

Date: 20080514

Docket: IMM-4500-07

Citation: 2008 FC 609

Toronto, Ontario, May 14, 2008

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

SEVERINA BUENAVISTA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Severina Buenavista seeks judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board refusing to approve the sponsorship of Ms. Buenavista's two adopted children. The IAD found that Ms. Buenavista and her husband's adoption of the husband's niece and nephew had been carried out for immigration purposes, and had not resulted in the establishment of a genuine parent/child relationship.

[2] Ms. Buenavista submits that the IAD erred by focusing on the nature and extent of the children's ongoing relationships with their birth parents, and by not properly taking all of the

relevant factors into account in its analysis. Ms. Buenavista also takes issue with the weight ascribed to certain evidence by the IAD.

[3] For the reasons that follow, I am satisfied that the IAD did not err as alleged, and that the IAD's decision was entirely reasonable. As a consequence, the application will be dismissed.

Standard of Review

[4] Both parties agree that the standard of review to be applied to the IAD's decision is that of reasonableness. Given the factually-intensive nature of the issue that confronted the IAD, I agree that the decision should be reviewed on the reasonableness standard.

[5] As the Supreme Court of Canada recently stated in *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9, in reviewing a decision against the reasonableness standard, a reviewing court must consider the justification, transparency and intelligibility of the decision-making process. The court must also consider whether the decision falls within the range of possible acceptable outcomes which are defensible in respect of the facts and law: see *Dunsmuir* at paragraph 47.

Analysis

[6] To be eligible for sponsorship, an adopted child must be a member of the "family class" as defined in section 117 of the *Immigration and Refugee Protection Regulations*. Amongst other things, the adoption must have created a genuine parent-child relationship.

[7] Moreover, section 4 of the Regulations, provides that a foreign national will not be considered to be an “adopted child” for sponsorship purposes, if the adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the *Immigration and Refugee Protection Act*.

[8] In assessing the genuineness of parent/child relationships, the jurisprudence teaches that the factors to be considered include:

- (a) the motivation of the adopting parents;
- (b) to a lesser extent, the motivation and conditions of the natural parents;
- (c) the authority and suasion of the adopting parents over the adopted child;
- (d) the supplanting of the authority of the natural parents by that of the adoptive parents;
- (e) the relationship of the adopted child with the natural parents after adoption;
- (f) the treatment of the adopted child versus natural children by the adopting parents;
- (g) the relationship between the adopted child and adopting parents before the adoption;
- (h) any changes flowing from the new status of the adopted child such as records, entitlements, etc., including documentary acknowledgment that the child is the son or daughter of the adoptive parents; and
- (i) the arrangements and actions taken by the adoptive parents as it relates to caring, providing and planning for the adopted child.

[9] This is not an exhaustive list, and other factors may be of relevance in specific cases: see, for example, *Annor v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 190, at

paragraph 17, citing the decision of the IAD in *De Guzman v. Canada (Minister of Citizenship and Immigration)* (1995), 33 Imm. L.R. (2d) 28.

[10] A review of the decision discloses that while the IAD was certainly concerned with respect to the serious conflicts in the evidence relating to the nature and extent of the children's ongoing relationships with their birth parents, its analysis was by no means confined to this issue.

[11] By way of example, the IAD specifically addressed Ms. Buenavista's motivation for adopting the children, making specific reference to the medical evidence attesting to the fact that she could not have children of her own. The IAD also considered the motivation of the birth parents in giving up the children for adoption.

[12] The IAD also addressed the nature and extent of the relationship between the children and their adoptive parents, noting significant discrepancies in the evidence with respect to when it was the male child first met his sponsors, the frequency of the telephone contact between Ms. Buenavista and her adopted daughter, and the nature of the financial support provided by Ms. Buenavista and her husband to the children and to other members of their extended family still in the Philippines.

[13] The IAD was also quite justifiably concerned about the limited amount of documentary evidence with respect to contact between the children and their adoptive parents, particularly for the

period before their application for permanent residence was first refused. The weight to be ascribed to the documentary evidence generated after the refusal was a matter for the IAD to determine.

[14] Moreover, the very serious contradictions and inconsistencies in the evidence as to the nature and extent of the children's ongoing relationships with their birth parents led the IAD to conclude that Ms. Buenavista and the two children had attempted to mislead the panel in this regard. This conclusion was one that was reasonably open to the IAD on the evidence before it.

Conclusion

[15] The Court is thus satisfied that the IAD's finding that Ms. Buenavista and her husband had a relationship with the children as a caring aunt and uncle, but did not have a genuine parent/child relationship was one that clearly fell within the range of possible acceptable outcomes, in light of the evidence before the panel.

[16] Moreover, the IAD provided clear and intelligible reasons for coming to the conclusion that it did. As a consequence, there is no basis for the Court to intervene in this matter. The application for judicial review is therefore dismissed.

Certification

[17] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and
2. No serious question of general importance is certified.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4500-07

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