



IAD File No. / N° de dossier de la SAI : VA7-01602

Client ID no. / N° ID client : 4460-3558

2008 CanLII 77943 (I.R.B.)

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Helene SPOMER	Appelant(e)(s)
Respondent	The Minister of Citizenship and Immigration Le ministre de la Citoyenneté et de l'Immigration	Intimé(e)
Date(s) and Place of Hearing	25 November 2008 Winnipeg, MB	Date(s) et lieu de l'audience
Date of Decision	25 November 2008 (rendered orally) 24 December 2008 (written decision)	Date de la décision
Panel	Douglas Cochran	Tribunal
Counsel for the Appellant(s)	R. Reis Pagtakhan	Conseil(s) de l'appelant(e) / des appelant(e)(s)
Counsel for the Minister	Leonard Offrowich Barrister and Solicitor	Conseil du ministre

Oral Reasons for Decision

[1] Helene SPOMER (the “appellant”) applied to sponsor David JANZEN, Katharina JANZEN, Katharina JANZEN Junior, Angelika JANZEN, and David JANZEN Junior (the “applicant’s”) from Germany as members of the family class and was refused by the visa officer pursuant to subparagraph 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations* (the “*Regulations*”)¹ as the combined income for herself and her husband, as co-sponsor, did not meet the Minimum Necessary Income (the “MNI”) requirements.

[2] As the appellant has five children of her own, the number of people covered by the MNI requirements is 12. The combined income of the appellant and her husband is less than half of what is required by the *Regulations*.

[3] The appellant acknowledged the legal validity of this refusal, but seeks the exercise of my discretion to allow the appeal should I find that, taking into account the best interests of a child directly affected by the decision, there are sufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of the case.

[4] The appellant was landed in Canada in 2001 and she presently has four siblings who are permanent residents and who are living and working in close proximity to her. This is not by accident, but as a result of the determination by the extended Janzen family, while living in a close community setting in Germany, to relocate to Manitoba. They all live in or about the area of Steinbeck, Manitoba.

[5] Presently, all the applicants are in Canada, and David and Katharina Senior, are each on a three-year work permit. David Janzen is currently working with the appellant’s husband in his plumbing business and earning an income of \$14 per hour as a gas fitter, which is his profession.

[6] Amongst the appellant’s siblings and herself, there are 22 grandchildren, all of whom are Canadian citizens. The evidence before me establishes that the extended family is extremely

¹ *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.

close knit, the bonds formed by living, working, socializing together and sharing religious worship, which is an important part of their identity.

[7] David and Katharina Janzen Senior have close ties to Canada given their many children and grandchildren, as well as the fact that David works in Canada and is entitled to do so over the next three years. Katharina Senior will likely soon be working in Canada as well. They own the home that they live in with the appellant and her family, a property worth approximately \$260,000 (Cdn), which is mortgage free.

[8] Given the substantial shortfall that the appellant has in terms of the MNI requirement, this is an extremely important consideration as it goes a long way to bridging a gap between their actual cost of living and the shortfall in the MNI.

[9] In addition to the above, virtually all of the appellant's siblings have committed themselves to providing whatever support may be required to aid the applicants in establishing themselves in Canada. The appellant's sister, Katharina Junior, has completed a three-year nursing diploma in Germany and worked there briefly before coming to Canada. She is apparently in the process of obtaining permission to work as a nurse in Manitoba. The applicant, Angelika Janzen, the appellant's other sister, has lived with the appellant in Canada for two years, helping care for her young children and the sisters' grandparents. She is well established here doing church and community volunteer work.

[10] There is a document in relation to Katharina's work as a nurse, which supports the demand for nurses or caregivers in Manitoba, and I conclude that within a reasonable time, she will likely be contributing to the support of the applicants.

[11] Mr. Janzen has a significant pension and his wife a smaller one from Germany, which is only an entitlement at this stage. He will not be eligible to receive this pension for approximately eight years. He has not ever relied on social assistance, even though he immigrated to Germany from Russia, and does not know of any members of his family who have relied on social assistance either in Canada or elsewhere.

[12] I will comment briefly on David Janzen Junior, who is autistic. Presently, there has not been a medical refusal in relation to him and I have not considered his circumstances on the basis of a medical refusal. I have heard evidence that his needs can be addressed by this family and would not add significantly to the cost of maintaining the family unit.

[13] The applicants are already well established in Canada, have a house that is mortgage free, \$22,500 in savings, and an additional 7,000 Euros set aside to purchase a vehicle. They have an enormously wide and supported extended family unit in the community they are currently living in, Steinbeck, Manitoba.

[14] In relation to the best interests of children, there are a multitude of children to consider in this matter, at very least, the 22 grandchildren who were referred to earlier in these reasons. I consider that it is very substantially in their best interest for them to have their grandparents close at hand. I was impressed by the documentary evidence that shows a very tightly knit, loving and supportive family unit in the Janzen clan.

[15] Notwithstanding that there is a very large gap between the income available to the appellant to sponsor the applicants and the MNI, I have determined that there are sufficient humanitarian and compassionate considerations, in particular, taking into account the best interests of children affected by this decision, to warrant the granting of special relief in light of all the circumstances of the case, and the appeal is therefore allowed.

[Edited for clarity, spelling, grammar and syntax]

NOTICE OF DECISION

The appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and the officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

(signed)

"Douglas Cochran"

Douglas Cochran

24 December 2008

Date (day/month/year)