

Federal Court



Cour fédérale

Date: 20140206

Docket: IMM-4926-13

Citation: 2014 FC 134

Vancouver, British Columbia, February 6, 2014

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

SURJIT SINGH AUJLA

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision made by the Immigration Appeal Division of the Immigration and Refugee Board (the Board) on July 5, 2013. The Applicant, Surjit Singh Aujla, challenges the Board's finding that he failed to establish a genuine parent-child relationship after completing the adoption of the 12-year-old daughter of his cousin in India. This determination led to the refusal of Mr. Aujla's sponsorship application to bring his adopted daughter to Canada.

[2] It is apparent from the Board's decision that the only issue of concern was the genuineness of the relationship and, in particular, whether it was of sufficient strength that it would be considered to be in the best interests of the child. All of the other pre-requisites set out in ss 117(2) and (3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) appear to have been met including the completion of a satisfactory home study, the proof of parental consent and a valid Indian adoption.

[3] The Board had a number of concerns about the evidence presented by the Applicant. It noted the fact that, in the preceding nine years, the Applicant's wife visited the child only twice – once at the time of the adoption in 2004 and once in 2012 on the occasion of her son's wedding. When asked why she did not accompany her husband on his regular trips to India, she said that she was required to stay behind to prepare meals for her two adult sons. The Board found that evidence not to be credible.

[4] The Board found the daughter's evidence to be perfunctory and emotionally detached. She offered little detail about her future plans in Canada and seemed almost neutral about the relationship. Despite the Applicant's evidence that he had plans for her marriage, she said that the issue had never been discussed in over nine years of regular communication.

[5] The Board was also troubled by the stated motives for the adoption. The Applicant and his wife claimed that, after having two sons, they wanted a daughter. This was not possible because the Applicant's wife underwent a medically-necessary sterilization in 1981. The Board found this evidence to be inconsistent with what was reported in the home study and in an earlier immigration

interview. When the inconsistency was raised during the hearing, the Applicant gave equivocal and convoluted answers. The Board described this evidence as “a patchwork of contradictions” and it was said to cast “substantial doubt on his credibility”. The Board also noted that the decision to adopt was made when both parents were over 50 years of age and more than 20 years after the wife’s sterilization.

[6] The Board described the Applicant as “only superficially conversant with respect to prospects for [his daughter’s] future”. For example, the Applicant said he would “try” to have his daughter continue with her education or, alternatively, she could work on the family farm. This evidence was described as “devoid of any expression of the love and affection that would reasonably be expected of a genuine parent-child relationship”.

[7] The Board did acknowledge the external trappings of a parental relationship such as evidence of financial support and cards, but it questioned the practice of sending only money on important occasions like birthdays.

[8] Finally, the Board expressed a concern about the Applicant’s lack of detailed knowledge about his daughter’s activities and interests. These discrepancies only added to the Board’s credibility concerns.

[9] The Board concluded its assessment of the evidence in the following way:

[36] The purpose of the hearing of this appeal is to assess the evidence presented against the precise tests that the *Regulations* state. The onus lies with the appellant to demonstrate that the adoption created a genuine parent-child relationship. To do so he

must cross the threshold defined by the balance of probabilities. I have examined the factors in this case accordingly, from the perspective of the entire framework of evidence so as to assess equitably their relative weight.

[37] There are, as noted above, fundamental discrepancies and inconsistencies in the evidence and in the testimony that the respondent counsel has properly pointed to and that I have considered carefully. There are also some areas in which the testimony is consistent, as the appellant counsel has noted and there are some elements that are inconclusive because of the natural tendencies of the witnesses towards a certain degree of uncertainty in their respective recollections. The proposition advanced by the appellant is that there exists a genuine parent-child relationship; however, the evidence indicates a situation that is substantially different. The nature of a genuine adoption is one of events, interactions, and shared interests that develop more or less progressively until they reach the threshold of a lasting bond. Above all, there must be an abiding and mutual affection between the child and her adoptive parents. I find that this is not the prevailing characteristic of the relationship between the appellant and the applicant.

[38] The inconsistencies and gaps in the witnesses' testimonies outweigh the favourable factors in this appeal. It is the sum of individual deductions, each determined from the full context of the relevant circumstances and measured against the scale of probability, that lead me to the conclusion that the adoption is not a genuine one. I am led to the conclusion that the adoption did not create a genuine parent-child relationship between the appellant couple and the applicant and, therefore, that the adoption was not in the best interests of the child within the meaning of the Hague Convention of Adoption. As a consequence I find that the applicant is not a member of the family class by virtue of the adoption, pursuant to *Regulations* 117(2).

[39] After carefully considering all of the documentary and oral evidence, and the submissions of both counsel I find that, on the balance of probabilities, the appellant has not met the burden on him to prove that the adoption created a genuine parent-child relationship pursuant to paragraph 117(3)(c) of the *Regulations*. As a consequence the applicant is not a member of the family class under subsection 117(2) of the *Regulations*.

[10] The Applicant contends that the Board failed to consider all of the factors identified in the Minister's Guidelines. In particular, it was argued that the Board failed to consider the validity and the implications of the Indian adoption and much of the favourable content of the home study report. It was also asserted that the Board paid insufficient attention to documents such as the daughter's passport, money transfer receipts, police clearance reports, greeting cards and telephone records. In oral argument, counsel for the Applicant asserted that the Board focused only on minor or insignificant points to the exclusion of what was truly important.

Issue

[11] Was the Board's decision reasonable?

Analysis

[12] The parties agree that the standard of review that applies is reasonableness and, specifically, whether the decision falls within the range of acceptable and defensible outcomes based on the evidence and the law.

[13] In my view, the arguments advanced on behalf of the Applicant amount to a plea to the Court to reweigh the evidence and to substitute its judgment for that of the Board. That, of course, is not the role of the Court on judicial review.

[14] The Board had the benefit of hearing all of the evidence. It was particularly troubled by the emotional detachment of the parties and by the inconsistencies in their explanations for the timing and motives for the adoption. Of additional concern was the Applicant's wife's failure to regularly

travel to India to visit her adopted daughter. The Board's negative characterization of her excuse for that failure was entirely reasonable. In light of the wife's clearly disingenuous answer, it was not unreasonable for the Board to infer that she was substantially disinterested in her daughter.

[15] The criticism that the Board ought to have more fully considered the validity of the Indian adoption and the corresponding severance of the legal bonds with the birth parents is unwarranted. The validity of the adoption was not in issue. The Board's only concern was whether there was sufficient evidence to establish a loving, caring and genuine parent-child relationship. I accept that the outward trappings of such a relationship (e.g. newspaper clippings, cards, phone records, money transfers), the fitness of the parents and the general adequacy of the household are relevant factors. They are, however, far less significant to the assessment than are the expressions of awareness, affection and future hopes that one would expect to hear and which, in this case, were found by the Board to be mostly lacking. It was not unreasonable for the Board to base its conclusion on these important considerations and to give less weight to the other evidence tendered by the Applicant.

[16] For the foregoing reasons, this application is dismissed.

[17] Counsel for the Applicant suggested the following certified question:

Whether a valid foreign adoption is pertinent to the assessment of the genuineness of a parent-child relationship?

The answer to this question is self-evident. A valid foreign adoption is a pre-requisite to an adoption-based sponsorship. In some situations, it may also be relevant to the assessment of the

genuineness of the relationship. But in this case, the answer to the question is not determinative and certification is not warranted.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

“R.L. Barnes”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-4926-13

STYLE OF CAUSE: SURJIT SINGH AUJLA v THE MINISTER
OF CITIZENSHIP & IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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

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