

Federal Court



Cour fédérale

**Date: 20160720**

**Docket: IMM-5759-15**

**Citation: 2016 FC 839**

**Ottawa, Ontario, July 20, 2016**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**FELOMINA DELFIN ALACAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2012, Mrs Felomina Delfin Alacar, a permanent resident of Canada, sought to sponsor her adopted son, who was living in the Philippines at the time. The boy is the son of her brother-in-law and his late wife. After an immigration officer refused her son a visa, Mrs Alacar appealed that decision to the Immigration Appeal Division (IAD). The IAD concluded that she and her son did not have a genuine parent-child relationship, and that the primary purpose of the

adoption was to acquire status for him under the *Immigration and Refugee Protection Act*, SC 2002 c 27, [IRPA].

[2] Mrs Alacar submits that the IAD treated her unfairly because it did not give her an opportunity to explain her 13-year delay in applying to sponsor her son. She also argues that the IAD's decision was unreasonable because it rested on a faulty assumption -- that it was implausible, within a genuine parent-child relationship, that she would delay her sponsorship application for that long. Mrs Alacar asks me to quash the IAD's decision and order another panel to reconsider her application.

[3] I disagree with Mrs Alacar. The IAD's main concern was that the evidence simply did not support the existence of a genuine parent-child relationship between Mrs Alacar and her son. The IAD also confirmed the officer's conclusion that the primary purpose for which she had adopted her son was to achieve immigration status for him. As explained below, the IAD could confirm the officer's decision either by finding the absence of a genuine parent-child relationship or the existence of an ulterior motive for the adoption. In my view, its findings on the former were reasonable. Therefore, I must dismiss this application for judicial review.

[4] There are two issues:

1. Did the IAD treat Mrs Alacar unfairly?
2. Was the IAD's decision unreasonable?

## II. The IAD's Decision

[5] In order to succeed on her sponsorship application, Mrs Alacar had to demonstrate that the adoption was in the best interests of the child, that is, that the adoption created a genuine parent-child relationship. In addition, she had to prove that the adoption was not entered into primarily to acquire immigration status (*Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], ss 117(2),(3)(c); see Annex).

[6] The IAD found that Mrs Alacar and her husband had genuine affection for their adopted son, much as they might for a nephew (which he is). However, Mrs Alacar had failed to show a genuine parent-child relationship with her son because:

- He lived with one of Mrs Alacar's other sons, Wilfredo Jr, while growing up. Therefore, Wilfredo Jr – not Mrs Alacar, her husband, or the boy's biological father – had the most influence over him.
- Mrs Alacar and her husband did not pursue adoption until after they were in Canada, even though they could have initiated proceedings before they left the Philippines.
- The son maintained regular contact with his biological father.
- Mrs Alacar and her husband registered their son as their natural child in 1995, but did not take any steps to formalize the adoption until his visa was refused in 1999.
- Even then, Mrs Alacar did not apply to sponsor her son until 2012, believing that she needed first to prove a minimum income. However, no such requirement existed. Mrs Alacar could not explain why she made no inquiries into the legal requirements for sponsorship for 13 years.

- There was little evidence showing that Mrs Alacar provided for her son financially.
- While there was evidence of ongoing communication between Mrs Alacar and her son, they knew very little about each other's lives.
- Mr Alacar visited his adopted son infrequently in the Philippines.

[7] In its conclusion, the IAD found that Mrs Alacar had not proved a genuine parent-child relationship with her son, or that the adoption was not entered into primarily to achieve immigration status.

### III. Issue One – Did the IAD treat Mrs Alacar unfairly?

[8] Mrs Alacar submits that the IAD failed to provide her an opportunity to respond to its specific concern about her delay in making inquiries into sponsorship over the course of 13 years.

[9] I disagree. The IAD gave Mrs Alacar a chance to address the issue of delay.

[10] The IAD made Mrs Alacar aware of its concern about this issue. At the hearing, it asked her why she had not attempted to sponsor her son earlier. In response, Mrs Alacar offered her explanation about her misunderstanding of the income requirements based on what relatives had told her. Mr Alacar provided a similar answer. I see nothing unfair in how the IAD treated them.

IV. Issue Two – Was the IAD’s decision unreasonable?

[11] Mrs Alacar submits that the IAD made a number of unreasonable findings on its way to concluding that she had not proved a genuine parent-child relationship with her son. In particular:

- There was no reason for Mrs Alacar to consider a formal adoption until she learned of that requirement on the denial of her son’s visa in 1999.
- There was no need for her to remain in the Philippines to conclude the adoption arrangements before leaving for Canada.
- Mrs Alacar’s explanation for the 13-year delay was genuine, and the IAD made no adverse credibility finding against her. It found her explanation implausible, but it could make such a finding only in the clearest of cases. It was not justified, she maintains, in her case.
- The IAD did not take account of Mrs Alacar’s lack of sophistication and limited means and resources. In that light, her behaviour corresponds with a genuine parent-child relationship.

[12] I cannot agree with Mrs Alacar’s submissions.

[13] The IAD’s concerns about the delay in seeking sponsorship and Mrs Alacar’s explanation for not making earlier inquiries were relevant to the issue of genuineness and its findings were not unreasonable on the evidence. Further, the evidence does not support Mrs Alacar’s

submissions about lack of sophistication – her husband is a pastor with three years of education in engineering.

[14] Even though the IAD rested its conclusion primarily on the issue of genuineness, it also confirmed the officer's finding that Mrs Alacar had failed to demonstrate that the adoption was not entered into primarily to acquire immigration status. However, it did not provide any real basis for that conclusion.

[15] In my view, the IAD's failure to address the issue of the sponsorship's primary purpose does not represent a reviewable error. The IAD fully addressed the issue of the genuineness of the adoption, which was a sufficient basis for concluding that Mrs Alacar's son could not be considered a member of the family class. The fact that there was an additional, alternative basis for that conclusion, which was not fully analyzed by the IAD, does not render its ultimate conclusion unreasonable.

#### V. Conclusion and Disposition

[16] The IAD treated Mrs Alacar fairly and reasonably concluded that she had not proved that the adoption of her son created a genuine parent-child relationship between them. I must, therefore, dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

“James W. O'Reilly”

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Judge

## Annex

*Immigration and Refugee Protection Regulations, SOR/2002-227**Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227*

## Adoption — under 18

## Adoption : enfant de moins de dix-huit ans

**117.** (2) A foreign national who is the adopted child of a sponsor and whose adoption took place when the child was under the age of 18 shall not be considered a member of the family class by virtue of the adoption unless :

**117.** (2) L'étranger qui est l'enfant adoptif du répondant et qui a été adopté alors qu'il était âgé de moins de dix-huit ans n'est pas considéré comme appartenant à la catégorie du regroupement familial du fait de cette relation à moins que :

(a) the adoption was in the best interests of the child within the meaning of the Hague Convention on Adoption; and

a) l'adoption n'ait eu lieu dans l'intérêt supérieur de l'enfant au sens de la Convention sur l'adoption;

(b) the adoption was not entered into primarily for the purpose of acquiring any status or privilege under the Act.

b) l'adoption ne visât pas principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi.

## Best interests of the child

## Intérêt supérieur de l'enfant

(3) The adoption referred to in subsection (2) is considered to be in the best interests of a child if it took place under the following circumstances:

(3) L'adoption visée au paragraphe (2) a eu lieu dans l'intérêt supérieur de l'enfant si les conditions suivantes sont réunies :

...

[...]

(c) the adoption created a genuine parent-child relationship;

c) l'adoption a créé un véritable lien affectif parent-enfant entre l'adopté et l'adoptant;



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5759-15

**STYLE OF CAUSE:** FELOMINA DELFIN ALACAR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JUNE 15, 2016

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** JULY 20, 2016

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