Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

Date: 19980616

Docket: IMM-2413-97

BETWEEN:

JASVIR SINGH CHEEMA,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

HEALD, D.J.

[1] This is an application for judicial review of a decision of the Immigration and Refugee Board, Appeal Division (the "Board") dated May 20, 1997. By that decision the Board dismissed an appeal by the applicant from the decision of a visa officer dated July 27, 1995 wherein the visa officer concluded that for immigration purposes Iqbal Singh Sandhu (Iqbal) was not the applicant's adopted son and was not a member of the Family Class.

THE FACTS

[2] The applicant and his wife Jasbinder, were born in India. The applicant immigrated to Canada under his sister's sponsorship in September of 1990. Iqbal was born in India in April of 1987. He was raised in a family compound comprised of his immediate family, along with other individuals. He has two older siblings, a sister and a brother. His parents are both living. In December of 1992, the applicant and his wife executed a power of attorney wherein Bahadur Singh (a relative of the wife) was appointed as their agent to expedite their adoption of Iqbal in India. With his assistance, an adoption ceremony was performed in February of 1993. An Adoption Deed was also registered in February of 1993.

[3] As of April of 1993, the applicant filed an undertaking of assistance to sponsor Iqbal's entrance to Canada as his adopted son. Jasbinder also signed the documents as his spouse.

THE BOARD'S DECISION

[4] The Board dismissed the appeal pursuant to subsection 77(3) of the *Immigration Act* for lack of jurisdiction. Having found on the facts that Iqbal was not an "adopted" son, the Board concluded that, since subsection 77(3) only provides an appeal for persons who have sponsored applications for landing of members of the Family Class, and since Iqbal was not such a

member, the Board was without jurisdiction and, accordingly, the appeal was dismissed.

ISSUES

1. Did the Board err in concluding that there had not been an intent to transfer Iqbal from one family to the other?

2. Did the Board ignore evidence before it when it concluded that a genuine relationship had not been created?

3. In its reasons, the Board observed that the applicant and his wife "did not typically exaggerate". Does this statement provide the basis for a reasonable apprehension of bias on the part of the Board?

ANALYSIS

1. No Intention to Transfer the Child From One Family to Another

[5] In my view, the record contains ample evidence to support this conclusion by the Board. Iqbal still referred to his natural parents as mother and father. He informed the visa officer at his interview that he had no parents other than his natural parents. He didn't appear to comprehend the meaning of adoption. He advised the Visa Officer that he did not know the names of his adoptive parents. The evidence clearly supports the Board's conclusion that Iqbal "saw no real changes in his family status following adoption".[1]

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[1] See certified record, p. 16.

2. Ignoring of Evidence by the Board

[6] After a careful review of the evidence, the Board concluded that the applicant and his wife were not "...people who currently stand in *loco parentis*" to the child. In my view, such a finding of fact was reasonably open to the Board on this record and, in so concluding, the Board did not ignore or disregard any of the evidence before it.

3. Reasonable Apprehension of Bias

[7] The applicant submits that the Board member's comment that the applicant and his wife "did not typically exaggerate" creates a reasonable apprehension of bias. In the applicant's view, this gratuitous comment demonstrates that the Board member either believes that all applicants typically exaggerate or that adoptive parents from India typically exaggerate.

[8] The accepted test for "reasonable apprehension of bias" is the Crowe test[2] and reads as follows "...what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that Mr. Crowe, whether consciously or unconsciously, would not decide fairly". Applying

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2 *The Committee for Justice and Liberty et al. v. The National Energy Board et al.* [1978] 1 S.C.R. 369, at pp. 394-95, *per* de Grandpré J. This test has been followed by the Federal Court of Appeal in *Arthur v. Canada (Minister of Employment and Immigration)* [1993] 1 F.C. 94 at 101 and in *MacBain v. Lederman* [1985] 1F.C. 856 at p. 867.

that test to the words of the Board member, in this case, and taking these words in total context, I do not think that her remark was a gratuitous expression amidst an otherwise careful and articulate set of reasons. As I read this observation, I believe it to be a finding that while the applicant and his wife exaggerated in some of their testimony, they did not exaggerate generally nor definitively in their evidence.

[9] After a careful examination of the totality of the record, I am not persuaded that a reasonable apprehension of bias has been demonstrated.

CONCLUSION

[10] For the foregoing reasons, the within application for judicial review is dismissed.

CERTIFICATION

[11] Counsel for the applicant suggested two questions for certification pursuant to section 83 of the *Immigration Act*. They read, substantively, as follows:

1. In considering if there has been an intent to transfer under section 11(vi) of the *Hindu Adoption and Maintenance Act* (HAMA), does the Board err in law in considering an eight year old child's lack of understanding of the fact and import of adoption at the time of interview two years after adoption, as a relevant and significant, if not determinative, factor in concluding lack of intent to transfer?

2. In determining if a "genuine parent child" relationship is created by adoption, does the Board err in law in considering as a relevant and significant (if not determinative) factor, an eight year old boy's understanding or lack of understanding of the fact and import of the adoption and the child's continuing relationship with his birth parents, over the steps taken by the adoptive parents, limited by distance, to effect the creation of a genuine parent/child relationship?

[12] I agree with the respondent's counsel that both of the proposed questions are fact specific to the case at bar. Accordingly, no questions will be certified.[3]

Darrel V. Heald
Deputy Judge

OTTAWA, ONTARIO
June 16, 1998

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[3] Compare *Liyanagamage v. Canada (Minister of Citizenship and Immigration)* (1994), 176 N.R., 4 at page 5, *per* Décary J.A.