Federal Court  Cour fédérale

Date: 20150715

Docket: T-63-15

Citation: 2015 FC 867

Montréal, Quebec, July 15, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

RICKTA MATHILDA MCLAWRENCE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] According to the jurisprudence of this Court, a child adoption is a forward looking relationship. The assessment of the genuineness of a parent-child relationship "is not defined by the past but by the future about to happen as a result of the adoption" (*Perera v Canada (Minister of Citizenship and Immigration)*, [2001] FCJ 1443 at paras 15 and 16 [*Perera*]; see: *Young v Canada (Minister of Citizenship and Immigration)*, 2015 FC 316 at para 31 [*Young*]).

II. Introduction

[2] The Applicant seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision rendered on December 17, 2014, by a Citizenship officer [officer] rejecting the Applicant's citizenship application.

III. Background

[3] The Applicant is a 17-year-old citizen of Grenada, who, following her mother's death in February 19, 2002, was adopted by her Canadian aunt, Ms. Pansy Elizabeth Davidson, on April 15, 2011.

[4] On May 23, 2011, the Applicant applied for Canadian citizenship and a negative decision was rendered on June 25, 2013.

[5] On June 17, 2014, on judicial review, Justice Yves de Montigny of this Court ordered the determination anew of the Applicant's citizenship application (Docket: T-1481-13). In his decision, Justice de Montigny first found that the officer's findings did not reflect consideration of the totality of the evidence. In particular, it was noted that the officer failed to consider the extensive report by the Quebec social worker in assessing the genuineness of the parent-child relationship. Justice de Montigny also held that the officer's inferences were unreasonable, in particular in respect of the father of the Applicant's purported ability to take care of the Applicant, despite evidence of substantial changes over the years. Finally, it was held that an interview with the Applicant's adoptive mother should be held "if the purpose of the adoption

questioned" (Order: T-1481-13 dated June 17, 2014, Certified Tribunal Record at pp 15-20 [CTR].

[6] As a result, the Applicant and Ms. Davidson were invited to an interview at the High Commission of Canada in Port of Spain, Trinidad and Tobago, held on November 24, 2014.

[7] The Applicant's citizenship application was rejected by way of a letter dated December 17, 2014.

IV. Impugned Decision

[8] In rejecting the Applicant's citizenship application, the officer concluded that the Applicant did not meet the requirements of paragraphs 5.1(1)(*a*), 5.1(1)(*b*) and 5.1(1)(*d*) of the *Citizenship Act*, RSC 1985, c C-29 [Act].

[9] First, the officer found that the Applicant failed to establish that the adoption was in the best interests of the (Applicant) child. In particular, the officer noted that the Applicant did not cite "considerations such as family ties, parental love, close relationship, parent-child relationship" in support of her application (Officer's decision, CTR at p 7).

[10] Second, the officer observed a lack of evidence in respect of the genuineness of the parent-child relationship. In the Global Case Management System [GCMS] notes pertaining to the decision, the officer observes that the "very limited contact and limited proof of contact" between the Applicant and her adoptive parents, the Applicant's "very limited knowledge of

Canada and of family in Canada" and the appearance that the Applicant has "more of a relationship with her sisters' family than with [her] adopted parents and siblings" support this finding (Officer's notes, CTR at p 3). Moreover, the officer notes that the Applicant only referred to Ms. Davidson as her mother near the end of the interview.

[11] Third, the officer found that the adoption was entered into primarily for the purpose of acquiring status or privilege in relation to immigration and citizenship, and in particular, to provide the Applicant with "access to the privileges of Canada's generous health care and education systems" (Officer's decision, CTR at p 7).

V. Legislative Provisions

[12] Subsection 5.1(1) of the Act provides the following:

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, while a minor child, was adopted by a citizen on or after January 1, 1947, was adopted before that day by a person who became a citizen on that day, or was adopted before April 1, 1949 by a person who became a citizen on that later day further to the union of Newfoundland and Labrador with Canada, if the adoption	**5.1** (1) Sous réserve des paragraphes (3) et (4), le ministre attribue, sur demande, la citoyenneté soit à la personne adoptée avant le 1er janvier 1947 par une personne qui a obtenu qualité de citoyen à cette date — ou avant le 1er avril 1949 par une personne qui a obtenu qualité de citoyen à cette date par suite de l'adhésion de Terre-Neuve-et-Labrador à la Fédération canadienne — soit 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;	*c*) elle a été faite conformément au droit du lieu de l'adoption et du pays de résidence de l'adoptant;
(*c.1*) did not occur in a manner that circumvented the legal requirements for international adoptions; and	*c.1*) elle a été faite d'une façon qui n'a pas eu pour effet de contourner les exigences du droit applicable aux adoptions internationales;
(*d*) was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.	*d*) elle ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté.

VI. Issues

[13] The Applicant submits the following issues to be considered by the Court:

a) Did the officer commit a reviewable error in her assessment of the evidence?

b) Did the officer breach procedural fairness by failing to interview the Applicant's adoptive mother?

VII. Standard of Review

[14] It is common ground between the parties that the applicable standard of review to the Officer's assessment of the evidence and findings in respect of paragraphs 5.1*a*), *b*) and *d*) of the

Act is that of reasonableness. As summarized by Justice Donald J. Rennie in *Young v Canada (Minister of Citizenship and Immigration)*, 2015 FC 316 at paras 15-17 [*Young*]:

> [15] The reasonableness standard applies to questions of fact and to questions of mixed fact and law such as whether an adoption was entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship contrary to subsection 5.1(1)(d). As such, the Officer's decision under section 5.1 of the *Citizenship Act* attracts the standard of review of reasonableness. When reviewing the reasonableness of a decision the analysis is concerned with "the existence of justification, transparency and intelligibility within the decision-making process": *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47.
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> [16] In the present case, the role of the Officer was to interview Ms. Pope and Ms. Young, to make findings of fact based on those interviews, and then to apply those facts to the applicable legislation: *The Minister of Citizenship and Immigration v Davis*, 2015 FCA 41 at para 9. In such a "factually laden context", deference is owed to "the expertise of the immigration officer both in finding facts and in applying those facts to the relevant provisions of the *Citizenship Act*": *Davis* at para 9. This specific context "broadens the range of possible, acceptable and defensible outcomes": *Davis* at para 9.
>
> [17] It is not the role of the Court to re-weigh the evidence; however, the Court does have jurisdiction to intervene if it is determined that the Officer erred by ignoring evidence or by drawing unreasonable inferences from the evidence: *Smith v Canada (Minister of Citizenship and Immigration)*, 2014 FC 929; *Jardine v Canada (Citizenship and Immigration)*, 2011 FC 565.
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> [Emphasis added.]

[15] The right to an interview is a procedural fairness issue which attracts the standard of correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, [2009] SCJ 12 at paras 42 and 43).

VIII. Analysis

A. *Genuineness of the parent-child relationship (paragraph 5.1(1)(b))*

[16] The officer's GCMS notes pertaining to the interview held on November 24, 2014, reveal that the officer was not satisfied of the existence of a genuine parent-child relationship primarily based on the Applicant's limited contact with her adoptive parents, and limited knowledge of Canada and of her family in Canada. As such, the officer concluded that the Applicant failed to meet the requirements of paragraph 5.1(1)(*b*) of the Act.

[17] According to the jurisprudence of this Court, a child adoption is a forward looking relationship. The assessment of the genuineness of a parent-child relationship "is not defined by the past but by the future about to happen as a result of the adoption" (*Perera* at paras 15 and 16; see: *Young*, above at para 31).

[18] Justice Jean-Eudes Dubé's reasoning in *Perera*, recently adopted by Justice Rennie in *Young*, is instructive in assessing the genuineness of a parent-child relationship for the purposes of immigration:

> [13] Moreover, the Appeal Division has adopted an improper concept of "genuine parent and child relationship" in suggesting that the adopting parents' desire to bring the boys to Canada and provide them with a better life and education is contradictory to the establishment of a genuine parent and child relationship. Contrary to the Appeal Division's understanding of the definition of the term "adopted", the words "genuine parent and child relationship" do not require that there existed a fully developed parent and child relationship between the adoptive parents and the children at the time of a sponsored application. More often than not, the genuine relationship is created as a result of the adoption. The mere fact

> that adoptive parents want to bring their adopted children with them to the country where they live is not a presumption that they are attempting to create an adoption of convenience. Canadian parents fly all over the world to find and adopt children. Surely, visa officers will not close the door to these children because genuine parental relationships have not yet been created.
>
> [14] Similarly to a so-called "marriage of convenience" (where two total strangers fake an illusory marital relationship so as to admit a temporary spouse to Canada) an "adoption of convenience" would be a situation where Canadian citizens would pretend to adopt an unknown child so as to bring him to Canada for a financial reward. Clearly, such is not the case here.
>
> [Emphasis added.]
>
> (*Perera*, above at paras 13 and 14)

B. *Primary purpose of entering in to an adoption (paragraph 5.1(1)(d))*

[19] The law in respect to a citizenship officer's finding that an adoption was entered into primarily for acquiring a benefit of immigration or citizenship was recently summarized by Justice Rennie in *Young*, above:

> [18] The bar for finding that an adoption was entered into primarily for acquiring a benefit of immigration or citizenship is high. When an adoption has been approved by a Canadian court, it must be established that the court judgment was obtained by fraud against the legal system: *Canada (Citizenship and Immigration) v Dufour*, 2014 FCA 81. This gives effect to Parliament's intention when enacting section 5.1; to facilitate the granting of Canadian citizenship to children adopted abroad by Canadian citizens: *Dufour* at para 53. In cases where there is no Canadian court judgment certifying the lawfulness of the adoption, such as the present case, there "must be clear evidence that it is an adoption of convenience": *Dufour* at para 57.
>
> [19] Adoptions of convenience are "limited to situations where the parties (the adoptee or the adopter) have no real intention to create a parent-child relationship": *Dufour* at para 55. Essentially, they are "schemes to circumvent the requirements of the [Citizenship] Act or of the Immigration and Refugee Protection

> Act, S.C. 2001, c. 27": *Dufour* at para 55. In *Perera v Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No 1443 at para 14, the Federal Court held that "[s]imilarly to a so-called 'marriage of convenience' (where two total strangers fake an illusory marital relationship so as to admit a temporary spouse to Canada) an 'adoption of convenience' would be a situation where Canadian citizens pretend to adopt an unknown child so as to bring him to Canada for a financial reward".

[20] Also, this Court has held that an adoptive parent's intent of providing a better quality of life for an adopted child in Canada is a "legitimate goal" (*Smith v Canada (Minister of Citizenship and Immigration)*, 2014 FC 929 at para 65 [*Smith*]).

[21] Such an intention does not necessarily reflect an adoption of convenience. As illustrated by Justice Rennie in *Young*:

> [24] The fact that the adoptive and biological parent(s) wish to give a child a better life in terms of access to medical care and schooling cannot support a finding that the primary intention of adoption was to evade immigration laws. The fallacy of the reasoning employed is best revealed if the proposition is inverted; what parent would give up a child if they knew it faced a more difficult life with fewer opportunities?

C. *Discussion*

[22] Having exposed the relevant legal principles elaborated in the jurisprudence, the Court finds that the officer's decision cannot stand.

[23] First, aside from the interview held on November 24, 2014, aiming to remedy a breach of procedural fairness, the officer failed to address the errors raised by Justice de Montigny on judicial review.

[24] Second, the officer fails to support the finding that the adoption was entered into primarily for the purpose of acquiring status or privilege in relation to citizenship or immigration in Canada with any point of reasoning. Rather, the officer simply states that she is not satisfied that the adoption meets the requirements of paragraph 5.1(1)*d*) of the Act.

[25] Such finding does not find anchorage in the evidence and contradicts this Court's view that the mere fact that adoptive parents want to bring their adopted child to Canada to provide them with a better quality of life are not presumptions that they are attempting to create an adoption of convenience (*Perera*, above at para 13; *Smith*, above at para 65; *Young*, above at para 24).

[26] Third, the officer's reasons reveal that evidence on record, such as the Guardian Ad Litem Report and the social worker's reports, were not considered in the determination of the Applicant's citizenship application.

[27] Such as previously noted by Justice de Montigny in his decision (T-1481-13), the two reports provide extensive evidence and analysis relating to the best interests of the (Applicant) child, the nature of the relationship between the Applicant and her adoptive parents and the circumstances and motivations surrounding the adoption (Guardian Ad Litem Report for Rickta Mathilda McLawrence and Psychosocial Evaluation for International Adoption, CTR at pp 53-65 and 68-72).

[28] An officer's omission to consider the totality of the evidence, particularly that which appears to contradict an officer's finding, constitutes a reviewable error. Such as stated by Justice Richard G. Mosley in *Jardine v Canada (Minister of Citizenship and Immigration)*, 2011 FC 565 at para 21:

> [21] It is well established that while a decision maker is presumed to have considered all of the evidence, where relevant evidence runs contrary to the decision maker's finding on the central issue, there is an obligation to analyse such evidence and explain why it has not been accepted or why other evidence is preferred instead: *Pradhan v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1500, 52 Imm. L.R. (3d) 231 at para 14; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, [1998] F.C.J. No. 1425 (QL).

[29] It was therefore unreasonable for the officer to conclude that the adoption was not in the best interests of the (Applicant) child, whilst ignoring the body of evidence which stands against this proposition.

[30] In sum, the officer's decision lacks the transparent and intelligible justification, and therefore fails to comply with the requirements of reasonableness established in *Dunsmuir v New Brunswick*, [2008] SCJ 9 at para 47.

IX. Conclusion

[31] In light of the foregoing, this application for judicial review is granted.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is granted. No costs are awarded. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-63-15
STYLE OF CAUSE:	RICKTA MATHILDA MCLAWRENCE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	JULY 14, 2015
JUDGMENT AND REASONS:	SHORE J.
DATED:	JULY 15, 2015

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