Immigration and
Refugee Board of Canada

Immigration Appeal Division

Commission de l'immigration
et du statut de réfugié du Canada

Section d'appel de l'immigration

IAD File No. / N° de dossier de la SAI: VB4-02589

Client ID no. / N° ID client: 6178-4867

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Jannet KIADII	**Appelant(e)(s)**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	January 11, 2016	**Date(s) de l'audience**
Place of Hearing	Calgary, AB	**Lieu de l'audience**
Date of Decision	April 16, 2016	**Date de la décision**
Panel	Lynne Cunningham	**Tribunal**
Counsel for the Appellant(s)	Manjit Walia Barrister and Solicitor	**Conseil(s) de l'appelant(e) / des appelant(e)(s)**
Designated Representative(s)	N/A	**Représentant(e)(s) Désigné(e)(s)**
Counsel for the Minister	Colleen O'Bertos	**Conseil du minister**

Canada

REASONS FOR DECISION

[1] These are my reasons and decision in the appeal of Jannet KIADII (the "appellant") who appeals the refusal to approve the permanent resident visa application of her husband David Momo PAASEWE (the "applicant") who applied to immigrate to Canada as a member of the family class.

[2] This couple claim to have been married in Sierra Leone on July 16, 2011 and the appellant subsequently filed an application to sponsor her husband for immigration to Canada. A visa officer in Accra, Ghana interviewed the applicant on August 30, 2012. It was following that interview that the visa officer refused his application to immigrate to Canada pursuant to section 4(1) of the *Immigration and Refugee Protection Regulations* (the "Regulations")[1] on the grounds that the visa officer concluded the marriage is not genuine and had been entered into by the applicant primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act* (the "Act").[2]

[3] Section 4(1) of the Regulations provides as follows:

> **4(1) Bad Faith** – For the purposes of these regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership
>
> (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or,
>
> (b) is not genuine.

[4] The appellant appealed the decision of the visa officer and an Immigration Appeal Division (the "IAD") hearing date was scheduled for February 2, 2015. At the commencement of the hearing, the representative for the Minister of Citizenship and Immigration (the "respondent") applied to add a ground of refusal for section 117(9)(d) of the Regulations. The appellant did not oppose and the application was granted. However, the appellant's counsel indicated that he was not prepared to proceed on that ground of refusal, so his application to

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[1] *Immigration and Refugee Protection Regulations* (the "Regulations"), SOR/2002 – 227.
[2] *Immigration and Refugee Protection Act* (the "Act"), S.C. 2001, c. 27.

postpone the hearing was also granted. A subsequent hearing was scheduled and heard on January 11, 2016.

[5] The relevant section of 117(9) of the Regulations provides as follows:

> **117(9)** Excluded relationships – 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.

[6] In order for a foreign national to be caught by section 4(1) of the Regulations, the preponderance of reliable evidence must demonstrate that the marriage is not genuine or was entered into primarily for the purpose of acquiring a status or privilege under the Act. Similarly, the appellant must demonstrate on a balance of probabilities that she was not required to declare the applicant as a non-accompanying family member at the time the appellant made an application for permanent residence and became a permanent resident. The onus is on an appellant to demonstrate that the applicant is not caught by the excluding provisions of the Regulations.

[7] The visa officer was concerned that three different stories had emerged regarding the nature of the appellant and applicant's relationship. During the interview with the appellant's mother for permanent residence in 2009, her mother indicated the appellant was single and that the applicant had raped the appellant twice, which resulted in two pregnancies and two children born in 2004 and 2006. Shortly after the appellant's arrival in Canada, she applied to sponsor the applicant as a spouse in the one-year window of opportunity program available to refugees. The visa office denied the application because up to that point in time, the applicant had only been identified as the appellant's rapist in her application to come to Canada, not her spouse. The visa office was concerned about the appellant's safety. In January 2012, the appellant applied to sponsor the applicant to Canada as a member of the family class. On August 30, 2012, the visa officer interviewed the applicant, who denied that he had raped the appellant and stated that he and the appellant had a family traditional wedding/dowry in 2003 or 2004 and that their

relationship had been ongoing since 2003 before their first child was born. When the visa officer informed the applicant that the appellant's family had stated he had raped the appellant, he denied the allegation. Within a few days of the interview with the visa officer and prior to the refusal letter being issued, the appellant wrote a letter indicating that she was never raped by the applicant, that her real date of birth is November 10, 1982, and that she and the applicant were consenting adults when they had sexual relations. The visa officer was also concerned that the appellant's date of birth as stated on her application for permanent residence and her passport indicated that she was born on November 10, 1987. Based on information gathered from documentary evidence, the previous applications and at the interview of the applicant, the visa officer refused the sponsorship application, indicating that the concerns about the allegations of rape made against the applicant in 2009 and the safety of the appellant and her children in Canada remained unresolved. The appellant contends that the decision of the visa officer was incorrect, that she was not legally married until 2011 and that her marriage to the applicant is genuine and she asked that her appeal be allowed. After hearing the oral testimony of the appellant and applicant, the respondent did not address the genuineness or the primary purpose of the marriage, but contends that the applicant is caught by the excluding provision of section 117(9)(d) of the Regulations. On this ground, the respondent asked that I dismiss the appeal.

[8] In reaching my decision, I considered the Record and additional materials provided by the respondent[3] and the appellant,[4] the testimony of the appellant and applicant, and the written submissions of counsel for the appellant and respondent.

BACKGROUND

[9] By way of background, the appellant was born in Liberia. She was the oldest child in a large family that had fled from Liberia to a refugee camp in Sierra Leone with their parents. In July 2009, the appellant's mother was interviewed by an officer to determine their refugee claim.

[3] Exhibit R-1.
[4] Exhibit A-1, A-2, and A-3.

The following are excerpts from the notes[5] taken at the time of the interview. It should be noted that Principal Applicant ('PA') refers to the appellant's mother.

> The PA and her husband are also stressed and concerned as a result of the rape of their daughter Jannet which was possible while absent of the camp for traditional treatment, as this further increases the PA's sense of inability to protect herself or her children from violence. In addition, Jannet was kidnapped in the camp and exposed to human trafficking…
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> In addition, the PA's daughter has been kidnapped and raped in her country of asylum, resulting in the birth of two children, an experience which enhances the reluctance of the PA and her family to settle in Sierra Leone…
>
> In addition, PA states that in 2003, while in Jembe camp, her daughter Jannet was kidnapped by a Guinean woman, Aminata Donzo, who took her to Conakry and intended to sell her. Through the Sierra Leone Police and UNHCR intervention, Jannet was traced to Conakry and handed over to her parents a few months after her kidnapping. That same year Jannet was raped by a fellow refugee. The matter was referred to Police and the rapist was summoned by the police. He however escaped from the threat of detention. Meanwhile Jannet became pregnant as a result of the rape and gave birth to PA's grand son. As PA and her husband were absent most of the time on medical treatment, she discovered that Jannet was pregnant for the second time in 2005. She gave birth to her second child in 2006. Jannet revealed that it was the same man who was also the father of her daughter. He returned to Liberia in 2005 according to the man's parents and PA cares for her grand children.

The appellant's mother identified David Paasewe with the date of birth as January 1, 1983 as the father of her grandchildren and stated that he had presumably returned to Liberia in late 2005 and his whereabouts were unknown.

[10] By June 2010, the appellant had submitted a request for processing family member, David Paasewe with the date of birth of January 1, 1983 under the one-year window of opportunity provisions. A Citizenship and Immigration Canada officer contacted the visa office in Accra to ask whether David Paasewe was eligible for consideration under that program.[6] The visa officer responded:

[5] Record, p. 56-57.
[6] Record, p. 59.

> Considering that Janet has been processed as the dependent of her parents as a single mom with 2 children and that those children were born after she had been raped by PAASEWE, David who went back to Liberia in 2005. PAASEWE, David does not qualifies under the OYW program. He has never been considered as being part of this family.

The application was denied.

[11] In 2011, the appellant went to Sierra Leone and celebrated and registered a marriage to David Paasewe on July 16, 2011. She returned to Canada in August 2011 and submitted a sponsorship application for her husband on January 20, 2012.

[12] The applicant was interviewed by a visa officer in Accra, Ghana on August 30, 2012. The visa officer confronted the applicant about the allegations of raping the appellant.[7] His response is recorded as follows:

> Our families got together. We got together and she got pregnant. That's not true. We are married. When did you get married? July 2011. Your wife attempted to have you processed under the one year window program in 2010 as her spouse. How could she do that if you were not married until 17 July 2011? Well in 2003/2004: We had a family traditional wedding/dowry. You bring yourself to the family and a token as I was involved in the pregnancy. From there the family knew me. It wasn't a big ceremony with pictures. It was our 2 families that got together with their 2 children (SPR and PA) to have an understanding. So in 2003/2004 you were considered a married couple? Yes, traditionally we were married.

[13] The appellant wrote a letter to Citizenship and Immigration Canada Processing Centre immediately after the applicant's interview on August 30, 2012, stating the following:[8]

> My husband had an interview today (August 30th, 2012) at Ghana, Accras Consulate office and was accused of raping me during the time I was dating him. I would like to inform you that this is false accusation and we both are adults and I gave consent to have sexual relationship with him.
>
> I was born on November 10, 1982. I was 21 years old when I was dating my husband David Momo Paasewe. My parents did not allow me to marry him at that

[7] Record, p. 27.
[8] Record, p. 43.

> time because we were in the processing of resettling in Canada and they do not like him. We have 2 children together…

[14] The visa officer took the appellant's letter into consideration before refusing the sponsorship application.

ANALYSIS

[15] At the IAD hearing, there was little testimony regarding the genuineness and the primary purpose of the marriage. However, based on the documentary evidence that was tendered, it appears that the appellant and applicant's names are indicated as the parents on birth certificates of two children born in 2004 and 2006.[9] The appellant provided ample documents to demonstrate that there is continual communication between them and several money transfers from the appellant to the applicant. Furthermore, based on the applicant's immediate response of denial to allegations of rape and the appellant's testimony that she was an adult and consented to having sexual relations with the applicant that resulted in the birth of two children, I find that on a balance of probabilities, they are in a genuine marital relationship. Given the date of the legal marriage in 2011, after the appellant had had two children with the applicant and came to Canada, the primary purpose of the marriage in 2011 is questionable. Nevertheless, because the appellant chose to focus her testimony on regulation 117(9)(d) and the respondent asked that I dismiss the appeal on the ground of refusal for regulation 117(9)(d), I will concentrate my reasons on that ground.

[16] According to their testimony, the appellant and applicant were both high school students while living in the Jembe refugee camp in Sierra Leone. The appellant testified that she met the applicant in 2003 and the applicant proposed that they be boyfriend/girlfriend. The appellant accepted and they began dating. The appellant became pregnant and gave birth to their son. The appellant testified that she continued to live with her parents. She stated that her parents did not like the applicant because he had no means of supporting her and the child. Nevertheless, she conceded that together with his parents, he came to the appellant's home to accept responsibility

[9] Exhibit A-3.

for the pregnancy. Although she was adamant that this gathering was not a marriage and that there was no agreement to marry, I found her testimony to be somewhat vague. She indicated that her parents were angry when she became pregnant and that the applicant said that he wanted to bring his parents to meet her family. Then she changed her answer and stated that her parents asked his name, if he had family and demanded that he come to them with his family. At the meeting, they were angry and then his parents left.

[17] The appellant testified that after her son was born, the applicant would spend a great deal of time with the child at her house, but insisted that he never lived in her home. She also stated that she was not allowed to be in the same room with him when he came to the house. She stated that the applicant lived by himself in the Jembe camp and his parents lived in a camp that was five or six hours travel time away. Nevertheless, his mother would often take the bus and bring the appellant groceries. The appellant testified that because her parents did not like the applicant, her mother advised the officer that the applicant had raped her. However, I note that the appellant also wrote in her letter that her parents did not allow the appellant to marry the applicant because they were being processed for resettlement in Canada. At the hearing, the appellant failed to address that she benefitted by the misrepresentation. If the relationship with the applicant had been known, she would not have been considered a dependent of her mother.

[18] The applicant's testimony about his relationship with the appellant's family was different. He testified that he was accepted by the appellant's parents and they have always gotten along. Although he was adamant that he did not live with the appellant, he stated that he would go to the appellant's home on a daily basis to visit the child and take money and food. He did not indicate that the appellant was not allowed to see him as the appellant had stated. He testified that he lived with his parents in the same camp, only 5 or 6 minutes away from the appellant's home and his parents would frequently visit the appellant's parents. He stated that although he never had sexual relations with the appellant at her parent's home, they frequently had sex at his home where the appellant was always welcome or they would meet at friends' homes.

[19] The applicant testified that the ceremony in 2003 or 2004 was not large and they did not take photographs. The applicant testified that when they became girlfriend and boyfriend in

2003, he was exclusively dating the appellant. On the balance of probabilities, this couple were seen by the community to be married. They were exclusively seeing each other and engaging in sexual relations. They had two children in less than two years. She also stated that she was not aware that her mother had told the officer that David Paasewe had raped her twice. However, I do not find this to be credible. Given the serious nature of the allegations of rape and the likelihood that the officer would place importance on this sort of information, I find it difficult to imagine that the appellant's mother would allow the appellant to be interviewed by an officer without first advising her that she had alleged to the officer or was planning to allege that the applicant had raped her. The appellant testified that she was interviewed in 2009 by an officer, but she failed to mention anything to the officer about the applicant because she was too nervous. I do not find it credible that given her intention to live in Canada with the applicant and her two children as a family unit that she was simply too nervous to mention this to the officer. Within a few weeks of her arrival in Canada, she applied to process the applicant as a spouse under the one-year window of opportunity program. I note that on the application for that program, the form indicates only four eligible relationships: spouse, common-law partner, and two classes of children. On balance, I find that since the traditional ceremony in 2003 or 2004, this couple were in a marital relationship.

[20] At hearing, the applicant testified that he was denied entry to Canada under the one-year window of opportunity program because they were not legally married. However, the notes of the visa officer indicate that he was denied because he was not considered a member of the family class at the time the appellant was granted permanent resident status. His name was only referred as the father of the appellant's children and as the perpetrator of rapes against the appellant. Not only did the appellant fail to advise the officer that she was in a relationship with the applicant, but she also failed to declare the applicant as a dependent when she arrived in Canada. I find that on a balance of probabilities, this couple were in a marriage relationship prior to the appellant's application for permanent residence and the applicant was not examined at the time of her application to Canada. The legal marriage in 2011 was only for the purpose of immigration because other avenues for the applicant's entry to Canada had been denied.

[21] I am also not persuaded by the appellant's testimony regarding her date of birth. The application for permanent residence in Canada indicates that the appellant was born in November 1987 and the Computer Assisted Immigration Processing System (CAIPS) notes taken by the officer in Freetown, Sierra Leone on July 22, 2009 at the International Office of Migration records the appellant's date of birth as November 1987. The appellant's passport indicates her birthdate as November 1987. The appellant wrote a letter, an affidavit and testified that her actual date of birth is November 1982. She stated that her mother took control of her passport and she did not notice that the birthdate was incorrectly recorded on the documents until after the applicant was interviewed by the visa officer in August 2012. Regardless whether her mother kept the family's documents, it was the appellant who indicated that she began living independently of her mother within a month of her arrival in Canada in March 2010. It was the appellant who applied to bring the applicant to Canada under the one-year window of opportunity provisions and she was also responsible for submitting an application to sponsor her husband to Canada in January 2012 after she had travelled to Africa, likely using that passport. The appellant is articulate, she is fluent in English and was sufficiently educated to read and write English. Even if she relied on a consultant to assist with submitting the application, it was her responsibility to ensure the information was correct. It was also troubling that even though she testified that she was unaware that her mother had reported her date of birth as 1987, she spontaneously testified that her birthdate was 1987 before correcting herself. In the end, it is not clear to the panel what the appellant's correct date of birth is, but even if her correct date of birth is 1982, I am not persuaded that the appellant was not aware of a plan to incorrectly report it. The date of birth was likely altered to 1987, which would have made her under 22 years old at the time of the refugee claim in order for her to come to Canada as a dependent. Being over 21 years and married would have disqualified her as a dependent. Clearly, she benefitted by the misrepresentation to the officer.

[22] The appellant came to Canada accompanied by nine other family members and two other family members joined them shortly afterward under the one-year window of opportunity provisions. It is likely that the appellant's mother developed the story about the appellant's rape by the applicant in order to include the appellant as a dependent on her application in a desperate measure to keep as many of the family members together as possible. The appellant should not

be held responsible for her mother's statements. Nevertheless, I find it is not credible that the appellant was not aware of her mother's statements. The applicant's testimony was spontaneous regarding the relationship of his family with the appellant's family after the ceremony in 2003 or 2004 and his ongoing involvement with the appellant and their children since their births. He told the visa officer that they and the community considered them to be married after the dowry/marriage ceremony in 2003 or 2004. I also find that despite their testimony that they were not living under the same roof prior to the appellant's entry to Canada, they were married and only completed another ceremony in 2011 for the purpose of immigration because other avenues to bring the applicant to Canada had failed. If it was only nerves that prevented the appellant from disclosing her relationship with the applicant during her interview with the officer, as she testified, then she should have notified the visa officer prior to coming to Canada or at the port of entry about her marriage to the applicant, so that the applicant could be examined. It is not clear to the panel if the appellant would have been excluded as a dependent on her mother's application to Canada. Nevertheless, the appellant failed to declare the applicant, he was not examined, and therefore he is excluded as a member of the family class in relation to the appellant for the purpose of immigration pursuant to section 117(9)(d) of the Regulations.

[23] I find that on the balance of probabilities, this couple were married in 2003 or 2004, the marriage is genuine and the appellant failed to declare the applicant as a dependent at any time during the application process for immigration, including advising the port of entry officer upon her entry to Canada. I find that the 2011 marriage was celebrated only for the purpose of facilitating the applicant's entry to Canada. The applicant, David Momo PAASEWE, falls within the section 117(9)(d) exclusionary provision. The appeal of Jannet KIADII is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Lynne Cunningham"**

Lynne Cunningham

April 16, 2016

Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.