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 : VB2-00093

Client ID no. / N° ID client : 5247-8469

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Rita MAGLANQUE	**Appelant(e)(s)**
and		
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	May 7, 2013	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	May 27, 2013	**Date de la décision**
Panel	Erwin Nest	**Tribunal**
Counsel for the Appellant(s)	Khushpal Taunk 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	David Macdonald	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] Rita MAGLANQUE (the "appellant") appeals from the refusal of the sponsored application for a permanent resident visa in Canada for her daughter, Mylyn MAGLANQUE (the "applicant") from the Philippines. The application was refused because, the visa officer concluded the applicant is excluded from the family class by operation of paragraph 117(1)(b) of the *Immigration and Refugee Protection Regulations* (the "*Regulations*")[1] in that she does not meet the definition of a "dependent child" as described in the *Regulations.* The visa officer relied on the subsections 11(1) and 12(1) of the *Immigration and Refugee Protection Act* (the "*Act*")[2] in making the determination.

[2] *Regulation* 117(1)(b) provides that:

> **117(1)** A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is
>
> (b) a dependent child of the sponsor

[3] *Regulation* 2 provides as following:

> **2.** The definitions in this section apply in these Regulations.
>
> "**dependent child**", in respect of a parent, means a child who
>
> (a) has one of the following relationships with the parent, namely,
>
> (i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or
>
> (ii) is the adopted child of the parent; and
>
> (b) is in one of the following situations of dependency, namely,
>
> (i) is less than 22 years of age and not a spouse or common-law partner,
>
> (ii) has depended substantially on the financial support of the parent since before the age of 22 — or if the child became a spouse or common-law partner before the age of 22, since becoming a spouse or common-law partner — and, since before the age of 22 or since becoming a spouse or common-law partner, as the case may be, has been a student

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

> (A) continuously enrolled in and attending a post-secondary institution that is accredited by the relevant government authority, and
>
> (B) actively pursuing a course of academic, professional or vocational training on a full-time basis, or
>
> (iii) is 22 years of age or older and has depended substantially on the financial support of the parent since before the age of 22 and is unable to be financially self-supporting due to a physical or mental condition.

[4] Subsection 11(1) of the *Act* provides:

> **11(1)** A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

[5] Subsection 12(1) of the *Act* provides:

> **12(1)** A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

[6] Through the fairness letter from the Visa Section, the Embassy of Canada in the Makati City, Philippines, dated July 8, 2011, the appellant and the applicant were informed about the visa officer's concerns with respect to the applicant's eligibility to meet the definition of a "dependent child" as defined in the *Regulations.* The letter asked for submissions to address the specific concerns raised by the visa officer. The application was refused because after review of the materials submitted by the applicant in support of her application, the additional submissions and the information she provided during the interview, the visa officer concluded the applicant's psychological condition does not prevent her from becoming financially independent. The visa officer concluded the applicant is not a person described in the paragraph 2(b)(iii) of the *Regulations*; therefore, she is not a member of the family class.

[7] It was also determined that humanitarian and compassionate considerations, taking into account the best interests of a child directly affected by the determination, are insufficient compelling to warrant special consideration or justify an exemption from any applicable criteria or obligation under the *Act.*

[8] The appellant and her daughter Margie Maglanque testified at the hearing. Documentary material filed by the appellant reflects her ongoing contact with the applicant and her family's financial support to the applicant; her return visits to the Philippines and her continuing support of the applicant over time, as well as Dr. Tiffany Uy-Ponio's report dated October 24, 2012 attached with Official Receipts; Dr. Ronald Talens' report dated November 29, 2012; copies of the bank books of BDO Peso Savings; copies of the money transfer receipts of LBC Mundial Remitt; copy of the Payment Order Form of Omnex Group; copies of the money transfer slips; copy of the electronic ticket passenger itinerary receipt with stamped passport page attached; copy of passport of Maribeth Reyes and a copy of the application form of Topline Manpower Services.

ANALYSIS

[9] I have considered all the testimony adduced at the *de novo* hearing, the contents of the Record, the appellant's disclosure and the oral submissions from the counsel for the appellant and from the Minister's counsel.

[10] I found the appellant credible. She testified in a clear and straightforward manner. She was spontaneous and detailed in her responses to questions.

[11] Based on the two psychiatric certificates, from Dr. Tiffany Uy-Ponio and one from Dr. Elizabeth Espinosa-Rondain, and a letter from Everlita G. Baluyut, RSW, Social Welfare Officer III, Office of the Municipal Social Welfare and Development Office, Municipality of San Simon, Republic of the Philippines, the applicant was diagnosed with Bipolar Affective Disorder with Psychotic Features at the age of 12.[3]

[12] According to the medical officer's notes, the applicant was diagnosed with Bipolar Disorder-Manic Depressive Psychosis Mood Disorder.[4]

[3] Record, pages 48-58.
[4] Record, page 51.

[13] The Minister's counsel conceded the applicant, who is 41 years old at present, has depended substantially on the financial support of her parents since before the age of 22.

[14] There is unrebutted evidence before me, to conclude, on balance of probabilities, Maribeth Reyes, the applicant's younger sister, left her employment in Hong Kong to return to the Philippines to look after the applicant, after their parents immigrated to Canada in December 2005.

[15] Based on all the evidence before me, I find it is more likely than not the applicant is unable to be financially self-supporting due to her physical or mental condition.

[16] In coming to this conclusion, I have taken into consideration the following factors:

- the applicant has never lived independently, without the supervision or care of her immediate family member;
- she worked periodically as a store clerk, lasting no more than a week on a job at most, due to her mental condition. She assisted her younger sister in running a convenience store located in the appellant's family home in the Philippines. However, the preponderance of reliable evidence in this case does not establish the applicant has ever worked independently since before the age of 22 or she has ever received remuneration for her work;
- the applicant is unable to function, and she faces the issues the people with bi-polar disorder are coping with when she goes off medication.

[17] I accept the opinion of Dr. Ronald C. Talens, Attending Neurologist and Psychiatrist, certificate dated November 29, 2012,[5] recommendations as follows:

> . . . At present, Mylyn can do simple but not complex house chores. She is unable to secure a job because of her rapid cycling manic episodes with symptoms of psychosis. She is dependent on her family members for the emotional, financial and material needs. She must have regular supervision from her family. . . .

[5] Exhibit A-1, pages 8-10.

[18] In my view, Parliament has expressly turned its mind to the situation of a child's dependency on substantial financial support of his/her parents and his/her inability to be financially self supporting as a result of the disability.

[19] Based on all the evidence before me, I reject the visa officer's view suggesting the applicant "has no mental or cognitive impairment and is in fact equipped with average life skills that allow her to lead a productive life."[6] I find it is more likely than not the applicant cannot support herself independently and lead a normal life due to her mental condition.

[20] The Minister's counsel submitted a case law in support of his position seeking to dismiss the appeal because in his view, the applicant is not a member of a family class but it was not helpful as the case cited can be distinguished on facts.

[21] Based on the totality of evidence before me and on the balance of probabilities, I find that the appellant meets the onus of establishing the applicant is a person described in the paragraph 2(b)(iii) of the *Regulations,* therefore, the applicant is a member of the family class.

CONCLUSION

[22] The decision appealed is wrong in law. The appeal is allowed.

[6] Record, page 86.

NOTICE OF DECISION

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

(signed) **"Erwin Nest"**

Erwin Nest

May 27, 2013

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.