Federal Court  Cour fédérale

Date: 20150428

Docket: T-1790-14

Citation: 2015 FC 555

Ottawa, Ontario, April 28, 2015

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

CRISTETA L. DELA ROCA
AGAPITO MANALO DELA ROCA
JAMES RUSSEL DELA ROCA
MAC MARLO DELA ROCA
JOSEPH MARI DELA ROCA
JULIUS STEPHEN DELA ROCA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In 2005, Cristeta L. Dela Roca and her husband Agapito Manalo legally adopted her brother's four sons in the Philippines. They are: Mac Marlo born in 1988; Joseph Mari born in 1990; James Russel born in 1992; and Julius Stephen born in 1994.

[2] Mrs. Dela Roca and her husband first tried to bring their four adopted sons to Canada as members of the family class in accordance with the *Immigration and Refugee Protection Act* [IRPA] and Regulations thereunder. The visa applications were denied and Mrs. Dela Roca's appeal to the Immigration Appeal Division [IAD] of the Immigration and Refugee Board was dismissed. They did not apply for leave and judicial review of that decision.

[3] The *Citizenship Act* has been amended so that adopted children need not become permanent residents before applying for citizenship. They applied. However, their applications were denied as the citizenship officer was not satisfied that the adoptions were in their best interests, that a genuine relationship of parent and child was created and that the adoptions were not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship. As such, the requirements of s. 5.1 of the *Citizenship Act* were not met. This is the judicial review of that decision.

[4] Although there were four separate appeals under Court docket numbers T-1790-14, T-1791-14, T-1792,-14 and T-1793-14, by order dated 26 January 2015, they were consolidated under the lead file T-1790-14, and the style of cause was amended so that the adoptive parents and all four adopted sons are shown as applicants.

I. Judicial Review Dismissed

[5] As I am of the view that it was reasonably open to the citizenship officer to determine that the adoption was entered into primarily for the purpose of acquiring a status or privilege in relation to citizenship, this judicial review is dismissed. Consequently, it is not necessary to

discuss in any detail whether the adoptions were in the best interests of the children and whether a genuine relationship of parent and child was created.

II. Analysis

[6] Mrs. Dela Roca's brother and his wife, the birth parents of the four boys, and the four boys themselves, were all interviewed by the visa officer in 2007. The officer's notes are quite detailed. Apart from establishing that daily life continued just as it had before, with the birth parents and their children continuing to live under the same roof, the birth parents and the four boys are reported to have said that the boys would enjoy a better life in Canada. The visa applications were denied as the officer was not satisfied that the adoption was not entered into primarily for the purpose of acquiring a status or privilege under IRPA. The officer's notes record the following exchanges at the interview:

> Do you know why your spr want to adopt the 4 of you? Yes. Why? So that we can have a better future. Do you think you will have a better future if you are in cda? Yes. Because the govt supports students there. Because they can support all our needs. We can find jobs there.
>
> …
>
> Your children wants to be adopted by the spr? Yes. Why? Because they know that they will have a better future there. They want to go to cda.

[7] Mrs. Dela Roca, a Canadian citizen, appealed to the IAD. Apart from herself, she only called one of her adopted sons as a witness, Joseph Mari. He was found not to be credible in that he was trying to retreat from what he had said to the visa officer the year before, particularly as regards living arrangements with his birth parents. The appeal was dismissed, again on the

grounds that the primary purpose was to gain status or advantage under IRPA and that the adoption did not create a genuine parent-child relationship.

[8] As mentioned above, no application for leave and judicial review of that decision was filed.

[9] In 2007, the *Citizenship Act* was amended to add section 5.1, subsection (1) of which reads:

5.1 (1) Subject to subsections (3) and (4), the Minister shall, on application, grant citizenship to a person who was adopted by a citizen on or after January 1, 1947 while the person was a minor child if the adoption	5.1 (1) Sous réserve des paragraphes (3) et (4), le ministre attribue, sur demande, la citoyenneté à la personne adoptée par un citoyen le 1er janvier 1947 ou subséquemment lorsqu'elle était un enfant mineur. L'adoption doit par ailleurs satisfaire aux conditions suivantes :
(*a*) was in the best interests of the child;	*a*) elle a été faite dans l'intérêt supérieur de l'enfant;
(*b*) created a genuine relationship of parent and child;	*b*) elle a créé un véritable lien affectif parent-enfant entre l'adoptant et l'adopté;
(*c*) was in accordance with the laws of the place where the adoption took place and the laws of the country of residence of the adopting citizen; and	*c*) elle a été faite conformément au droit du lieu de l'adoption et du pays de résidence de l'adoptant;
(*d*) was not entered into primarily for the purpose of acquiring a status or privilege in relation to	*d*) elle ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à

immigration or citizenship.	l'immigration ou à la citoyenneté.

[10] The citizenship officer relied heavily on the notes taken by the visa officer in 2007. In addition, new evidence by way of affidavit was rejected as being after the fact and self-serving.

[11] It was submitted that the visa officer's notes should not have been taken into consideration at all because:

a. there was no affidavit from the officer who took the notes;

b. the four boys, three of whom were still minors in 2007, were interviewed together;

c. part of the interview was in English, even though the four boys only had a tenuous grasp thereof;

d. there was no interpreter present; and

e. the notes were inaccurate in some respects.

[12] The citizenship officer was quite entitled to take into consideration the visa officer's notes and the decision of the IAD. There is no requirement that they had to be accompanied by an affidavit. Issues of procedural fairness in respect of the 2007 interview should have been raised before the IAD and were not. It is quite improper to raise them before this Court several years later (*Uppal v Canada (Minister of Citizenship and Immigration)*, 2006 FC 338 at para 52).

[13] The citizenship officer had issued a fairness letter stating that she was not satisfied that the adoptions were in the children's best interests, that a genuine relationship of parent and child was created and that the adoptions were not entered into primarily for the purpose of acquiring status or privilege in relation to immigration or citizenship. The applicants were given an opportunity to address those concerns. Although they now say the letter was procedurally unfair in that it was too vague, they did file further evidence, rather than request particulars.

[14] It was not unreasonable for the citizenship officer to discount the affidavits on the basis that they were after the fact (obviously, after the 2007 interview) and self-serving. Clearly, the four sons wish they had not said what they did in 2007.

[15] The applicants have been backtracking ever since.

[16] I might well have come to a different conclusion had the only two grounds for refusing citizenship been the best interests of the children and whether or not a genuine relationship of parent and child was created.

[17] Mrs. Dela Roca takes strong issue with the officer's view that she only did what a loving and generous aunt would do. She says she did far more, and she may well be right. However, what could she do as an adoptive mother which she could not do as an aunt? The answer is straightforward – bring her adopted sons to Canada!

[18] It was not unreasonable for the citizenship officer to form the view that the adoptions were primarily for the purpose of gaining status or privilege in relation to citizenship. As citizens, the four sons could have come to Canada, and left, as they pleased.

[19] There is no serious question of general importance to certify.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to certify.

3. A copy of this decision shall be placed in Court File Nos. T-1791-14, T-1792-14 and T-1793-14.

"Sean Harrington"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1790-14
STYLE OF CAUSE:	DELA ROCA AND OTHERS V MCI
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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JUDGMENT AND REASONS	JUSTICE HARRINGTON
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