Federal Court Cour fédérale

Date: 20131120

Docket: T-1083-13

Citation: 2013 FC 1177

Ottawa, Ontario, November 20, 2013

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

KULWINDER KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This is an appeal of a denial of the citizenship application of Ms. Kulwinder Kaur. The application was grounded on her adoption in India by Canadian citizens. The Citizenship Officer [Officer] dismissed the application which was governed by s 5.1(1) of the *Citizenship Act*, RSC 1985, c C-29 [Act].

5.1 (1) Subject to subsection (3), the Minister shall on application grant citizenship to	5.1 (1) Sous réserve du paragraphe (3), le ministre attribue, sur demande, la

a person who was adopted by a citizen on or after January 1, 1947 while the person was a minor child if the adoption	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.

II. BACKGROUND

[2] The Appellant is a citizen of India. She was "adopted" by her Canadian aunt and uncle in 2002 when she was 13 years old. She is a member of the Sikh faith.

[3] The Appellant claimed that she was adopted in accordance with the *Hindu Adoption and Maintenance Act*, 1956, an Indian statute, as required pursuant to paragraph 5.1(1)*(c)* of the Act. A Deed of Adoption was issued in September 2002. Despite the adoption allegedly having taken place

in 2002, it was not until 2010 that steps were taken to bring the Appellant to Canada; the first step was an application for Canadian citizenship.

[4] It was accepted by the parties that Indian law required a ceremony of the giving and taking of the child:

> …there cannot be a valid adoption unless the adoptive (child) is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive (child) and the adoptive parent shall receive (her). The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it.
>
> *Lakshman Sigh v Rup Kanwar*, AIR 1961 SC 1378

[5] The Officer was not satisfied that a physical giving and taking was performed. The Appellant claimed that a small ceremony occurred but the nature of the ceremony and its date was not clear. In particular, the notes from the interview with the Appellant's natural mother cast doubt on the Appellant's assertion that the ceremony had taken place as required.

[6] The Officer relied on the test in *Mayne's Treatise on Hindu Law and Usage* (12 ed: 1986) to the effect that the mere execution of a deed in connection with the giving and taking is not a substitute for the physical act thereof. There was no dispute about this finding.

[7] In addition, the Officer concluded that the Appellant had failed to establish that there was a genuine parent/child relationship between the Appellant and her adopting parents. In this regard, the Officer noted the following key facts:

- The adopting parents did not establish a Power of Attorney to care for the Appellant until 2010 when the Appellant was an adult. The adopting parents left India in 2002 and only made periodic visits. No Power of Attorney for the Appellant's care was in place. The Power of Attorney was established to assist with obtaining a passport so the Appellant could leave India.
- The Appellant had limited communication with her adopting parents and she had limited knowledge of life in Canada.
- There was no satisfactory explanation why the adopting parents did not commence the process to bring the Appellant to Canada immediately after adoption. The excuse that these parents wished the Appellant to obtain her education in India did not satisfy the Officer.
- There was insufficient evidence that the Appellant had severed ties permanently with the natural parents.

[8] The Officer was not convinced that the adoption was genuine and concluded that it was entered into primarily for the purpose of acquiring Canadian citizenship.

III. ANALYSIS

[9] The Officer's decision on the merits of the application is reviewable on a standard of reasonableness (*Dufour v Canada (Minister of Citizenship and Immigration)*, 2013 FC 340). There is no issue on the applicable laws of India.

[10] The key issue in this appeal is a dispute about the sufficiency of evidence to establish a genuine adopting parents/child relationship. In this case the Officer had more than sufficient evidence to justify the conclusion. To reach an opposite conclusion would have been perverse.

[11] This was a thorough and clear decision. Given the lack of detail or the confusing details in the evidence submitted by the Appellant, the Officer had good grounds to approach this application with care.

[12] On the issue of the validity of the adoption, the requirement for a physical giving and taking, as referred to in *Dhadda v Canada (Minister of Citizenship and Immigration)*, 2011 FC 206, was not reasonably established.

[13] On the issue of the creation of a genuine parent/child relationship, there was an abundance of evidence to justify the Officer's conclusion. The overarching fact that the adopting parents did not take steps to bring the Appellant to Canada at the first opportunity is so inconsistent with adopting parents' behaviour (whatever the cultural background) such that it undermines the very fact of an adoption. It was open to the Officer to reject the excuse of wanting the Appellant to study in India.

[14] The reasonableness of the conclusion is reinforced by the absence of a Power of Attorney when the Appellant was a young teenager and likely in greater need; by the limited number of times the adopting parents visited the Appellant; by the Appellant's lack of knowledge about life in Canada. It was reasonable to see these deficiencies as more compelling than the vague evidence of telephone calls and money transfers to the uncle in India who acted as attorney but also as agent for the adopting parents' investments in India.

[15] The Officer's scepticism about the Power of Attorney was justified. The fact that it was given when the Appellant was an adult, when there was interest in coming to Canada and for purposes of immigration requirements is suggestive of an adoption for immigration purposes only.

[16] I see no legal infirmity in the decision nor do I accept that the Officer ignored the departmental Guidelines. Not only are these Guidelines simply that, guidelines where not every factor must be addressed, but the Officer fully addressed all the relevant points in those Guidelines.

IV. CONCLUSION

[17] I concluded that this decision looked at as a whole and considered in respect of each important constituent part is reasonable. Therefore, this appeal will be dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the appeal is dismissed.

"Michael L. Phelan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1083-13
STYLE OF CAUSE:	KULWINDER KAUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	NOVEMBER 18, 2013
REASONS FOR JUDGMENT AND JUDGMENT:	PHELAN J.
DATED:	NOVEMBER 20, 2013

APPEARANCES:

Baldev Sandhu	FOR THE APPLICANT
Marjan Double	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sandhu Law Office Barristers and Solicitors Surrey, British Columbia	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT