Federal Court Cour fédérale

Date: 20150616

Dockets: T-1389-14
T-1390-14

Citation: 2015 FC 756

Ottawa, Ontario, June 16, 2015

PRESENT: The Honourable Mr. Justice Russell

Docket: T-1389-14

BETWEEN:

JOGINDER SINGH SAHOTA
GURMEET KAUR

Applicants

and

THE MINISTER OF CITIZENSHP AND IMMIGRATION

Respondent

Docket: T-1390-14

AND BETWEEN:

JOGINDER SINGH SAHOTA
JAGMOHAN SINGH SAHOTA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] There are two applications for judicial review under s. 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 before the Court. The Applicants seek judicial review of two decisions of a visa officer [Officer], dated May 12, 2014, which refused to grant citizenship to Gurmeet Kaur Sahota and Jagmohan Singh Sahota, the adopted children of Joginder Singh Sahota [Parent Applicant], under s. 5.1(1) of the *Citizenship Act*, RSC 1985, c C-29. Due to the similarities in the factual background, the decisions and the legal arguments, one set of reasons will be provided and filed in both T-1389-14 and T-1390-14.

II. BACKGROUND

[2] Gurmeet was born in India on July 26, 1991. Gurmeet's biological father is her adoptive mother's brother. The Parent Applicant says that he and his wife adopted Gurmeet through an informal, verbal agreement with her biological parents when she was one year old.

[3] Jagmohan was born in India on February 16, 1993. Jagmohan's biological father is the Parent Applicant's brother. The Parent Applicant says that he and his wife adopted Jagmohan through an informal, verbal agreement with his birth parents when he was two years old.

[4] The Parent Applicant, his wife and biological daughter moved to Canada as permanent residents on January 19, 2002.

[5] The Parent Applicant and his wife formally adopted Gurmeet and Jagmohan in India with deeds of adoption dated January 7, 2008. A corrected deed of adoption was registered for Gurmeet on January 11, 2008.

[6] The Applicants applied for Canadian citizenship for Gurmeet and Jagmohan in late 2010.

III. DECISIONS UNDER REVIEW

[7] The applications for citizenship were denied on May 12, 2014.

A. *Gurmeet*

[8] The Officer stated that under s. 5.1 of the *Citizenship Act,* an adoption must create a genuine relationship of parent and child and be in accordance with the laws where the adoption took place. The Officer found that the *Hindu Adoptions and Maintenance Act, 1956* [HAMA] governed adoptions in India. It applied to the adoption of Gurmeet by virtue of s. 2(1)(b) which brings Sikhs under HAMA's application. Section 5(2) provides that an adoption is void if made in contravention of any of HAMA's provisions.

[9] The Officer said that s. 10(iv) of HAMA provides that no person over the age of fifteen years old can be adopted unless a custom or usage applies as an exception. The Officer found

that Gurmeet's adoption did not comply with s. 10(iv) of HAMA because she was sixteen years old at the time of her adoption.

[10] The Officer also said that s. 11(ii) provides that an adoptive father or mother cannot adopt a Hindu daughter if they have a living daughter. The Officer found that Gurmeet's adoption was not in accordance with s. 11(ii) of HAMA because "Hindu" is to be read as including Sikhs and the Parent Applicant and his wife had a living daughter at the time of the adoption.

[11] The Officer was also not satisfied that a "giving and taking" ceremony, as required by Indian law, had taken place. She noted (Certified Tribunal Record [CTR] at 3):

> During the interview, Gurmeet Kaur called her biological parents as "mom" and "dad". Even after the adoption, all her school documents are listed the name of her biological parents. At interview, none of you were able to remember much about the adoption ceremony and were not able to tell the date the ceremony. This implies that it was not a significant ceremony reflecting the creation of a new relationship between you and Gurmeet Kaur and cutting of relationships with biological parents. [*sic*]

As a result, the Officer found that the adoption did not comply with s. 12 of HAMA which provides that an adopted child is deemed to be the child of his or her adoptive parents and that all ties to the biological parents are severed.

[12] As a result of her findings under ss. 10(iv), 11(ii) and 12, the Officer concluded that the adoption was void under s. 5(2) of HAMA. The Officer concluded that the adoption did not meet the requirements of ss. 5.1(1)(b) and (c) of the *Citizenship Act*.

B. *Jagmohan*

[13] In considering Jagmohan's application, the Officer outlined the same considerations under s. 5.1 of the *Citizenship Act* and ss. 2 and 5 of HAMA. The Officer was also not satisfied that a "giving and taking" ceremony had taken place that created a new relationship between Jagmohan and his adoptive parents while severing the relationship with his biological parents. The Officer noted (CTR at 2-3):

> During the interview, Jagmohan Singh called you as "uncle" & "aunty" and to his biological parents as "mom" & "dad". Even after the adoption, all her [*sic*] school documents are listed the name of his biological parents, even the 2012 school documents state the name of biological parents. At interview, neither Jagmohan Singh, nor you, nor biological parents can remember much about the adoption ceremony and none of you were able to tell the date of adoption ceremony. In extended family settings in India it is very common for a more well off brother to pay for his nieces and nephews [*sic*] education and living costs. This does not create a parental relationship in and of itself. In addition, Jagmohan Singh's biological parents stated at interview that they still held a strong ties to him, despite the verbal agreement to give him in adoption. This implies that it was not a significant ceremony reflecting the creation of a new relationship between you and Jagmohan Singh and cutting of relationship with biological parents.

As a result, the Officer was not satisfied that the adoption complied with s. 12 of HAMA. The Officer concluded that the adoption did not meet the requirements of ss. 5.1(1)(b) and (c) of the *Citizenship Act*.

IV. ISSUES

[14] The Applicants raise the following issues in these applications:

1. Did the Officer err by failing to apply the presumption of validity and accuracy of foreign documents?

2. Did the Officer err in law by requiring that the Applicants establish that the parent-child relationship between the adopted child and his or her biological parents was severed in fact?

3. Is an adoption in accordance with the laws of the place where the adoption took place if the adoption is voidable but not void?

4. Did the Officer breach procedural fairness by failing to put her concerns regarding the discrepancies in the dates of the adoption ceremonies to the Applicants?

V. STANDARD OF REVIEW

[15] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

A. *Respondent*

[16] The Respondent submits that decisions made under s. 5.1 of the *Citizenship Act* are reviewed on a standard of reasonableness: *Satnarine v Canada (Citizenship and Immigration)*, 2012 FC 91 at para 9; *Asad v Canada (Citizenship and Immigration)*, 2014 FC 921 at para 8. An

officer's determinations regarding the content of foreign law are findings of fact reviewable on a standard of reasonableness: *Cheshenchuk v Canada (Citizenship and Immigration)*, 2014 FC 33 at paras 17-18 [*Cheshenchuk*].

B. *Applicants' Post-Hearing Submissions*

[17] In post-hearing submissions, the Applicants submit that the Officer's determination of foreign law is reviewable on a standard of correctness. They argue this despite their acknowledgement that the content of foreign law is a finding of fact that must be established by evidence. However, the Applicants say that the Federal Court's legal interpretive skills mean that the Court has expertise above that of visa officers in interpreting foreign law. They further submit that questions of foreign law are not questions of law that arise under a visa officer's home statute and that these questions are of general importance to the legal system.

[18] The Applicants further submit that the Respondent's reliance on *Cheshenchuk*, above, does not settle the question of the applicable standard of review because *Cheshenchuk* relies on cases which did not perform a full standard of review analysis. In contrast, the Applicants submit that the Federal Court determined the standard of review to be correctness in *Kim v Canada (Citizenship and Immigration)*, 2010 FC 720. The Applicants acknowledge that *Kim* is somewhat confusing because its finding that correctness applies is based upon a case which incorporated appellate standards of review into a judicial review proceeding (para 5, citing *Williams v Canada (Minister of Citizenship and Immigration) v Williams*, 2005 FCA 126 at paras 19-23).

[19] The Applicants acknowledge that the Court conducted a full standard of review analysis in *Canada (Minister of Citizenship and Immigration) v Choubak*, 2006 FC 521 [*Choubak*] and concluded that the applicable standard of review was reasonableness. However, the Applicants submit that this cannot remain good law because it was decided before the Ontario Court of Appeal decision in *General Motors Acceptance Corp of Canada, Ltd v Town and Country Chrysler Ltd* (2007), 88 OR (3d) 666 [*General Motors*]. In *General Motors*, the Ontario Court of Appeal held that a trial judge's decision on foreign law was reviewable, on appeal, on a standard of correctness.

[20] Finally, the Applicants submit that if the Court finds that *Choubak* was properly decided, then the decision is entitled to a lesser level of deference: *Dunmsuir*, above, at paras 139-141; *Vasquez v Canada (Citizenship and Immigration)*, 2014 FC 782 at paras 21-27 [*Vasquez*].

C. *Respondent's Post-Hearing Submissions*

[21] The Respondent further submits that none of the issues in this proceeding turn on the Officer's determination of the content of Indian law. However, if the Court determines that the content of foreign law underlies any issue before the Court, then the jurisprudence is well established that the issue is reviewable on a standard of reasonableness.

[22] The Federal Court has repeatedly relied upon the Federal Court of Appeal decision in *Canada (Minister of Citizenship and Immigration) v Saini*, 2001 FCA 311 at para 26 [*Saini*] to review officers' determinations of foreign law on a standard of reasonableness. While that decision concerned appellate standards of review, the Federal Court has relied on the case for its

holding that the content of foreign law is a question of fact: see *Canada (Minister of Citizenship and Immigration) v Sharma*, 2004 FC 1069 [*Sharma*]; *Sicuro v Canada (Minister of Citizenship and Immigration)*, 2004 FC 461; *Magtibay v Canada (Minister of Citizenship and Immigration)*, 2005 FC 397. Questions of fact are reviewable on a standard of reasonableness.

[23] The Respondent points out that the Federal Court has also held that findings of foreign law are reviewable on a standard of reasonableness even when not relying on *Saini*, above: see *Nur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 636; *Aung v Canada (Minister of Citizenship and Immigration)*, 2006 FC 82; *Buttar v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1281 [*Buttar*]. In addition, the Federal Court has repeatedly held that immigration and citizenship decision-makers are entitled to deference in determining whether a foreign adoption complies with the laws of the place where it took place: *Sharma*, above; *Dhindsa v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1362 [*Dhindsa*]; *Kisimba v Canada (Citizenship and Immigration)*, 2008 FC 252.

[24] The Respondent acknowledges that the Applicants have been able to point to one case where the Court has applied a correctness review. The Respondent also points to *Dufour v Canada (Citizenship and Immigration)*, 2013 FC 340 where the Court also conducted correctness review. The Respondent submits, however, that the Court should not rely on either case because they both cite cases which have either no application to the issue or, in fact, applied reasonableness review.

[25] The Respondent says that the Ontario Court of Appeal decision in *General Motors* has no application to immigration and citizenship decisions. First, there is a long line of jurisprudence that establishes that determinations of foreign law are reviewable on a standard of reasonableness. Second, the Federal Court has continued to apply reasonableness in the seven years since the *General Motors* decision. Third, *General Motors* discusses appellate standards of review, not standards of judicial review. Notwithstanding this, the Federal Court considered *General Motors* in *Vasquez*, above. The Court held that *General Motors* did not change the standard for judicial review in light of the long line of jurisprudence which has applied reasonableness.

D. *Analysis*

[26] I agree with the Respondent that the jurisprudence is clear that an officer's determination of foreign law is reviewable on a standard of reasonableness: *Cheshenchuk*, above, at para 18; *Bhagria v Canada (Citizenship and Immigration)*, 2012 FC 1015 at para 39. Courts have been advised that established standards of review can be re-evaluated "if the relevant precedents appear to be inconsistent with recent developments in the common law principles of judicial review" (*Agraira*, above, at para 48). I see no reason to re-evaluate this jurisprudence. Parliament has given citizenship officers the authority and duty to determine whether foreign adoptions comply with the law of the jurisdiction where they occurred: *Citizenship Act*, s. 5.1(1)(c). This is a finding of fact that the Applicants have the burden of proving, and it arises under the Officer's home statute.

[27] I reiterate what I said in *Vasquez*, above, about the limitations of the Court's ability to make a "correct" determination of the content of foreign law (at para 24):

> …A standard of correctness implies that I am to make a definitive finding on the proper interpretation of foreign law, but the Court faces the same constraints as the tribunal in that its ability to interpret the foreign law at issue (here the criminal law of the State of Florida) is affected by the quality of the evidence before it. Under these circumstances, it would be disingenuous for the Court to imply that it was offering a "correct" interpretation. The Court must look at the evidence and determine whether the Board reasonably interpreted the foreign law and reasonably applied it to the facts of the case.

[28] In my view, the same applies to the present proceeding. The Court cannot offer a "correct" interpretation as to the content of Indian adoption laws. The Court is limited to determining whether the Officer's interpretation of Indian adoption laws are supported by the record, i.e. justified, transparent and intelligible.

[29] The procedural fairness issue remains reviewable on a standard of correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Exeter v Canada (Attorney General)*, 2014 FCA 251 at para 31.

[30] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": see *Dunsmuir*, above, at para 47; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls

outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. LEGISLATIVE PROVISIONS

[31] The following provisions of the *Citizenship Act* are applicable in these proceedings:

Adoptees — minors	**Cas de personnes adoptées — mineurs**
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 :
[…]	[…]
(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;
[…]	[…]

[32] The following provisions of HAMA are applicable in these proceedings:

2. Application of Act – (1) This Act applies-

[…]

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

[…]

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

5. Adoptions to be regulated by this Chapter- (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

[…]

10. Persons who may be adopted- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely-

[…]

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

[…]

11. Other conditions for a valid adoption- In every adoption, the following conditions must be complied with:

[…]

(ii) if the adoption is of a daughter the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son’s daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

[…]

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose

> parentage is not known, from the place or family where it has been brought up to the family of its adoption;
>
> […]
>
> 12. Effect of adoptions- An adopted child shall be deemed to be the child or his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.
>
> […]
>
> 16. Presumption as to registered documents relating to adoption- Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act and until it is disproved.

VII. ARGUMENT

A. *Applicants*

(1) Gurmeet

[33] The Applicants submit that a presumption of validity attaches to foreign documents and the accuracy of their contents: *Rasheed v Canada (Minister of Citizenship and Immigration)*, 2004 FC 587 at paras 19-20 [*Rasheed*]; *Bouyaya v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1042 at para 11. This presumption obliged the Officer to accept the adoption deeds as proof of the adoptions unless there was good reason to doubt their validity. The presumption also leads to a further rebuttable presumption that the “giving and taking” ceremony occurred. The Officer improperly shifted the burden on the Applicants to establish the

"giving and taking." The Officer also failed to provide reasons regarding why she was not satisfied that a "giving and taking" ceremony occurred.

[34] The Applicants also complain about the Officer's assumption that there was only one adoption ceremony for Gurmeet and Jagmohan. They acknowledge that the evidence was contradictory but submit that the evidence indicates that there were two adoption ceremonies. The Applicants acknowledge that the Gurdwara letter states that the adoption ceremonies took place two months later than the dates the parents provided in the interview. However, the presumption of the validity of foreign documents cannot apply to the letter because it is not "issued by a competent foreign public officer." The Applicants also say it is unfair that the Officer did not put the letter to the Applicants and provide them with an opportunity to explain the inconsistency.

[35] The Officer also erred in finding that Gurmeet could not be adopted because she was sixteen years old at the time of the adoption. HAMA provides for an exception if a custom or usage permits a child over the age of fifteen years to be adopted. The presumption of the validity of foreign documents leads to a presumption that a custom or usage applies to this adoption. The Officer erred in failing to consider whether there was an applicable usage or custom.

[36] The Officer also erred in finding that the adoption was not in accordance with s. 12 of HAMA. The section merely deems certain facts to exist in law when a child is adopted. It is irrelevant whether the Officer was satisfied that Gurmeet's ties with her biological parents were not severed and that a parent-child relationship had not been established with her adoptive

parents. The Officer's misinterpretation vitiates her conclusion that because the adoption did not meet the requirements of the HAMA, it did not create a parent-child relationship under s. 5.1 of the *Citizenship Act*. The Court cannot assume that because the Officer made an erroneous factual finding under HAMA, the Officer would have made the same factual finding under the *Citizenship Act*. The legal tests are different: see *Citizenship Regulations*, SOR/93-246, s. 5.1(3). Under the *Citizenship Act*, an adopted child is not required to cut ties with his or her biological parents: *Martinez Garcia Rubio v Canada (Citizenship and Immigration)*, 2011 FC 272 at para 7; *Adejumo v Canada (Citizenship and Immigration)*, 2011 FC 1485 at para 12-14 [*Adejumo*]. This is particularly true when the adopted child is related to the adoptive family. Further, the Officer failed to explain why she did not rely on the Government of Canada, Operational Bulletin 183-February 8, 2010: Supplementary policy guidance on assessing the severing of a pre-existing legal parent-child relationship for grants of citizenship under A5.1(1) or A5.1(2) which provides that when an adopted child is related to the adoptive parents "an ongoing relationship and contact with the natural parent and extended family may still occur": see *Adejumo*, above, at para 14.

[37] Finally, the Applicants submit that the Officer has no ability to declare the adoption void under HAMA. The existence of facts putting into question the validity of the adoption makes the adoption voidable, not void: *Sinniah v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 822 at paras 8-12 [*Sinniah*]; *Singh v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 37 (CA) [*Singh* 1990]. The Officer's concerns regarding whether Gurmeet could be adopted when the adoptive parents already had a daughter does not void the adoption.

(2) Jagmohan

[38] In relation to Jagmohan, the Applicants adopt the same arguments as for Gurmeet regarding: the presumption of the validity of foreign documents; the Officer's findings regarding the "giving and taking" ceremony; the Officer's interpretation of s. 12 of HAMA; and, the difference between a void and voidable adoption.

B. *Respondent*

(1) Gurmeet

[39] The presumption of validity attaches only to identity documents issued by foreign governments. An adoption deed is not an identity document, nor is it issued by a government; there is no presumption as to its validity: *Singh v Canada (Citizenship and Immigration)*, 2012 FC 1302 at para 12 [*Singh* 2012]. Any presumption of validity under HAMA is applicable only in an Indian court: *Shergill v Canada (Minister of Citizenship and Immigration)* (1998), 149 FTR 157 at para 9 [*Shergill*].

[40] The Applicants had the onus of establishing that they met the requirements of s. 5.1 of the *Citizenship Act*. This required them to establish that a "giving and taking" ceremony had taken place so that the child was adopted in accordance with the laws of India: *Citizenship Act*, s. 5.1; *Dhindsa*, above, at para 22. The Officer's assumption that the adoption ceremonies took place on the same day is reasonable given that the photos of the ceremonies identify both children as "adopted daughter" and "adopted son." Though they are inconsistent, both adoption deeds and

both Gurdwara letters bear the same dates as well. The Officer had no obligation to put the inconsistencies regarding when the adoption ceremonies took place to the Applicants. The discrepancies came from the various documents that the Applicants submitted as proof of the adoption ceremony and the Applicants' statements at the interviews. Fairness does not require an officer to put discrepancies in an Applicant's evidence to them: *Chen v Canada (Citizenship and Immigration)*, 2014 FC 240 at para 12; *Singh v Canada (Citizenship and Immigration)*, 2009 FC 620 at para 7. The Officer reasonably concluded that the adoptions were not legally valid under Indian adoption laws because no "giving and taking" had taken place. As a result, the adoption did not meet the requirements of s. 5.1(1)(c) of the *Citizenship Act*.

[41] The Applicants had the onus of establishing any applicable custom or usage that created an exception to the requirements of HAMA: *Canada (Minister of Employment and Immigration) v Taggar*, [1989] 3 FC 576 at 583 (CA) [*Taggar*]; *Buttar*, above, at para 19. There is no evidence that any custom or usage applied to Gurmeet's adoption.

[42] The Officer also reasonably concluded that Gurmeet's adoption was not in accordance with the bar on a family adopting a Hindu daughter if they have a living daughter. HAMA states that "Hindu" is to be construed to include any person to whom HAMA applies, which includes Sikhs.

[43] The Officer reasonably found that she was not satisfied a genuine parent-child relationship had been created. The Respondent concedes that the Officer misinterpreted s. 12 of HAMA. However, this error was immaterial to the Decision: *Panossian v Canada (Citizenship*

and Immigration), 2008 FC 255; *Tahiyeva v Canada (Minister of Citizenship and Immigration)*, 2005 FC 651. The Officer's conclusion regarding the genuineness of the parent-child relationship was also based on her conclusions under ss. 10(iv) and 11(ii) and her factual findings regarding the relationship between Gurmeet and her biological parents and her adoptive parents.

(2) Jagmohan

[44] Regarding Jagmohan, the Respondent adopts the same arguments as for Gurmeet regarding the presumption of the validity of foreign documents; the Officer's interpretation of s. 12 of HAMA; the Officer's findings regarding "giving and taking" ceremony; and the difference between a voidable and void adoption. The Officer's factual findings are sufficient for a finding that a genuine parent-child relationship was not created.

VIII. ANALYSIS

A. *Presumption of Validity of the Adoption Deeds*

[45] The Applicants say there is "a presumption in favour of the validity of foreign documents and accuracy of their contents" so that the "onus did not lie on the applicants to demonstrate the validity of the adoption. The Officer had to accept the adoption as valid and accurate unless there was good reason to doubt its validity and accuracy."

[46] The cases relied upon by the Applicants for this broad proposition all involved documents that were "issued by a competent foreign public officer" that amounted to "an act of state" such as a passport, a birth certificate, or a foreign court order of adoption.

[47] The adoption deeds at issue in the present case are not such documents. There is no evidence before the Court, nor was there before the Officer, as to their origin. They appear to be contracts that were registered with a sub-registrar of Bhopal, Madhya Pradesh. There is nothing to suggest that the act of registration created a state endorsement of the contents of the documents or turned them into government-issued documents that attract a legal presumption of validity. The registration explicitly says "NON JUDICIAL" which suggests that this was an administrative act and not the result of a legal or judicial determination.

[48] A similar deed appears to have been before the Court in *Singh* 2012, above, where, at paragraph 17, the Court described the origins and nature of the "Deed of Adoption" and found that it could not be said to be a validly issued foreign legal judgment because the court registration process did not involve "any independent decision-making" and was "merely an administrative process for which the court charges a nominal fee."

[49] In any event, even if the adoption deeds were sufficient evidence of the proof of their contents, the jurisprudence provides that the presumption is rebutted if an officer has reason to doubt the validity of the foreign document: *Rasheed*, above, at para 19; *Berhane v Canada (Citizenship and Immigration)*, 2011 FC 510 at para 32; *Ru v Canada (Citizenship and Immigration)*, 2011 FC 935 at para 42. The Decisions provide several reasons as to why the

validity and accuracy of the adoption deeds in this case could not be relied upon to create a valid adoption. For example, the Officer said that the *bona fides* of the deeds was called into question because they provided that the adoption took place from that day forward, but the Gurdwara letter indicated that the adoption ceremonies had not taken place until two months later.

[50] The Applicants also point to s. 16 of HAMA which contains a presumption that the Applicants say is applicable in this case:

> **16. Presumption as to registered documents relating to adoption-** Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

[51] Based upon these provisions, the Applicants argue as follows (Applicant's Record T-1390-14 at 123-126):

> 61. The court for the purposes of The Hindu Adoptions and Maintenance Act is an Indian court. Canadian courts have no jurisdiction to determine the merits of Indian adoptions.
>
> 62. The adoption deed in this case was registered. It purporting to record an adoption made [sic]. It is signed by the person giving and the person taking the child in adoption.
>
> 63. The effect of this presumption is to give this adoption a presumptive validity in India unless and until it is disproved in an Indian court, which to date it has not been. The applicant submits that this presumptive validity is sufficient to meet the requirements the adoption was in accordance with the laws of the place where the adoption took place.
>
> […]
>
> 70. In this case also, in light of the fact that there is a registered adoption deed and The Hindu Adoptions and Maintenance Act

> gives a presumptive validity to the adoption in light of that deed, the adoption is "in accordance with the laws of" India. The existence of facts putting into question the validity of the adoption makes the adoption voidable but not void.
>
> 71. The inability to provide evidence to satisfy the visa officer that the underlying facts necessary to establish an adoption, in this case the giving and taking, can not [sic] possibly invalidate the adoption. To suggest otherwise would be to assign to the visa office a legal role which is reserved only to Indian courts.
>
> 72. This presumptive validity of the adoption as in accordance with the laws of India because of the registration of the deed is true both for the existence of a daughter living at the time of the adoption and the giving and taking. Unless and until the adoption is voided, that is to say declared invalid in an Indian court, the adoption is "in accordance with the laws of" India.

[52] The Applicants rely heavily upon *Sinniah*, above, but it has to be remembered that, in that case, there was an Indian court order of adoption. It may have been "patently unreasonable" in *Sinniah* to find no valid adoption in accordance with the laws of Sri Lanka when there was a valid court order in place. In the present case, there is no such order, which is why the Applicants fall back on the presumption contained in s. 16 of HAMA. That presumption is not binding upon the Officer and it is not binding on this Court: *Singh* 1990, above; *Shergill*, above. The Applicants argue, however, that until a registered adoption is declared void in India, it remains a valid adoption for the purposes of s. 5.1(1)(c) of Canada's *Citizenship Act*.

[53] It seems to me, however, that s. 5.1(1)(c) of the *Citizenship Act* required the Officer to consider whether, in this case, the adoptions were in accordance with the applicable Indian law. The logic of the Applicants' argument would require Canada to accept every phony adoption that has not been challenged in India on the sole basis that an adoption deed has been registered with the Court but has not been subjected to government or judicial scrutiny. In my view, this cannot

be the intent of the *Citizenship Act* which requires officers to determine whether an adoption has taken place in accordance with, in this case, Indian law. In contrast to *Sinniah*, it cannot be unreasonable for the Officer in this case to question and explore the legal validity of an adoption deed that has simply been registered with a sub-registrar.

[54] The Applicants argue that the Officer is bound by the presumption because she has no authority to declare an Indian adoption void. I agree. The Officer cannot declare an Indian adoption void. Her task is merely to determine whether the adoption is valid for the purposes of Canadian law. Her determination that an adoption is invalid for the purposes of the *Citizenship Act* has no effect on the adoption's status in India.

[55] It seems to me, then, that the Officer did not have to acknowledge and apply any presumption of validity for the adoption deeds and their contents at issue in these applications and that she was required to examine the validity of the adoptions in their full context. The onus remained with the Applicants to demonstrate the validity of the adoptions.

B. *Giving and Taking*

[56] The Applicants argue that a "rejection based on a finding that the officer is not satisfied that a giving and taking was performed ignores the presumption of validity and accuracy of the adoption deed."

[57] As set out above, the adoption deeds were not presumptive proof of the truth of their contents. The Officer's determination that Indian law requires a giving and taking ceremony to

constitute a valid adoption is reviewable on a standard of reasonableness. There is no evidence in the record to rebut the Officer's determination that Indian law requires a giving and taking ceremony. Section 11(iv) of HAMA provides that "the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth." The Officer also cited the following case law, *Laksmahn Singh v Rup Kanwar*, AIR 1961 SC 1378, which also provides that the requirement is essential (CTR at 3):

> …there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be and giving and taking shall be a part of it.

[58] In the absence of any other evidence, the Officer's determination that the Applicants were required to establish a valid giving and taking ceremony had taken place is reasonable. The onus remained with the Applicants to establish that a valid giving and taking had taken place in accordance with Indian law. The Applicants seem to have been of the same opinion because they submitted photographs of the giving and taking ceremony for the Officer's consideration.

[59] The Officer was not satisfied that a valid giving and taking ceremony had occurred. The Applicants ask the Court to re-examine the evidence regarding the giving and taking ceremony and to find the Officer's conclusions unreasonable. In my view, the Applicants are simply asking the Court to review the evidence relevant to this ceremony and to reach a conclusion that favours

them. The Court cannot substitute its own assessment in this way. See *Khosa*, above, at paras 59, 61; *League for Human Rights of B'Nai Brith Canada v Odynsky*, 2010 FCA 307 at paras 85, 91. The Officer's findings and reasoning set out in the GCMS notes are intelligible and transparent and her conclusions do not fall outside the range of possible, acceptable outcomes which are defensible in respect of the facts and the law. For example, in relation to Jagmohan, the Officer noted that nobody could date the ceremony in their interviews. In addition, the date in the Gurdwara letter was inconsistent with the adoption deed.

[60] The Applicants say that the "officer assumes that there was one ceremony for both adoptions on the same day. However, this need not have been the case." The Applicants appear to be saying that the Officer "may" have made a mistake and there may have been two ceremonies, which took place at different times. It would appear from the evidence that the family members interviewed did not say there were different ceremonies at different times, but the Applicants now invite the Court to speculate that there may have been, so that the Officer may have made a mistake over this issue. However, the evidence before the Officer fully supports her conclusions that the ceremonies took place on the same day. The photographs show both adoptions together and the ceremony and the adoption deeds bear the same dates (January 7, 2008) and indicate that they take effect "from today's date." Also, the Gurdwara letter indicates that both adoptions were performed at the same Gurdwara on the same date (March 27, 2008). I do not think there is any room here for an allegation that the Officer's assumptions about the ceremony were unreasonable.

C. *Procedural Fairness*

[61] The Applicants argue that "the Gurdwara letter was not put to either the natural mother or adoptive parents" and it is "unfair to all concerned that they were given no opportunity to explain this discrepancy."

[62] This is a strange assertion because the documentation in question was provided by the Applicants so that they had every opportunity to explain any discrepancy in dates that it might contain. In any event, the Officer interviewed the parties involved and asked them about the date of the ceremony. They had every opportunity to identify the accurate date in their oral evidence, but they failed to do so consistently.

[63] The Applicants may now realize that they made mistakes when they provided their evidence, but this does not mean that they were treated unfairly or that the Officer reached unreasonable conclusions based upon the evidence that they provided.

D. *HAMA, s. 10(iv) – The Exception*

[64] The Applicants say that the Officer committed a reviewable error by failing to consider whether an applicable exception for custom or usage applied to exempt Gurmeet from the application of s. 10(iv) of HAMA. Gurmeet was sixteen years old at the time of her adoption and s. 10(iv) of HAMA provides that she could not be adopted "unless there is a custom or usage applicable to the parties which permits persons who have completed the age of 15 years being taken into adoption."

[65] The Applicants did not suggest in their submissions to the Officer that there was any such custom or usage that would permit Gurmeet's adoption, and they have not suggested before me that there is such a custom or usage that the Officer could have explored.

[66] Their argument appears to be that the "presumption of validity and accuracy of foreign documents is, in context, a presumption that there is custom or usage applicable to the parties to this adoption which permits persons who have completed the age of fifteen years being taken in adoption."

[67] No such presumption exists on the facts of the case. If any such custom existed, then the onus was on the Applicants to adduce evidence to establish it before the Officer. They failed to do so and cannot now claim reviewable error because the Officer failed to consider something they did not raise and, for all the Court knows, may not even exist. See *Taggar*, above, at 583, and *Buttar*, above, at para 19.

E. *The Reasonableness of the Decisions*

(1) Gurmeet

[68] The Applicants' arguments regarding the Officer's interpretation of s. 12 of HAMA will be discussed in relation to Jagmohan. However, the Officer made two additional findings in relation to Gurmeet that will be addressed first. First, as discussed above, the Officer reasonably found that Gurmeet's adoption was not in compliance with s. 10(iv) of HAMA because she had completed the age of fifteen at the time of the claimed adoption. Second, the Officer found that

Gurmeet's adoption did not comply with s. 11(ii) because the Applicants already had a living daughter at the time of the adoption. I can find no reviewable error with this finding. These findings are independent of the interpretation issues and are dispositive of the Decision concerning Gurmeet's adoption.

(2) Jagmohan

[69] Section 5.1(1)(b) of the *Citizenship Act* requires the adoption to have "created a genuine relationship of parent and child." The Officer explores this issue in some detail and concludes that the Applicants have not established such a genuine relationship. However, in the Decision, the Officer connects this issue to s. 12 of HAMA which is a deeming provision and does not require factual severance. The Applicants point out that the Officer misapplies s. 12 of HAMA by confusing the legal consequences of an adoption in India with the factual requirements of the *Citizenship Act*. In other words, neither s. 12 of HAMA nor s. 5.1 of the *Citizenship Act* requires that the adopted child *in fact* cut ties with his or her biological parents to establish a parental relationship with the adoptive parents. They argue as follows (Applicants' Record T-1390-14 at 92-93):

> 48. The fact that an adoptive child might maintain a parent child relationship with his or her biological parents may be evidence relevant to whether the relationship with the adoptive parents is genuine. However, in this case, the visa office [*sic*] did not consider the relationship between the adopted child and her biological parents from that perspective.
>
> 49. Rather, the visa officer turned what may be relevant evidence into a legal test. This adoption was refused because the officer was not satisfied that ties were cut with the biological parents.
>
> 50. The visa officer, in other words, put an onus on the applicants to show severance in fact, an onus in law legally they do not have. Their onus is to show genuineness of the adoption only.

> 51. The visa office could legitimately refuse an application where the applicants failed to meet the onus imposed upon them to establish genuineness. However, the visa office can not [*sic*] legitimately refuse an application where the applicant failed to establish one amongst many potentially relevant facts.
>
> 52. The adoptive parents do not have to establish severance in fact from the biological parents in order to show genuineness. Rather, they have to show genuineness on all facts of the case. Turning one potentially relevant evidentiary factor into a rigid legal test amounts to an error of law.

[70] The Respondent concedes that the Officer misinterpreted s. 12 of HAMA but argues that this mistake does not invalidate the decision (Respondent's Record T-1390-14 at 31-32):

> 51. The Respondent concedes that the officer misinterpreted HAMA s.12 as creating an adoption requirement. Rather than creating a requirement, that section deems certain things to be true once an adoption takes place under HAMA. To the extent then that the officer found that HAMA requirements were not met due to a failure to meet s.12, she erred. This error, however, was immaterial to the decision, both because the officer had another, reasonable basis for finding no genuine parent-child relationship and also because her findings based on HAMA subsections 10(iv) and 11(ii) (discussed above) independently support the refusal of the application.
>
> [Footnote omitted]

[71] The issue for the Court in the case of Jagmohan is whether the finding of non-compliance with ss. 5.1(b) and (c) of the *Citizenship Act* that his "adoption does not comply with section 12 of the Adoptions Act" and so "is void pursuant to section 5(1) of the said Act," is a reviewable error that requires Jagmohan's application be reconsidered.

[72] Before the Officer turns to s. 12 of HAMA, the Officer finds that she is "not satisfied that a physical giving and taking in connection with your claimed adoption, was performed at the

time of writing up of the adoption deed" (CTR at 3). This appears to be based upon the Officer's earlier findings (CTR at 2-3):

> During the interview, Jagmohan Singh called you as "uncle" & "aunty" and to his biological parents as "mom" & "dad". Even after the adoption, all her [*sic*] school documents are listed the name of his biological parents, even the 2012 school documents state the name of biological parents. At interview, neither Jagmohan Singh, nor you, nor biological parents can remember much about the adoption ceremony and none of you were able to tell the date of adoption ceremony. In extended family settings in India it is very common for a more well off brother to pay for his nieces and nephews education and living costs. This does not create a parental relationship in and of itself. In addition, Jagmohan Singh's biological parents stated at interview that they still held a strong ties to him, despite the verbal agreement to give him in adoption. This implies that it was not a significant ceremony reflecting the creation of a new relationship between you and a significant ceremony reflecting the creation of a new relationship between you and Jagmohan Singh and cutting of relationship with biological parents.

[73] Section 11(vi) clearly says that the giving and taking ceremony is a necessary condition for a valid adoption:

> **11. Other conditions for a valid adoption-** In every adoption, the following conditions must be complied with:
>
> [...]
>
> (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption...

[74] The Officer also cites case law in the GCMS notes which provides that an adoption deed is insufficient proof of an adoption in the absence of an actual giving and taking: *Raghunath Behera v Balaram Behera*, AIR 1996 Ori 38.

[75] As a result, I think the Officer's finding that no giving and taking ceremony had taken place is determinative of Jagmohan's application.

[76] There is no question that the Officer made a mistake in the Decision. She fails to link her finding that no giving and taking ceremony occurred to her conclusion. She simply says "Since Jagmohan Singh's adoption does not meet the requirements of the Adoptions Act, it is void and does not create a relationship of parent and child. Consequently Jagmohan Singh is not your adopted child to section 5.1(1)(b) & (c) of the Citizenship Act."

[77] However, when I consider the GCMS notes as part of the reasons for the Decision, I think it is clear that the Officer knew a giving and taking ceremony was required for a valid adoption, and that she was not satisfied that a valid adoption had occurred.

[78] The GCMS notes also reveal an additional finding that the Officer was not satisfied that a genuine parent-child relationship had been created as required by s. 5.1(1)(b). The Applicants say that because the Officer made her finding regarding the genuineness of the relationship in relation to her s. 12 analysis, the Court cannot guess that she would have made the same finding under s. 5.1(1)(b). I agree that the Court cannot guess at how the Officer would have decided an issue she did not turn her mind to. However, the Court does not need to guess. The Officer

makes a very clear finding in the GCMS notes that she is not satisfied that a genuine relationship has been created and provides her reasons (CTR at 10):

> Although the adoptions of both Gurmeet and Jagmohan are stated to have happened verbally when each child was very young, in 2002, when the adoptive parents went to Canada they did not choose to legalize the adoptions. I am not satisfied that a genuine parent child relationship was created before the adoptive parents left for Canada and I am not satisfied that one was created after the adoption. Both children called their biological parents 'mom' and 'dad' at interview and all school docs are in the names of their biological parents, even after the adoption. Additionally, the BCs of the children are i n [*sic*] the names of biological parents.

[79] This finding and its reasons seem intelligible, justified and transparent to me. As s. 5.1(1) is a conjunctive test (*Jardine v Canada (Citizenship and Immigration)*, 2011 FC 565 at para 15), this finding is also dispositive of the application.

[80] The problem is that despite these two clear dispositive findings, the Officer continued on for some reason and garbled her analysis with an incorrect interpretation of HAMA. To my reading, her analysis of HAMA is irrelevant as she had already decided that there was no genuine parent-child relationship and that a giving and taking ceremony had not occurred. As a result, the Applicants had failed to establish that the adoptions satisfied both s. 5.1(1)(b) and (c). I think on reasonableness review, the Decision can withstand scrutiny given the clear findings in the GCMS notes. In my view, the misinterpretation under s. 12 of HAMA is immaterial to the Decision because of the Officer's other factual findings under s. 5.1(1) of the *Citizenship Act*.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application in T-1389-14 is dismissed;
2. The application in T-1390-14 is dismissed;
3. No costs are requested in either case and none are awarded; and
4. A copy of this Judgment shall be placed on each separate file.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1389-14
STYLE OF CAUSE:	JOGINDER SINGH SAHOTA, GURMEET KAUR v THE MINISTER OF CITIZENSHP AND IMMIGRATION
AND DOCKET:	T-1390-14
STYLE OF CAUSE:	JOGINDER SINGH SAHOTA, JAGMOHAN SINGH SAHOTA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	FEBRUARY 24, 2015
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	JUNE 16, 2015

APPEARANCES:

David Matas	FOR THE APPLICANTS
Nalini Reddy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas Barrister and Solicitor Winnipeg, Manitoba	FOR THE APPLICANTS
William F. Pentney Deputy Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT