THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN
The Voice of the Legal Profession
La voix de la profession juridique

December 21, 2006

The Honourable Monte Solberg, P.C., M.P.
Minister of Citizenship and Immigration
Parliament Hill
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister Solberg,

Re: IRPR s. 117(9)(d) and its Adverse Impact on Canadian Families

I write to you on behalf of the National Citizenship and Immigration Law Section of the Canadian Bar Association (the CBA Section) to request once again that Citizenship and Immigration Canada revisit the issue of s. 117(9)(d) of the *Immigration and Refugee Protection Regulations* (the Regulation). As a result of the operation of the Regulation, there is the potential for lifetime separation of spouses and dependent children. This adverse effect upon Canadian families, which is not addressed sufficiently by the current application of s.25 of the *Immigration and Refugee Protection Act* (IRPA), is in direct conflict with a cornerstone of Canada's immigration policy and a stated objective of IRPA: family reunification in Canada.

Attached for your review is a copy of our March 14, 2006 submission to Michel Dupuis on this issue, his reply dated June 13, 2006, and a copy of the directive (06-044 RIM) *Excluded Family Members and Humanitarian and Compassionate Factors*, that was distributed to visa offices on May 24, 2006. While we appreciate that some guidelines and direction have been provided to the visa offices, unfortunately the directive has high thresholds for consideration of humanitarian and compassionate (H & C) factors and will not address numerous fact scenarios.

The prospect of a family being forever separated due to a sponsor remaining in Canada while their spouse or dependent child are barred from entry as a result of the Regulation, supports deleting the Regulation altogether. This would leave the issue of misrepresentation to be dealt with through the appropriate sections of IRPA. This is the most pragmatic solution to stop the heartbreak when families cannot be reunited under a family class sponsorship. Alternatively, at the very least, an appeal should lie to the Appeal Division to permit it to weigh all factors contributing to the non-examination of the dependent. In addition, or in the further alternative, more comprehensive guidelines should exist in the interest of procedural fairness to allow for consistent processing of H & C cases arising out of the Regulation.

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We respectfully submit that, at a minimum, an expansion of the RIM directives would be appropriate. This position is consistent with the decision of Mr. Justice Shore in *Cheng Bin Li* (IMM-5973-05). There, the learned Justice stated, without qualification, that the particular circumstances giving rise to the exclusion under the Regulation should be examined by the visa officer "*to ensure that the matter is duly considered, under subsection 25(1) of IRPA, within the framework of the fragility of the human condition which that subsection addresses."*

The s.117 (9) (d) committee of our National Citizenship and Immigration Section would be pleased to meet with you to discuss this issue in greater detail. Kindly advise as to your availability for such a meeting in early January 2007 in Ottawa, or in Vancouver where two of our Committee members reside.

Yours truly,

(Original signed by Jean-Philippe Brunet)

JP Brunet
Chair, Citizenship and Immigration Section

cc. Michel Dupuis

Enclosure

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March 14, 2006

Michel Dupuis
Director
Citizenship and Immigration Canada
Social Policy and Programs
300 Slater Street
Ottawa, ON K1A 1L1

Dear Mr. Dupuis,

Re: IRPR s. 117(9)(d) and Its Adverse Impact on Canadian Families

I write to you on behalf of the Citizenship and Immigration Section of the Canadian Bar Association (the CBA Section) to request again that Citizenship and Immigration Canada revisit the issue of IRPR s. 117(9)(d) (the Regulation). As a result of the operation of the Regulation, there is the potential for lifetime separation of spouses and dependent children. This adverse effect upon Canadian families is in direct conflict with a cornerstone of Canada's immigration policy and a stated objective of the *Immigration and Refugee Protection Act*: family reunification.[1]

The CBA Section has previously made a number of submissions with respect to the Regulation (attached for ease of reference):

- Letter to Citizenship and Immigration Canada dated November 26, 2003 (pages 5 to 12, "Comments on Regulations Amending the Immigration and Refugee Protection Regulations"); and

- Submission to the Standing Committee on Citizenship and Immigration entitled, "IRPA Family Reunification Issues" dated April 2005 (pages 1 and 2).

[1] See IRPA s. 3(d).

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The Regulation generally excludes family class membership simply on the basis of non-examination, without considering the reasons for non-examination. The Regulation does not allow any discretion in the assessment of an application, with some minor exceptions[2], and purports to bar completely remedial review by the Appeal Division. Future entry of the unexamined dependent is wholly within the humanitarian discretion of CIC, subject only to Federal Court review by leave.

The Federal Court has rendered decisions regarding IRPR s.117(9)(d), and Certified Questions are pending. Many of the Federal Court cases suggest that it remains open to the sponsor to make an application for permanent residence, other than as a member of the family class, via an application on humanitarian and compassionate grounds (H & C). The Federal Court appears to be anticipating that H & C will be considered in these cases, and that this would serve to reduce the inflexibility of IRPR s. 117(9)(d) and therefore the potential violation of the sponsor's s.7 *Charter* rights. However, the current approval rate for overseas H & C cases is quite low: approximately 13%. As well, no specific guidelines exist to assist visa officers with H & C applications arising out of the Regulation.

I. Harshness of the Regulation

Situations continue to exist that that the Regulation did not anticipate, or where the Regulation's effect has been extremely harsh. In the most sympathetic situations:

- Illegitimate children may be unknown to immediate family members (as in the *Jean-Jacques* case discussed below), or they may be in one parent's custody with no intent to immigrate. Years later, the other parent in Canada may wish to take custody of the children but would not be permitted to sponsor them;

- Children may be in a former spouse's custody and even disclosed to the visa officer, but examinations were waived – perhaps because the former spouse refused to allow the children to be examined. If circumstances change (eg. death or ill health of the former spouse) and the parent in Canada takes custody, there is no way to sponsor their own children even though they are now the sole custodial parent;

- Live-in caregivers serve Canadian families, and may subsequently obtain resident status and citizenship. Many of these caregivers, particularly from the Philippines, do not disclose children when they apply for a work permit or residency status. They erroneously believe that their children disqualify them from the program. They left their children with relatives and supported them with earnings from Canada. These children cannot now be sponsored as family class members, even in situations where they had been wholly financially supported by their mothers here and where the sponsoring parent gained no immigration advantage;

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[2] These minor exceptions include IRPR ss. 117(10) and (11), which came into effect in 2004 and remedy situations of non-examination that occurred as a result of examinations not being required under the Act, or former Act.

- An independent applicant with no family receives a visa, and then marries before obtaining permanent resident status with the intent of sponsoring once settled in Canada. The spouse is then disqualified from being sponsored; and

- An accompanying dependent child is forced to leave a child behind by the parent, and the parent does not disclose this grandchild. The accompanying dependent child cannot sponsor their own child upon arrival in Canada, notwithstanding that this child would not have been prohibited from coming to Canada as part of the original application.

II. Inconsistencies in Processing

In response to our previous submissions calling for the deletion of the Regulation, your Department asked us to provide specific examples of how visa officers' application of H & C in IRPR s. 117(9)(d) cases has been problematic. We received many reports from our members, which may be summarized as follows:

- In some cases, the visa officer refused to consider H & C, and the Immigration & Refugee Board, Appeal Division refused to take jurisdiction, even though the sponsor in question did not even know that he had dependants at the time of his application (*Jean-Jacques v. Canada (Minister of Citizenship & Immigration)* 2005 F.C. 104, Docket No. IMM-3639-04);

- In some instances, an officer refused the case without considering H & C under IRPA s.25, even though it was specifically requested.;

- If no specific request for H & C consideration was in the original submission package, the officer did not give H & C consideration, and generally no letter was issued in the interest of procedural fairness to the sponsor advising them of the opportunity to make such submissions;

- In a number of instances, officers' reviews of H & C considerations were seemingly perfunctory, and no reasons were given for negative decisions despite the existence of factors such as a change in custody situation, or that parents of the undisclosed or unexamined child had been financially responsible for the child for many years. It is impossible to tell how much weight was given to these seemingly compelling factors as detailed refusal letters were not issued;

- In those cases where H & C submissions were made and applicants were scheduled for interviews, the officers refused requests for counsel to attend at the interview or for the sponsor to be interviewed as well. From the CAIPS notes of one file, it does not appear that the request for counsel to attend at the interview was even forwarded to Ottawa for review, as per the process outlined by David Manicom at the CICIP meeting in Toronto on November 4, 2005;

- There does not seem to be consistency in the issuance of refusal letters from different visa offices. Some visa offices are issuing two separate letters - one that refuses the family class application, (sometimes) with instructions to appeal to the Appeal Division, and the other refusing the H & C component of the application, (sometimes) with

instructions to proceed to the Federal Court. Other visa offices are including both refusals in one letter with no direction; and

- In one recent case, the visa office would not consider H & C until all avenues of appeal on the issue of membership in the family class were resolved, forcing a likely delay for the sponsor of at least one year.

The above examples call into question whether IRPA s. 25 provides relief from the harshness of the Regulation in the current circumstances. Therefore, the CBA Section recommends once again that IRPR s. 117(9)(d) be deleted. Alternatively, the CBA Section recommends that the government make a regulatory change to allow an appeal to the Appeal Division for disqualification for prior non-examination. In addition, or in the further alternative, we recommend that Citizenship and Immigration Canada draft special guidelines for the Manual, tailored to these specific situations, which would assist officers in their application of H & C under IRPA s. 25. We discuss these recommendations in detail below.

III. Recommendations

1. Delete IRPR s. 117(9)(d)

We stand by our previous submissions that prior non-disclosure of dependents is a misrepresentation and should be dealt with accordingly. In appropriate cases, the misrepresentation allegation can be made against the sponsor or against the applicant.

There is no reason to treat non-disclosure differently from any other misrepresentation. The effect is to punish family members more harshly than other applicants, despite the importance of family in immigration policy. It results in a lifetime separation of family members, whereas a finding of misrepresentation leads to only a two-year period of separation. There is also no reason why decisions to refuse applications by spouses or children should not be reviewed by the Appeal Division to determine whether the failure to disclose was deliberate and whether the circumstances justify loss of status or refusal of the application.

Deleting the Regulation would not give applicants license to conceal non-accompanying dependents. Misrepresentation inadmissibility continues to apply, both at the initial application and during subsequent sponsorship. Officers would conduct an independent assessment of the misrepresentation, and consider whether the misrepresentation should result in loss of status of the subsequent sponsor.

If CIC still believes that a complete deletion of the Regulation is not an option, we recommend:

2. Disqualification for Prior Non-Examination Should be Appealable to the Appeal Division

The Appeal Division is a specialized tribunal that can assess the deliberateness of the non-examination, and determine if there are sufficient H & C factors to overcome the refusal. The sponsor and the applicant would bear the onus of making a case to overcome that refusal. A case involving unexamined spouses and children under the Regulation would be like any case of a reviewable refusal of a family class member. The Appeal Division would provide a balance

between the enforcement interest and the inherent interest in reuniting immediate family members.

The Appeal Division has developed considerable expertise in addressing and balancing H & C factors in the context of non-disclosure. Factors such as deliberate deception (and the purpose of it), the child's situation in their home country, the parent's situation here, the existence of benefits accruing from the non-disclosure, among others, would be reviewed and balanced.

This change could be accomplished easily by changing IRPR s.117(9)(d) from a jurisdictional ground to an admissibility ground in the regulations.

In addition to this recommendation, or in the further alternative, we recommend the following:

3. Changes to Policy Guidelines

IRPR s.117 (9)(d) is a hard and fast rule, with no apparent appeal. There is no meaningful review of H & C by the Appeal Division; the only consideration of these factors occurs at the discretion of CIC officers under IRPA s.25. The guidelines provide the officers with little guidance as to how this discretion ought to be exercised.

It has been our position since the inception of this legislation that not all failures to disclose are malicious or unforgivable, and situations exist where even deliberate failures to disclose ultimately merit relief. Given the historical significance of family reunification to Canada's immigration policies and process, guidelines should address all of these situations. The guidelines for the application of H & C should be expanded so that "disproportionate hardship…caused to the person seeking consideration" looks to the well being of the unexamined child or spouse. The guidelines should specifically address all of the examples of sympathetic situations outlined above as unforeseen by the legislation, and direct officers to grant relief in those cases.

In addition, we would recommend the following directions be referenced in the Manual for these types of cases:

a) There is a right to counsel at all H & C interviews (in person or via teleconference), which interviews should include the sponsor (in person or via teleconference) and the applicant;

b) H & C consideration should be given in all of these cases even if <u>not</u> requested (as the sponsor may not be aware of this option);

c) If there are no submissions by the sponsor on the H & C factors, a fairness letter should be sent to the sponsor (as in medical refusal cases) requesting submissions on this point;

d) If an application is ultimately refused notwithstanding the procedural safeguards which are noted in a) to c) above, a detailed refusal letter should be issued on the refusal of H & C grounds, with a clear statement of the sponsor's recourse if they wish to appeal, seek leave, etc.;

e) A separate refusal letter should be issued with respect to the refusal of the family class application, with a clear statement of the sponsor's recourse if they wish to appeal, seek leave, etc.; and

f) H & C consideration should be given immediately once determination is made by the visa office that IRPR s.117(9)(d) applies, and not after all avenues of appeal have been exhausted.

IV. Conclusion

The prospect of a family being forever separated due to a sponsor remaining in Canada while their spouse or dependent child are barred from entry as a result of the Regulation supports deleting the Regulation all together. This would leave the issue of misrepresentation to be dealt with through the appropriate sections of the Act. This is the most pragmatic solution to stop the heartbreak when families cannot be reunited under a family class sponsorship. Alternatively, at the very least, an appeal should lie to the Appeal Division to permit it to weigh all factors contributing to the non-examination. In addition, or in the further alternative, comprehensive guidelines should exist in the interest of procedural fairness to allow for consistent processing of H & C cases arising out of this Regulation.

Our Section Officers will be in Ottawa at the end of March for the H & C and CICIP meetings, and we would welcome the opportunity to meet with you and Rell DeShaw on this issue separately at that time.

Yours truly,

(Original signed by Kerri Froc on behalf of Robin Seligman)

Robin Seligman
Chair, Citizenship and Immigration Section

cc. Rell DeShaw

Enclosure

Citizenship and Immigration Canada | Citoyenneté et Immigration Canada

300 Slater Street
7th Floor – North
Ottawa, Ontario
K1A 1L1

June 13, 2006

Ms. Robin Seligman
30 St. Clair Ave. West
10th Floor
Toronto, Ontario
M4V 3A1

Dear Ms. Seligman:

I am writing in response to your letter of March 14, 2006, concerning section 117(9)(d) of the *Immigration and Refugees Protection Act* (IRPA) and its impact on families. As you know, we discussed this issue recently at both the Immigration Practitioners Working Group meeting in Ottawa on March 31, 2006, and at the Canadian Bar Association (CBA) / Continuing Legal Education (CLE) meeting in Quebec on May 5-6, 2006. This letter serves to confirm some of the information that I have already conveyed and provides some additional input.

In your letter, you have raised a breadth of issues, including procedural and legal matters for which the Immigration Branch, a policy branch, will be unable to provide a response. In addition, it would be inappropriate for me to comment on specific cases (notwithstanding that these case scenarios were provided as examples). We have, however, shared a copy of your letter with the International Region which is responsible for overseas processing.

In your letter you argue that the Regulation in its effect is "extremely harsh". The intent of 117(9)(d) is to make sue that all applicants for permanent residence declare all their dependents and that they do not conceal the existence of a family member who could make the principal applicant inadmissible for immigration to Canada. This means that a family member who would have prevented a principal applicant from immigrating to Canada should not later benefit from being sponsored under the more generous family class sponsorship rules.

As we have discussed at our recent meetings, Citizenship and Immigration Canada has no plans to either repeal or amend this section of IRPA. As well, we do not intend to seek a legislative amendment which would make this exclusion one that could be appealed to the Immigration Appeal Division.

At the meetings I recently attended, some CBA members told me that visa officers abroad do not use their discretion to apply Humanitarian and Compassionate (H&C) considerations in family class cases. However, the statistics we have obtained indicate otherwise. In 2003/2004/2005, visa officers abroad applied H&C considerations 580 times in order to approve cases where an applicant did not meet the requirements of the family class. Our best estimates would indicate that the majority of these cases were those affected by 117(9)(d).

Regarding your concerns about inconsistencies in processing, it must be borne in mind that the use of H&C considerations in this context is a tool completely within the discretion of the Minister's delegate. It would, therefore, be inappropriate to have officers apply H&C considerations in all exclusion cases or to solicit via fairness letters, H&C submissions in each exclusion case. As you are aware, the onus rests on the applicant to request H&C consideration and to establish the facts on which his or her claim for an exemption rests.

.../2

This having been said, the Department recently issued expanded guidelines reminding officers that the use of H&C *may* be appropriate in certain circumstances involving this exclusion clause. The guidelines also remind officers that the best interests of the child must be taken into account when an application is reviewed for possible use of H&C considerations. Discretion as to whether to use H&C to overcome a deficiency in a particular case however rests with the officer.

The above mentioned guidelines were recently shared with you and the rest of the Department's Immigration Practitioners Working Group.

In closing, I hope that you find my reply informative. Thank you for bringing your concerns to our attention.

Sincerely,

Michel Dupuis
A/Director
Social Policy and
Programs Immigration
Branch

Operational Instruction: 06-044 (RIM) Date : May 23, 2006
>> Author: Rell Deshaw/Immigration Branch
>> Approval: David Manicom
>> Category: Procedures
>> Subject: Excluded Family Members and Humanitarian and Compassionate
>> Factors
>>
>> For manual inclusion.
>>
>> Section 25 of IRPA requires officers and delegated authorities to
>> examine humanitarian and compassionate factors (H&C) upon request of
>> the applicant. In addition, if an officer believes there are strong
>> humanitarian and compassionate factors present in a case, the
>> officer may on his or her own initiative, without the applicant
>> specifically requesting it, put the case forward to the person with
>> the delegated authority to approve the use of A25(1) for the case. A
>> separate application and fee are not required.
>>
>> A25 can be used by officers to overcome an applicant being an
>> excluded family member or any other requirement of the Act. This
>> includes an applicant who has a sponsor that does not meet eligibility
>> requirements.
>>
>> The text which follows addresses the use of A25 in relation to
>> regulation 117(9)(d). This regulation excludes from the family
>> class, persons who were not examined as non-accompanying family
>> members at the time their sponsor made their application for permanent
>> residence.
>>
>> In considering the use of H&C for excluded family members, the
>> officer should take into account all relevant factors, including but
>> not limited to, those provided below.
>>
>> General
>>
>> - The onus is on the client to understand their obligations under the
>> law. The information guides included with application kits and visa
>> issuance letters have clear information on the need to declare and
>> have examined all family members, including new family members.
>>
>> - The exclusion found in regulation 117(9)(d) exists to encourage
>> honesty and prevent applicants from circumventing immigration rules.
>> Specifically, it exists to prevent applicants from later being able
>> to sponsor otherwise inadmissible family members under the generous
>> family class sponsorship rules when these family members would have
>> prevented the applicant's initial immigration to Canada for
>> admissibility reasons (i.e., excessive demand).
>>
>> - The application of humanitarian and compassionate considerations
>> may nonetheless be appropriate in cases which are exceptional and
>> deserving from a reasonable person's point of view.
>>
>> Case-specific factors
>>
>> - Canada's continuing obligations under the Convention on the Rights
>> of the Child require that the Department consider the best interests
>> of a child directly affected by the application whether they are

>> explicitly mentioned by the applicant or are otherwise apparent.
>> (For more information on the application of the BIOC policy, see OP4,
>> section>
>> 8.3.)
>>
>> - Where family members were declared but not examined and it is clear
>> that the applicant/sponsor made best efforts to facilitate this
>> examination and that this lack of examination was beyond the
>> applicant's/sponsor's control, considering the use of H&C may be
>> appropriate.
>>
>> When the client presents compelling reasons for not having disclosed
>> the existence of a family member, it may also be appropriate to
>> consider the use of H&C factors. For example:
>>
>> - a refugee presents evidence that they believed their family members
>> were dead or that their whereabouts were unknown; or
>>
>> - a client presents evidence that the existence of a child was not
>> disclosed because it would cause extreme hardship because the child
>> was born out of wedlock in a culture that does not condone this.
>>
>> Where an officer decides to put forward a case for consideration of
>> H&C in the absence of a specific request from the client, the client
>> should be informed that H&C is being considered and should be
>> provided with an opportunity to present their own reasons for H&C
>> consideration. This is procedurally fair and ensures that the
>> decision-maker has all the information necessary before making a decision.
>>
>> Should a decision be made to process an application favourably even
>> though the applicant is excluded pursuant to R117(9)(d), the case
>> should be coded as FCH. FCH indicates that the case is within the
>> family class, but that H&C consideration was given.
>> the sponsorship is enforceable and the normal family class exemptions
>> apply where applicable (i.e., excessive demand and LICO). Should the
>> application be rejected, the sponsor has appeal rights. See OP4
>> section 8.2 for further information on processing family class cases
>> under A25.
>>
>> Questions on this issue should be referred to Immigration Branch/Rell
>> Deshaw, cc: RIM/Daniel Vaughan.
>>
>> **********
>> *** Directive opérationnelle : 06-044 (RIM) Date : le 23 mai 2006
>> Auteur : Rell Deshaw/Direction de l'Immigration Approbation : David
>> Manicom Catégorie : Procédures Objet : Membres de la famille exclus
>> et motifs d'ordre humanitaire
>>
>> Pour intégration dans le manuel
>>
>> Selon l'article 25 de la LIPR, les agents et les personnes ayant les
>> pouvoirs délégués doivent, sur demande d'un étranger, étudier le cas
>> pour des considérations d'ordre humanitaire (CH). De plus, si un
>> agent estime qu'il y a en l'espèce de solides motifs d'ordre

>> humanitaire, il peut, de sa propre initiative, sans que ne le demande
>> expressément le demandeur ou le répondant, transférer le cas à une
>> personne ayant le pouvoir délégué d'approuver le recours à L25(1).
>> Une demande distincte ou des frais additionnels ne sont pas exigés.
>>
>> Les agents peuvent invoquer l'article 25 pour surmonter le fait qu'un
>> demandeur soit un membre de la famille exclus ou qu'il ne répond pas
>> à toute autre exigence de la Loi, y compris un demandeur dont le
>> parrain ne remplit pas les critères d'admissibilité.
>> >> Le texte qui suit porte sur l'utilisation de L25 au regard de R117(9)d).
>> Ce règlement exclut de la catégorie de la famille les personnes qui
>> n'ont pas fait l'objet d'un examen en tant que membres de la famille
>> qui n'accompagnent pas l'intéressé au moment où leur parrain a présenté
>> sa demande de résidence permanente.
>>
>> Lorsqu'il considère les CH pour les membres de la famille exclus, l'agent
>> devrait tenir compte de tous les facteurs pertinents, y compris, entre
>> autres, ceux présentés ci-dessous :
>>
>> Facteurs généraux
>>
>> - Il incombe au client de comprendre ses obligations aux termes de la
>> loi. Les guides d'information inclus dans les trousses de demande et
>> livrés avec les lettres de délivrance des visas présentent de l'information
>> claire concernant la nécessité de déclarer et de faire examiner tous les >>
>> membres de la famille, y compris les nouveaux membres de la famille.>
>>
>> - Les motifs d'exclusion prévus à R117(9)d) existent en vue
>> d'encourager l'honnêteté et d'empêcher les immigrants de contourner le
>> règlement. Plus précisément, cet alinéa existe pour empêcher les demandeurs
>> de pouvoir parrainer plus tard des membres de la famille autrement
>> interdits de territoire aux termes des généreux règlements de parrainage de
>> la catégorie de la famille alors que d'avoir déclaré ces mêmes membres
>> aurait empêché l'immigration du demandeur au Canada pour des motifs relatifs
>> à l'admissibilité (c.-à-d. fardeau excessif).
>>
>> - L'application de CH peut néanmoins être appropriée dans les cas
>> exceptionnels et dignes d'intérêt d'un point de vue raisonnable.
>>
>> Facteurs particuliers
>>
>> - Les obligations du Canada dans le cadre de la Convention relative
>> aux droits de l'enfant font en sorte que Ministère doit envisager
>> l'intérêt supérieur de l'enfant directement touché par la demande,
>> qu'il soit directement invoqué par le demandeur ou qu'il soit apparent par
>> ailleurs.
>> (Pour obtenir davantage de renseignements sur l'application de la
>> politique sur l'ISE, veuillez consulter le guide OP4, section 8.3).
>>
>> - Il peut être approprié d'envisager des CH lorsque les membres de la
>> famille ont été déclarés, mais qu'ils n'ont pas fait l'objet d'un
>> contrôle et qu'il est manifeste que le demandeur/parrain a fait tous
>> les efforts requis pour rendre ce contrôle possible et que le fait
>> qu'il n'ait pas eu lieu est au-delà du ressort du demandeur/parrain.
>>

>> Lorsque le client présente des motifs impérieux pour ne pas avoir
>> révélé l'existence d'un membre de sa famille, il peut également être
>> approprié d'envisager des CH. Par exemple :
>>
>> - Un réfugié présente une preuve qu'il croyait que les membres de sa
>> famille étaient décédés ou que leur emplacement était inconnu.
>>
>> - Un client présente une preuve que l'existence de l'enfant n'a pas
>> été révélée, car cela aurait causé un préjudice extrême parce que
>> l'enfant est né hors des liens du mariage dans une culture où ce
>> n'est pas accepté.
>>
>> Lorsqu'un agent décide qu'il faudrait appliquer les motifs d'ordre
>> humanitaire à un cas sans que le client l'ait expressément demandé,
>> le client devrait en être informé et avoir la possibilité de
>> répondre. Il s'agit d'une procédure équitable qui garantit que le
>> décisionnaire possède toute l'information nécessaire avant de prendre une
>> décision.
>>
>> Si l'on décide d'approuver une demande malgré le fait que le
>> demandeur est exclu en vertu du R117(9)d), le cas doit recevoir le
>> code CFH. On saura ainsi qu'il s'agit d'un cas appartenant à la
>> catégorie du regroupement familial auquel on a appliqué les CH et que
>> le parrainage est exécutoire et que les exemptions normalement
>> applicables à la catégorie de la famille s'appliquent également, le cas
>> échéant (p. ex. fardeau excessif et SFR). Si la demande est rejetée, le
>> parrain dispose du droit d'appel. Voir OP4, section 8.2 pour obtenir de
>> plus amples renseignements sur le traitement des cas appartenant à la
>> catégorie de la famille visés par L25.
>>
>> Les questions à ce sujet devraient être adressées à la Direction de
>> l'Immigration/Rell Deshaw, cc : RIM/Daniel Vaughan.