Federal Court Cour fédérale

Date: 20130404

Docket: T-802-12

Citation: 2013 FC 340

[UNREVISED ENGLISH CERTIFIED TRANSLATION]
Ottawa, Ontario, April 4, 2013

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

BUROU JEANTY DUFOUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant is a permanent resident who is subject to a legally enforceable removal order. He is now asking the Court to review a decision rendered on March 16, 2012, by a citizenship officer under section 5.1 of the *Citizenship Act*, RSC 1985, c C-29 [Act], refusing his application for Canadian citizenship for a person adopted by a Canadian citizen [citizenship application].

BACKGROUND

[2] The applicant, Burou Jeanty Dufour, was born in Haiti on June 5, 1987. His biological father died when he was five years old, while his mother died a few years after the applicant was adopted in Haiti by Joseph Dufour in 2001. The applicant's adoptive father is a Canadian citizen, divorced, a teacher by profession and now retired. Between 1999 and 2002, he worked as a missionary in Haiti, where he met the Jeanty and Eliadam families.

[3] The applicant's mother had a business which took up much of her time; she was of modest financial means and wanted a better future for the applicant, who also looked after his brother and sister. The Eliadams were a dysfunctional family that included Jonathan, who is one year older than Burou. The applicant's mother and Jonathan's father wanted Mr. Dufour to adopt the two teenagers, who shared the same desire.

[4] The adoption judgment was delivered in Haiti by the court of first instance of the city of Cayes [foreign court] on September 17, 2001, when the applicant was 14 years old. The adoptive father remained in Haiti for a year after the adoption was completed. On June 18, 2002, the two teenagers accompanied their adoptive father to Canada, travelling on visitor visas.

[5] The family settled in the Chicoutimi area, where the applicant went to high school. Sponsored by his adoptive father, the applicant was granted permanent resident status on February 4, 2004. In the meantime, on October 7, 2002, the Court of Québec [domestic court] had recognized the adoption judgment rendered in Haiti.

[6] On September 11, 2007, Jonathan was granted Canadian citizenship, since he met the residence requirement and the other conditions set out in subsection 5(1) of the Act. However, the applicant neglected to submit a new citizenship application—his first application had been refused because it had been filed too soon.

[7] The applicant moved to Québec in 2007 in the hope of continuing his studies in restaurant management. That same year, his mother died, and he dropped out of school and started associating with the wrong crowd. Between 2007 and 2008, the applicant was convicted of various offences under the *Criminal Code*, RSC 1985, c C-46.

[8] On March 5, 2009, a removal order was made against the applicant. On April 7, 2010, the Immigration Appeal Division of the Immigration and Refugee Board [Board] stayed the removal order for a period of five years.

[9] On November 27, 2009, the applicant filed an application for Canadian citizenship for a person adopted by a Canadian citizen after 1947, under the new section 5.1 of the Act. He states in his application that he [TRANSLATION] "has Canadian citizenship", having obtained it [TRANSLATION] "by birth in Canada, as my adoptive father was born in Canada, has always lived there and currently lives there".

[10] On December 16, 2010, the applicant was convicted of another series of criminal offences. On January 26, 2011, the Immigration Appeal Division of the Board found that the stay was cancelled by operation of law and the appeal was terminated. On May 17, 2012, the Federal

Court refused to quash the most recent decision: *Jeanty Dufour v Canada (Minister of Citizenship and Immigration)*, 2012 FC 580.

[11] In the meantime, on July 21, 2010, Citizenship and Immigration Canada [CIC] had notified the applicant that a [TRANSLATION] "positive decision" regarding his citizenship application under section 5.1 of the Act had been made. However, one year later, on July 28, 2011, the applicant was surprised to hear from CIC that his citizenship application was still [TRANSLATION] "in process". This contradicted not only the letter dated July 21, 2010, but also the information appearing on the CIC Web site's Client Application Status tool, to the effect that CIC had [TRANSLATION] "sent a certificate of citizenship to 199 Price Street E., Chicoutimi, Quebec, Canada, G7H 2E3, on March 4, 2011". It would appear that a clerical error had occurred and that the citizenship certificate had been sent to the CIC office in Montréal instead.

[12] On March 16, 2012, the citizenship application was refused by Nicole Campbell, Analyst [citizenship officer], on the basis that the applicant had been unable to establish that he met the requirements of the Act, in particular, the conditions set out in paragraphs 5.1(3)(*a*) and (*b*) of the Act.

THE PRESENT APPLICATION FOR JUDICIAL REVIEW

[13] The impugned decision was made pursuant to section 5.1 of the Act, which allows the Minister of Citizenship and Immigration [Minister] to grant citizenship to a person who was adopted by a Canadian citizen after January 1, 1947.

[14] The citizenship officer's reasons for refusing the application may be summarized as follows:

(a) The applicant's adoption was not in accordance with the established rules of the country of adoption, the Republic of Haiti, because the Bureau des affaires sociales [Social Affairs Office] is supposed to issue an adoption authorization, not the Institut du Bien Être social et de Recherches [Institute of Social Welfare and Research];

(b) The Quebec authority responsible for international adoptions, the Secrétariat à l'adoption internationale, did not advise, in writing, that in its opinion the applicant's adoption meets the requirements of Quebec law governing adoption;

(c) The applicant's adoption was entered into for the purpose of acquiring a status or privilege in relation to immigration or citizenship because the adoptive father made the application at the request of the child and his mother;

(d) The citizenship application was submitted under section 5.1 of the Act to circumvent the removal order.

[15] The applicant accuses the citizenship officer of having erred in law and in fact or of having otherwise acted unreasonably in deciding that the conditions set out in section 5.1 of the Act have not been met. The respondent submits that the impugned decision is in every respect

reasonable and consistent with the Act and the applicable principles of international adoption law.

[16] Generally speaking, the reasonableness standard applies in the present case: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Jardine v Canada (Citizenship and Immigration)*, 2011 FC 565 at paras 16-17 [*Jardine*]. However, the Court is better placed than a citizenship officer to interpret domestic and foreign adoption law, so the correctness standard should apply to this issue: *Dunsmuir* at para 55; (*Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 62; *Taylor v Canada (Citizenship and Immigration)*, 2006 FC 1053 at paras 34-36; *Canada (Citizenship and Immigration) v Taylor*, 2007 FCA 349 at para 4.

[17] For the following reasons, this application for judicial review seems to me to be well founded.

LEGAL FRAMEWORK

[18] It should be noted that biological children born outside Canada automatically become Canadian citizens at birth if one of their parents is a Canadian citizen (section 3 of the Act). Section 5.1 of the Act has been in force since December 23, 2007. The purpose of this new provision (SC 2007, c 24, section 2, as amended by SC 2008, c 14, section 13) is to allow children adopted abroad by Canadian citizens after January 1, 1947, to acquire Canadian citizenship without having to go through the usual process.

[19] It is important to remember that children adopted abroad by a Canadian citizen were previously subject to the same process as foreigners. First, they could not become permanent residents while continuing to live outside Canada. Second, once they obtained a permanent resident visa and left their country, they had to be 18 years old and live at least three years in Canada before being able to apply for citizenship under section 5 of the Act.

[20] At the time, CIC stated the following in its clause-by-clause analysis of Bill C-18:

> [TRANSLATION]
> The proposed legislation erases many of the distinctions the current Act makes between biological children and adopted children born abroad. It also protects the integrity of citizenship by requiring that the adoption create a genuine parent-child relationship between the adoptee and the adoptive parent and that the adoption was not entered into to circumvent Canadian immigration and citizenship legislation. Finally, it requires that the adoption be made in the best interests of the child. These provisions will allow the Department to make regulations authorizing it to formally require a home study and a medical examination. However, these tools will only be used to provide provinces and adoptive parents with information and could not be used to deny a child citizenship. The best interests of the child principle will also allow the Department to fight the abduction and trafficking of children.

[21] Subsections 5.1(1) and (3) of the Act are relevant to the present case and read as follows:

5.1(1) 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 a minor child if the adoption	5.1(1) Sous réserve du paragraphe (3), le ministre attribue, sur demande, la citoyenneté 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 :

(*a*) was in the best interests of the child;	a) elle a été faite dans l'intérêt supérieur de l'enfant;
(*b*) created a genuine relationship of parent and child;	b) elle a créé un véritable lien affectif parent-enfant entre l'adoptant et l'adopté;
(*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	c) elle a été faite conformément au droit du lieu de l'adoption et du pays de résidence de l'adoptant;
(*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.
. . .	[...]
(3) The Minister shall on application grant citizenship to a person in respect of whose adoption — by a citizen who is subject to Quebec law governing adoptions — a decision was made abroad on or after January 1, 1947 if	(3) Le ministre attribue, sur demande, la citoyenneté à toute personne faisant l'objet d'une décision rendue à l'étranger prononçant son adoption, le 1er janvier 1947 ou subséquemment, par un citoyen assujetti à la législation québécoise régissant l'adoption, si les conditions suivantes sont remplies :
(*a*) the Quebec authority responsible for international adoptions advises, in writing, that in its opinion the adoption meets the requirements of Quebec law governing adoptions; and	a) l'autorité du Québec responsable de l'adoption internationale déclare par écrit qu'elle estime l'adoption conforme aux exigences du droit québécois régissant l'adoption;
(*b*) the adoption was not entered into primarily for the	b) l'adoption ne visait pas principalement l'acquisition

purpose of acquiring a status or privilege in relation to immigration or citizenship.	d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté.

[Emphasis added.]

[22] In practice, the citizenship officer must consider the factors listed in section 5.1 of the Act, as detailed in sections 5.1 to 5.5 of the *Citizenship Regulations*, SOR/93-246 [Regulations], as applicable: CIC Operations Manual, *CP 14 – Adoptions*, section 11 – Factors to be considered, and Section 12 – Quebec adoptions – 5.1(3) of the Act.

[23] Section 5.1 of the Act is very broad in scope, as it covers all foreign adoptions since January 1, 1947. A citizenship application submitted under this provision may be made at any time, either by the Canadian adoptive parent if the child is still a minor, or by the adopted child him- or herself once he or she reaches the age of majority. Fewer documents are required when the application is made by an adopted child who has reached the age of majority, and such an individual does not need to be a permanent resident to apply for citizenship under section 5.1 of the Act. See in particular sections 5.4 and 5.5 of the Regulations, which apply to an application made under subsection 5.1(3) of the Act.

[24] Since paragraphs 5.1(3)(*a*) and (*b*) of the Act must be read together with subsection 5.1(1) of the Act, where applicable, the citizenship officer must among other things be satisfied that the adoption 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, including the law in

force in the province of Quebec, and that the adoption was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.

[25] Incidentally, a permanent resident who is under a removal order cannot apply for citizenship under section 5 of the Act, and a person shall not be granted citizenship under subsection 5(1), (2) or (4) or 11(1) of the Act or take the oath of citizenship if he or she has been convicted of certain criminal offences: paragraph 5(1)(*f*) and section 22 of the Act. These restrictions do not appear in section 5.1 of the Act. The Minister therefore does not have discretion to refuse to grant citizenship, on grounds of criminality, to a person who was adopted by a Canadian citizen and otherwise meets the conditions of section 5.1 of the Act.

[26] In practice, when a child adopted abroad by a Canadian citizen immigrates to Canada before he or she has been granted citizenship under section 5.1(1) of the Act, he or she must first obtain a permanent resident visa under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Where applicable, he or she must also obtain from the Quebec authorities a Quebec selection certificate attesting that the applicant meets the requirements of Quebec under the *Act respecting Immigration to Québec*, RSQ, c I-0.2.

[27] It should also be noted that immigration is an area of shared jurisdiction, while the provinces have exclusive jurisdiction to make laws in relation to the rules governing the law of persons, filiation, domicile and residence, private international law and the recognition of foreign judgments in the province: *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK), section 92, paragraphs 13 and 16, and section 95.

[28] A person's identity is inseparable from the person's name, and a person's name is in turn intimately related to filiation. According to article 50 of the *Civil Code of Québec*, SQ 1991, c 64 [CCQ], every person has a name which is assigned to him or her at birth and is stated in his or her act of birth; the name includes the surname and given names. But adoption confers on the adopted person a filiation which replaces his or her original filiation, such that the adopted person ceases to belong to his or her original family: article 577 CCQ.

[29] On the one hand, in Quebec, no adoption may take place except in the interest of the child and on the conditions prescribed by law: article 543 CCQ. Furthermore, no minor child may be adopted unless his or her father and mother or his or her tutor has consented to the adoption, or unless he or she has been judicially declared eligible for adoption: article 544 CCQ.

[30] On the other hand, special conditions apply to the adoption of a child domiciled outside Quebec by a person domiciled in Quebec. The adopting parent must first undergo a psychological assessment: article 563 CCQ. Furthermore, the adoption arrangements are normally made by a certified body: article 564 CCQ; *Order respecting the adoption without a certified body of a child domiciled outside Québec by a person domiciled in Québec*. Finally, the adoption of a child domiciled outside Quebec must be granted abroad or granted by judicial decision in Quebec: article 565 CCQ.

[31] It should be noted that in Quebec private international law, the rules respecting consent to the adoption and the eligibility of the child for adoption are those provided by the law of the

child's domicile, while the effects of adoption are subject to the law of the domicile of the adopter: article 3092 CCQ. Moreover, a decision granted abroad must be recognized by the court in Quebec, unless the adoption has been certified by the competent authority of the State where it took place as having been made in accordance with the *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* [Convention]: article 565 CCQ.

[32] The Convention came into force on May 1, 1995, when the Quebec legislature enacted the *Act to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, RSQ, c M-35.1.3, which came into force on February 1, 2006. One of the purposes of the Convention is to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights. The Convention adds to the international protections already provided under the *Convention on the Rights of the Child*, which came into force on September 2, 1990, and was ratified by Canada on December 13, 1991, and by Haiti on January 8, 1995.

[33] In Quebec, the Secrétariat à l'adoption internationale [Secretariat] is the central authority for the purposes of the Convention: *Act respecting the ministère de la Santé et des Services Sociaux*, RSQ, c M-19.2, section 3; *Act to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, RSQ, c M-35.1.3, section 2; *Youth Protection Act*, section 71, RSQ, c P-34.1; *Order respecting the adoption without a certified body of a child domiciled outside Québec by a person domiciled in Québec*, RRQ, c P-34.1, r 2, sections 3 and 30; Secrétariat à l'adoption internationale, *Adoption process – International adoption procedure* (Secretariat's Guide).

[34] In practice, the Secretariat is responsible for co-ordinating international adoption procedures. Unfortunately, there is no evidence in the record explaining the specific role that the Secretariat may have played in 2001 in the case of an adoption concerning a minor child from Haiti adopted by a parent domiciled in Quebec. However, it appears that before February 1, 2006, the Secretariat [TRANSLATION] "was less strict on requirements and verified whether, on the whole, the proposed adoption was in the best interests of the child": *Adoption – 104*, 2010 QCCQ 2039 at para 18 [*Adoption – 104*].

[35] The CIC and Secretariat documents filed in the Court record address, rather, current procedures regarding the adoption of minor children by a parent domiciled in Quebec, that is, since section 5.1 of the Act came into force on December 23, 2007. Once the Secretariat has sent a letter of no-objection and a certificate of compliance with Quebec law to the Canadian and Quebec immigration authorities, the minor child may enter Quebec without a visa, regardless of whether the child comes from a country that has signed the Convention.

[36] However, the Court of Quebec (Youth Division) had exclusive jurisdiction to grant an adoption or recognize a foreign adoption judgment in 2001 and continues to have such exclusive jurisdiction today: articles 36.1 and 785 of the *Code of Civil Procedure*, RSQ, c C-25 [CCP]; *Adoption - 111*, 2011 QCCA 38 at paras 43 to 48. In such matters, the Court of Quebec does not necessarily have to ensure that every provision of Quebec law has been fully respected; [TRANSLATION] "it must however ensure that the legal rules that must be applied because of their specific purpose have indeed been applied": *Adoption – 104* at para 51.

[37] Adopting a minor child is a very serious matter that goes well beyond a mere exchange of consent by the spouses witnessed by a public official responsible for solemnizing and registering a marriage in an act of civil status. One spouse may divorce the other, but a child cannot divorce its new parent once the original parent-child relationship has been severed by adoption. Therefore, the Court of Quebec must make sure that the rules respecting consent to the adoption and the eligibility of the child for adoption have been complied with and that the consents have been given for the purposes of an adoption resulting in the dissolution of the pre-existing bond of filiation between the child and the child's family of origin: article 568 CCQ.

[38] It is important to point out here that when the Court of Quebec recognizes a decision by a foreign court granting an adoption, this recognition has the same effects as an adoption judgment rendered in Quebec, and the effects are retroactive to the date of the original decision: article 581, first paragraph, CCQ. A new act of civil status is therefore drawn up by the registrar of civil status: articles 132 and 132.1 CCQ. Entries in the act of birth thus amended are authentic, as are entries and amendments in the foreign act of birth, once their validity is recognized by a court in Quebec: articles 107, 136 and 137 CCQ.

[39] As we have seen above, the adoption of a minor child presupposes a thorough independent third-party review of the proposed adoption and of the motivations for the adoption so that, after the psychosocial assessment, there is less of a chance that the Court of Quebec will find itself faced with an "adoption of convenience," especially when the Director of Youth Protection is impleaded and may object to the adoption.

[40] Nevertheless, when it is a question of considering a citizenship application made by an adoptive parent or by an adopted child once he or she has reached the age of majority, if the citizenship officer finds that an adoption was entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship, he or she must refuse the application for citizenship as a person adopted by a Canadian citizen: paragraphs 5.1(1)(*d*) and 5.1(3)(*b*) of the Act; CIC, *Citizenship Manual*, c CP 14, section 12 [Manual].

[41] In such cases, the citizenship officer must base his or her opinion on factors that, when taken together, could lead a reasonably prudent person to conclude that the adoption was entered into for the purposes of circumventing the requirements of the IRPA or those of the Act. It is not a question of whether the citizenship application is being made today by the adoptive parent or the majority-age adopted child for the purpose of acquiring a status or privilege in relation to immigration or citizenship, but rather a question of whether the adoption itself was at that time entered into primarily for such a purpose.

[42] To determine whether or not the adoption was entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship, the citizenship officer must assess all the relevant information on a case-by-case basis, including the following:

- the circumstances surrounding the adoption;
- the whereabouts of the adoptive child's biological parents and the nature of their personal circumstances;
- who was included in the adopted child's household before and after the adoption;

- whether the adoptive parents are supplying financial and emotional support;
- the motivation or reasons for the adoption of the child that the biological parents and the adopting parents give;
- the authority and suasion of the adopting parents over the adopted child;
- arrangements and actions taken by the adoptive parents as it relates to caring, providing, and planning for the adopted child;
- 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;
- the relationship between the adopted child and the biological parents before the adoption;
- the relationship between the adopted child and the biological parents after the adoption;
- the treatment of the adopted child versus that of biological children by the adopting parent;
- the prevailing social and legal practices governing adoption in the adoptive child's home country;
- in a case where the adoption took place a long time ago, evidence that the child has lived with the adoptive parent and that the adoptive parent cared for the adopted child.

[43] This is not an exhaustive list. Some of the above factors from the Guide may not be applicable in certain cases, while others not listed above could be relevant. By analogy, for the

purpose of determining whether an adoption was entered into primarily to obtain a status in Canada, the Immigration Appeal Division of the Board set out a list of factors similar to those appearing in the Guide, in *Guzman v Canada (Minister of Citizenship and Immigration)*, [1995] IADD No 1248, 33 Imm LR (2d) 28, and *Hurd v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 719 at para 5, 2003 FCT 719.

[44] At the end of the day, to meet the transparency and rationality requirements laid down by the Supreme Court of Canada in *Dunsmuir*, citizenship officers must justify their decisions on applications with documentary or other evidence, and if they refuse an application, they must give, in the refusal letter, the reasons for the negative decision.

UNREASONABLENESS OF THE IMPUGNED DECISION

[45] As the Supreme Court of Canada noted in *Dunsmuir*, at paragraph 47, "reasonableness is concerned both with the existence of justification, transparency, and intelligibility in the decision-making process and with whether the decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law". In the present case, having carefully read the reasons of the citizenship officer, the Court must conclude that the impugned decision is unreasonable.

[46] If we set aside the fact that the applicant was notified in July 2010 that his citizenship application had been granted and that a citizenship application would be issued, and if we accept that a "clerical error" occurred, as the respondent claims, then why was the citizenship application ultimately refused in March 2012, nearly two years later?

[47] In the present case, the applicant provided all the documents required under the Regulations, namely, his birth certificate, the foreign adoption decision and proof of his adoptive father's Canadian citizenship (section 5.5 of the Regulations). The applicant also submitted the Quebec judgment recognizing the effects of the foreign adoption judgment and a Quebec selection certificate as a member of the family class.

[48] First, the citizenship officer did not personally verify the procedures that applied in Haiti and in Quebec at the time of the applicant's adoption, including the 1983 order creating the Institute of Social Welfare and Research, which was not filed in the record. Moreover, the Ministère public [Public Prosecutor's Office] in Haiti and the Director of Youth Protection in Quebec, who were impleaded in the adoption proceedings and the recognition of the adoption judgment, did not object to the applicant's adoption.

[49] Second, a final adoption judgment was delivered by the foreign court in September 2001. The authenticity of the adoption judgment and the applicant's Haitian birth certificate is not in issue here. This being an international adoption, it is common ground that the judgment rendered in Haiti was legally recognized in 2002. Neither the jurisdiction of the Court of Quebec nor the validity of its final judgment was called into question by the citizenship officer or either of the parties in this application for judicial review.

[50] Normally, the citizenship application should therefore have been granted. However, the CIC's handling of the applicant's file was unusual. Documentation of the administrative process

followed in this case confirms that officials were uneasy about the applicant's criminality. The evidence on record shows that they were working towards an outcome: they were trying to find a legal reason for the citizenship officer to refuse the 2009 application made under section 5.1 of the Act.

[51] In fact, on February 24, 2011, Simone Luedey, Program Support Officer, CPC Sydney, sent the following internal memorandum to Anne-Marie Beaulieu, Program Advisor, NHQ Operational Management and Coordination, Ottawa:

> I have a C14 file that I wanted to ask your opinion. He became a permanent resident Feb 4, 2004 and was adopted in Quebec Oct 7, 2002. There was concern he may have lost his PR status but he was given a 1 year validity PR card that expired 26oct2010. If you check FOSS under CI 51609279, he was under a deportation order and now that his PR card expired I don't know if he is a PR or not. I requested his original PR card in Sept but he did not reply to my letter. He has not applied for a replacement PR card.
>
> Usually, we grant a client citizenship when he is a PR living in Canada but after reading FOSS, (criminality) I'm not comfortable granting him citizenship. Do you think I should grant him citizenship or refer the file to the manager in Montreal? What if he lost his PR status, could we still grant him citizenship? I could have the certificate prepared and if Montreal can confirm he is still a PR, they can grant him citizenship and give him his citizenship card.
>
> [Emphasis added.]

[52] In response to this request for an opinion, in an internal email dated February 28, 2011, the program advisor wrote the following to the support officer: "Normally, whether or not the applicant has a valid status or not and criminality or not, we can still grant citizenship under the adoption provision of the *Citizenship Act* as long as the applicant meets all the requirements

under section 5.1" [emphasis added]. The program advisor was thus of the view that the citizenship application was admissible under the Act and proposed that the application be analyzed to determine whether it could involve an "adoption of convenience".

[53] At the same time, the program advisor suggested that the applicant be summoned for an interview. She did not know if the adoption process in Haiti had indeed been considered when the applicant' application for permanent residence (sponsored by his adopted father) was processed. It would appear that the application was granted on the basis of humanitarian and compassionate considerations in 2004.

[54] However, the program advisor acknowledged that an analysis of the adoption process would have been done at the time if the applicant's application for permanent residence had instead been processed under the family class. In the present case, Quebec did indeed process the applicant's application for permanent residence in 2003 under the family class, as is attested by the Quebec selection certificate (certified record, page 201).

[55] In concluding that the applicant's adoption did not comply with the rules of the country where the adoption took place simply because it was the Institute of Social Welfare and Research, not the Social Affairs Office, that was supposed to approve the adoption, it is clear that the citizenship officer engaged in a selective reading of the evidence and ignored all the evidence submitted in support of the citizenship application.

[56] It is also obvious that the foreign court considered the proposed adoption in light of the applicable law and the evidence on record, including any authorization legally required under the applicable laws of Haiti. The principles of the Convention—although the Convention is not expressly mentioned in the judgment—appear to have been considered by the foreign court [TRANSLATION] "after examination and on the basis of the due findings of the public prosecutor's office".

[57] Indeed, the foreign court notes in its judgment that [TRANSLATION] "given the precarious nature of her resources", the applicant's mother [TRANSLATION] "is unable to provide for her child's needs", and that she gave her full and free consent to the applicant's adoption. The foreign court further states that it is satisfied that [TRANSLATION] "this adoption is motivated primarily by the best interests of the child, who has consented and still consents to his adoption", which is consistent with the Convention.

[58] Moreover, according to Quebec law and the rules of private international law, the adopter was domiciled in Quebec, while the adoptee was domiciled in Haiti. There is no evidence on record that the Haitian authorities certified the applicant's adoption as being compliant with the Convention, such that the foreign adoption judgment required judicial recognition in Quebec.

[59] Such is the case here.

[60] Before the Quebec court rendered its decision, a member of Quebec's professional order of social workers conducted a psychosocial assessment of the father and found that

[TRANSLATION] "this assessment establishes that the adopter is able to meet the material, psychological and social needs of the young person".

[61] In addition, the Quebec court notes in its judgment that [TRANSLATION] "in support of his application, the applicant filed a copy of the legal provisions governing adoption in the Republic of Haiti, and the documents filed establish that the rules concerning consent to the adoption and his eligibility for adoption were followed", and that the adoptive father [TRANSLATION] "took the required steps for the adoption [of the applicant] in accordance with the applicable law of his country of origin, namely, the Republic of Haiti" [emphasis added].

[62] What is more, the Director of Youth Protection was impleaded and did not challenge the application to recognize the foreign adoption judgment.

[63] In the end, the Court of Quebec allowed the application and ordered the registrar of civil status to [TRANSLATION] "make the entries and amendments required by law and, more specifically, to draw up the act of birth of BUROU JEANTY under the surname of DUFOUR and the given names of Burou Jeanty, born in Lopino, Republic of Haiti, on June 5, 1987, son of Joseph Dufour, residing and domiciled at 101 Lapointe Street, St-David-de-Falardeau, G0V 1C0, District of Chicoutimi, Province of Quebec, Canada".

[64] The final judgment of the foreign court has become *res judicata*, particularly since that judgment has received judicial recognition in Quebec: articles 565, 2848 and 3092 CCQ. From the standpoint of both Haitian law and Quebec law, the applicant was legally adopted and is now

the son of Joseph Dufour, his adoptive father, as confirmed by the official birth certificate issued by the registrar of civil status.

[65] According to the documentation in the record, the Secretariat plays an active role in an international adoption, particularly before the adoption takes place. It is unreasonable to require a Secretariat certificate in every adoption case prior to the coming into force of section 5.1 of the Act because that is what subsection 5.1(3) of the Act demands. That subsection does not explicitly refer to a certificate issued by the Secretariat. It therefore comes as no surprise that, more than 10 years after the applicant's adoption, the Secretariat did not act on the citizenship officer's request for an opinion on the applicant's adoption, particularly since the Court of Quebec recognized the foreign judgement in 2002.

[66] In light of the particular circumstances of this case, there was no need to produce a certificate, issued by the Secretariat, confirming that the adoption complied with Quebec law. The lack of a certificate is merely a pretext for not approving the citizenship application.

[67] The citizenship officer also found that the applicant's adoption was entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship because the adoptive father applied for the adoption upon the request of the child and his mother. This too is a mere pretext. Once again, it is clear that the citizenship officer failed to consider all of the evidence on record in the light of the relevant factors.

[68] According to the evidence on record, the adoption was in the best interests of the child and created a genuine parent-child emotional bond between the adopter and the adoptee. There is a considerable body of evidence against the suggestion that this could be an adoption of convenience, including the fact that the adoptive father and the applicant have maintained ties over the years since their arrival in Canada and since the applicant was granted permanent resident status in 2004.

[69] A noteworthy fact that emerges when we look at the circumstances surrounding the adoption is that the applicant's biological father had died. The applicant's adoptive father was himself an orphan, which may explain why he agreed to adopt the applicant at the request of the applicant's biological mother, who was in desperate need of assistance. Moreover, the neighbourhood children were giving the applicant a very hard time. The adoptive father had spent several months in Haiti personally looking after the applicant and his brother while their mother worked. He gave French classes and served as tutor.

[70] The adoptive father remained with the applicant in Haiti for a year before beginning the process to return to Canada. After their arrival in Quebec, he continued to act as a true father to the applicant, who enrolled in school and became part of the adoptive father's family. For many years, the applicant continued living with his adoptive father, who says he did everything to give him a better life and keep him safe. Today, the emotional bonds between the applicant and his adoptive father are still very strong. In every respect, the parental authority of the biological parents was transferred to the adoptive father.

[71] In the present case, the evidence on record does not admit the conclusion that the adoption was entered into primarily for the purpose of acquiring a status or privilege in respect of immigration or citizenship. In terms of acquiring citizenship, the more favourable regime introduced by section 5.1 of the Act for minor children adopted abroad did not exist in 2001. The immigration file was destroyed, but we do know that the applicant had to wait until 2004 to acquire permanent resident status.

[72] The impugned decision is unreasonable in every respect. The citizenship officer does not have the discretion to act for an oblique motive or to not approve a citizenship application that otherwise meets the conditions of section 5.1 of the Act.

[73] For all of these reasons, this application will be allowed. The decision of the citizenship officer will be set aside. A redetermination of the citizenship application under section 5.1 of the Act will be made on the basis of the evidence in the record, the applicable law and the reasons for judgment of this Court.

[74] Given the outcome, the applicant is entitled to costs.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed;
2. The citizenship officer's decision is set aside;
3. A redetermination of the citizenship application under section 5.1 of the Act shall be made on the basis of the evidence in the record, the applicable law and the reasons for judgment of this Court; and
4. Costs are awarded to the applicant.

"Luc Martineau"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-802-12
STYLE OF CAUSE:	BUROU JEANTY DUFOUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	March 5, 2013
REASONS FOR JUDGMENT:	MARTINEAU J.
DATED:	April 4, 2013

APPEARANCES:

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