

Federal Court



Cour fédérale

**Date: 20120614**

**Docket: T-1318-11**

**Citation: 2012 FC 755**

**Ottawa, Ontario, June 14, 2012**

**PRESENT: The Honourable Mr. Justice Simon Noël**

**BETWEEN:**

**PHU QUOC HUY (MINOR ADOPTED SON)  
REPRESENTED BY PHU THO QUANG  
(ADOPTIVE FATHER)**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of the Operations Manager [the manager] at the High Commission of Canada in Singapore, dated June 16, 2011, refusing the citizenship application of Phu Quoc Huy [the applicant], adopted son of Canadian citizen Phu Tho Quang [Mr. Phu], who presented arguments on behalf of the applicant at the hearing. The manager was not satisfied that the adoption was not entered into primarily for the purpose of acquiring a

status or privilege in relation to citizenship, in contravention of paragraph 5.1(3)(b) of the *Citizenship Act*, RSC 1985, c C-29 [the *Citizenship Act*].

## **I. Background**

[2] The applicant is a Vietnamese citizen born on November 27, 1992. On December 12, 2007, at the age of 15 and following the divorce of his parents in 2006, he was adopted by his uncle, Mr. Phu, a Canadian citizen living in the province of Quebec.

[3] The applicant first applied for citizenship in March of 2008. The officer reviewing the application, identified several concerns and recommended that proof of a genuine parent-child relationship be provided (Computer Assisted Immigration Processing System [CAIPS] notes, Trial Record [TR] at 4). Receiving further submissions from the applicant, the reviewing officer was concerned that despite proof of five visits to Vietnam by Mr. Phu between 2005 and 2007, only two photos could be provided of him with the applicant. The photos were of the applicant at a funeral procession for his grandmother, accompanied by his father and Mr. Phu. The officer did not find evidence of a parent-child relationship and also had concerns, based on the addresses provided in their household registrations and divorce documents, as to whether the applicant's parents were in fact divorced and living apart (CAIPS notes, TR at 6).

[4] An interview was held with the applicant and his father in the presence of an interpreter. Following the interview, a determination was made that the applicant did not meet the requirement set out in paragraph 5.1(3)(b) of the *Citizenship Act*, which requires that “the adoption was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.” During the interview, the applicant stated that while he lived with his aunt, his father visited him every 10 days to one month and that his sister took him to visit his mother about once a

month, which it was determined showed a significant parent-child relationship with his biological parents and that the adoption was therefore one “of convenience for the purpose of acquiring Canadian citizenship” (CAIPS notes, TR at 10). It was also found there was no significant information on file to indicate a genuine relationship between the applicant and Mr. Phu.

[5] The applicant applied for judicial review of that decision and on consent, the application was granted and the matter was remanded for re-assessment. At that point, after reviewing the entire file, the manager identified several continued concerns surrounding the applicant’s adoption, his current residence, whether his younger brother resided with him, and whether he would be adopted as well. It was noted that the Household Register on file showed that the applicant’s family lived together, including his father, mother, older sister, and younger brother. Accordingly, the manager determined that another interview with the applicant was necessary.

[6] On March 3, 2010, Canada Border Services Agency [CBSA] anti-fraud officer Jack Avery [the officer] visited the applicant’s residence in the company of a translator. The applicant was not there at the time, but the officer spoke with his older sister and his aunt. During the interview with the sister, the aunt contacted Mr. Phu, who was on vacation in Vietnam at the time. Mr. Phu asked to speak with the officer, but the officer informed him that he had to complete the interview with the sister before she returned to work and that he could call the officer when he returned to Ho Chi Minh City. Approximately 15 minutes later, the aunt summoned her niece to the phone. The officer presumed it was probably Mr. Phu on the phone and that he might be coaching her on what to say. The officer went over to her and she confirmed that it was her uncle on the phone. The officer asked him not to call as he was taking valuable time from the interview and reiterated his statement that Mr. Phu could call him when he returned to Ho Chi Minh City (CAIPS notes, TR at 16-17).

[7] After the visit, the officer provided the following summary (CAIPS notes, TR at 19):

The circumstances of this adoption point to one of design in obtaining permanent residence in Canada for the boy. The actual adoption takes place after the boy has reached the age of 15, which is illegal in Vietnam. Both his mother and father live within short distances to where he is residing. We believe that the father still resides with him at this address. A telephone call that [the interpreter] made to a neighbour indicates as much.

[8] Unable to speak to the applicant or his parents during the first visit, the officer returned with the interpreter to the home on August 4, 2010, hoping to establish if the applicant's father did in fact reside at the same residence. They first spoke to a street vendor located directly in front of the residence, who was renting the space from the family. The vendor confirmed that the applicant's father lived at the home. The officer and interpreter then proceeded to the home, where they found a young boy watching television. Speaking to the boy, they confirmed that he was the applicant's younger brother, lived there for years with his mother, that she was out selling, and that the applicant would take his mother's place at noon while she had lunch (CAIPS notes, TR at 20).

[9] The applicant then came into the house. He sent his brother out and indicated that his brother was "just visiting." The officer and interpreter introduced themselves and explained why they were there. They proceeded to interview the applicant in Vietnamese. The applicant at first stated that while his parents divorced in 2006, the situation had since improved and the family was back together as one. Their financial situation was difficult however and his uncle was sending them money regularly. Questioned further, the applicant admitted that his family had actually never lived apart (CAIPS notes, TR at 21-22):

Q. You have always lived here?

A. Yes, of course.

Q. Has your brother always lived here?

A. Before he lived with mother and just back.

Q. When did your mother and brother come back?

A. A long time back.

Q. After 2006?

A. (he pauses and doesn't answer, appearing to not know what to say)

Q. Were you ever actually living apart?

A. No.

[10] The officer resumed his findings as follows (CAIPS notes, TR at 22):

During the course of the interview, the [applicant] gave an elaborate answer regarding a family problem that occurred in 2006. It seems that there was some kind of major crisis in the family. His sister told us during the first interview that the father had a mistress. Today the [applicant] talked of his father's mother passing away in 2006 and that everyone hated his father at the time. It appears as though a rift was created and that it was decided that the [applicant] should go and live with his uncle in Canada. According to the sister, her father went bankrupt when the mother was pregnant with the younger brother. She says that the father blamed his bad luck on the [applicant].

With time the parents appear to have resolved their situation but are still carrying on with the charade of being divorced for the sole purpose of having their son get to Canada. Everyone of the family members are participants in the scheme except for the youngest brother as he appears to have not been told. Today he spoke the truth as he knows nothing else. When confronted with this, the applicant had no choice but to admit the truth as well. The mother, father, and two children have always lived together as a family unit, in spite of some challenges and difficulties. The adoption is a sham.

[11] In correspondence dated August 5, 2010 addressed to the Canadian High Commission, which included photos of Mr. Phu with the applicant and money transfer receipts, Mr. Phu wrote the following (TR at 28-29):

According to my adopted son, on August 4, 2010, there were an **unknown Immigration Officer** and an unknown interpreter from Consulate General of Canada to Vietnam in Ho Chi Minh City came to my sister residence [...] without any confirmation.

There was no one home except for my adopted son and eight years old boy. At first the **unknown Immigration Officer** and unknown interpreter spoke with the eight years old boy without the present of an adult in the family. Then they spoke with my adopted son for

about half an hour about the family status and his future. The **unknown Immigration Officer** and an unknown interpreter had convinced to my adopted son that life for my adopted son is better in Vietnam than in Canada and my adopted son has no chance to reunite with his adopted family in Canada.

I feel sorry for the negative feedback from this **unknown Immigration Officer** that he gave it to my adopted son while on the other side of the world his adopted father is working extremely hard to prepare for the family to be together.

Immigration Officer **Jack Every** came to my sister residence before and this **unknown Immigration Officer** came again probably for the same purpose about my adopted son's biology parents status. Just a reminder that this adopted event happened back in 2006 during my trip in Vietnam. It has been more than three years since I applied to sponsor my adopted son. Please accept the fact that people do change from times to times but my adoption remain solid with my commitment that I had made four years ago.

My older sister **Phu Thi Thu Nga** had refused to look after my adopted son in reasoning that she does not want extra stress from this affaire. Therefore I've decided to move my adopted son to live with my family in law in another province. [Emphasis in original.]

[12] Having reviewed the entire application and in light of the evidence provided by the officer, the manager determined that the applicant did not meet the requirements of the *Citizenship Act*. In a letter dated June 16, 2011, the manager informed the applicant of her decision to refuse the application, based on the investigation conducted by the CBSA anti-fraud officer, which provided evidence that the adoption did not create a genuine parent-child relationship with Mr. Phu and was entered into primarily for the purpose of acquiring status or privilege in relation to citizenship, contrary to paragraph 5.1(3)(b) of the *Citizenship Act*: "His investigation results provide concrete evidence that, contrary to the information you had provided on the application and at interviews, you actually live with your biological parents, your younger brother and your aunt. Although both you and your father claimed to the contrary, you do have an ongoing parent-child relationship with your biological parents" (TR at 26).

## II. Issues and Standard of Review

[13] While the applicant has set out a number of issues (which will be addressed within these reasons), the determinative issue is whether the manager erred in her assessment of the evidence. The fact-driven inquiry and assessment of the evidence required by section 5.1 of the *Citizenship Act* calls for the reasonableness standard of review (*Satnarine v Canada (Minister of Citizenship and Immigration)*, 2012 FC 91 at para 9, [2012] FCJ 97 and *Jardine v Canada (Minister of Citizenship and Immigration)*, 2011 FC 565 at paras 16-17, [2011] FCJ 782). Accordingly, this Court will only intervene if the decision does not fall within the range of possible, acceptable outcomes or does not accord with the principles of justification, transparency, and intelligibility (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

## III. Analysis

[14] As outlined above, the officer visited the applicant's home on two occasions and his investigation led him to conclude the adoption was a sham. Contrary to the account initially given by the applicant, his father, aunt, sister, and Mr. Phu, the applicant never stopped living with his parents and the adoption appeared to have been entered into primarily for the purpose of acquiring status or privilege in relation to citizenship, contrary to subparagraph 5.1(3)(b) of the *Citizenship Act*:

*Citizenship Act*, RSC 1985,  
c C-29

Adoptees — minors

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

*Loi sur la citoyenneté*,  
LRC (1985), ch C-29

Cas de personnes adoptées —  
mineurs

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

minor child [...]	subséquemment lorsqu'elle était un enfant mineur [...]
Quebec adoptions	Adoptants du Québec
(3) The Minister shall on application grant citizenship to a person in respect of whose adoption — by a citizen who is subject to Quebec law governing adoptions — a decision was made abroad on or after January 1, 1947 if	(3) Le ministre attribue, sur demande, la citoyenneté à toute personne faisant l'objet d'une décision rendue à l'étranger prononçant son adoption, le 1er janvier 1947 ou subséquemment, par un citoyen assujetti à la législation québécoise régissant l'adoption, si les conditions suivantes sont remplies
[...]	[...]
(b) the adoption was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.	b) l'adoption ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté.

[15] Section 10.9 of the Citizenship Policy Operations Manual on Adoptions (CP 14) indicates that if an officer determines that “the adoption was entered into primarily for the purpose of acquiring status or privilege in relation to immigration or citizenship (i.e. an adoption of convenience), the officer must refuse the application [emphasis in original].” Section 10.10 sets out how to identify an adoption of convenience, stating that an officer “must form his or her opinion on factors which, taken together, could make a reasonably prudent person conclude the adoption has taken place to circumvent the IRPA or the *Citizenship Act*.” It is noted that no formal criteria exist for deciding whether or not an adoption is *bona fide*, but that the officer should look at relevant information, and a non-exhaustive list of potential elements to consider is provided. Elements listed which are pertinent to this case include:

- the circumstances of the adoption;



- the whereabouts of the child's biological parents and the nature of their personal circumstances;
- who was included in the child's household before and after the adoption (e.g. did the child continue to live in the same household as the biological parents even after the adoption);
- supplanting of the authority of the child's biological parent(s) by that of the adopting parent(s); and
- the relationship between the adopted child and the biological parent(s) after the adoption.

[16] The officer's investigation revealed that the applicant and his family had misled Canadian authorities as to the circumstances of the adoption and the continued relationship between the applicant and his parents. Mr. Phu's correspondence of August 5, 2010 and additional evidence clearly failed to alleviate the concerns raised by this deception. In light of the pertinent elements set out in the policy manual and the related findings made by the officer, it was reasonable for the manager to conclude that the applicant had failed to satisfy her that his adoption was not entered into primarily for the purpose of acquiring status or privilege in relation to citizenship, as set out in paragraph 5.1(3)(b) of the *Citizenship Act*. This conclusion falls within the range of possible, acceptable outcomes and adheres to the principles of justification, transparency and intelligibility set out by the Supreme Court in *Dunsmuir*, above.

[17] In his submissions, Mr. Phu alleges that the manager failed to consider all the evidence before her, but fails to identify any specific evidence, let alone explain how this evidence could have affected the outcome of the application. Having reviewed the record, this Court finds the evidence submitted by the applicant and Mr. Phu was insufficient to cast doubt on the reasonability of the manager's decision.

[18] Mr. Phu has also questioned the adequacy of the reasons provided by the manager, but this Court finds that the reasons meet the bar set in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] SCJ 62. Specifically, the reasons dated June 16, 2011 allow this Court to understand why the manager made her decision and permit it to determine whether her conclusion is within the range of acceptable outcomes, as it was established above.

[19] Mr. Phu alleges a breach of the principles of natural justice caused by the manager's alleged failure to consider whether or not to recommend an exercise of discretion under subsections 5(3), 5(4) or 9(2) of the *Citizenship Act*, as set out in subsection 15(1):

*Citizenship Act*, RSC 1985,  
c C-29

Recommendation re use of  
discretion

15. (1) Where a citizenship judge is unable to approve an application under subsection 14(2), the judge shall, before deciding not to approve it, consider whether or not to recommend an exercise of discretion under subsection 5(3) or (4) or subsection 9(2) as the circumstances may require.

[Emphasis added.]

*Loi sur la citoyenneté*,  
LRC (1985), ch C-29

Exercice du pouvoir  
discrétionnaire

15. (1) Avant de rendre une décision de rejet, le juge de la citoyenneté examine s'il y a lieu de recommander l'exercice du pouvoir discrétionnaire prévu aux paragraphes 5(3) ou (4) ou 9(2), selon le cas.

[Nous soulignons.]

[20] In the English version, a citizenship judge's duty to consider whether or not to recommend an exercise of discretion under subsections 5(3), 5(4), and 9(2) comes into play only when he is unable to approve an application under subsection 14(2). While the French version does not

explicitly specify subsection 14(2), it also only speaks of the duty of the citizenship judge. In either case, section 14 makes clear which applications are to be considered by a citizenship judge:

<i>Citizenship Act</i> , RSC 1985, c C-29	<i>Loi sur la citoyenneté</i> , LRC (1985), ch C-29
Consideration by citizenship judge	Examen par un juge de la citoyenneté
14. (1) An application for	14. (1) Dans les soixante jours de sa saisine, le juge de la citoyenneté statue sur la conformité — avec les dispositions applicables en l'espèce de la présente loi et de ses règlements — des demandes déposées en vue de :
<u>(a) a grant of citizenship under subsection 5(1) or (5),</u>	<u>a) l'attribution de la citoyenneté, au titre des paragraphe 5(1) ou (5);</u>
(b) [Repealed, 2008, c. 14, s. 10]	b) [Abrogé, 2008, ch. 14, art. 10]
(c) a renunciation of citizenship under subsection 9(1), or	c) la répudiation de la citoyenneté, au titre du paragraphe 9(1);
(d) a resumption of citizenship under subsection 11(1)	d) la réintégration dans la citoyenneté, au titre du paragraphe 11(1).
shall be considered by a citizenship judge who shall, within sixty days of the day the application was referred to the judge, determine whether or not the person who made the application meets the requirements of this Act and the regulations with respect to the application.	
[...]	[...]

## Advice to Minister

(2) Forthwith after making a determination under subsection (1) in respect of an application referred to therein but subject to section 15, the citizenship judge shall approve or not approve the application in accordance with his determination, notify the Minister accordingly and provide the Minister with the reasons therefor.

[...]

[Emphasis added.]

## Information du ministre

(2) Aussitôt après avoir statué sur la demande visée au paragraphe (1), le juge de la citoyenneté, sous réserve de l'article 15, approuve ou rejette la demande selon qu'il conclut ou non à la conformité de celle-ci et transmet sa décision motivée au ministre.

[...]

[Nous soulignons.]

[21] As it is made clear in section 14, the application for citizenship of a person adopted by a Canadian citizen, governed by section 5.1, is not an application to be considered by a citizenship judge. Consequently, the obligation set out in subsection 15(1) for a citizenship judge to consider a recommendation under subsections 5(3), 5(4), and 9(2) did not apply to the applicant in this case.

[22] Mr. Phu also alleges that the manager failed to clearly select and apply the appropriate test to determine whether the applicant had met the requirements under paragraph 5.1(3)(b) of the *Citizenship Act*. This argument appears to refer to the various tests considered by citizenship judges when examining applications for citizenship made under section 5 of the *Citizenship Act*. As explained above, an application for citizenship of a person adopted by a Canadian citizen is made under section 5.1, a different provision with different requirements, and does not require the application of the tests established under section 5.

[23] Finally, Mr. Phu implies that the manager intentionally waited for the status of the applicant's biological family to change so that she could question the information provided in the

application. There is no evidence in the record of such an intentional delay. Furthermore, the account according to which the parents divorced and moved away, leaving the applicant with his aunt, proved false. The applicant confirmed that his parents continued to live with him throughout. The application was processed normally, concerns raised in light of the evidence were investigated, and the investigation revealed a significant degree of deception which cast doubt as to whether the adoption was entered into primarily for the purpose of acquiring status or privilege in relation to citizenship. For all of these reasons, this Court finds the manager's decision to be reasonable, falling within the range of possible, acceptable outcomes, and adhering to the principles of justification, transparency, and intelligibility set out in *Dunsmuir*, above.

[24] Mr. Phu was given every opportunity to explain the case and to present his arguments at the hearing. He did so in an elaborate way and this Court has taken his oral submissions into consideration.

[25] Counsel for the respondent is claiming costs. Using my discretion, pursuant to Rule 400 of the *Federal Court Rules*, SOR/98-106, I will limit them to \$250.00.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that** the application for judicial review of the June 16, 2011 decision is dismissed. Costs of \$250.00 are in favour of the respondent.

“Simon Noël”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1318-11

**STYLE OF CAUSE:** PHU QUOC HUY (MINOR ADOPTED SON)  
REPRESENTED BY PHU THO QUANG  
(ADOPTIVE FATHER) v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Montreal, Quebec

**DATE OF HEARING:** June 12, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** NOËL S. J.

**DATED:** June 14, 2012

**APPEARANCES:**

Phu Tho Quang  
(Adoptive father)

FOR THE APPLICANT  
(ON BEHALF OF HIS MINOR  
ADOPTED SON, PHU QUOC HUY)

Emilie Tremblay

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Myles J. Kirvan  
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FOR THE RESPONDENT