

Federal Court



Cour fédérale

Date: 20131211

Docket: T-765-13

Citation: 2013 FC 1244

Toronto, Ontario, December 11, 2013

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

TERIKA DAVIS

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] These Reasons for Order and Order must be read in conjunction with those supplied in the decision in T-764-13 for the reasons explained in the Introduction to that decision, which is quoted in the paragraphs that follow.

I. Introduction

[2] In April 2009, Lancia Davis (DOB: August 18, 1989) and her younger sister Terika Davis (DOB: December 23, 1991), both citizens of Jamaica, were adopted by their Canadian grandmother, Ida Brown (Ida). Based on the adoption, Lancia and Terika each applied for Canadian citizenship in June 2009. The same Citizenship Officer (Officer) rejected both applications on the same grounds. As a result, Lancia and Terika filed separate Applications for judicial review with the Court challenging the rejection decisions (Docket T-764-13 for Lancia and Docket T-765-13 for Terika).

[3] Because Lancia was more than 18 years old on the date of adoption, her application for citizenship was governed by s. 5.1 (2) of the *Citizenship Act* (R.S.C., 1985, c. C-29) (*Act*). Because Terika was less than 18 years old on the date of adoption, her application for citizenship was governed by s. 5.1 (1) of the *Act*. Section 5.1 (1) and (2) reads as follows:

<p>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</p> <p>(a) was in the best interests of the child;</p> <p>(b) created a genuine relationship of parent and child;</p> <p>(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</p>	<p>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 :</p> <p>a) elle a été faite dans l'intérêt supérieur de l'enfant;</p> <p>b) elle a créé un véritable lien affectif parent-enfant entre l'adoptant et l'adopté;</p>
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(d) was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.

(2) 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 at least 18 years of age if

(a) there was a genuine relationship of parent and child between the person and the adoptive parent before the person attained the age of 18 years and at the time of the adoption; and

(b) the adoption meets the requirements set out in paragraphs (1)(c) and (d).

c) elle a été faite conformément au droit du lieu de l'adoption et du pays de résidence de l'adoptant;

d) elle ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté.

(2) 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 âgée de dix-huit ans ou plus, si les conditions suivantes sont remplies :

a) il existait un véritable lien affectif parent-enfant entre l'adoptant et l'adopté avant que celui-ci n'atteigne l'âge de dix-huit ans et au moment de l'adoption;

b) l'adoption satisfait aux conditions prévues aux alinéas (1)c) et d).

[4] With respect to the applications for citizenship, the Officer interviewed Lancia, Terika, and Ida and took contemporaneous notes of each interview. The interview notes constitute the evidence upon which each rejection decision was made (Tribunal Record, pp. 009 to 040). In the opening to each of Lancia's and Terika's decisions, the Officer made a specific statement of facts drawn from the interview notes directed at the circumstances of each individual. However, with only slight factual variation, the primary conclusions reached in both decisions are identical: a "genuine

relationship of parent and child” did not exist, and the adoption was “primarily for the purpose of acquiring a status or privilege in relation to immigration and citizenship”.

[5] As a result, for clarity, the Reasons for Order and Order (ROO) in each of Lancia’s and Terika’s Applications for judicial review will take the following approach: APPENDIX 1 to each ROO will provide the Officer’s specific statement of facts expressed in the decision rendered; and the narrative of each ROO will provide the Officer’s reasons for decision. Given the high degree of similarity in the content of the decisions under review, there is a high degree of similarity with respect to my analysis of the issues presented by the Officer’s findings of fact and reasons for decision. Thus, for clarity and to avoid unnecessary repetition, the ROO with respect to Lancia’s Application will be the Master from which narrative and findings will be incorporated by reference into the ROO with respect to Terika’s Application. APPENDIX 2 to Lancia’s ROO contains what I find to be specifically relevant evidence with respect to the purpose of the adoptions.

[6] There is one unique feature that distinguishes Terika’s Application, which is the requirement that her best interests be addressed in determining her application for citizenship. This feature will be addressed in the ROO with respect to Terika.

[7] It is agreed that the standard of review of the rejection decisions is reasonableness. Counsel for both Lancia and Terika argues that the rejection decisions under review are unreasonable. For the reasons which follow, I agree with this argument.

II. A Genuine Relationship of Parent and Child?

[8] The specific statement of the facts directed at Terika's circumstances is quoted in

APPENDIX 1 of these reasons. The Officer's reasons for decision, which are addressed to Ida, are as follows:

Based on the information provided in Terika's application and during the interviews, Terika does not meet the requirements of paragraphs 5.1 (1)(b) and 5.1 (1)(d) of the Citizenship Act. In coming to this decision, I considered all of the evidence and the factors set out in paragraph 5.1 (3)(a) of the *Citizenship Regulations*.

I am not satisfied that the adoption has created a genuine relationship of parent and child. I noted that Terika was 17 1/2 years old at time of the adoption and that she had lived with her birth father prior to the adoption. The evidence suggests that the relationship between Terika and her birth parents has remained the same; her maintaining regular contact with them and her birth father continuing to provide guidance and some financial support for her care.

During your interview, you indicated that Terika's birth father was financially stable and gainfully employed in Jamaica. The evidence shows that the relationship between Terika and her birth father was a typical parent-child relationship prior to the adoption.

It is understood that you have been caring for Terika since July 22, 2008; however, it appears that your relationship with her is a typical grandparent-grandchild relationship. Therefore, I am not satisfied that the adoption created a genuine relationship of parent and child.

[9] On this question of genuine relationship, I hereby incorporate by reference the narrative and findings expressed in Lancia's decision. I do so with the proviso that there is a variance with respect to the Officer's reference to the *Citizenship Act* and the *Citizenship Regulations* due to the fact that Terika was under 18 years of age when her adoption occurred:

Based on the information provided in Terika's application and during the interviews, Terika does not meet the requirements of paragraphs 5.1 (1)(b) and 5.1 (1)(d) of the *Citizenship Act*. In coming to this decision, I considered all of the evidence and the factors set out in paragraph 5.1 (3)(a) of the *Citizenship Regulations*.

[10] The variance does not affect the substance of the findings as expressed in Lancia's decision on the relationship question except to introduce another important reason for finding that the Officer's rejection of Terika's application for citizenship is unreasonable.

[11] Pursuant to s. 5.1 (1)(a) of the *Act*, the Officer was required to specifically address Terika's best interests and to make a finding on her best interests. In my opinion, the Officer's failure to do so renders the decision under review unreasonable.

III. Adoption for the Purpose of Acquiring Status or Privilege in Relation to Immigration or Citizenship?

[12] On this question, the Officer made the following finding also addressed to Ida:

I am also not satisfied that the adoption was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.

The reasons given by both you and Terika as to why this adoption took place were for the purpose of providing Terika with a better education, economic gains, family ties and a better quality of life in Canada.

[Emphasis added]

[13] On this question, I hereby incorporate by reference the narrative and findings expressed in Lancia's decision, including the content of Appendix 2.

IV. Result

[14] For the reasons provided, the decision under review must be set aside.

APPENDIX 1

Ms. Ida Rebbica BROWN
106 - 177 Pendrith Street Toronto, Ontario M6G 1 S1

March 22, 2013

Dear Ms. Brown:

I have completed the assessment of Terika Anna-Stacia Davis, Application for Canadian citizenship for a person adopted by a Canadian citizen (on or after January 1, 1947). This letter is to inform you that her application has been refused for the reasons set out below.

You and Terika were present with you legal counsel, Nathan Higgins, in this office on January 22, 2013 and were interviewed by me. During your interviews, you provided me with the following details which I considered before making my decision:

You stated that the reason you decided to adopt Terika was to help out your brother, Oral Conrad Davis, Terika's birth father, who is residing in Jamaica. You continued to state that your brother was no longer able to provide a safe environment for Terika, so you thought it best that she join her extended family in Canada. During her visit to Canada, Terika advised you that she would like to remain permanently in Canada and you asked your brother if he would give his consent for you to adopt her.

Both you and Terika stated that Terika resided with her birth parents and sister, Lancia Lesette Davis, from birth until approximately 6 years old, around which time Terika's parents separated. At this time, Terika began residing with her birth mother and sister at the home of her grandparents, Maye and Nathan Ellis. At approximately the age of 11, Terika went to reside with her birth father, step-mother (common-law) and sister at their family home.

You also stated that Terika's birth father continued to support Terika and her sister financially after her birth parent's separation and during the time that they were living with their birth mother and grandparents.

You both stated that Terika had a good relationship with her birth father and that the issue lay with her step-mother, Shelly-Ann Earle. You both stated that Terika's step- mother was verbally abusive with her. Eventually, this resulted in Terika moving out and living in a one room house that her birth father had built. Terika was approximately

14 years old when she and her sister began these new living arrangements.

You both stated that Terika's birth father paid for Terika to attend a private elementary school and that he worked very hard to provide for the family. You both described him as a humble person with a kind and caring nature. You both continued to state that Terika's birth father is a "good father" and that he always provided and continues to provide Terika with financial, emotional and parental support.

You stated that you were very concerned for Terika's safety in Jamaica due to her step- mother's abusive behavior and also because there had been a few girls raped behind their birth father's house. Also, you had expressed concern for the well-being of Terika and her sister residing alone in a one-room house that only had a kitchen but no washroom. For this reason, you suggested that Terika and her sister come to visit you in Canada. On July 22, 2008, Terika and her sister arrived in Canada as visitors. During Terika's visit, she informed you that she did not want to return to Jamaica and that she wished to remain in Canada. Upon this request, you and your two daughters, Oeon and Marsha, decided to call the immigration office and inquire as to the possibility of Terika being able to remain in Canada permanently. You stated that the immigration officer advised you to adopt Terika since her birth parents are not Canadian citizens. At this time, you contacted a legal representative at West Toronto Community Legal Services. In turn, they directed you to an adoption lawyer, who initiated the adoption proceedings.

During your interviews, you both stated that your relationship with each other remained the same after the adoption.

Further, both you and Terika informed me that Terika's relationships with her birth parents remained the same after the adoption and that there is regular contact with her birth father through texting and telephone conversations as well as regular contact with her birth mother through texting and Facebook. Furthermore, you both stated that Terika's birth father continues to be involved in making decisions about her affairs and sends her money and gifts whenever he is able to do so.

ORDER

THIS COURT ORDERS that the decision presently under review is set aside, and the matter is referred back for redetermination by a different citizenship officer on the directions that:

1. The redetermination be in accordance with the reasons for decision provided herein;
and

2. Counsel for the Applicant has the right to make further updated submissions.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-765-13

STYLE OF CAUSE: TERIKA DAVIS v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 3, 2013

**REASONS FOR ORDER AND
ORDER:** CAMPBELL J.

DATED: DECEMBER 11, 2013

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