

Federal Court



Cour fédérale

Date: 20110221

Docket: IMM-3695-10

Citation: 2011 FC 206

Ottawa, Ontario, February 21, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

**SARWAN SINGH DHADDA
UMRAODEEP SINGH DHADDA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are part of a family being sponsored for permanent residency in Canada. An immigration officer deleted the family's adopted son, Umraodeep Singh Dhadra, from the application. The officer was not satisfied that Umraodeep was a "dependant child" within the meaning of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] The applicants seek judicial review of that decision, submitting that the immigration officer erred by misinterpreting and ignoring evidence in assessing whether Umraodeep met the definition of a “dependant child”.

[3] For the reasons that follow, I have not been persuaded that the officer erred as alleged, or that the decision was unreasonable. As a result, the application for judicial review will be dismissed.

Analysis

[4] The question of whether someone is a “dependent child” pursuant to the *Immigration and Refugee Protection Regulations* is a question of mixed fact and law. As such, it is subject to the reasonableness standard of review: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paras. 47 and 53. See also *Boachie v. Canada (MCI)*, 2010 FC 672, [2010] F.C.J. No. 821 at para. 21.

[5] Umraodeep was born on March 11, 1995, to Harbajan Singh and Bhupinder Kaur. He was adopted by the applicant Sarwan Singh Dhadda and his spouse, who are neighbours of the birth parents, on February 12, 1997. Umraodeep was two years old at the time of the adoption. The adoptive parents say that they adopted Umraodeep because they had only daughters and desired a son, and that Sarwan Singh Dhadda’s wife was unable to have any more children.

[6] The parties agree that Indian law requires that in order for an adoption to be legal, there must be a formal “giving and taking” of the child. The applicants produced a “Deed of Adoption” in

support of their application, which stated that “The ceremony of giving and taking the child in adoption including physical delivery from hand to hand has been performed under ceremonial pomp and show”.

[7] The Deed of Adoption does not appear to be a court order, and there is no evidence as to how the document was obtained.

[8] After reviewing the family’s application, the immigration officer determined that further investigation was required with respect to the adoption of Umraodeep. Accordingly, both the birth family and the adoptive family were interviewed, along with the child himself.

[9] I agree with the applicants that little weight should be given to the immigration officer’s affidavit as it relates to what transpired at the interview. It was sworn months after the interview, and there is no indication in the affidavit that the officer continued to have any specific recollection of what may or may not have been said in the course of the various interviews: see *bin Abdullah v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1185, [2006] F.C.J. No. 1482.

[10] That said, it is evident from the officer’s CAIPS notes of the various interviews that there were significant material discrepancies and inconsistencies in the evidence given by the individuals interviewed. These were sufficient to raise concerns in the mind of the immigration officer as to the adoption.

[11] For example, there were fundamental inconsistencies between the evidence given by the birth parents and Umraodeep himself as to the nature of their relationship after the adoption. While they all agree that Umraodeep continued to spend time at the birth parent's home on a daily basis after the adoption, the birth parents stated that Umraodeep knew that he was adopted, and that they were his birth parents. In contrast, Umraodeep insisted in his interview that he was never adopted, and that he was the natural child of his adoptive parents.

[12] Umraodeep's adoptive father was questioned at some length about the adoption ceremony itself. Based upon her knowledge of local customs, the immigration officer was concerned about the fact that the ceremony took place in a Tehsil office (or local administration office) rather than in a Gurdwara, or Sikh temple. Sikh adoption ceremonies normally take place in a Gurdwara, in the presence of a large number of witnesses, in order to make the adoption known to the community.

[13] When asked about this, Sarwan Singh Dhadda gave conflicting answers that did not make a great deal of sense. For example, he initially claimed that it was necessary to have the ceremony at the Tehsil office in order to change the child's name to that of the adoptive parents, so that he could be admitted to school.

[14] When the immigration officer pointed out that the child was only two years old at the time of the adoption ceremony and did not need to be registered for school, Sarwan Singh Dhadda changed his explanation. He claimed that the reason that the ceremony took place at the Tehsil office was because the family was in the process of getting a ration card, and wanted to have the child's name endorsed on the card.

[15] When it was then pointed out that the family's ration card was issued more than three years after Umraodeep was adopted, and that the explanations offered by the father did not make sense, the father's explanation changed yet again. His final explanation for holding the adoption ceremony in a Tehsil office was that the family just did not think of holding it in a Gurdwara.

[16] The immigration officer was also concerned about the fact that the family could not produce any photographs of the adoption ceremony, as the adoption of a child, particularly the adoption of a son by a family with no boys, would be considered to be an important life event. Once again, the explanations offered by Sarwan Singh Dhadda were inconsistent and ever-changing.

[17] He initially claimed that they did not take any photographs of the ceremony because it took place in a Tehsil office rather than in a Gurdwara. He then stated that the reason that there were no photographs of the ceremony was that there was no photographer in their village. When pressed on the issue, the explanation changed yet again, with the adoptive father finally stating that he had just not thought about having pictures taken of the ceremony.

[18] The officer then asked Sarwan Singh Dhadda to describe what had occurred at the adoption ceremony. The officer's questions were initially very broad and open-ended, with the officer giving the adoptive father a number of opportunities to mention the "giving and taking" ceremony. When Sarwan Singh Dhadda repeatedly failed to mention any such ceremony, the officer finally asked him directly whether there had been a "giving and taking" ceremony. The response to the direct question was negative, with Sarwan Singh Dhadda stating "Only the party, no religious ceremony".

[19] “Taking everything together”, the officer stated that she “was not satisfied that a genuine adoption took place or that there was a severing of the parent-child relationship between Umraodeep Singh Dhadda and his natural parents”. The result of this was the officer’s decision to delete Umraodeep from the family’s application.

[20] The applicants argue that the interview took place some 13 years after the adoption ceremony took place, and that it was thus not unreasonable for the participants not to be able to recall all of the details of the day’s events. While this may be true, it does not explain the varying and conflicting explanations offered by the various people in Umraodeep’s life as to what went on, both at the adoption ceremony itself, and afterwards.

[21] In light of these material inconsistencies, the officer’s finding that Umraodeep was not a “dependant child” within the meaning of the *Immigration and Refugee Protection Regulations* was entirely reasonable.

[22] Similarly, it was not unreasonable for the officer to place little weight on the Adoption Deed, given that the statement in the deed that “The ceremony of giving and taking the child in adoption including physical delivery from hand to hand has been performed under ceremonial pomp and show” was inconsistent with the evidence of Umraodeep’s adoptive father, Sarwan Singh Dhadda.

Conclusion

[23] For these reasons, the application for judicial review is dismissed.

Certification

[24] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3695-10

STYLE OF CAUSE: SARWAN SINGH DHADDA ET AL v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 17, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** Mactavish J.

DATED: February 21, 2011

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