

Federal Court



Cour fédérale

Date: 20140122

Docket: T-1270-13

Citation: 2014 FC 77

Vancouver, British Columbia, January 22, 2014

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**NAVJIT KAUR RAI
AND SURINDER SINGH RAI**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The *Hague Convention* on Adoption of Children and Canadian domestic legislation, both federal and provincial, are in place to ensure that the vulnerability of children is protected with respect to safeguards in their regard, as well, both are in place to ensure that those whose interests are to protect such children are also protected.

[2] Without submission of letters from competent authorities from the countries of origin and the province in Canada in question, confirming that adoption requirements have been met under the *Hague Convention on Adoption*, adoption requirements are considered not to have been met by Canadian authorities as per the *Canadian Citizenship Act (Dufour v Canada (Minister of Citizenship and Immigration))*, 2013 FC 340; *Adejumo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1485, 402 FTR 282 [*Adejumo*].

II. Introduction

[3] This is an application for judicial review of the decision of a Visa Officer, dated May 28, 2013, refusing the Applicants' citizenship application for their adopted daughter. The Officer was not satisfied that the adoption met the requirements under paragraphs 5.1(1)(a), 5.1(1)(b) or 5.1(1)(c) of the *Citizenship Act*, RSC, 1985, c C-29.

III. Background

[4] The Applicants, Mrs. Navjit Kaur Rai and Mr. Surinder Singh Rai, are Canadian citizens who are originally from India. They have three Canadian-born children: Keerat Singh Rai, Ravjat Singh Rai and Kultaj Singh Rai.

[5] On December 31, 2009, the Applicants adopted Mrs. Rai's deceased brother's daughter, Kamaljeet Kaur. Kamaljeet's natural mother, Manjit Kaur, still resides in India. She still has a relationship with her daughter and sees her regularly.

[6] On May 18, 2012, the Applicants submitted an Application for Canadian Citizenship for a Person Adopted by a Canadian Citizen for Kamaljeet.

[7] As part of the application process, in a letter dated July 24, 2012 from the Immigration Section of the High Commission of Canada in New Delhi, the Applicants were asked to provide a number of documents to Citizenship and Immigration Canada [CIC] in order to confirm that the adoption was made in accordance with the laws of India and Canada. This included the following documents:

- a) Home study of the adoptive parents completed by an accredited agency in Canada;
- b) Notice of Agreement from the province of destination in Canada;
- c) No Objection Certificate from the Central Adoption Resource Authority (CARA); and
- d) Photos of the adoption ceremony.

(Certified Tribunal Record at p 109)

[8] The Applicants provided a home study and photos of the ceremony, however, they did not provide a Notice of Agreement from the Province of British Columbia or a No Objection Certificate from the CARA.

[9] On May 28, 2013, the Visa Officer rejected the Applicants' citizenship application for their adopted daughter, which is the underlying application before this Court.

IV. Decision under Review

[10] In her decision, the Officer concluded that the Applicants had failed to establish that the adoption was in the adoptee's best interest, that there existed a genuine parent-child relationship and that the adoption was performed in accordance with the laws of India and Canada respectively. As such, the Officer found that the Applicants had failed to meet the requirements of paragraphs 5.1(1)(a), 5.1(1)(b) and 5.1(1)(c) of the *Citizenship Act*.

[11] On the first issue, the Officer concluded that the Applicants had not sufficiently demonstrated that the adoption was in the best interest of the child as they could not provide the basic required documents to confirm that the adoption was performed in accordance with the *Hindu Adoption and Maintenance Act* (HAMA) of India or the *Hague Convention* on adoption.

[12] The Officer noted that there was a significant discrepancy in the five interviews she conducted in regard to the location of the adoption ceremony, making it unclear as to whether an actual ceremony had even taken place. She also noted that the pictures submitted by the Applicants did not clearly demonstrate that the ceremony was an adoption.

[13] On the second issue, in regard to the genuineness of the parent-child relationship, the Officer noted that there was minimal evidence on the record of any ongoing communication between the Applicants and Kamaljeet. There was also no evidence of any transfer of funds from the Applicants to support Kamaljeet in India. The Officer also found that Kamaljeet showed limited knowledge of Canada and her adoptive parents' living situation.

[14] On the last issue, the Officer indicated that the Applicants had not complied with the laws in Canada as they failed to provide a Notice of Agreement from the Province of British Columbia and a No Objection Certificate from the CARA. Without these documents, the Officer concluded that she could not be satisfied that the Applicants met the requirements of the *Citizenship Act*.

V. Issue

[15] Did the Officer err in her assessment of the evidence before her?

VI. Relevant Legislative Provisions

[16] The following legislative provision of the *Citizenship Act* is relevant:

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

(a) was in the best interests of the child;

(b) created a genuine relationship of parent and child;

(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

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) elle a été faite dans l'intérêt supérieur de l'enfant;

b) elle a créé un véritable lien affectif parent-enfant entre l'adoptant et l'adopté;

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

...

[...]

In addition to section 117(1)(g)(i) and (ii) of the *Immigration and Refugee Protection Regulations*.

VII. Standard of Review

[17] The Visa Officer's assessment of evidence required by section 5.1 of the *Citizenship Act* attracts the standard of reasonableness (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1177; *Satnarine v Canada (Minister Citizenship and Immigration)*, 2012 FC 91, 404 FTR 135). Consequently, this Court will not intervene if the decision is justified, transparent and intelligible, and if it falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

VIII. Analysis

[18] The Applicants dispute several of the Officer's factual findings. They insist that the evidence on file contradicts those findings.

[19] Having carefully reviewed the record, the Court cannot agree with the Applicants. The Court is of the view that the Officer had more than sufficient grounds to justify her conclusions.

[20] In their submissions, the Applicants provided few details regarding the adoption or the circumstances leading up to it. The little information that was provided to the Officer is confusing and contradictory. For instance, in their interview, the Applicants and Kamaljeet provided different

locations of where the adoption took place. No reasonable justification was provided to explain this discrepancy. It thus remains unclear as to where the ceremony actually took place, if at all. As established in *Dhadda v Canada (Minister of Citizenship and Immigration)*, 2011 FC 206, the ceremony is a key factor in determining the validity of an adoption in India; there is a requirement for a physical “giving and taking” of the child. This was not reasonably established in the present case.

[21] Likewise, the Applicants provided little evidence to demonstrate that a genuine parent-child relationship existed. While an ongoing relationship and contact with a natural parent may still occur in cases of adoption, the Applicants had the burden to establish that they had, not only legally, but practically, taken on the role of parent in Kamaljeet’s life (*Adejumo, supra*).

[22] There was little evidence that the Applicants provided emotional support to Kamaljeet since the adoption (minimal communication), and no evidence of any financial support. It would appear rather, that her aunt (and Power of Attorney), Mrs. Ranjit Kaur, and her husband, Mr. Davinder Singh, have emotionally and financially supported Kamaljeet since her adoption by the Applicants in 2009. While the Court acknowledges that Mr. Singh earns money by cultivating lands owned by Mr. Rai, which he then uses to support his wife and Kamaljeet, the Court does not consider this to be financial support by the Applicants for their adoptive daughter.

[23] On this issue, the Court finds that the Officer reasonably concluded that there was no genuine parent-child relationship between Kamaljeet and her adoptive parents.

[24] In his affidavit, Mr. Rai alleges that he and his wife provided the Officer with proof of communication with their adoptive daughter through telephone statements and birthday cards they had sent to Kamaljeet; however, as correctly pointed out by the Respondent, most of the documents to which they refer postdate the interview process. Moreover, the Officer confirmed in a sworn statement that these documents were not in the record before her (Affidavit of Stella Sweetman Griffin, Applicant's Record at p 128). Based on these facts, the Court cannot consider this evidence in the judicial review of the Officer's decision. The scope of evidence in an application for judicial review is restricted to the material that was before the decision-maker (*Dezameau v Canada (Minister of Citizenship and Immigration)*, 2010 FC 559, 369 FTR 151).

[25] In addition to the above, the Applicants also failed to provide the Officer the required documentation to establish that the adoption met the requirements of the *Hague Convention* on adoption, whose object is to establish safeguards to ensure that inter-country adoptions take place in the best interests of children, and the requirements of the laws in Canada. The Applicants received clear notice in the Officer's letter of July 24, 2012 that the application could not succeed without these key documents.

[26] The Court finds that the Officer was open to determine that it was not in Kamaljeet's best interest to permit her immigration to Canada in light of these missing documents.

[27] The Applicants explained that they are continuing their efforts to obtain the relevant documentation required to make Kamaljeet eligible for Canadian citizenship. Unfortunately, such efforts are not sufficient to impugn the Officer's decision.

IX. Conclusion

[28] For all of the above reasons, the Applicants' application for judicial review is dismissed.

JUDGMENT

THIS COURT ORDERS that the Applicants' application for judicial review be dismissed with no question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1270-13

STYLE OF CAUSE: NAVJIT KAUR RAI AND SURINDER SINGH RAI v
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PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 22, 2014

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

DATED: JANUARY 22, 2014

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