorie ou par une personne visée à l’article 71 :

(i) dans le cas du demandeur principal, 550 $,

(ii) dans le cas du membre de la famille du demandeur principal qui est âgé de vingt-deux ans ou plus ou qui, s’il est âgé de moins de vingt-deux ans, est un époux ou conjoint de fait, 550 $,

(iii) dans le cas du membre de la famille du demandeur principal qui est âgé de moins de vingt-deux ans et qui n’est pas un époux ou conjoint de fait, 150 $.

Exceptions : réfugiés

(2) Les personnes ci-après ne sont pas tenues d’acquitter les frais prévus au paragraphe (1) :

a) celle qui fait une demande au titre de la catégorie des réfugiés au sens de la Convention outre-frontières et les membres de sa famille visés par sa demande;

(*b*) a person who makes an application as a member of one of the humanitarian-protected persons abroad classes and the family members included in the member's application.

Exception — transitional skilled worker class

(2.1) The following persons are not required to pay the fees referred to in subsection (1):

(*a*) a person described in paragraph 85.1(2)(*a*) who makes an application as a member of the transitional federal skilled worker class for a permanent resident visa and the family members included in the member's application who were also included in the application referred to in subsection 85.1(2); and

(*b*) a person described in paragraph 85.1(2)(*b*) who makes an application as a member of the transitional federal skilled worker class for a permanent resident visa and the family members included in the member's application who were also included in the application referred to in subsection 85.1(2), if the fees for processing their withdrawn application have not been refunded.

Exception — transitional federal business classes

(2.2) The following persons are not required to pay the fees referred to in subsection (1):

(*a*) a person described in paragraph 109.1(2)(*a*) who makes an application as a member of the transitional federal investor class, the transitional federal entrepreneur class or the transitional federal self-employed persons class for a permanent resident visa and the family members included in the member's application who

b) celle qui fait une demande au titre de l’une des catégories de personnes protégées à titre humanitaire outre-frontières et les membres de sa famille visés par sa demande.

Exceptions : catégorie des travailleurs qualifiés (fédéral — transitoire)

(2.1) Les personnes ci-après ne sont pas tenues d’acquitter les frais prévus au paragraphe (1) :

a) celle visée à l’alinéa 85.1(2)*a*) qui fait une demande de visa de résident permanent au titre de la catégorie des travailleurs qualifiés (fédéral — transitoire) et les membres de sa famille visés par sa demande qui l’étaient déjà par la demande visée au paragraphe 85.1(2);

b) celle visée à l’alinéa 85.1(2)*b*) qui fait une demande de visa de résident permanent au titre de la catégorie des travailleurs qualifiés (fédéral — transitoire) et les membres de sa famille visés par sa demande qui l’étaient déjà par la demande visée au paragraphe 85.1(2), si les frais de traitement de la demande qui a été retirée n’ont pas été remboursés.

Exceptions : gens d’affaires (fédéral — transitoire)

(2.2) Les personnes ci-après ne sont pas tenues d’acquitter les frais prévus au paragraphe (1) :

a) celle visée à l’alinéa 109.1(2)*a*) qui fait une demande de visa de résident permanent au titre de la catégorie des investisseurs (fédéral — transitoire), de la catégorie des entrepreneurs (fédéral — transitoire) ou de la catégorie des travailleurs autonomes (fédéral — transitoire) et les membres de sa famille visés par sa demande qui l’étaient

were also included in the application referred to in subsection 109.1(2); and

(*b*) a person described in paragraph 109.1(2)(*b*) who makes an application as a member of the transitional federal investor class, the transitional federal entrepreneur class or the transitional federal self-employed persons class for a permanent resident visa and the family members included in the member's application who were also included in the application referred to in subsection 109.1(2), if the fees for processing their withdrawn application have not been refunded.

déjà par la demande visée au paragraphe 109.1(2);

b) celle visée à l'alinéa 109.1(2)*b*) qui fait une demande de visa de résident permanent au titre de la catégorie des investisseurs (fédéral — transitoire), de la catégorie des entrepreneurs (fédéral — transitoire) ou de la catégorie des travailleurs autonomes (fédéral — transitoire) et les membres de sa famille visés par sa demande qui l'étaient déjà par la demande visée au paragraphe 109.1(2), si les frais de traitement de la demande qui a été retirée n'ont pas été remboursés.

Payment by sponsor

(3) A fee payable under subsection (1) in respect of a person who makes an application as a member of the family class or their family members

(*a*) is payable, together with the fee payable under subsection 304(1), at the time the sponsor files the sponsorship application; and

(*b*) shall be repaid in accordance with regulations referred to in subsection 20(2) of the *Financial Administration Act* if, before the processing of the application for a permanent resident visa has begun, the sponsorship application is withdrawn by the sponsor.

Paiement par le répondant

(3) Les frais prévus au paragraphe (1) à l'égard de la personne qui présente une demande au titre de la catégorie du regroupement familial ou à l'égard des membres de sa famille sont :

a) exigibles au moment où le répondant dépose sa demande de parrainage, à l'instar des frais prévus au paragraphe 304(1);
b) restitués conformément aux règlements visés au paragraphe 20(2) de la *Loi sur la gestion des finances publiques*, si la demande de parrainage est retirée par le répondant avant que ne débute l'examen de la demande de visa de résident permanent.

Age

(4) For the purposes of paragraph (1)(*a*), the age of the person in respect of whom the application is made shall be determined as of the day the sponsorship application is filed.

Âge

(4) Pour l'application de l'alinéa (1)*a*), l'âge de la personne visée par la demande est déterminé à la date où la demande de parrainage est déposée.

Application under Section 25 of the Act

Fees

307. The following fees are payable for processing an application made in accordance with section 66 if no fees are payable in respect of the same applicant for processing an application to remain in Canada as a permanent resident or an application for a permanent resident visa:

(*a*) in the case of a principal applicant, $550;

(*b*) in the case of a family member of the principal applicant who is 22 years of age or older or is less than 22 years of age and is a spouse or common-law partner, $550; and

(*c*) in the case of a family member of the principal applicant who is less than 22 years of age and is not a spouse or common-law partner, $150.

Demande en vertu de l’article 25 de la Loi

Frais

307. Les frais ci-après sont à payer pour l’examen de la demande faite aux termes de l’article 66 si aucuns frais ne sont par ailleurs à payer à l’égard du même demandeur pour l’examen d’une demande de séjour au Canada à titre de résident permanent ou d’une demande de visa de résident permanent :

a) dans le cas du demandeur principal, 550 $;

b) dans le cas d’un membre de la famille du demandeur principal qui est âgé de vingt-deux ans ou plus ou qui, s’il est âgé de moins de vingt-deux ans, est un époux ou conjoint de fait, 550 $;

c) dans le cas d’un membre de la famille du demandeur principal qui est âgé de moins de vingt-deux ans et n’est pas un époux ou conjoint de fait, 150 $.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:	IMM-3045-08
STYLE OF CAUSE:	GUNTHER et al v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 23, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	Snider J.
DATED:	September 4, 2009

APPEARANCES:

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