Federal Court  Cour fédérale

Date: 20120827

Docket: T-1272-11

Citation: 2012 FC 1015

Halifax, Nova Scotia, August 27, 2012

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

DEVANSH BHAGRIA,
AGUM KUMAR BHAGRIA and
SANGEETA RANI BHAGRIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of a decision dated June 8, 2011 by a foreign service officer of the Canadian High Commission in India (the officer), refusing to grant Canadian citizenship to the applicant, Devansh Bhagria. This conclusion was based on the officer's finding that the adoption approval letter from the Indian authority for international adoptions was fraudulent. Therefore, pursuant to paragraph

5.1(1)(c) of the *Citizenship Act*, RSC 1985, c C-29, the officer concluded that the applicant, Devansh Bhagria did not meet the requirements for a grant of Canadian citizenship.

The applicants request that this Court order the granting of Canadian citizenship to the applicant, Devansh Bhagria. In the alternative, the applicants request that the officer's decision be set aside and that Devansh Bhagria's citizenship application be referred back to the Canadian High Commission in India for continued processing.

[2] The principal applicant is the infant, Devansh Bhagria. He is a citizen of India. The other applicants, the applicant couple, are Agum Kumar Bhagria and Sangeeta Rani Bhagria. They were married in 1990 and subsequently became Canadian citizens. The applicant couple currently resides in Winnipeg.

[3] The principal applicant was born on May 9, 2010. His mother is Mrs. Bhagria's distant cousin. As the applicant couple has been unable to have children, the principal applicant's mother offered to let them adopt her son. With the blessing of Mrs. Bhagria's grandmother, the applicant couple decided to proceed with the adoption. On May 28, 2010, the Roorkee Court in India issued a deed of adoption of the principal applicant to the applicant couple.

[4] On August 16, 2010, the Winnipeg Child and Family Services issued a home study report for the international adoption of the principal applicant by the applicant couple. This report recommended approval of the adoption.

[5] On January 4, 2011, the principal applicant's Canadian citizenship application was filed at the Canadian High Commission in New Delhi. The following month, on February 16, 2011, the officer sent a request letter for documents required to process the application. These included a home study, a no objection certificate (NOC) from the Indian Central Adoption Resource Authority (CARA) and a provincial NOC.

[6] In an NOC dated April 4, 2011, CARA stated that it had no objection to the adoption. However, as the NOC was not directly received from CARA, the province of Manitoba requested that its genuineness be verified.

[7] On April 21, 2011, a designated immigration officer at the Canadian High Commission sent an email to CARA. A copy of the NOC was attached with a request for verification of its authenticity. Later the same morning, C. Saraswathi, assistant director of CARA, sent an email reply indicating that CARA had not issued the subject NOC and it was therefore not authentic.

[8] Thereafter, on April 27, 2011, the officer sent the applicants a procedural fairness letter stating that CARA had informed the Canadian High Commission that the NOC was fraudulent. The officer notified the applicants that they had thirty days to provide additional submissions.

[9] Mr. Bhagria was in India when the procedural fairness letter was received. Therefore, on or about May 3, 2011, Mr. Bhagria attended the CARA office in New Delhi and met with the head of the department, Ms. Anu Jai Singh. Ms. Singh allegedly informed Mr. Bhagria that the case was still pending because the principal applicant was not an immediate family member, but rather a child of a distant cousin. The NOC provided to the Canadian High Commission was therefore created in error. In fact, it pertained to another child with the same first name as the principal applicant. However, contrary to the principal applicant, that child's file had already been approved.

[10] On May 4, 2011, Mr. Bhagria attended the Canadian High Commission in New Delhi. He spoke with immigration officer Manjit Keshub and informed him of his visit to CARA. In an email to the officer, Officer Keshub informed her of Mr. Bhagria's visit. Officer Keshub explained that Mr. Bhagria had spoken with Ms. Singh, who had informed him that the NOC was issued by CARA by mistake and this was a technical error on their part. However, Officer Keshub noted that in its

reply email to the NOC verification inquiry, CARA did not say that it issued the NOC, but did so in error.

[11] On May 12, 2011, Mr. Bhagria returned to the Canadian High Commission in New Delhi and requested a meeting with the officer. This request was denied, so Mr. Bhagria prepared written submissions which he left at the Canadian High Commission for the officer. In these submissions, Mr. Bhagria indicated that a CARA official had assured him that the principal applicant's case was under consideration. However, all cases had been held until the end of July due to changes in CARA's adoption rules. Mr. Bhagria therefore requested that the officer reconsider the file until the applicants received written response from CARA.

[12] Mr. Bhagria has allegedly repeatedly requested that CARA draft a new letter acknowledging its mistake, however, no such letter has yet been issued. Mr. Bhagria has also retained a lawyer in India to assist with this matter and that case is pending. Mrs. Bhagria remains in India with the principal applicant awaiting a determination on this application.

Officer's Decision

[13] In a letter dated June 8, 2011, the officer notified the principal applicant that his citizenship application did not meet the legal requirements under paragraph 5.1(1)(c) of the *Citizenship Act*. The officer explained that this finding was based on the evidence from CARA that the NOC was fraudulent. It was therefore not established that the principal applicant's adoption was in accordance with the laws of India, where it took place. For these reasons, the principal applicant's citizenship application was refused.

[14] The reasons for the officer's decision are expanded upon in the Global Case Management System (GCMS). These GCMS notes form part of the decision.

[15] The GCMS notes indicate that on May 4, 2011, Mr. Bhagria attended the Canadian High Commission in New Delhi to inquire about the principal applicant's application. The officer denied his request for an in-person meeting. Nevertheless, Mr. Bhagria notified Officer Keshub that he had visited the CARA office on May 3, 2011 and had spoken with Anu J. Singh, Secretary. The GCMS notes indicate that Ms. Singh informed Mr. Bhagria that CARA had not approved the NOC application because the principal applicant was a child of a distant cousin rather than an immediate family member. Ms. Singh also stated that CARA mistakenly issued the NOC. The GCMS notes also acknowledge Mr. Bhagria's explanation that his friend, Mr. Anand had coordinated on his behalf with CARA and had obtained the NOC from CARA. However, although the officer recognized these submissions, she noted that CARA did not inform the Canadian High Commission that the NOC was issued in error.

[16] The officer also reviewed Mr. Bhagria's May 12, 2011 submissions. These submissions included a letter to CARA requesting reconsideration of the decision to refuse the NOC. However, the officer noted that although the NOC was refused, the applicants had presented a fraudulent NOC to the Canadian High Commission. She noted that no response was provided on the issue of the fraudulent NOC. As such, the officer refused the principal applicant's citizenship application.

Issues

[17] The applicants submit the following points at issue:

1. What is the standard of review in this case?
2. What is required by the duty of fairness in this case?
3. Did the Canadian High Commission breach its duty of fairness to the applicants?

[18] I would rephrase the issues as follows:

1. What is the appropriate standard of review?

2. Did the officer deny the applicants procedural fairness?

3. Did the officer err in her assessment of the evidence?

Applicant's Written Submissions

[19] The applicants submit that given the importance of having the international adoption approved, a high level of procedural fairness is required. Issues of procedural fairness and natural justice are questions of law that are reviewable on a correctness standard.

[20] The applicants submit that it is well established that visa officers owe a duty of fairness towards applicants. The applicants highlight the factors that the Supreme Court of Canada specified in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, [1999] SCJ No 39 for determining the content of the duty of fairness.

[21] In applying the *Baker* above factors to this case and bearing in mind that it pertains to the adoption of a minor child, the applicants submit that a high level of fairness and procedural protection is required in the officer's decision making process. The applicants note that the officer's role in adoption cases is the same as that of a citizenship judge and therefore, the officer performs a judicial function. The applicants submit that this Court has stated that a high level of procedural fairness is required of citizenship judges.

[22] Further, the applicants note that the officer's decision is final without any right of appeal. A new application would considerably lengthen the overall waiting time for family reunification. In addition, having been invited by the officer to make additional submissions, the applicants have a legitimate expectation that their submissions will be thoughtfully considered.

[23] Having found that a high level of fairness is required in cases such as this, the applicants submit that the required level of fairness was not met in this case.

[24] First and foremost, the applicants submit that the officer failed to properly consider the evidence. The applicants note that the correspondence from CARA stated that the NOC was not approved by the Committee and was therefore not issued by CARA. From this, the officer concluded that the NOC was fraudulent. However, the applicants submit that the CARA correspondence could also be interpreted in other ways. For example, the NOC may not have been issued in accordance with normal procedures of Committee approval or a CARA employee may have issued it in error or fraudulently. As these other possibilities exist and as Mr. Bhagria provided a different version of the facts, the officer should have followed up with CARA to obtain clarification and/or test the applicants' credibility.

[25] The applicants also submit that there was no evidence in the officer's file that she gave any consideration to Mr. Bhagria's submissions. In support, the applicants note that there was no analysis, weighing of the evidence or follow up with either CARA or the applicants. As such, the applicants submit that the officer did not properly consider Mr. Bhagria's additional submissions.

[26] In addition, or in the alternative, the applicants submit that the officer should have granted Mr. Bhagria an opportunity to present his submissions in person to the officer. The applicants note that there is jurisprudence suggesting that an applicant must be granted an opportunity to make oral submissions where a decision turns on credibility or where there are doubts as to an applicant's evidence. The applicants submit that in this case, any finding that a fraudulent document was provided by or on behalf of the applicants depended on their credibility. Such a matter would be best tested by way of an oral examination. It is thus unfair to dismiss their explanation without a testing of their credibility.

[27] Finally, the applicants submit that they did not prepare or arrange for the preparation of any fraudulent documents purportedly from CARA or otherwise.

Respondent's Written Submissions

[28] The respondent submits that the appropriate standard of review is correctness for questions of procedural fairness and reasonableness for questions of interpretation and the weighing of evidence.

[29] The respondent submits that the officer properly considered the applicants' evidence.

[30] First, the respondent addresses the applicants' submission that the officer's use of the word fraudulent in characterizing the NOC is indicative of a finding of adverse credibility. The respondent notes that the officer did not allege in her decision or in the procedural fairness letter that the applicants had themselves committed fraud, nor that her ultimate decision was based on a finding of adverse credibility. Rather, the officer's decision merely indicated that the NOC was not verified by its purported source and was therefore insufficient to establish that the adoption was conducted in accordance with India's laws. As CARA indicated that the NOC was not authenticated by it, it was reasonable for the officer to characterize it as fraudulent as it was lacking in authority, not genuine and not certified by CARA. The respondent also notes that the applicants failed to establish that their adoption was in accordance with the laws of India as the officer never received an authenticated NOC from CARA.

[31] Second, the respondent submits that the officer properly considered the additional submissions. The respondent highlights that the standard for adequacy of reasons of administrative officers is not as stringent as that for administrative tribunals. Further, absent clear and convincing evidence to the contrary, decision makers are presumed to have considered all the evidence before them. In this case, there was no evidence to suggest that the officer did not consider the additional submissions. In fact, the officer's decision itself specifically refers to these submissions. The respondent submits that the officer therefore properly considered the applicants' submissions.

[32] The respondent then addresses the issue of procedural fairness raised by the applicants. The respondent submits that the officer did not err by not scheduling an interview. The respondent notes that there is no basis in law for the applicants' expectation for a meeting with the officer when Mr. Bhagria visited the Canadian High Commission in New Delhi without any prior scheduled appointment.

[33] The respondent also submits that no error was committed by the officer in not scheduling an interview or suggesting an alternative meeting time. The content of the duty of fairness in the context of the circumstances of this case did not include a duty to interview or schedule an interview with the applicants. The respondent also notes that this Court has recognized that visa officers are not always required to hold oral hearings. The crucial question in determining whether an oral hearing was required is whether the applicants, in the absence of an oral hearing, were afforded a meaningful opportunity to present evidence and to have that evidence fully and fairly considered. The respondent submits that the applicants were fully afforded this opportunity in this case.

[34] The respondent notes the applicants' submission that they were not given a meaningful opportunity to present evidence on the legality of the adoption in accordance with Indian laws. Pursuant to subparagraph 5.1(3)(b)(i) of the *Citizenship Regulations*, SOR/93-246, a valid NOC is required from CARA to confirm that an adoption is in accordance with the laws of India. This evidence must be in writing. Thus, without a valid NOC from CARA, an interview or oral hearing would not have helped the applicants satisfy the officer that the adoption was in accordance with Indian laws. Therefore, no breach of procedural fairness arose from the officer not suggesting alternative times for the applicants to meet with her.

[35] Further, the respondent submits that the officer was not required to follow-up with CARA. Rather, the applicants bore the onus of establishing that their application met citizenship

requirements. In support, the respondent highlights jurisprudence that states that when applying for citizenship, applicants bear the onus of establishing that they have met the requirements of both the *Citizenship Act* and the *Citizenship Regulations*.

[36] The respondent also submits that the officer was not required to hold the applicants' citizenship application in abeyance. In fact, such a requirement would be unreasonable and would frustrate the expeditious processing of applications. The respondent notes that Mr. Bhagria did not provide the officer with any clear timeline within which CARA's alleged NOC reconsideration would take place. Therefore, the respondent submits that the officer did not err in not holding the principal applicant's citizenship application in abeyance until the applicants' issues were resolved with CARA.

[37] Finally, the respondent submits that in the event that this Court allows this application, this Court should not give the respondent specific directions to grant the citizenship application. Such directions are not warranted in the circumstances of this case.

Analysis and Decision

[38] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue before the court, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[39] A decision under section 5.1 of the *Citizenship Act* is fact-driven and rendered by officers with specialized expertise in the field. These decisions warrant a high level of deference from this Court and therefore attract a reasonableness standard of review. This Court may however intervene if it finds that the officer erred by ignoring evidence or by drawing unreasonable inferences from the

evidence (see *Jardine v Canada (Minister of Citizenship and Immigration)*, 2011 FC 565, [2011] FCJ No 782 at paragraphs 16 to 18).

[40] In reviewing the officer's decision on a standard of reasonableness, the Court should not intervene unless the officer came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence before it (see *Dunsmuir* above, at paragraph 47). It is not up to a reviewing Court to substitute its own view of a preferable outcome, nor is it the function of the reviewing Court to reweigh the evidence (see *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at paragraphs 59 and 61).

[41] Conversely, issues of procedural fairness are reviewable on a correctness standard (see *Malik v Canada (Minister of Citizenship and Immigration)* 2009 FC 1283, [2009] FCJ No 1643 at paragraph 23; and *Khosa* above, at paragraph 43). No deference is owed to the officer on this issue (see *Dunsmuir* above, at paragraph 50).

[42] **Issue 2**

Did the officer deny the applicants procedural fairness?

This case revolves around section 5.1 of the *Citizenship Act*, which was enacted relatively recently. As such, it has received little treatment in the jurisprudence to date. Parliament's intent in enacting this provision was to reduce citizenship eligibility distinctions between adopted foreign children and children born abroad to Canadian parents. Prior to its enactment, adopted foreign children were first required to apply for and obtain permanent residence, after which they could apply for Canadian citizenship. Conversely, children born abroad to Canadian parents were automatically granted Canadian citizenship.

[43] When the Bill introducing this provision was discussed, Members of Parliament described its intent as the promotion of fairness, the treatment of children of Canadian parents with equity and

equality and the seeing of new families constituted as supportively and as quickly as possible. Monte Solberg, the Minister of Citizenship and Immigration and the sponsor of Bill C-14, explained at the House of Commons Debate:

> Indeed we are supporting families and their newest members, their adopted children, children we want to see protected, children we want to welcome, children who we want to feel at home here in Canada. [emphasis added]

[44] Mr. Solberg also noted that this provision incorporated important safeguards to ensure that the best interests of the child were met, that a proper home assessment was made, that the birth parents consented to the adoption, that no person would achieve unwarranted gain from the adoption and that a genuine parent-child relationship existed. Respecting the laws of the country from which the child was adopted was also described as an important obligation. It is the application of this obligation that is at issue here.

[45] Subparagraph 5.1(3)(b)(i) of the *Citizenship Regulations* implements this obligation to respect the adoption laws of other countries. This provision states:

> The following factors are to be considered in determining whether the requirements of subsection 5.1(1) of the Act have been met in respect of the adoption of a person referred to in subsection (1): […]whether, in the case of a person who has been adopted outside Canada in a country that is a party to the Hague Convention on Adoption and whose intended destination at the time of the adoption is a province, […] the competent authority of the country and of the province of the person's intended destination have stated in writing that they approve the adoption as conforming to that Convention […] [emphasis added]

[46] As indicated, subparagraph 5.1(3)(b)(i) of the *Citizenship Regulations* requires officers to consider whether the competent authority of the country has "stated in writing that they approve the adoption".

[47] In this case, there was no dispute that the competent authority in India is CARA and that a written NOC for the principal applicant was originally provided to the officer. However, the parties differ on their interpretations of CARA's email response to the verification request of the NOC's authenticity. CARA's email response to this request was brief and merely stated:

> The NOC of DEVANSH (M) DOB 09.05.2010 was not approved by Committee and therefore was not issued by CARA. Hence the attached NOC is not authenticated and not verified by CARA.

[48] The respondent submits that this response clearly indicates that the NOC was lacking in authority, not genuine and not certified by CARA. The officer therefore correctly deemed it fraudulent. Conversely, the applicants submit that as the officer deemed it fraudulent, she was essentially questioning their credibility. The officer was therefore required to hold an oral hearing, conduct an in-person interview with the applicants, and/or inquire further with CARA. By failing to do any of these, the applicants submit that the officer breached their procedural fairness rights.

[49] Before delving into these two positions, it is notable that the parties agree that a high level of procedural fairness is required in this case. However, they differ on the content of that duty of fairness in this case. As little jurisprudence has developed on this provision, basic principles must be reviewed in determining the required content of the duty of fairness under this provision and in the specific circumstances of this case.

[50] The basic principles relevant to the determination of the content of procedural fairness were discussed by Madam Justice L'Heureux-Dubé in *Baker* above. At the outset, Madam Justice L'Heureux-Dubé acknowledged that the content must be decided in the specific context of each case (see *Baker* above, at paragraph 21). Madam Justice L'Heureux-Dubé emphasized that (see *Baker* above, at paragraph 22):

> […] the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

[51] Madam Justice L'Heureux-Dubé then listed five non-exhaustive factors for determining the content of the duty of fairness (see *Baker* above, at paragraphs 23 to 28). In short, these factors are:

1. The nature of the decision and the decision making process;
2. The nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
3. The importance of the decision to the individual(s) affected;
4. The legitimate expectations of the person(s) challenging the decision; and
5. The choices of procedure made by the agency itself.

[52] On the first factor, Madam Justice L'Heureux-Dubé explained that the more the decision making process, the function and nature of the decision maker and the determinations made to reach a decision resemble judicial decision making, the more likely that procedural protections of a trial model will be required (see *Baker* above, at paragraph 23). The key is the nature of the issue that has to be determined, not the formal status of the decision maker (see *Baker* above, at paragraph 25). In this case, when exercising her power under section 5.1 of the *Citizenship Act*, the officer is making a citizenship determination on an adopted child. Thus, her role was similar to that of a citizenship judge, which entailed weighing evidence and the application of the law to the facts. As such, the officer played a judicial function in rendering her decision.

[53] On the second factor, Madam Justice L'Heureux-Dubé explained in *Baker* above, that greater procedural protections will be required where there is no appeal procedure provided in the

statute or when a decision is determinative of the issue (at paragraph 24). As indicated by this application, judicial review is available of the officer's decision under section 5.1 of the *Citizenship Act*. However, there is no appeal right and the applicants correctly submitted that the judicial review process is much narrower than an appeal. It is also notable that once an officer's decision is rendered, a new application would be required, thus, further delaying family reunification. A further delay runs counter to Parliament's intent in enacting this provision, which was to see new families constituted as supportively and as quickly as possible.

[54] On the third factor, Madam Justice L'Heureux-Dubé explained in *Baker* above, that the more important the decision is to the lives of those affected and the greater the impact on them, the more stringent the procedural protections will be (at paragraph 25). This factor clearly works in the applicants' favour as the officer's decision has a great impact on the applicants' lives. Thus, this factor also points towards greater procedural protections.

[55] On the fourth factor, Madam Justice L'Heureux-Dubé explained in *Baker* above, that if an applicant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness (at paragraph 26). In this case, the applicants submit that as the officer provided them with thirty days to make additional submissions, the officer was required to thoughtfully consider any such submissions. Indeed, the officer is required to consider all the evidence before her, which includes any additional submissions made within the permitted thirty days. However, unlike the applicants' submissions, there was no requirement that the file would be held open until matters were resolved with CARA. No such indication was made in the officer' procedural fairness letter.

[56] Finally, on the fifth factor, Madam Justice L'Heureux-Dubé explained in *Baker* above, that the choices of procedure made by the decision maker should be respected, particularly when the

statute allows the decision maker to choose its own procedures or when the decision maker has an expertise in determining what procedures are appropriate in the circumstances (at paragraph 27). Subparagraph 5.1(3)(b)(i) of the *Citizenship Regulations* clearly sets out a list of factors that the officer must consider in rendering a decision, thus, somewhat limiting flexibility in decision making. However, it is well recognized that immigration officers have expertise in immigration matters that generally attract deference from the Courts. Their choice of procedure in making their decision should thus generally be respected.

[57] In summary, the first three *Baker* above, factors clearly point to strong procedural protections, whereas the last two factors suggest somewhat lesser procedural entitlements. With this analysis as a background, the specific circumstances of this case must be reviewed to determine whether the necessary procedural fairness rights were granted to the applicants.

[58] In this case, the officer clearly considered the original NOC and CARA's response to the NOC verification request. However, upon receipt of CARA's brief reply email, the officer did not inquire further with CARA. Nevertheless, the officer did send a procedural fairness letter to the applicants to notify them of CARA's response and to provide them with thirty days to submit additional information.

[59] Shortly after receiving this procedural fairness letter, Mr. Bhagria visited the CARA office to inquire about the NOC. He then proceeded to the Canadian High Commission where he spoke with Officer Keshub. After their discussion, Officer Keshub sent the officer an email summarizing Mr. Bhagria's concerns. Officer Keshub noted Mr. Bhagria's statement that he had spoken with Ms. Singh at the CARA office. Ms. Singh had informed him that the NOC was issued in error as it was in fact intended for another child, other than the principal applicant. However, Officer Keshub noted that CARA's reply email to the NOC verification inquiry did not indicate that CARA issued the

NOC in error. Rather, it had said that the NOC was not authentic and not issued by CARA. Later, when Mr. Bhagria returned to the Canadian High Commission and requested a meeting with the officer, the officer denied his request.

[60] I find that these events, coupled with the relatively strong procedural protections mandated by the *Baker* above, factors as well as Parliament's intent in enacting section 5.1 of the *Citizenship Act*, raise serious questions about the sufficiency of procedural fairness granted to the applicants in this case. At the outset, I repeat Parliament's intent in enacting this provision which was to ensure that families are constituted as supportively and as quickly as possible.

[61] I then note the home study report completed by the provincial Manitoba government, which provided glowing favourable recommendations of the applicant couple as adoptive parents. With regards to India's own adoption laws, it is notable that a deed of adoption from the Roorkee Court in India was issued to the applicants and was before the officer. There was no suggestion that this deed was fraudulent or invalid. Further, upon receipt of the procedural fairness letter, Mr. Bhagria immediately contacted CARA and thereafter visited the Canadian High Commission on two separate occasions to address the issues raised. As such, I find that Mr. Bhagria acted swiftly and proactively to address the officer's concerns. The same cannot be said for the officer's actions.

[62] Recalling the importance that Canada places on family reunification, I find that the procedural fairness required in the specific circumstances of this case demanded greater attention and effort by the officer to verify CARA's treatment of the principal applicant's file.

[63] I question Officer Keshub's finding that CARA's brief email did not support Mr. Bhagria's allegation. Although CARA's email did not specifically state that it issued the NOC in error, it did say that the Committee had not approved the principal applicant's NOC. If, as Mr. Bhagria stated, the NOC had been incorrectly issued for the principal applicant when it was in fact intended for

another child, then the Committee would not have approved the principal applicant's NOC. Thus, there are two possible interpretations of CARA's email: one being that the NOC was fraudulent and the other being that the NOC was mistakenly issued by CARA. Without inquiring further, the officer's understanding was limited to Officer Keshub's interpretation as provided in the email. As such, the applicants were denied full and fair consideration of their evidence by the officer.

[64] Faced with a clear explanation that differed from the officer's ultimate finding and in light of Parliament's intent in enacting section 5.1 of the *Citizenship Act*, I find that the content of the procedural fairness in this case required that the officer, at a minimum, inquire further with CARA about the NOC at issue. Anything less would defeat Parliament's objective to constitute families as supportively and quickly as possible.

[65] Because of my finding with respect to procedural fairness, I need not deal with the remaining issue.

[66] For the above reasons, the applicant's application for judicial review is allowed.

[67] The applicant should be allowed sufficient time to obtain the NOC.

[68] The applicant requested costs in his written argument but based on the facts of the case, I am not prepared to make an award of costs. The problem arose as a result of CARA's error.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is referred to a different officer for redetermination.

"John A. O'Keefe"
Judge

ANNEX

Relevant Statutory Provisions

Federal Courts Act, RSC 1985, c F-7

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.	18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.
(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.	(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.
(3) On an application for judicial review, the Federal Court may	(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.	b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.
(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal	(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

(d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;

(f) acted in any other way that was contrary to law.

f) a agi de toute autre façon contraire à la loi.

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.

(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(b) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

Citizenship Act, RSC 1985, c C-29

5.1 (1) Subject to subsection (3), 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 du paragraphe (3), 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 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.

Citizenship Regulations, SOR/93-246

5.1(3) The following factors are to be considered in determining whether the requirements of subsection 5.1(1) of the Act have been met in respect of the adoption of a person referred to in subsection (1):	5.1(3) Les facteurs ci-après sont considérés pour établir si les conditions prévues au paragraphe 5.1(1) de la Loi sont remplies à l'égard de l'adoption de la personne visée au paragraphe (1) :
. . .	. . .
(b) whether, in the case of a person who has been adopted outside Canada in a country that is a party to the Hague Convention on Adoption and whose intended destination at the time of the adoption is a province,	b) dans le cas où la personne a été adoptée à l'étranger dans un pays qui est partie à la Convention sur l'adoption et dont la destination prévue au moment de l'adoption est une province :
(i) the competent authority of the country and of the province of the person's intended destination have stated in writing that they approve the adoption as conforming to that Convention, . . .	(i) le fait que les autorités compétentes de ce pays et celles de la province de destination de la personne ont déclaré par écrit que l'adoption était conforme à cette convention, . . .

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1272-11
STYLE OF CAUSE:	DEVANSH BHAGRIA, AGUM KUMAR BHAGRIA and SANGEETA RANI BHAGRIA - and - THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Winnipeg, Manitoba
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APPEARANCES:

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