

Federal Court



Cour fédérale

**Date: 20140820**

**Docket: IMM-7664-13**

**Citation: 2014 FC 806**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, August 20, 2014**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**ALAIN MOREL**

**Respondent**

**JUDGMENT AND REASONS**

[1] A sponsorship application was filed by the respondent on May 29, 2009, with respect to the applicant for permanent residence in the conjugal partner class.

[2] The immigration officer rejected the application.

[3] On November 15, 2011, the Immigration Appeal Division [IAD] allowed the respondent's appeal in respect of the officer's decision.

[4] Following that decision, an application for judicial review in Federal Court was allowed by the Court.

[5] This Court ordered that the appeal be reconsidered by another IAD member.

[6] Following the Federal Court judgment, the IAD again allowed the appeal.

[7] It is the second IAD decision that is the subject of this application.

[8] Knowing that the visa officer had rejected Mr. Rui Guo's application for permanent residence in the family class, the *de novo* hearing allowed the IAD to accept new evidence but did not allow it to disregard the duration or the reference period in respect of "conjugal partner".

[9] No statement was made with respect to the change in the duration or the reference period considered by the IAD.

[10] A change in the reference period disregards the Federal Court's first judgment.

[11] The date of the sponsorship application was accepted to calculate the reference period; that is, the period of one year, provided for in the notion "conjugal partner".

[12] The term “conjugal partner” is relatively new, with the first judgment issued by the Federal Court in *Canada (Minister of Citizenship and Immigration) v Savard*, 2006 FC 109, 292 FTR 10.

[13] “[T]he matter of the existence and the nature of the relationship between the applicant and the applicant for permanent residence is inextricably woven into the determination of the application of section 4 of the Regulations” (*Immigration and Refugee Protection Regulations* [IRPR]) (*Leroux v Canada (Minister of Citizenship and Immigration)*, 2007 FC 403 at para 20, 160 ACWS (3d) 527).

[14] The existence of a genuine “conjugal partner” relationship is revealed by the terminology of section 4 of the IRPR.

[15] In the first *Morel* judgment of this Court (2012 FC 1404), written by Justice François Lemieux, the judge showed that there should be a “conjugal partner” relationship at the beginning of the reference period with a demonstrated follow up. Also, the evidence that precedes and follows the reference period requires a demarcation of the period under consideration.

[16] The IAD erred in law; it cannot go against Justice Lemieux’s judgment by using a period after May 29, 2008 (see paras 120 to 122 inclusive of the IAD’s decision).

[17] The IAD also erred in addressing a period prior to the period specified within the year under consideration.

[18] The respondent has not shown that the major error in law noted in this IAD decision was justified.

[19] Therefore, as a result of the errors in law, the IAD decision is not acceptable, and the matter is returned to the IAD for reconsideration by a differently constituted panel.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** that the applicant's application for judicial review is allowed, and the matter is returned for reconsideration by a differently constituted panel with no question of general importance to certify.

“Michel M.J. Shore”

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Judge

Certified true translation  
Mary Jo Egan, LLB

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-7664-13

**STYLE OF CAUSE:** MINISTER OF CITIZENSHIP AND IMMIGRATION v  
ALAIN MOREL

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** AUGUST 18, 2014

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** AUGUST 20, 2014

**APPEARANCES:**

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