Federal Court  Cour fédérale

Date: 20220916

Docket: T-805-20

Citation: 2022 FC 1303

Toronto, Ontario, September 16, 2022

PRESENT: Madam Justice Go

BETWEEN:

IVANA EKHATOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application by Ms. Ivana Eromnwon Obianugu Ekhator [Applicant] for judicial review of a decision dated May 21, 2020 of a Citizenship Case Processing Officer [Officer] denying the Applicant's application for Canadian citizenship [Decision]. The Officer concluded that the Applicant has not met the requirements set out under section 5.1 of the *Citizenship Act*, RSC 1985, c C-29 [the *Act*].

[2] This case examines, at its core, the meaning of a genuine parent-child relationship created by an adoption under s. 5.1(2)(a) of the *Act*, and the impact, if any, the ongoing relationship between an applicant and her biological parent may have on assessing the genuineness of the adoptive relationship.

[3] The Applicant, born in 1998, is citizen of the United States of America (by birth), the United Kingdom [UK] (by naturalization) and Nigeria (by lineage).

[4] The Applicant has been living in Canada since the age of three. Before 2010, the Applicant was living with her biological mother in Mississauga (and for some of this time her biological father was with her). Since 2010, at age 12, the Applicant has been living with her maternal aunt, Ms. Vivienne Odanibe Agbi, a Canadian citizen, who later became her adoptive mother. Even before 2010, there were lengthy periods when the Applicant would stay with her adoptive mother beginning in 2004 in the absence of her biological mother. The adoption was finalized on October 14, 2016, after the Applicant's 18th birthday. The Applicant's birth father currently lives in Nigeria.

[5] The Applicant made several past attempts to obtain status in Canada, including filing a refugee claim and an application for permanent residence on humanitarian and compassionate grounds. The adoption was finalized after these failed efforts to regularize her status.

[6] On December 18, 2017, Ms. Agbi applied for citizenship for the Applicant pursuant to section 5.1 of the *Act*.

[7] The Officer conducted an interview with the Applicant and her adoptive mother on October 5, 2018. On October 11, 2018, the Officer sent a letter requesting further documents and information. On November 9, 2018, the Applicant provided responding documents.

[8] As stated in a procedural fairness letter [PFL], dated July 17, 2019, to the Applicant, the Officer was not satisfied that the parent-child relationship between the Applicant and her biological mother had been severed. The Officer was also concerned that the adoption may have been entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship. On October 31, 2019, the Applicant provided a response to the PFL but the Officer ultimately denied the Applicant's citizenship application.

[9] For the reasons set out below, I find the Decision unreasonable and I grant the application.

II. Standard of Review

[10] The Applicant submits that the Officer erred in finding that the primary purpose of the adoption was to acquire a benefit of immigration or citizenship, and that the adoption did not create a genuine parent-child relationship.

[11] The parties agree that the Decision is reviewable on a reasonableness standard.

[12] A reasonable decision "is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker":

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at para 85. The onus is on the Applicant to demonstrate that the Decision is unreasonable: *Vavilov,* at para 100. To set aside a decision on this basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov,* at para 100.

III. Analysis

[13] I will address the two issues raised by the Applicant in reverse, starting with whether or not the Officer erred in finding that the adoption did not create a genuine parent-child relationship.

A. *Did the Officer err in finding that the adoption did not create a genuine parent-child relationship?*

[14] Subsection 5.1(2) of the *Act* provides for the granting of citizenship to a person who has been adopted, as an adult, by a Canadian citizen, if, among other things, 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: s 5.1(2)(a) of the *Act*.

Citizenship Act (R.S.C., 1985, c. C-29)	**Loi sur la citoyenneté (L.R.C. (1985), ch. C-29)**
Adoptees — adults	**Cas de personnes adoptées — adultes**
5 (2) Subject to subsections (3) and (4), the Minister shall, on application, grant citizenship to a person who, while at least 18 years of age, was adopted by a citizen on or after January 1, 1947, was	**5 (2)** 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

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	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 âgée de dix-huit ans ou plus, si les conditions suivantes sont remplies :
(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	**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) the adoption meets the requirements set out in paragraphs (1)(c) to (d).	**b)** l'adoption satisfait aux conditions prévues aux alinéas (1)c) à d).

[15] The Officer found that a genuine parent-child relationship between the Applicant and her adoptive mother did not exist before the Applicant attained the age of 18 years and at the time of adoption.

[16] The Applicant raises a number of arguments to challenge the Officer's findings. The primary one being that the Officer erroneously adopted a binary approach to paragraph 5.1(2)(a) by finding that having an ongoing relationship with the biological parent precludes the creation of a genuine parent-child relationship between the Applicant and her adoptive parent.

[17] I begin my analysis by searching for the answer to the following question: What does a genuine parent-child relationship mean in the context of s. 5.1(2)(a)? The case law on this issue is scant. The Applicant asks this Court to draw from cases dealing with adoptions in different

contexts: overseas adoptions and adoptions of minor children. Most of these cases, however, say more about what is *not* a genuine parent-child relationship, as opposed to what is.

[18] Further, in these cases, the focus appears to be on whether the adoption was "not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship", a requirement under s. 5.1(1)(d) of the *Act*.

[19] One of the cases cited by the Applicant is *Canada (Citizenship and Immigration) v Young*, 2016 FCA 183 [*Young*] which involved an overseas adoption of a minor. Like the adoption of an adult, the *Act* also requires the applicant in those situations to demonstrate that the adoption created a genuine relationship of parent and child. After reviewing the Parliamentary debates surrounding the 2007 amendment to the *Act* allowing foreign-adopted children direct access to citizenship, similar to foreign-born children of Canadian citizens, the Federal Court of Appeal [FCA] continued:

> [11] These extracts show that the legislation was intended to provide a benefit to Canadians adopting children abroad while at the same time guarding against certain possible abuses. Prominent among these was the possibility of adoptions of convenience, that is, adoptions entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship. However, the statute must be read so that the search for abusive practices does not deprive Canadians of the intended benefit of the legislative changes.
>
> [Emphasis added]

[20] The FCA went on to reflect upon what is meant by adoption of convenience, a phrase that the FCA found "suffers from its association with 'marriages of convenience'" and concluded that the analogy to the latter "is inapt." The Court continued:

> [14] The conviction that an adoption is an adoption of convenience must rest on more than the awareness of the advantages to be gained by adoption. Every parent adopting a child from a country which does not have Canada's advantages will be aware of the advantages which the child will have in Canada relative to its country of birth. If that were the test, there would be no genuine adoptions for purposes of this legislation. The issue is not the knowledge of the relative advantages of life in Canada but the commitment of the adoptive parent to raise the child as their own, meeting the child's material and emotional needs as they arise.
>
> [Emphasis added]

[21] The Applicant proposes that the last sentence of the above-cited paragraph is perhaps the closest the FCA has gotten to defining a genuine parent-child relationship created by an adoption.

[22] The Respondent does not offer any alternative definition but instead asks the Court to note that evidence showing the Applicant is cared for by her adoptive mother is not enough: *Dubkov v Canada (Minister of Citizenship and Immigration),* 2014 FC 679 [*Dubkov*].

[23] I note, however, the Court in *Dubkov* emphasized at para 19 that the onus is on an applicant "to provide evidence that a genuine parent-child relationship existed at the relevant time", by showing that the adoptive parent or parents had "not only legally, but practically, taken on the role of parents in the applicant's life (*Rai v Canada (Minister of Citizenship and Immigration*), 2014 FC 77 at para 21)."

[24] I also note in *Canada (Citizenship and Immigration) v Dufour,* 2014 FCA 81 [*Dufour*], another case cited by the Applicant, the FCA stated:

> [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.
>
> [Emphasis added]

[25] The idea that an adoption of convenience "does not reflect reality" was also reinforced in *Young*, at para 16.

[26] Based on the case law cited above, I conclude that the assessment of whether a genuine parent-child relationship was created by the adoption in the context of s. 5.1(2)(a) should explore the following questions:

a. whether there is a commitment on the adoptive parent to raise the child as their own and to meet the child's material and emotional needs as they arise,
b. whether an adoptive parent not only legally, but practically, has taken on the role of parents in the applicant's life, and
c. whether the assertion of an adoptive relationship is reflected in the reality.

[27] Applying this framework to the case at hand, I note that the Applicant submitted much evidence - accepted by the Officer - that she has been residing with her adoptive mother since 2010, and has developed a strong relationship with her adoptive mother over the years in the physical absence of her biological parents. The Officer found that the adoptive mother "has done an incredible job by providing [the Applicant] with a stable home, prioritising education, making sure [the Applicant is] fed and clothed and by ensuring that '[the Applicant does] not fall into wrong groups.'" Such evidence, in my view, tends to demonstrate that Ms. Agbi has committed

herself to raise the Applicant and to meet the latter's material and emotional needs since 2010, and has practically taken on the role of the Applicant's parent in the absence of her biological parents. The reality of that relationship was made evident by the support that the Applicant has received from Ms. Agbi, who provided the much needed stability that the Applicant craved, as noted in her response to the PFL.

[28] Yet the Officer found that the adoption did not create a genuine parent-child relationship. This conclusion appears to contradict the Officer's earlier findings that, in the absence of her biological parents, the job of "parenting" fell on the Applicant's aunt and that she "accepted it without reservation."

[29] More importantly, I find unreasonable the Officer's conclusion that the Applicant has not demonstrated the existence of a genuine parent-child relationship because there is an ongoing relationship between the Applicant and her biological mother.

[30] It should be noted that, by virtue of the adoption order issued by the Ontario Court of Justice, the evidence before the Officer confirmed that the legal ties between the Applicant and her biological parents had been severed.

[31] The Officer's decision to refuse was based in large part on the ongoing relationship between the Applicant and her biological mother. The Officer stated in the Decision: "the biological parents should no longer be acting as parents to the adopted person after the adoption has taken place" and that the Applicant has "provided little evidence to show the contrary." This

was also confirmed by the Affidavit of the Officer before this Court stating, "[I]n my refusal decision, I relied in part on evidence that Ivana's mother 'continuously keep updates on [Ivana] on an almost daily basis' to refuse the application because I was not satisfied the parent-child relationship between Ivana and her mother had been severed."

[32] The Respondent argues that there is nothing unreasonable about the Officer considering the fact that the Applicant has not severed her ties with her biological mother. The Respondent submits that the biological mother's ongoing involvement throughout the Applicant's life means that the Applicant has not proven a parent-child relationship between her and her adoptive mother before she turned 18.

[33] With respect, I find the Respondent's argument has no merit.

[34] Having canvassed the jurisprudence, I have yet to find any case that suggests an adoptee must first sever all relational ties (other than legal ties) with their biological parents in order to demonstrate a genuine parent-child relationship with their adoptive parent.

[35] I also agree with the Applicant that, by requiring the severance of relational ties with the biological parents, the Officer appeared to have added a requirement that is not present in the legislation. The Officer stated in the Decision:

> [U]nder Canadian law, the effect of a full adoption is to fully and permanently severe [*sic*] the pre-existing legal parent-child ties between biological parents and adopted child and the latter becomes fully the child of the adoptive parent. As such, it is important that both parties to the adoption be aware of the legal incidents of an adoption in Canada.

[36] The Officer did not cite the specific “Canadian law” to support their conclusion. As the Applicant points out, however, the relevant sections are found in the *Citizenship Regulations*, SOR/93-246 [*Regulations*] that require the severance of *legal* ties between the adoptee and their biological parents (ss 5.1, 5.2 and 5.3).

[37] That the *Regulations* require only the severance of *legal* ties was emphasized by this Court in *Garcia Rubio v Canada (Minister of Citizenship and Immigration)* 2011 FC 272 [*Garcia Rubio*]. Justice Simpson, as she then was, found the officer erred as “the Reasons do not explain the relevance of the conclusion that ‘the ties with your biological parents have not been severed.’” As Justice Simpson explained: “This is important because the legislation speaks of ‘legal ties’ and they were clearly severed when the Applicant's parents consented to the adoption”: *Garcia Rubio*, at para 7.

[38] Further, in the context of this particular case, the Officer’s reliance on the relationship between the Applicant and her biological mother to refuse the application contradicts the Officer’s own acknowledgment that “an ongoing relationship and contact between biological parents and adopted child may still occur” after the adoption, and that “some cultural milieu embrace the sharing of parental responsibilities.” There was evidence before the Officer about the critical role culture plays in shaping the relationships among the Applicant, her biological mother and her adoptive mother. Indeed the Officer acknowledged the Applicant’s “cultural background” as explained during the interview and reiterated in her letter dated October 31, 2019. For the Officer to accept the cultural influence on these relationships on the one hand, and

then find fault with that enduring relationship notwithstanding the cultural influence on the other, was unreasonable.

[39] While I agree with the Respondent that evidence showing the Applicant is cared for by her adoptive mother is not enough, I do not read *Dubkov* to support their argument that the "[pre]-existing parent-child relationship must be severed" – other than in a legal sense.

[40] I also do not agree with the Respondent that if the severance of legal ties were sufficient there would be no basis for any further analysis. On the contrary, an officer must determine the central issue, namely, whether the adoption created a genuine parent-child relationship. It is my view, however, that in making this assessment, the relationship between an applicant and their biological parents is not determinative of the issue. Rather, the focus of the analysis under s. 5.1(2)(a) should always be the relationship between the applicant and their adoptive parents.

[41] The Respondent's position, if adopted, would pose an unfair and disproportionate challenge for applicants who are adopted by close family members and relatives. It is more likely for adoptees in those cases – as opposed to those adopted by individuals without blood relations – to maintain an ongoing relationship with their birth parents. Requiring these adoptees to sever all ties with their biological parents may not always be possible, and indeed may not be in their best interests.

[42] The African proverb, it takes a village to raise a child, represents a philosophy common among many cultures – including that of the Applicant – that see parenting as a responsibility

that extends beyond the nuclear family. By denying the application because the Applicant has maintained an ongoing relationship with her biological mother, the Officer injected a requirement that is absent from the legislation, while failing to give considerable regard to the relevant cultural background to which the Applicant belongs.

[43] By focusing on the relationship between the Applicant and her biological mother, and by discounting the evidence of the strong relationship between the Applicant and Ms. Agbi, who has practically performed the role of a parent for the Applicant since 2010, the Officer's conclusion that the adoption in question did not create a genuine parent-child relationship was unreasonable.

B. *Did the Officer err in finding that the primary purpose of the adoption was to acquire a benefit of immigration or citizenship?*

[44] The Officer agreed that the Applicant's adoptive mother has done an "incredible job" in providing the Applicant with a stable home, and that it was "physically impossible" for the Applicant's birth mother to carry out of the job of parenting. However, the Officer considered the Applicant's immigration history, including her failed refugee claim and failed H&C application, and found it was "not unreasonable to conclude that [the Applicant] turned towards the adoption process for the purposes of obtaining Canadian citizenship."

[45] In so finding, the Officer erred.

[46] As the Applicant submits, and I agree, the bar for a finding that the primary purpose of an adoption was to acquire an immigration benefit is a very high one, essentially requiring evidence of a scheme to circumvent immigration laws or enter into a "pretend" adoption.

[47] As the Applicant also noted, prior to the FCA's decision in *Dufour*, this Court held: "[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. Clearly, such is not the case here": *Perera v Canada (Citizenship and Immigration)*, [2001] FCJ No 1443 at para 14.

[48] Similarly, in *Dufour*, the FCA found at para 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

[49] As I have noted above, the FCA also confirmed in *Young* that "[t]he conviction that an adoption is an adoption of convenience must rest on more than the awareness of the advantages to be gained by adoption."

[50] In this case, I agree with the Applicant that the Officer erred by ignoring the primary motivation for the adoption was that Ms. Agbi wanted the Applicant to have stability in her life, while the Applicant believed that the adoption was in her best interests.

[51] At the interview, the Officer asked Ms. Agbi why she adopted the Applicant and was told: “I discussed it with her mom. I am a very structured person, and I don’t like Ivana not having stability.” The Applicant, in her written response to the PFL, described Ms. Agbi as her mother “in so many ways than I could possibly explain”, noting it was “physically impossible” for her biological mother to be the mother the Applicant knew she was capable of being, and that her biological father has chosen “a lifestyle that made it near impossible to be a parent.” The Applicant also explained that their parents made the decision for her to live in Canada with her aunt not for financial reasons, or because they wanted their daughter to live in “a first world country”, since the Applicant is American by birth and also entitled to British citizenship. The Applicant submitted that the decision was made by her parents “in the best interests of their only child.” The Applicant also noted that the adoption by her aunt offered her “a stable home” that she has yearned for all her life.

[52] The Officer did not consider the Applicant’s explanation that the primary purpose of the adoption was her best interests, noting the concept does not apply to the Applicant’s case as she was adopted as an adult. I agree with the Applicant that this was an error. While the *Act* requires an adoption of a minor to have been done in the minor’s best interest, it does not mean that the notion of best interests of the Applicant was an irrelevant factor in her decision to go through with the adoption.

[53] The Officer also rejected the explanation that the adoption provided the Applicant with stability, stating that the Applicant could have gone to live in the UK with her biological mother, and that she has provided little evidence to show that living in the UK would amount to an

unstable life. Putting aside the speculative nature of that statement, I agree with the Applicant that this was no reason to reject the evidence submitted by the Applicant and Ms. Agbi as it relates to the primary purpose of the adoption.

[54] At the hearing, the Respondent questioned the whole notion of stability as the basis for the adoption. The Respondent argued that the evidence did not suggest that the Applicant's life was unstable. Rather, the Applicant was relying on a good stable home life provided by her adoptive mother. The only instability was the Applicant's lack of legal status, and the purpose of the adoption was to cure the instability in her lack of status.

[55] I reject this submission. To start, this was not the reason given by the Officer for refusing the application, as the Officer never dealt with the stated purpose of stability as offered by the Applicant and her adoptive mother, other than to state that the Applicant could have found stability elsewhere. Further, as the FCA has confirmed, the mere fact that there are advantages to be gained by adoption does not mean the adoption was entered into for immigration purposes.

[56] The threshold that the FCA has laid down for a finding that the adoption is created to acquire immigration status is high. By ignoring the explanations for the adoption provided by the Applicant and her adoptive mother, the Officer unreasonably concluded that the primary purpose of the adoption was to obtain Canadian citizenship.

IV. Conclusion

[57] The application for judicial review is granted.

[58] There is no question for certification.

JUDGMENT in T-805-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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