

Federal Court



Cour fédérale

Date: 20110309

Docket: T-506-10

Citation: 2011 FC 272

Ottawa, Ontario, March 9, 2011

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

SALVADOR MARTINEZ GARCIA RUBIO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Salvador Martinez Garcia Rubio (the Applicant) was a minor when his Canadian uncle applied to adopt him. However, he had become an adult by the time the Canadian adoption order was made. In a decision dated January 26, 2010 (the Decision), his subsequent application for citizenship was denied. These reasons deal with application for judicial review of that Decision pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 and, for the following reasons, the application for judicial review will be allowed.

THE LEGISLATIVE CONTEXT

[2] Subsection 5.1(2) of the *Citizenship Act*, RS 1985, c C-29 deals with adult adoptions. It says:

(2) 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 at least 18 years of age if

(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

(b) the adoption meets the requirements set out in paragraphs (1)(c) and (d).

[...]

(2) Sous réserve du paragraphe (3), le ministre attribue, sur demande, la citoyenneté à la personne adoptée par un citoyen le 1^{er} janvier 1947 ou subséquemment lorsqu'elle était âgée de dix-huit ans ou plus, si les conditions suivantes sont remplies :

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) l'adoption satisfait aux conditions prévues aux alinéas (1)c) et d).

[...]

[3] Paragraphs 5.1(1)(c) and (d) read as follows:

(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
(d) was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.

[...]

c) elle a été faite conformément au droit du lieu de l'adoption et du pays de résidence de l'adoptant;
d) elle ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté.

[...]

[4] The Citizenship Regulations, SOR/93-246 provide in subsection 5.3(3) that:

(3) The following factors are to be considered in determining whether the requirements of subsection 5.1(2) of the Act have been met in respect of the adoption of a person referred to

(3) Les facteurs ci-après sont considérés pour établir si les conditions prévues au paragraphe 5.1(2) de la Loi sont remplies à l'égard de l'adoption de la personne visée au paragraphe

in subsection (1):

- (a) whether, in the case a person who has been adopted by a citizen who resided in Canada at the time of the adoption,
 - (i) a competent authority of the province in which the citizen resided at the time of the adoption has stated in writing that it does not object to the adoption, and
 - (ii) the pre-existing legal parent-child relationship was permanently severed by the adoption; and
- (b) whether, in all other cases, the pre-existing legal parent-child relationship was permanently severed by the adoption.

[...]

(1) :

- a) dans le cas où la personne a été adoptée par un citoyen qui résidait au Canada au moment de l'adoption :
 - (i) le fait que les autorités compétentes de la province de résidence du citoyen au moment de l'adoption ont déclaré par écrit qu'elles ne s'opposent pas à celle-ci,
 - (ii) le fait que l'adoption a définitivement rompu tout lien de filiation préexistant;
- b) dans les autres cas, le fait que l'adoption a définitivement rompu tout lien de filiation préexistant.

[...]

THE DECISION

[5] The decision-maker set out the above-noted provisions and then provided the following reasoning (the Reasons):

[...]

You declared that you had spent all your life with your biological parents and that after November 2008 you moved to Canada to live with the brother of your biological father and his spouse. You stated that while you were in Canada you had kept contact with your biological parents by telephone on birthdays, for Christmas, and to share news; you also indicated that on your current travel to Mexico you were staying with them. Furthermore, you informed me that sometimes you referred to your biological parents as “mom” and “dad”.

It is therefore my opinion, that the ties with your biological parents have not been severed, that your adoption has been conducted primarily for the purpose of acquiring a status or privilege under the *Citizenship Act* and that such adoption is not in the best interests of

you as it does not create a genuine parent-child relationship with your adoptive parents.

In addition, and based on the information provided in your application, although you were in Canada when the adoption was made, your legal residence was in Mexico. The adoption was not in accordance with the Mexican law and was not an international adoption. Under the Mexican law, you remain the son of your biological parents. Furthermore, your birth certificate shows your biological parents on it and your adopting father is blood related to you.

DISCUSSION

[6] In my view, there has been a failure of natural justice in that the Reasons are wholly inadequate. They omit mention of two important facts. First, that the affidavit evidence showed that the Applicant's uncle had paid for his schooling in Mexico since kindergarten and, second, that the uncle initially tried to adopt the Applicant under Mexican law when he was fourteen years old. At that time his parents had just divorced.

[7] As well, the Reasons do not explain the relevance of the conclusion that "the ties with your biological parents have not been severed." This is important because the legislation speaks of "legal ties" and they were clearly severed when the Applicant's parents consented to the adoption. Finally, the six facts listed in the final paragraph of the Reasons appear to be irrelevant. At a minimum, the Decision should have included an explanation of their significance.

CONCLUSION

[8] The Applicant is entitled to a logical, reasoned decision which demonstrates that the decision-maker understood the salient facts. The Decision, in this case, does not meet this standard.

JUDGMENT

THIS COURT’S JUDGMENT is that the application is allowed.

This matter is hereby referred back for re-determination by a different decision-maker who is to consider, *inter alia*:

- (i) The factors described in Citizenship and Immigration Canada’s manual entitled CP 14 Adoption in sections 6.5, 6.7, 10.9, 10.10; and
- (ii) The factors described in the case of *Severina Buenavista v The Minister of Citizenship and Immigration*, 2008 FC 609, [2008] FCJ No 753 at para 8.

The Applicant is entitled to submit fresh evidence and to make submissions within a reasonable timeframe to be set by the decision maker.

The decision maker may interview the Applicant and his uncle.

“Sandra J. Simpson”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-506-10

STYLE OF CAUSE: Salvador Martinez Garcia Rubio v the Minister of
Citizenship and Immigration

PLACE OF HEARING: Toronto, Ontario

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REASONS FOR JUDGMENT: SIMPSON J.

DATED: March 9, 2011

APPEARANCES:

Alla Kikinova FOR THE APPLICANT

Jamie Todd FOR THE RESPONDENT

Neal Samson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michael Loebach FOR THE APPLICANT
London, Ontario

MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Toronto, Ontario