

Federal Court



Cour fédérale

**Date: 20160114**

**Docket: T-474-15**

**Citation: 2016 FC 41**

**Ottawa, Ontario, January 14, 2016**

**PRESENT: The Honourable Mr. Justice O'Keefe**

**BETWEEN:**

**WING KAI LEUNG  
MAN KI LEUNG**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant, Wing Kai Leung [the principal applicant] and his wife, Wan Chun Kon, ask the Court to set aside the decision of the First Secretary (Immigration) at the Canadian Embassy in Beijing, China, dated February 9, 2015, which rejected the application for Canadian citizenship for the principal applicant's daughter, Man Ki Leung [Man Ki], pursuant to section 5.1 of the *Citizenship Act*, RSC, 1985, c C-29, as amended [the Act].

I. Facts

[2] The principal applicant is a citizen of both Hong Kong and Canada. His wife is a citizen of China. The principal applicant has two children: a biological son and an adopted daughter. On September 18, 2012, the principal applicant submitted an application for Canadian citizenship for a person adopted by a Canadian citizen on behalf of his daughter, Man Ki. They want to move to Canada and allege the citizenship application is to facilitate that process.

[3] The principal applicant alleges he and his wife adopted their daughter after she was found abandoned as a baby outside of a seniors' home in Jiujiang, China in early 2007. The principal applicant's wife learned of the baby through her older sister's friend, Chen Ai Zhen, who worked at the seniors' home. Initially, Man Ki stayed with the principal applicant's wife's older sister in Jiujiang, but then moved to live with the principal applicant's wife in Shenzhen. At the time, the principal applicant was working in Hong Kong during the weeks and returning to his family on the weekends.

[4] After following the required procedures, the principal applicant received a Republic of China Adoption Certificate dated July 12, 2010.

[5] The facts regarding the officer's verification process of the above facts are recounted under the Decision heading.

II. Decision

[6] In a decision dated February 9, 2015, the officer refused the principal applicant's application.

[7] The officer explained that the principal applicant, his wife and their daughter were interviewed on April 18, 2014. The respondent notes the interview raised some inconsistencies between the applicants and deficiencies in the evidence, in particular: the principal applicant knew few details about the adoption process; the principal applicant's wife confused the dates when her daughter was adopted; and the principal applicant and his wife provided inconsistent evidence as to whether the child lived at the Child Welfare Institute, as indicated on the application form.

[8] In order to confirm the principal applicant's statements, the officer explained that the seniors' home where the daughter was allegedly found was contacted. The director of the home initially stated that he worked at the home in 2007, that they house elderly people, not orphans, and that he did not recall a baby girl being abandoned there in 2007. When asked about Chen Ai Zhen, the director said he had never heard the name.

[9] However, when the director learned the call was for the purpose of the girl's immigration status in Canada, he stated he was actually not working at the home in 2007 and would speak to the previous director.

[10] The previous director stated that he worked at the home in 2007. He asked if the girl had the surname “Liang” and stated that Chen Ai Zhen, a part-time nursing worker at the home in 2007, picked up the girl in 2007. He noted the baby girl only stayed at the home for about a half-day and that babies were often found abandoned outside the home, which is located near a university. When asked who brought the girl away, he said it seemed to be “a boss” in Shenzhen, who was from Jiujiang. When asked how this person knew about the baby, the previous director said he had something urgent and hung up.

[11] The officer stated that his office contacted a consultant working at the seniors’ home based on an internet search. The consultant said she worked at the seniors’ home in 2007 and before hanging up, said there was no abandoned girl in 2007.

[12] The officer noted his concerns arising out of the interview and telephone verifications, which related to whether: the adoption was in the best interests of the child; the adoption was entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship; the parent(s) of the child gave their free and informed consent to the adoption before the adoption; and the adoption was entered into for the purpose of child trafficking or undue gain within the meaning of the Hague Convention on Adoption. He explained that he put these concerns to the principal applicant on June 2, 2014 and gave him an opportunity to make submissions.

[13] In response, the principal applicant submitted a statement. He noted that abandoned babies are common in China and often no formal process is followed. He stated that the adoption

had to be formalized in order to achieve Hong Kong residency and tax benefits for his daughter. He said he did not know how his wife handled the adoption, but that she “puzzled out” ways of formal adoption. He explained that he had difficulty filling out the residence section of the application form because his daughter formally belonged to the seniors’ home, but that organization did not practically take her. He also explained that his wife’s sister helped take care of the baby until she was about two years old.

[14] The officer explained that the applicants’ submissions did not respond to his/her concerns. The officer found the principal applicant’s child does not meet the requirements of paragraphs 5.1(1)(a) and (d) of the Act.

[15] The Global Case Management System notes further explain that given that an adoption is an exceptional event in one’s life, the officer found the principal applicant’s explanation regarding the provenance of his child to be incredible and that he did not know details surrounding his daughter’s adoption. Considering the evasive answers given by the principal applicant at the interview, the results of the telephone verification, the discrepancies in the principal applicant’s wife’s statements in the interview and the principal applicant’s statement in response to the procedural fairness letter, there was insufficient evidence to demonstrate the adoption was in the child’s best interests, that it was not entered into primarily for the purpose of acquiring a status or privilege in relation to citizenship or immigration, and that prior to the adoption, the child’s parents gave their free and informed consent to the adoption. The officer also found there was no evidence the adoption was not for the purpose of child trafficking or undue gain.

### III. Issues

[16] The applicants state the decision is unreasonable because:

1. No issue was raised regarding the legality of the adoption, yet concerns were raised relating to the principal applicant's daughter's "provenance";
2. The test for an adoption of convenience is not met;
3. The finding on the best interests of the child is not reasonable;
4. The finding on the consent of the birth parents ignores evidence; and
5. The finding on child trafficking and undue gain are not reasonable.

### IV. Applicants' Written Submissions

#### A. *Legality of Adoption*

[17] The applicants submit that the officer did not refuse the application on the basis of paragraph 5.1(1)(c) of the Act. The officer was apparently satisfied that the adoption was legally valid. However, the officer raised concerns regarding the "provenance" of the principal applicant's daughter. Given that the Government of China was satisfied the adoption was legitimate and the principal applicant and his wife were eligible to adopt her, the officer's concerns regarding the provenance of the principal applicant's daughter was unreasonable.

#### B. *Test for Adoption of Convenience*

[18] The applicants submit that the decision does not explain the finding that the adoption was an adoption of convenience or how it flows from the evidence. The applicants submit that the

test for an adoption of convenience is only met in the clearest of cases. *Young v Canada (Minister of Citizenship and Immigration)*, 2015 FC 316 [Young] provides that the bar for finding an adoption was entered into primarily for acquiring a benefit of immigration or citizenship is high. The Federal Court of Appeal noted in *Canada (Minister of Citizenship and Immigration) v Dufour*, 2014 FCA 81 [Dufour] that finding an adoption of convenience is generally limited to situations where the parties have no real intention to create a parent-child relationship (at paragraphs 55 and 56).

[19] The applicants submit that the officer provided no justification for the conclusion that there was no real intention to create a parent-child relationship and did not identify any concerns relating to the parent-child relationship.

[20] The applicants submit that section 11.10 of the Citizenship and Immigration Canada [CIC] CP14 Manual [CP14 Manual] provides a list of factors that may be considered in identifying adoptions of convenience. The applicants submit that none of these factors were evaluated by the officer. While they do not have the force of law, the factors are important and their importance has been recognized by the Federal Court of Appeal in *Dufour* (at paragraph 57).

[21] The applicants argue the record supports that the principal applicant and his wife have complete and total authority over their daughter, are her legal parents and this has been true since 2007.

[22] Further, the applicants argue that finding an adoption of convenience requires an inference of malicious intent, on the basis of duly proven facts and not speculation, on the part of the parents (*Dufour* at paragraph 60).

[23] The applicants submit that the telephone verification process used by the officer does not fulfil the standard for finding an adoption of convenience. It appears that the CIC representative did not identify himself or herself at the outset of the phone call which would reasonably make employees at the seniors' home reluctant to admit they housed an abandoned child. When the CIC representative did identify himself or herself, the representative was put in contact with the past director, who verified the principal applicant's and his wife's statements.

[24] Further, the applicants submit that it was clear from the interview the principal applicant knew little about the adoption process because he was working in Hong Kong at the time of the adoption.

[25] The applicants argue that drawing an inference from a contradiction in the evidence, that the adoption was an adoption of convenience, amounts to speculation (*Young* at paragraphs 21 and 22). The officer failed to consider the reasons for the adoption other than acquiring status or privilege in Canada (*Smith v Canada (Minister of Citizenship and Immigration)*, 2014 FC 929 at paragraphs 62 to 65 [*Smith*]). The applicants submit that there is no evidence to substantiate this was an adoption of convenience and the officer does not address the logical reason for the adoption; to permit Man Ki to join her family in Canada.



C. *Best Interests of Child*

[26] The applicants submit that the decision does not explain the officer's finding, i.e., why the adoption is not in Man Ki's best interests, or how it flows from the evidence.

[27] Further, the applicants argue the adoption is in Man Ki's best interests and the officer failed to identify this. The evidence substantiates that Man Ki is content, well cared for and identifies the applicant and his wife as her parents.

D. *Consent of Birth Parents*

[28] The applicants submit that the evidence demonstrates Man Ki's birth parents were sought and not found. They provided the newspaper advertisement which sought Man Ki's parents, the adoption certificate which states the parents could not be found and the male applicant explained in two letters to the officer that the parents could not be found.

[29] The applicants submit the officer's decision is unreasonable because the officer ignored the above evidence, which contradicted the finding in reaching the conclusion.

E. *Child Trafficking and Undue Gain*

[30] The applicants submit that, contrary to section 12.9 of the CP14 Manual, the officer cited no evidence that Man Ki was abducted, sold or the subject of improper financial gain. Given the serious nature of a finding under paragraph 5.1(1)(d) of the Act, this was a significant error.

Further, contrary to section 12.9 of the CP14 Manual, it does not appear that Citizenship Case Review at the Case Management Branch of Citizenship and Immigration was contacted, which is also an error.

V. Respondent's Written Submissions

A. *Legality of Adoption*

[31] The respondent submits that the officer's discretion should not be fettered by the existence of valid adoption documents. It was reasonable for the officer to question the origins of the principal applicant's daughter and find her adoption did not meet the requirements of the Act. Further, the respondent argues that even if the adoption was legally valid, it must also be in the best interests of the child.

B. *Test for Adoption of Convenience*

[32] The respondent submits that the decision was not based on speculation. As a result of the vague and contradictory evidence and telephone verification process, the officer was not satisfied the adoption was not entered into for immigration purposes.

[33] The respondent submits that in *Dufour*, the Federal Court of Appeal held that because direct evidence of fraud is rare, the officer must often infer malicious intent from all the relevant circumstances. It was reasonable for the officer to infer that this could be an adoption of convenience based on the evidence and telephone verification process. The respondent submits that the officer did not base this conclusion only on the material on file (as in *Dufour*) or the

interview (as in *Young*), but rather on the interviews, the evidence, the telephone verification process and the principal applicant's and his wife's lack of reasonable explanation for the inconsistencies that arose.

[34] The respondent submits that the applicants' reliance on *Dufour* for the proposition that there must be clear evidence of an adoption of convenience is misplaced, as that decision was based on subsection 5.1(3) of the Act and, in that case, the Court held there was a genuine parent-child relationship and the adoption was in the best interests of the child. Given that these findings were not made in the present case and the decision was based on subsection 5.1(1), a less stringent approach to a finding of an adoption of convenience is reasonable.

C. *Best Interests of the Child*

[35] The respondent submits that the officer concluded the applicants did not demonstrate the adoption was in the best interests of the child due to the principal applicant's and his wife's vague and inconsistent evidence about the origins of their daughter and the adoption process. In particular:

1. The principal applicant provided few details of the adoption;
2. The principal applicant's wife confused the dates when her daughter was adopted;
3. The principal applicant provided inconsistent evidence as to whether the child lived at the Child Welfare Institute, as indicated on the application form; and
4. The principal applicant did not know his wife's sister found the baby.

[36] The telephone verification did not resolve the officer's concerns resulting from this evidence. It revealed contradictory responses regarding the alleged abandonment of the child.

[37] The applicants' submissions in response to the officer's fairness letter did not resolve the concerns. This response did not resolve the discrepancies arising out of the telephone verification process and it remains unclear how the principal applicant's daughter came to be found and adopted. The principal applicant simply explained that his wife and her sister "puzzled out ways of formal adoption" and had to look for an organization to recognize the abandoned baby to proceed with the adoption. The principal applicant explained that, as a person from Hong Kong, he was unfamiliar with the process and thus had difficulty completing his daughter's residence history, as she formally belonged to the seniors' home but that organization did not practically take her.

[38] The respondent argues that the explanation the applicants now offer, that the employees of the seniors' home would be reluctant to admit they housed an abandoned child in 2007 to an unknown person, was not provided in the submissions in response to the fairness letter and does not negate the officer's concerns. It also does not address the fact that the consultant who was contacted also did not know of a baby abandoned at the seniors' home in 2007.

D. *Consent of Birth Parents*

[39] The respondent submits that the applicants' submissions on this point amount to a request for the Court to re-analyze the evidence. The officer is not required to list every piece of evidence. The evidence cited by the applicants was not sufficient to overcome the officer's

doubts arising from the contradictory evidence from the principal applicant's and his wife's interview and the telephone verification.

E. *Child Trafficking and Undue Gain*

[40] The respondent submits that the officer could not be satisfied the adoption was not for the purposes of child trafficking or undue gain because of the inconsistent information arising from the interview and telephone verification.

[41] The respondent also submits that there was no duty on the officer to contact Citizenship Case Review because section 12.9 of the CP14 Manual only applies where officers have evidence of child abduction or fraud. Here, the officer was not relying on such evidence.

VI. Analysis and Decision

- (1) No issue was raised regarding the legality of the adoption, yet concerns were raised relating to the principal applicant's daughter's "provenance".

[42] It does not appear that the officer had any concerns with the legality of the adoption as it was not discussed in the decision as a reason for refusal of the application. The officer did mention concerns about the "provenance" of the adoptive child but gave no further details and did not mention this in the decision. Hence, there is nothing to show the adoption was not legal.

- (2) The test for an adoption of convenience is not met.

[43] Regarding the finding that the adoption was an “adoption of convenience”, I agree with the respondent the decision in *Dufour* was made in the context of a different section of the Act and in the context of positive findings regarding the best interests of the child and a genuine parent-child relationship.

[44] However, in my view, the statements regarding the evidence required are still applicable in the present circumstances. *Dufour* provides:

55 Adoptions of convenience are limited to situations where the parties (the adoptee or the adopter) have no real intention to create a parent-child relationship. They are adoptions where appearances do not reflect the reality. They are schemes to circumvent the requirements of the Act or of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

56 If there is a true intention to create a parent-child relationship and this relationship is in the best interests of the minor child, it cannot normally be concluded that the adoption is entered into primarily to create a status or a privilege in relation to immigration or citizenship.

57 Even in cases where there is no Canadian court judgment certifying the lawfulness of the adoption, there must be clear evidence that it is an adoption of convenience. This is why the relevant circumstances to be considered under section 11.10 of the CP14 manual (a non-exhaustive list) state that a decision-maker must take into account a variety of factors existing at the time of the adoption, as well as the situation of the child before and after the adoption, even though the intention with which we are concerned is that of the parties at the time of the adoption. As the CP14 manual states, it is all these factors taken together that allow a decision-maker to determine whether the parties had a particular intention contrary to paragraph 5.1(3)(b) at the time of the adoption. It is surprising to note that the officer in this case never refers to these criteria in her analysis or in her affidavit, and that section 11.10 of the CP14 manual is not included in the excerpts from manuals filed in the appeal book (see Exhibit “B” in the affidavit of Nicole Campbell, pages 77 *et seq.* of the A.B., and in particular pages 321-322 of the A.B.).

58 It is rare to have direct evidence that one of the parties intended to defraud the other or that both parties primarily intended to acquire a status or privilege in relation to immigration on the basis of a family relationship that does not reflect the reality of their situation. One can certainly imagine such scenarios, for example, where one or both parties were members of or used a network for providing foreign nationals with a status or privilege in relation to immigration or citizenship.

59 In the vast majority of cases, the administrative decision-maker must infer malicious intent from all the relevant circumstances.

60 To infer intent, the decision-maker must first have duly proven facts on which to base his or her reasoning or logical deductions. Intent cannot be inferred from a fact that is nothing more than one among many theories because such an approach amounts to pure speculation rather than logical reasoning.

61 Therefore, to find that paragraph 5.1(3)(b) has been violated, the officer could not speculate on the intentions of the respondent and Mr. Dufour.

[45] The Federal Court of Appeal's statements in paragraph 57 and following are based on the alternative situation where a genuine parent-child relationship and the best interests of the child are not established in a Canadian court judgment. Consequently, that the best interests of the child and a genuine parent-child relationship are not necessarily found by the officer in the present case does not affect the applicability of the statements from *Dufour* that the inference of intent to defraud cannot be drawn based on speculation and must be based on logical reasoning.

[46] Further, the statements from *Dufour* have been applied in the context of subsection 5.1(1) in *Young*:

18 The bar for finding that an adoption was entered into primarily for acquiring a benefit of immigration or citizenship is high. When an adoption has been approved by a Canadian court, it must be established that the court judgment was obtained by fraud

against the legal system: *Canada (Citizenship and Immigration) v Dufour*, 2014 FCA 81. This gives effect to Parliament's intention when enacting section 5.1; to facilitate the granting of Canadian citizenship to children adopted abroad by Canadian citizens: *Dufour* at para 53. In cases where there is no Canadian court judgment certifying the lawfulness of the adoption, such as the present case, there "must be clear evidence that it is an adoption of convenience": *Dufour* at para 57.

19 Adoptions of convenience are "limited to situations where the parties (the adoptee or the adopter) have no real intention to create a parent-child relationship": *Dufour* at para 55. Essentially, they are "schemes to circumvent the requirements of the [Citizenship] Act or of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27": *Dufour* at para 55. In *Perera v Canada (Minister of Citizenship and Immigration)*, [2001] F.C.J. No 1443 at para 14, the Federal Court held that "[s]imilarly to a so-called 'marriage of convenience' (where two total strangers fake an illusory marital relationship so as to admit a temporary spouse to Canada) an 'adoption of convenience' would be a situation where Canadian citizens pretend to adopt an unknown child so as to bring him to Canada for a financial reward".

[47] In my opinion, the finding of an adoption of convenience in the present case is not based on logical reasoning or the evidence. The officer never connects the findings relating to the deficiencies in the evidence to why the adoption is one of convenience. While the deficiencies in the evidence might be because the adoption is one of convenience, this is only one of many reasons which could explain why there are identified deficiencies.

[48] Further, there is nothing to suggest the principal applicant has anything to gain from his young daughter becoming a Canadian citizen, beyond ensuring the family can move to Canada for reasons related to the child's education: *Smith* at paragraph 65:

The Officer's reasons for refusal do not acknowledge the evidence that would support the contrary finding, i.e. that the adoption was entered into for reasons other than acquiring a status or privilege in Canada, including for example, to take the next logical step to



solidify the future for Shana-K as the child of Ms Smith and as part of the family here, and to provide a safer environment. Ms Smith's goal of providing a better quality of life for Shana-K is also a legitimate goal and is clearly one of the purposes for pursuing the adoption, but the Officer's finding that this intention leads only to the conclusion that the adoption was entered into to circumvent the requirements of IRPA or the *Citizenship Act* is not supported by the evidence on the record and is not reasonable.

[49] Moreover, as in *Dufour*, it is surprising the officer never refers to section 11.10 of the CP14 Manual, which elucidates factors that may be considered in finding an adoption of convenience.

[50] I conclude that the officer's decision relating to an adoption of convenience is unreasonable.

(3) The finding on the best interests of the child is not reasonable.

[51] At the hearing of this matter, counsel for the respondent informed the Court that this issue was conceded.

(4) The finding on the consent of the birth parents ignores evidence.

[52] I agree with the applicants that the officer's finding relating to the consent of the birth parents was not reasonable, as it ignores and does not address the evidence that efforts were made to locate the child's birth parents, in accordance with Chinese law. Moreover, the officer never connects his finding on this factor to his findings that the adoption was not in the child's best interests and was one of convenience.

(5) The finding on child trafficking and undue gain are not reasonable.

[53] I also agree with the applicants that the officer's finding relating to whether the child was abducted, sold or the subject of improper financial gain was unreasonable. There is no logical link between the deficiencies in the evidence relating to the child's provenance and whether she was abducted, sold or the subject of improper financial gain. The officer was not entitled to make this finding simply because the evidence was deficient; it needed to be justified in the evidence. This is supported by section 12.9 of the CP14 Manual. Moreover, the officer never connects the finding on this factor to the findings that the adoption was not in the child's best interests and was one of convenience.

[54] Further, I agree with the applicants that, to refuse the case on this basis, according to section 12.9 of the CP14 Manual, the officer was required to contact the Case Management Branch. While not binding, contrary to the respondent's argument, the language of the CP14 Manual does not restrict this requirement only to situations where evidence, rather than credibility assessments, is being considered to make a finding of child trafficking or undue gain.

[55] For the above reasons, it is my opinion that the application be allowed.

[56] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

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

<p>5.1 (1) Subject to subsections (3) and (4), the Minister shall, on application, grant citizenship to a person who, while a minor child, was adopted by a citizen on or after January 1, 1947, was adopted before that day by a person who became a citizen on that day, or was adopted before April 1, 1949 by a person who became a citizen on that later day further to the union of Newfoundland and Labrador with Canada, if the adoption</p>	<p>5.1 (1) Sous réserve des paragraphes (3) et (4), le ministre attribue, sur demande, la citoyenneté soit à la personne adoptée avant le 1er janvier 1947 par une personne qui a obtenu qualité de citoyen à cette date — ou avant le 1er avril 1949 par une personne qui a obtenu qualité de citoyen à cette date par suite de l'adhésion de Terre-Neuve-et-Labrador à la Fédération canadienne — soit 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) was in the best interests of the child;</p>	<p>a) elle a été faite dans l'intérêt supérieur de l'enfant;</p>
<p>(b) created a genuine relationship of parent and child;</p>	<p>b) elle a créé un véritable lien affectif parent-enfant entre l'adoptant et l'adopté;</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;</p>	<p>c) elle a été faite conformément au droit du lieu de l'adoption et du pays de résidence de l'adoptant;</p>
<p>(c.1) did not occur in a manner that circumvented the legal requirements for international adoptions; and</p>	<p>c.1) elle a été faite d'une façon qui n'a pas eu pour effet de contourner les exigences du droit applicable aux adoptions internationales;</p>

(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) :

...

...

(c) whether, in all other cases,

c) dans les autres cas :

(i) a competent authority has conducted or approved a home study of the parent or parents, as the case may be,

(i) le fait qu'une étude du milieu familial a été faite ou approuvée par les autorités compétentes,

(ii) before the adoption, the person's parent or parents, as the case may be, gave their free and informed consent to the adoption,

(ii) le fait que le ou les parents, selon le cas, ont, avant l'adoption, donné un consentement véritable et éclairé à l'adoption,

(iii) the pre-existing legal parent-child relationship was permanently severed by the adoption, and

(iii) le fait que l'adoption a définitivement rompu tout lien de filiation préexistant,

(iv) there is no evidence that the adoption was for the purpose of child trafficking or undue gain within the meaning of the Hague Convention on Adoption.

(iv) le fait que rien n'indique que l'adoption avait pour objet la traite de la personne ou la réalisation d'un gain indu au sens de la Convention sur l'adoption.

**Citizenship and Immigration Canada CP14 Manual, as amended (June 19, 2014 Version)**

**11.10 Identifying an adoption of convenience/not for the purpose of acquiring a status or privilege – A5.1(1)(d), A5.1(2)(b) and A5.1(3)(b)**

If a citizenship officer determines that an adoption was entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship (i.e. an adoption of convenience), the officer must refuse the application.

A citizenship officer must form his or her opinion based upon factors which, taken together, could make a reasonably prudent person (balance of probabilities) conclude that the adoption has taken place to circumvent the requirements of the IRPA or the *Citizenship Act*.

No formal criteria exist for deciding whether or not an adoption is bona fide. Rather, the citizenship officer must look at the relevant information of the case, which typically might include:

the circumstances of the adoption;

the whereabouts of the adopted child's biological parents and the nature of their personal circumstances;

who was included in the

**11.10 Repérer une adoption de complaisance/L'adoption ne visait pas l'acquisition d'un statut ou d'un privilège – L5.1(1)d, L5.1(2)b et L5.1(3)b**

Si l'agent de citoyenneté conclut qu'une adoption visait principalement l'acquisition d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté (p. ex. adoption de complaisance), il doit refuser la demande.

L'agent de citoyenneté doit fonder son opinion en fonction de facteurs qui, pris ensemble, pourraient mener une personne raisonnablement prudente à en venir à la conclusion que l'adoption a été faite dans le but de contourner les exigences de la LIPR ou de la *Loi sur la citoyenneté*.

Aucun critère officiel n'a été établi pour conclure qu'il s'agit d'une adoption de bonne foi. L'agent de citoyenneté doit plutôt évaluer toute l'information pertinente au cas, notamment :

les circonstances entourant l'adoption;

les allées et venues des parents biologiques de l'enfant adopté et la nature de leur situation personnelle;

les personnes qui faisaient

adopted child's household before and after the adoption (i.e. did the adopted child continue to live in the same household as the biological parents even after the adoption);	partie du foyer de l'enfant adopté avant et après l'adoption (p. ex. est-ce que l'enfant continuait d'habiter dans la même maison que ses parents biologiques après l'adoption?);
whether or not the adoptive parents are supplying financial and emotional support to the adopted child;	le fait que le parent adoptif répond ou non aux besoins financiers et émotifs de l'enfant adopté;
the motivation or reasons for the adoption of the child given by the biological parents and the adoptive parents;	la motivation ou les raisons des parents biologiques et du parent adoptif justifiant l'adoption de l'enfant;
the authority and influence of the adoptive parents over the adopted child;	l'autorité et la persuasion que le parent adoptif exerce à l'égard de l'enfant adopté;
the arrangements and actions taken by the adoptive parents related to caring, providing and planning for the adopted child;	les dispositions et mesures prises par le parent adoptif pour prendre soin de l'enfant adopté, subvenir à ses besoins et planifier son avenir;
the supplanting of the authority of the child's biological parents by that of the adoptive parents, meaning that the adoptive parents play the "parenting role" in all aspects of the adopted child's life;	le fait que l'autorité des parents biologiques de l'enfant est supplantée par celle du parent adoptif, ce qui signifie que le parent adoptif joue le rôle de parent dans tous les aspects de la vie de l'enfant adopté;
the relationship between the adopted child and the biological parents before the adoption;	le lien entre l'enfant adopté et ses parents biologiques avant l'adoption;
the relationship between the adopted child and the biological parents after the adoption;	le lien entre l'enfant adopté et ses parents biologiques après l'adoption;
the treatment of the adopted	le traitement que subit l'enfant

child versus that of the biological children by the adoptive parents;

adopté par rapport au traitement que subissent les enfants biologiques du parent adoptif;

the prevailing social and legal practices governing adoption in the adopted child's home country;

les pratiques sociales et juridiques régissant l'adoption dans le pays d'origine de l'enfant adopté;

in a case where the adoption took place a long time ago, documentary evidence demonstrating that the adopted child has lived with the adoptive parents and that they cared for the adopted child.

si l'adoption a eu lieu de nombreuses années auparavant, la preuve documentaire démontrant que l'enfant habitait avec le parent adoptif et que ce dernier prenait soin de l'enfant adopté.

This list of factors is not exhaustive. Some factors listed may not be applicable to a particular case, while other factors not included in this list may be relevant.

Cette liste n'est pas exhaustive. Certains facteurs énumérés peuvent ne pas être applicables dans un cas en particulier, tandis que d'autres, non énumérés dans cette liste, pourraient être pertinents.

The citizenship officer must have evidence, documentary or otherwise, to support his or her decision on the application and, in cases of a refusal, must include reasons for the decision in the refusal letter. The adoptive parents may apply for a judicial review of the decision with the Federal Court of Canada.

L'agent de citoyenneté doit disposer de preuves, documentaires ou autres, pour appuyer sa décision concernant la demande et, dans le cas d'un refus, il doit inclure, dans la lettre de refus, les raisons justifiant la décision. Les parents adoptif peuvent présenter une demande auprès de la Cour fédérale du Canada afin que la décision fasse l'objet d'un contrôle judiciaire.

...

...

### **12.9 Child trafficking and undue gain**

### **12.9 Traite d'enfants et réalisation d'un gain indu**

Cases may arise where citizenship officers will have

Il se peut que l'agent de citoyenneté dispose d'éléments



evidence that child abduction and/or fraud has occurred. There have been cases where adopted children were abducted.

de preuve selon lesquels l'enfant a été enlevé et/ou l'adoption est frauduleuse. Nous avons déjà traité des cas où des enfants adoptés ont été enlevés.

If a citizenship officer suspects that an adopted child was abducted, the officer may:

Si l'agent de citoyenneté pense qu'un enfant adopté a été enlevé, il peut :

interview the biological parents or any of the persons involved in the adoption process.

interroger les parent biologiques ou toute autre personne impliquée dans le processus d'adoption.

If the relevant P/T adoption authority is not involved (i.e. the adoptive parents reside outside Canada at the time of the adoption and/or the P/T adoption authority has advised that they have no involvement in the assessment of the adoption) and the citizenship officer has evidence that child trafficking has taken place or that there was undue gain in the process (i.e. a child was sold or improper financial gain took place), the citizenship officer should refuse the case on the basis of paragraph A5.1(1)(a)

Si les autorités provinciales/territoriales en matière d'adoption ne sont pas impliquées (p. ex. les parents adoptifs résident à l'extérieur du Canada au moment de l'adoption et/ou les autorités provinciales/territoriales en matière d'adoption ont indiqué qu'elles n'interviennent pas dans l'évaluation de l'adoption) et que l'agent de citoyenneté dispose d'éléments de preuve selon lesquels l'enfant a été victime de traite ou qu'un gain indu a été réalisé dans le cadre du processus (l'enfant a été vendu ou des profits financiers inhabituels ont été réalisés), l'agent de citoyenneté devrait refuser la demande en vertu de l'alinéa L5.1(1)a).

Child trafficking and undue gain contravene most foreign legislation. These cases would therefore not meet the requirements of paragraph A5.1(1)(c). If a citizenship officer is considering refusing

La traite d'enfants et la réalisation d'un gain indu contreviennent à la plupart des lois étrangères. Les cas où une telle infraction a été commise ne satisfont pas non plus aux exigences énoncées à l'alinéa

a case on this basis, the officer must contact Citizenship Case Review at Case Management Branch (CMB) by email.

L5.1(1)c). Si l'agent de citoyenneté envisage de refuser une demande en invoquant ce motif, il doit communiquer avec l'Examen des cas de citoyenneté de la Direction générale du règlement des cas (AC-BCM) par courriel.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-474-15

**STYLE OF CAUSE:** WING KAI LEUNG, MAN KI LEUNG v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 20, 2015

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'KEEFE J.

**DATED:** JANUARY 14, 2016

**APPEARANCES:**

Mario Bellissimo FOR THE APPLICANTS

Brad Gotkin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Bellissimo Law Group FOR THE APPLICANTS  
Barristers and Solicitors  
Toronto, Ontario

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
Canada  
Toronto, Ontario