Federal Court  Cour fédérale

**Date: 20131204**

**Dockets: T-1537-12**
**T-1538-12**

**Citation: 2013 FC 1215**

**Ottawa, Ontario, December 4, 2013**

**PRESENT: The Honourable Mr. Justice Harrington**

**Docket: T-1537-12**

**BETWEEN:**

**GURKINDER SINGH SANDHU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMGRATION**

**Respondent**

**Docket: T-1538-12**

**AND BETWEEN:**

**MANINDER DEEP SANDHU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Gurkinder Singh Sandhu and Maninder Deep Sandhu, Indian nationals, were adopted in British Columbia, by two Canadians, Baljinder Kaur Sandhu and her husband Dangal Singh Sandhu. The latter is related to the adopted. At the time of the adoption, Gurkinder was 19 years of age and Maninder was 18.

[2] The Minister's delegate refused to grant Gurkinder and Maninder citizenship on the grounds that there was no genuine parent/child relationship before they reached the age of 18. This is the judicial review of those decisions.

[3] Citizenship rights of non-Canadians adopted by Canadians, who are not Quebec residents, are now governed by subsections 5.1(1) and 5.1(2) of the *Citizenship Act* which read:

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| 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 | c) elle a été faite conformément au droit du lieu |

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| adoption took place and the laws of the country of residence of the adopting citizen; and | 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. |
| (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 | (2) 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 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) and (d). | b) l'adoption satisfait aux conditions prévues aux alinéas (1)c) et d). |

[4] The citizenship officer was satisfied that there was a genuine parent/child relationship at the time of the adoption, and subsequently. However, she was of the view that this relationship only developed after the applicants came to Canada on study permits. Having found that there was no genuine parent/child relationship before they reached the age of 18, she did not consider whether or not the relationship was entered into primarily for the purpose of acquiring status in relation to citizenship.

I. The Issues

[5] The applicants submit that the hearing was procedurally unfair and, in any event, was unreasonable. The Minister submits that what the applicants characterize as procedural fairness should rather be characterized as findings of credibility. Furthermore, the decision was reasonable.

[6] The Court owes no deference to a federal board or tribunal on questions of natural injustice, including procedural fairness. The general rule is that if the process was tainted with unfairness, judicial review should be granted and the matter referred to another officer for redetermination (*Cardinal v Director of Kent Institution*, [1985] 2 SCR 643, [1985] SCJ No 78 (QL)).

[7] Otherwise, the decision is reviewed on a standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, [2008] SCJ No 9 (QL), para 47). Even if the rationale is not as fulsome as one would like, the Court is entitled to consider whether the conclusion is justified by the tribunal record (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708, [2011] SCJ No 62 (QL)).

II. Procedural Fairness

[8] A number of points were raised, but none in my opinion reach the level of unfairness. The applicants and their adoptive parents were interviewed separately. Exclusion of witnesses is quite common in court proceedings and certainly is not unfair.

[9] A family friend, a former immigration officer, attended the interviews with the family but was not given a right of audience. However, there is no suggestion that he was an authorized immigration consultant.

[10] The applicants and their adoptive parents complained that they proffered new documents to the officer who did not take copy of them. Her evidence on cross-examination, confirmed by the applicants, is that she did look at them and found there was nothing new. She did copy a few documents, although there is some debate as to exactly what she had copied.

[11] On matters of procedural unfairness, one is entitled to bring to the Court documents which should have been before the decision maker (*Tremblay v Canada (Attorney General)*, 2005 FC 339, [2005] FCJ No 421 (QL)). Maninder said there were some photographs. Nothing can turn on photographs. Nothing has been brought forward to displace the officer's assessment.

[12] The interviews were not recorded. The officer took handwritten notes, which were only transcribed a few weeks later. There was no obligation to record the interviews. While it would

have been better to transcribe the notes earlier, there is no reason to assume that the original notes were not accurate.

[13] I agree with the position taken by the Minister that the issue is really one of credibility. It was submitted that the officer's recollection should be preferred because the others had a personal interest in the outcome. In my opinion, there is no such presumption. All applicants in immigration and citizenship matters have a personal interest in the outcome. Nevertheless, there is a presumption they are telling the truth (*Maldonado* v *MEI*, [1980] 2 FC 302 (CA)).

[14] The officer and the applicants were cross-examined on their affidavits. Certainly there are differences of recollection, but on key issues the officer appears to have gotten it right.

III. The Decision Was Reasonable.

[15] The interviews were far from perfect. The officer did not ask, as she should have, who was financially supporting the boys when they were in India. The evidence is that for at least a few years their adoptive father had supported them. In cross-examination, the officer said she did not ask the question because they were living with their parents. This point is somewhat unclear as they were boarding away from home. Their adoptive parents had a house in India 70 km away. They would visit there on weekends.

[16] However, the major point is that, according to the officer, the adoptive parents stated that a genuine parent/child relationship only developed once the young men were in Canada, at which time they were adults, both having obtained the age of 18. Consequently, the officer was entitled

to make the decision she did. Even if I were to substitute my own opinion for that of the officer, which I am not permitted to do on the reasonableness standard of review, there is nothing in the record to establish other than all the adoptive parents were doing in India was helping family members.

[17] These applications were not consolidated but were heard together in one hearing. The essential facts and issues are common to both. I shall dismiss both applications. There shall be no order as to costs. A copy of my reasons shall be filed in each.

## ORDER

**FOR REASONS GIVEN;**

**THIS COURT ORDERS that**

1. The application for judicial review in T-1537-12 is dismissed.

2. The application for judicial review in T-1538-12 is dismissed.

3. There shall be no order as to costs.

4. A copy of my reasons shall be filed in both court dockets.

"Sean Harrington"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1537-12 |
| **STYLE OF CAUSE:** | GURKINDER SINGH SANDHU v MCI |
| **AND DOCKET:** | T-1538-12 |
| **STYLE OF CAUSE:** | MANINDER DEEP SANDHU v MCI |
| **PLACE OF HEARING:** | VANCOUVER, BRITISH COLUMBIA |
| **DATE OF HEARING:** | NOVEMBER 27, 2013 |
| **REASONS FOR ORDER AND ORDER:** | HARRINGTON J. |
| **DATED:** | DECEMBER 4, 2013 |

**APPEARANCES:**

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| Milan Uzelac | FOR THE APPLICANTS |
| Helen Park | FOR THE RESPONDENT |

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