

CANADA / JUDGMENT

Haile v. Canada (Citizenship and Immigration)

2026 FC 452

COURT

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DECIDED

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Ottawa, Ontario, April 8, 2026

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

MESFIN GEBRU HAILE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Applicant, Mesfin Gebru Haile [Applicant] sought to sponsor his common-law partner and their two children [collectively, the family members] for permanent residence as members of the family class. The application was refused by an officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC]. The Applicant sought to appeal this decision to the Immigration Appeal Division of the Immigration and Refugee Board of Canada [IAD].

[2] On September 10, 2024, the IAD confirmed the Officer's decision, finding that the Applicant's family members were excluded as members of the family class by virtue of paragraph 117(9)(d) of the Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR] because they were not examined during the Applicant's permanent residence application process.

[3] Furthermore, the IAD refused to decide on appeal whether the Officer erred by concluding that the Ministerial public policy, Consecutive public policy to facilitate the immigration of certain sponsored foreign nationals excluded under paragraph 117(9)(d) or 125(1)(d) of the Immigration and Refugee Protection Regulations (September 1, 2023) [Public Policy], did not apply. The IAD stated that it lacked jurisdiction to consider the Public Policy under subsection 63(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] [Decision].

[4] For the reasons set out below, the application for judicial review is granted.

II. Applicable Legislative and Policy References [5] Before detailing the facts in this case, it is relevant to outline the following legal framework to understand the context of this application for judicial review.

[6] The IRCC Officer relied on paragraph 117(9)(d) of the IRPR to justify the refusal of the Applicant's application to sponsor his family members. Paragraph 117(9)(d) of the IRPR, and relevant passages of the IRPR referring to it read as follows:

Excluded relationships

- (9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if
 - (d) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.

Exception

- (10) Subject to subsection (11), paragraph (9)(d) does not apply in respect of a foreign national referred to in that paragraph who was not examined because an officer determined that they were not required by the Act or the former Act, as applicable, to be examined.

Application of par. (9)(d)

- (11) Paragraph (9)(d) applies in respect of a foreign national referred to in subsection (10) if an officer determines that, at the time of the application referred to in that paragraph,
- (a) the sponsor was informed that the foreign national could be examined and the sponsor was able to make the foreign national available for examination but did not do so or the foreign national did not appear for examination; or
 - (b) the foreign national was the sponsor's spouse, was living separate and apart from the sponsor and was not examined.

Restrictions

- (9) Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :
- d) sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.

Exception

- (10) Sous réserve du paragraphe (11), l'alinéa (9)d) ne s'applique pas à l'étranger qui y est visé et qui n'a pas fait l'objet d'un contrôle parce qu'un agent a décidé que le contrôle n'était pas exigé par la Loi ou l'ancienne loi, selon le cas.

Application de l'alinéa (9)d)

- (11) L'alinéa (9)d) s'applique à l'étranger visé au paragraphe (10) si un agent arrive à la conclusion que, à l'époque où la demande visée à cet alinéa a été faite :
- a) ou bien le répondant a été informé que l'étranger pouvait faire l'objet d'un contrôle et il pouvait faire en sorte que ce dernier soit disponible, mais il ne l'a pas fait, ou l'étranger ne s'est pas présenté au contrôle;
 - b) ou bien l'étranger était l'époux du répondant, vivait séparément de lui et n'a pas fait l'objet d'un contrôle.

- [7] A finding under paragraph 117(9)(d) has the effect of creating a lifetime bar on one's ability to sponsor family members if they were not examined at the time of the sponsor's application (*Adjani v Canada (Citizenship and Immigration)*, 2008 FC 32).
- [8] The Public Policy, adopted in September 2019, and renewed in September 2021, was meant to address concerns about the harsh effects of the lifetime bar of foreign nationals excluded from sponsorship by application of paragraphs 117(9)(d) or 125(1)(d) of the IRPR.
- [9] The Public Policy was enacted under subsection 25.2 of the IRPA, which provides that the Minister may exempt an individual from the normal application of the IRPA provisions when it is justified by public policy considerations. Subsection 25.2 reads as follows:

Public policy considerations

25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.

Exemption

- (2) The Minister may exempt the foreign national from the payment of any applicable fees in respect of the examination of their circumstances under subsection (1).

Provincial criteria

- (3) 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.

Conditions

- (4) The conditions referred to in subsection (1) may include a requirement for the foreign national to obtain an undertaking or to obtain a determination of their eligibility from a third party that meets any criteria specified by the Minister.

Séjour dans l'intérêt public

25.2 (1) Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.

Dispense

- (2) Il peut dispenser l'étranger du paiement des frais afférents à l'étude de son cas au titre du paragraphe (1).

Critères provinciaux

- (3) Le statut de résident permanent 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.

Conditions

- (4) Les conditions mentionnées au paragraphe (1) peuvent notamment inclure l'obligation pour l'étranger en cause d'obtenir d'une tierce partie une détermination de recevabilité qui répond aux critères précisés par le ministre ou d'obtenir un engagement.
- [10] Generally, to be eligible under the Public Policy, an applicant must show that had the foreign nationals been declared when their sponsor immigrated to Canada, they would not have made their sponsor ineligible for permanent residence in one of the classes which the sponsor applied for and was granted permanent residence, as mentioned in the Public Policy.

III. Background and Decision Under Review [11] The Applicant is a citizen of Ethiopia. In 2008, he fled Ethiopia and received refugee protection in South Africa. He began a relationship with his current common-law spouse, a South African citizen, in 2012. They welcomed their first child in 2013, and their second in 2018. Both children are citizens of South Africa.

- [12] In 2019, the Applicant came to Canada as a sponsored Convention refugee and obtained permanent resident status. In his immigration forms, he did not declare his family members.

A. IRCC Officer Decision [13] In 2022, the Applicant filed an application to sponsor his common-law spouse and their two children. The Officer refused the application because the family members had not been examined at the time of the Applicant's permanent residence application and were thus excluded from being sponsored as members of the family class, pursuant to paragraph 117(9)(d) of the IRPR.

- [14] The Officer then considered the Public Policy and concluded that it did not apply because the Applicant's family members could have rendered him ineligible for permanent residence had they been declared and examined at the time of the Applicant's permanent residence application. The Officer reasoned that the Applicant's failure to declare his family members prevented an officer from assessing whether he would have a durable solution in South Africa as a partner or parent to South African citizens.

B. IAD Decision [15] Following the Officer's refusal, the Applicant sought an appeal before the IAD. For the purposes of this judgment, I will not repeat the substantive submissions made to the IAD challenging the Officer's refusal.

- [16] Of relevance, the Applicant submitted that the IAD had jurisdiction to consider the refusal of the application, including the finding that the family members were not exempt pursuant to the Public Policy. Relying on sections 62, 63(1), and 67(1)(a) of the IRPA, the Applicant argued that as the Officer's decision involved both factual and legal issues, and in consideration of the IAD's competency and expertise to assess family class sponsorship applications appeals, the IAD had jurisdiction in this matter. In sum, the Applicant explained that although the word "exclusion" was used in the Officer's decision, its practical consequence was the refusal of a permanent residence visa, which the IAD has the jurisdiction to review under subsection 63(1) of the IRPA.
- [17] In a decision dated September 10, 2024, the IAD confirmed the IRCC Officer's decision. The IAD concluded that the Officer correctly found that the Applicant's family had not been examined and therefore that paragraph 117(9)(d) of the IRPR applied to the Applicant's sponsorship application. The Applicant does not challenge this conclusion.
- [18] The IAD then stated that only the Minister could consider eligibility or exceptions under the Public Policy, meaning the IAD itself lacked the jurisdiction to review this part of the Decision. The IAD also found that it did not have the jurisdiction or authority to grant humanitarian and compassionate relief when a person does not qualify as a member of the family class (citing IRPA at s 65).
- [19] The IAD's Decision is the subject of this application for judicial review.
- [20] Around the same time that the Applicant submitted his appeal to the IAD, the family members also contested the Officer's decision by way of an application for leave and judicial review [ALJR] before the Federal Court (*Jones v Canada (Citizenship and Immigration)*, IMM-10337-24 (FC) (Memorandum of fact and law, Applicants) [FC Parallel Application]). This was filed with the Court on March 17, 2024. The Minister filed a response dated August 21, 2024, contesting the ALJR (*Jones v Canada (Citizenship and Immigration)*, IMM-10337-24 (FC) (Memorandum of fact and law, Respondent)).
- [21] In the FC Parallel Application, the Minister took the position that the ALJR was not filed in accordance with paragraph 72(2)(a) of the IRPA, as the rights of appeal provided by the IRPA—specifically an appeal before the IAD—had not yet been exhausted. In other words, the Minister took the position on the ALJR that the applicants first had to seek an appeal before the IAD, before coming to the Court on judicial review, so as to exhaust all available administrative remedies before seeking leave for judicial review.
- [22] The parties in the FC Parallel Application agreed to settle the ALJR and remit the sponsorship application back to another IRCC Officer. At the hearing on December 5, 2025, the parties advised the Court that a decision had yet to be reached by the IRCC officer.

IV. Issues and Standard of Review [23] The issue on judicial review is whether the IAD's Decision was unreasonable.

[24] The parties submit that the standard of review with respect to the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [Vavilov]). I agree that reasonableness is the applicable standard of review, in particular with respect to an administrative decision-maker's interpretation of its home statute (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at paras 38-39 [Pepa]).

[25] On judicial review, the Court must consider whether a decision bears the hallmarks of reasonableness – justification, transparency and intelligibility (Vavilov at para 99). A reasonable decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (Vavilov at para 90). A decision may be unreasonable if the decision-maker misapprehended the evidence before it (Vavilov at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (Vavilov at para 100).

V. Preliminary Issue: Mootness [26] In their written submissions and repeated at the hearing, the Respondent submitted that the application should be dismissed as it is moot. The Respondent argued that in the FC Parallel Application, the parties agreed to remit the matter back to the IRCC for redetermination of the sponsorship application. Since the case has been sent back, there is no longer a live controversy. The Respondent submits that since both the present application and the FC Parallel Application raise the same concern arising from the same underlying, negative sponsorship application decision, its remittance renders the proceeding moot.

[27] The Respondent further contends that the settlement of the FC Parallel Application constitutes an adequate alternative, which is a discretionary ground for refusing judicial review. They note that the IRPA would have “no meaning” if it could be circumvented through duplicitous proceedings (citing *Somodi v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 288 at para 29).

[28] However, the Respondent had already submitted this question to the Court, in a motion to strike this application dated March 14, 2025 [Motion]. In an order dated April 1, 2025, Associate Judge Horne dismissed the Respondent's motion seeking to strike this application on the basis of mootness (*Haile v Canada (Citizenship and Immigration)* (1 April 2025), St. John's, FC, IMM-17919-24 (Order) [April 1, 2025, Order]).

[29] Associate Judge Horne found that the relief sought in the two applications is not the same (i.e., in the present application, the matter would be sent back to the IAD, as opposed to the FC Parallel Application, which was returned to a different IRCC Officer) and that the question of the IAD's jurisdiction remains a live issue between the parties (April 1, 2025, Order at paras 8–11). Accordingly, Associate Judge Horne was not satisfied that this application should be dismissed as moot.

[30] At the hearing, the Respondent confirmed that no appeal had been sought of Associate Judge Horne's Order dismissing the Motion.

[31] I find that continuing to argue mootness is a collateral attack on the April 1, 2025, Order. A collateral attack is "an impermissible attempt to nullify the result of another proceeding outside of the proper channels for the review of that decision" (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 39).

[32] Having not appealed Associate Judge Horne's April 1, 2025, Order, the Respondent cannot now advance the same question again.

VI. Analysis A. The IAD's decision that it lacks jurisdiction to hear appeals of a decision that considered the Public Policy exception is not transparent, intelligible or justified (1) Judicial review of the IAD's statutory interpretation [33] As the Supreme Court instructs, assessing the reasonableness of a decision begins with a "reasons-first" approach and seeks to understand the reasoning that led to the decision, and whether it was "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker" (*Vavilov* at paras 84-85).

[34] There are legal constraints on the IAD's interpretation of legislation and regulations. The decision-maker is constrained by the specifically worded statutory scheme from which it draws its authority (*Vancouver (City) v Canada (Attorney General)*, 2025 FC 1456 at para 35 [*Vancouver*])-primarily, their empowering legislation (*Canada (Attorney General) v Responsible Plastic Use Coalition*, 2026 FCA 17 at para 6 [RPUC], citing *Vavilov* at para 99; *Innovative Medicines Canada v Canada (Attorney General)*, 2022 FCA 210 at para 44). The facts before the decision-maker, the common law, and the decision-maker's past practices are also constraints which must be accounted for in the decision.

[35] On judicial review of a decision interpreting a statute, the Court does not conduct its own statutory interpretation exercise or seek to determine the correct interpretation (*Vavilov* at paras 83, 116; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 62 [*Mason*]; *Pepa* at paras 48, 147, 179, Rowe J, dissenting, but not on this point).

[36] A reviewing court cannot impose its statutory interpretation onto the decision-maker (*Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 66 at para 16). This would be akin to creating a "yardstick" to measure the decision and result in improperly conducting a correctness review (*Vavilov* at para 83, citing *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 28). Rather, I must review whether the Decision as a whole—that includes the IAD's statutory interpretation—bears the hallmark of reasonableness (*Mason* at para 68, citing *Vavilov* at para 116).

[37] An administrative decision-maker is required to interpret a statutory provision in a manner consistent with its text, context, and purpose, and to demonstrate in its reasons that it was "alive to the essential elements" of proper statutory interpretation (*Vancouver* at para 37, citing *Vavilov* at paras 120-121, *Mason* at paras 10-11, 69, *Pepa* at paras 10, 62-65, 180).

- [38] To be reasonable, an administrative decision on a question of statutory interpretation must be consistent with the “modern principles” of statutory interpretation (Vavilov at para 118). The decision-maker does not have to engage in a formalistic statutory interpretation exercise every time, but the decision must always be consistent with the text, context and purpose of the provision (Vavilov at paras 119–120).
- [39] The Supreme Court in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 221 NR 241 [Rizzo Shoes], also explains that statutory interpretation must begin with reading the words of an Act “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (at para 21, citing *Elmer Driedger in Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at p 87).
- [40] *Rizzo Shoes* further reminds that the legislature “does not intend to produce absurd consequences,” which are defined as being ridiculous or frivolous, extremely unreasonable or inequitable, illogical or incoherent, or incompatible with other provisions or with the object of the legislative enactment (at para 27).
- (2) Application to the Decision under review [41] Considering these principles, I turn towards the reasons of the Decision. The relevant portion of the written reasons on the IAD’s jurisdiction are found at paragraphs 12 to 15 of the Decision:
- [12] The IAD’s jurisdiction does not extend to consideration of eligibility under the public policy. The consideration of eligibility under this public policy rests with the Minister.
- [13] The public policy exempts some unexamined family members from the effect of paragraph 117(9)(d) of the Regulations. The policy is authorized under the Immigration and Refugee Protection Act (Act) and gives the Minister discretion to exempt a foreign national from inadmissibility or the failure to meet a requirement under the Act if the Minister is of the opinion that such an exemption is justified by public policy considerations.
- [14] The Act does not include a right of appeal to the IAD against any eligibility decision made under the public policy and such a right of appeal cannot be inferred. The IAD has no jurisdiction to consider how and whether the Minister applied the public policy. The IAD is required to apply paragraph 117(9)(d) of the Regulations to the facts of this appeal.
- [15] Furthermore, the IAD has no jurisdiction or authority to grant humanitarian and compassionate relief when a person does not qualify as a member of the family class.
- [42] Paragraph 14 of the Decision also included a footnote citing two cases as examples, *Dairo v Canada (Citizenship and Immigration)*, 2022 CanLII 136346 (CA IRB) [Dairo] and *Konadu v Canada (Citizenship and Immigration)*, 2022 CanLII 46678 (CA IRB) [Konadu]. These cases will be addressed further in these Reasons.

(a) The IAD did not engage with the specific language of its enabling statute or with the Applicant's arguments [43] The Applicant put before the IAD that it had jurisdiction to hear his appeal under the IRPA. As such, the issue of statutory interpretation was a central argument for the IAD's consideration.

[44] The IAD's approach is not reflective of the modern approach to statutory interpretation which should begin with the language of the enabling statute (RPUC at para 6). Instead, the IAD begins with a statement that its jurisdiction does not extend to the consideration of eligibility under the Public Policy.

[45] Subsection 63(1) affords the IAD the jurisdiction to hear appeals of decisions relating to sponsorship applications under the family class:

Right to appeal — visa refusal of family class

63 (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.

Droit d'appel : visa

63 (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

(emphasis added)

[46] Section 67 of the IRPA states that on appeal, the IAD may consider errors of fact, errors of law, and errors of mixed fact and law:

Appeal allowed

67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

- (a) the decision appealed is wrong in law or fact or mixed law and fact;
- (b) a principle of natural justice has not been observed; or
- (c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

Fondement de l'appel

67 (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :

- a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;
- b) il y a eu manquement à un principe de justice naturelle;

- c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

(emphasis added)

- [47] Subsection 63(1) of the IRPA specifies that the IAD is the competent division of the Immigration Refugee Board to hear appeals of a “decision not to issue the foreign national [sponsored as a member of the family class] a permanent resident visa”. The term “decision” is not defined in the IRPA. The specific language in the IRPA states that to allow an appeal, the IAD must be satisfied that, at the time that the appeal is disposed of, the decision appealed is wrong in law or fact or mixed law and fact (IRPA at para 67(1)(a)). The term “decision” appears again in this section and is again not defined.
- [48] Sections 63 and 67 of the IRPA address the IAD’s jurisdiction on appeal of a decision not to issue the foreign national a permanent resident visa and both sections use the general term “decision”.
- [49] In its Decision, the IAD excluded from its jurisdiction “any eligibility decision made under the public policy”. Yet the Applicant argued that the Officer’s decision not to issue the permanent resident visas considered whether the exceptions in the Public Policy could apply. As such, the Applicant had submitted that the Officer’s consideration of the Public Policy was part of the “decision” under appeal.
- [50] The IAD did not analyze whether the term “decision” as found in sections 63 and 67 of the IRPA contemplates a decision not to issue permanent resident visas to foreign nationals where the Officer considered if the Public Policy applied or not.
- [51] Because administrative decision-makers receive their powers from statute, the governing statutory scheme may be the most salient aspect of the relevant legal context. The IAD did not address the IRPA’s governing statutory scheme. Neither did it try to interpret the scope of its authority as specified in the IRPA. In *Rebelo v Canada (Citizenship and Immigration)*, 2025 FC 1738, the Court found the absence of this type of analysis to be unreasonable (at paras 79, 95, citing *Vavilov* at para 108).
- [52] Without any analysis, it is therefore unclear how the IAD concluded that the IRPA must include an explicit right for the IAD to hear appeals of decisions to apply the Public Policy or not in refusals under paragraph 117(9)(d) of the IRPR.
- [53] I conclude that the IAD did not meaningfully engage with the specific language of its enabling statute.

- [54] Furthermore, the Applicant had explicitly submitted in his appeal that the IAD had jurisdiction to decide the appeal under the IRPA and provided statutory references. The Applicant equally referred to the IAD's role as a specialized tribunal, making it better suited to the task than the Federal Court. The Applicant argued that the IAD was empowered to consider "factual and legal issues".
- [55] Where the meaning of a statutory provision is raised by a party, the reasons must also demonstrate that the decision-maker was alive to this element (Vavilov at para 120). The IAD did not meaningfully engage with, nor address the Applicant's submissions on this question.
- [56] Both in written and oral submissions with respect to the issue of statutory interpretation, the Respondent repeats the proposition that the IAD "does not have the jurisdiction to "waive" or exempt the Applicant from the application of paragraph 117(9)(d) of the IRPR pursuant to the public policy as suggested by the Applicant and that a public policy can only be applied by a delegated IRCC officer under the authority of section 25.2 of the IRPA" (citing *Rosa v Canada (Citizenship and Immigration)*, 2019 CanLII 130768 (CA IRB) [Rosa]; *Limage v Canada (Citizenship and Immigration)*, 2022 CanLII 60774 (CA IRB) at para 10).
- [57] As such, the Respondent states that section 25.2 of the IRPA only gives delegated IRCC Officers the jurisdiction to apply the policy and does not give the IAD jurisdiction to consider these decisions by the delegated officer.
- [58] I am not persuaded by the Respondent's submissions.
- [59] The Respondent has cited *Rosa*, in support of its argument that the IAD cannot waive or exempt the application of paragraph 117(9)(d). In *Rosa*, the appeal involved a request that the IAD consider the appellant's eligibility to be exempt under the Public Policy. In that case, the appellant was essentially asking the IAD to act as an IRCC Officer and apply the Public Policy to his case, despite it not having been previously considered by the IRCC officer. The IAD found that the Public Policy did not apply to the appellant because his application was refused before the Public Policy start date and noted that it did not receive notice from the IRCC that a delegated officer had exempted the appellant through the application of the Public Policy. Accordingly, the IAD concluded that it had to apply paragraph 117(9)(d) and did not have the authority to "waive" it.
- [60] The IAD's inability to waive or exempt the application of paragraph 117(9)(d) based on the Public Policy as described in *Rosa* does not apply to the present judicial review. In the Applicant's case, he was not asking the IAD to apply the Public Policy to his family members' sponsorship application without first having raised it before a delegated officer. *Rosa* is distinguishable.

- [61] Furthermore, the purpose of section 25.2 of the IRPA is to permit the Minister to enact policies (such as the Public Policy) to exempt foreign nationals from criteria under the IRPA (*Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at para 105). It is also clear the Minister can also delegate the power to waive the application of some provisions of the IRPA based on the Public Policy he has enacted, in this case, to an IRCC officer. This is not at issue.
- [62] The Respondent submitted that in interpreting the IAD's jurisdiction, only the finding of ineligibility based on paragraph 117(9)(d) of the IRPA can be appealed to the IAD. The conclusion that the foreign national cannot be exempted from the consequence of paragraph 117(9)(d), pursuant to the Public Policy, cannot. Instead, that "separate" question would have to proceed directly to the Federal Court on judicial review. The Respondent conceded that this approach would create two different "streams" to challenge the same decision from the same decision-maker, which they explained was simply a result of the operation of the IRPA.
- [63] I cannot consider these arguments in assessing the reasonableness of the Decision. The Decision did not account for the consequences of the IAD's interpretation on its jurisdiction or Parliament's intention from its interpretation on the different challenge pathways.
- [64] The issue is that the IAD made a conclusory statement about its jurisdiction without further analysis, especially since it determined that part of the Decision was within its jurisdiction. Reasons that simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion will generally be unreasonable because they rarely assist a reviewing court with understanding the rationale for a decision. An entirely conclusory analysis will meet the same fate (*Sedoh v Canada (Citizenship and Immigration)*, 2021 FC 1431 at paras 21-22, citing *Vavilov* at paras 102-103, other citations omitted).
- [65] With respect, the Respondent's submissions attempt to buttress the IAD's Decision, and a reasonableness review does not permit either the Respondent or the Court to do so (*Mason* at para 101).
- [66] I also underline that the IAD did not have before it the fact that the Respondent had taken contradictory positions before the IAD and the FC Parallel Application. Before the IAD, the Respondent stated that the IAD did not have jurisdiction to hear the Applicant's appeal. In the FC Parallel Application, the Respondent challenged the ALJR stating that the Applicant's family members cannot access judicial review before the Court until they had appealed the decision before the IAD. I did not consider this fact in assessing the reasonableness of the Decision, as it was not before the IAD.
- [67] The IAD's analysis on its jurisdiction did not need to be extensive or formalistic. However, when administrative decision-makers interpret a legislative provision, they must show a genuine, non-tendentious, explicit, or implicit analysis of the text, context and purpose behind a legislative provision when interpreting it (*Jennings-Clyde (Vivatas, Inc.) v Canada (Attorney General)*, 2025 FCA 225 at para 11 [*Jennings-Clyde*], citing *Vavilov* at paras 119-123).

Reasons for a decision can be brief so long as reviewing courts can “connect the dots on the page” in assessing the reasonableness of a decision (Jennings-Clyde at para 18, citing *Komolafe v Canada (Citizenship and Immigration)*, 2013 FC 431 at para 11).

- (b) The IAD’s reference to two IAD decisions was not transparent nor justified [68] As noted previously, the Decision cited two IAD cases, *Konadu* and *Dairo*, in a footnote accompanying the finding that the IAD is “only required to apply paragraph 117(9)(d) to the facts of the appeal”. The Respondent submits that these citations, as well as the Respondent’s cited cases in their written submissions, justify the IAD’s Decision that it had no jurisdiction to consider whether the Public Policy was correctly applied.
- [69] It is well established that a decision-maker does not always have to engage in the explanation of a particular interpretation of a statute and can instead cite a rigorous and well-explained past interpretation (*Canadian National Railway Company v Canada (Transportation Agency)*, 2025 FCA 184 at para 47, citations omitted). However, this principle does not find application here.
- [70] The Applicant raised that it is unclear what the cited decisions purport to support. The Applicant argues that the decisions cited were applied neither to the facts of the case, nor to the parties’ submissions before the IAD.
- [71] For example, the IAD in *Dairo* adopted the IAD’s reasoning in *Fosu v Canada (Citizenship and Immigration)*, 2022 CanLII 16753 (CA IRB) in finding that the Public Policy does not set out a right of appeal to the IAD, and does not negate the fact that the right of appeal provided for in section 63(1) of the IRPA is limited to the sponsors of foreign nationals as members of the family class (*Dairo* at paras 8–10). The IAD in *Konadu* found that the right to appeal under section 63(1) of the IRPA did not extend the right to an appeal to a finding of non-eligibility for the Public Policy (at paras 10–17). Moreover, the Decision states that the Public Policy does not include a right of appeal to the IAD against eligibility decisions made under the Public Policy, restraining the IAD’s role to only the review of the application of section 117(9)(d) of the IRPR.
- [72] As the Supreme Court writes in *Pepa*, “[t]hrough failure to conduct a statutory interpretation analysis is not fatal on its own, where the case law available to the decision-maker is not sufficiently material or binding, the analysis cannot simply stop without ensuring that due consideration has been given, according to the modern principle of interpretation, to the competing interpretations asserted by the parties” (at para 85).
- [73] This is the case here. The IAD did not meaningfully engage with the applicable statutory provisions or the Applicant’s submissions on the legislative references to its jurisdiction. It then cited two IAD cases but did not explain how these two precedents are sufficiently material or binding. This is especially the case where the cited decisions essentially concluded that the Public Policy does not set out a right of appeal to the IAD. It is unclear how these precedents resolve the statutory question that was before the IAD or demonstrate that reliance on their holdings was reasonable (*Pepa* at para 68).

[74] Considering the above, the Decision lacks transparency, intelligibility and justification. I cannot find that the IAD was reasonable in the way it approached the statutory interpretation of its jurisdiction under the IRPA.

B. The Court declines to certify a question for the purpose of appeal [75] The Applicant seeks to certify a question under paragraph 74(d) of the IRPA. Although the Respondent objects to the certification of a question, the parties conferred with each other and agreed on the following language, if the Court were inclined to certify the question:

Where a family-class sponsorship is refused because the spouse or dependent children were ‘undeclared’ and therefore not examined at the time of the sponsor’s permanent residence application that results in these foreign nationals being excluded under paragraph 117(9)(d) of the Immigration and Refugee Protection Regulations, and where the decision-maker determined that the eligibility criteria were not met as per the conditions of the Consecutive Public Policy to Facilitate the Immigration of Certain Sponsored Foreign Nationals excluded under paragraph 117(9)(d) or 125(1)(d) of the Immigration and Refugee Protection Regulations issued under s. 25.2 of the Immigration and Refugee Protection Act that exempts certain undeclared family members from that exclusion, does the Immigration Appeal Division have jurisdiction to decide the applicability of the Public Policy?

[76] The criteria for certifying a question of general importance are summarized in *Obazughanmwun v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at paragraph 28:

- The question was dealt with by the court below and arises from the case rather than the judge’s reasons;
- The question is dispositive of the appeal;
- The question transcends the interests of the parties and raises an issue of broad significance or general importance; and,
- The question was not previously settled by the decided case law.

[77] The Applicant submits that the proposed question fulfills the established criteria for certification. Its answer transcends the parties, and the question of the interplay between appeals under subsection 63(1) of the IRPA and this Public Policy, has not yet been decided by the Court.

[78] The Respondent submits that the question should not be certified, on the basis that it is purely statutory, and its answer can already be found in the IRPA and the IRPR. They explain that an issue that need not be decided cannot properly ground a certified question (citing *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at 46).

[79] I disagree with the Respondent’s submissions. However, I cannot certify the question.

- [80] In *Canada (Public Safety and Emergency Preparedness) v Melo Leguizamo*, 2025 FC 1195 [Melo Leguizamo], the Court declined to certify a question on the IAD's statutory interpretation in similar circumstances. In that case, the Court found that the IAD did not expressly turn their mind to the statutory interpretation of the term "government" or establish a mandatory test. The Court's reasoning and analysis in *Melo Leguizamo* demonstrate the unreasonableness of the decision and the IAD's vague analysis. The IAD did not demonstrate such reasoning and analysis, and this absence is itself why that decision was found to be unreasonable. The applicant in *Melo Leguizamo* sought to certify questions calling upon the Court to answer questions that the IAD did not. The Court found that the questions were important and transcended the interests of the parties. However, the Court declined to certify the proposed questions, concluding that a certified question should be left for a case turning solely on this question of law (*Melo Leguizamo* at paras 65-66).
- [81] I adopt Justice Strickland's analysis in *Melo Leguizamo*. In the Applicant's case, the IAD's jurisdiction relating to appeals engaging a public policy exemption is an important question and transcends the interests of the parties. However, the issue in this application was whether the Decision concluding that the IAD did not have jurisdiction was reasonable. Similarly to the Court in *Melo Leguizamo*, I found that the IAD did not meaningfully engage in statutory interpretation or with the submissions that were placed before it. I made no determination on whether the IAD has jurisdiction or not. The Court cannot, on judicial review, pronounce itself on the statutory interpretation that the IAD did not undertake.
- [82] As such, this is not the appropriate application to certify the proposed question for an appeal to the Federal Court of Appeal (*Samli v Canada (Citizenship and Immigration)*, 2022 FC 928 at para 77).

VII. Conclusion [83] The Decision is unreasonable and therefore must be set aside. This matter is remitted to the IAD for redetermination by another decision-maker. The proposed question will not be certified.

JUDGMENT in IMM-17919-24

THIS COURT'S JUDGMENT is that:

1.The application for judicial review is granted. The IAD's decision is set aside, and this matter is remitted to another decision-maker at the IAD for redetermination, in accordance with these reasons.

2.No question is certified.

"Phuong T.V. Ngo"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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