

Federal Court



Cour fédérale

Date: 20110726

Docket: IMM-385-11

Citation: 2011 FC 929

Ottawa, Ontario, July 26, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

KULVIR KAUR BRAR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Kulvir Kaur Brar and her husband, Mr. Dalbir Beniwal, wish to sponsor their adopted daughter, Gungeet, who lives in India, to become a permanent resident of Canada. Gungeet is Mr. Beniwal's niece.

[2] Ms. Brar filed a sponsorship application in 2005, but it was turned down by a visa officer. The officer found that the adoption was not genuine and was entered into for the purpose of gaining

permanent resident status in Canada for Gungeet. Ms. Brar appealed to the Immigration Appeal Division [IAD] which dismissed her appeal.

[3] Ms. Brar submits that the IAD made numerous errors of fact and came to an unreasonable conclusion. She asks me to quash the decision and order a new hearing. However, I can find no basis on which to overturn the decision and must, therefore, dismiss this application for judicial review. In my view, the IAD's decision was supported by the evidence.

[4] The sole question is whether the IAD's decision was unreasonable.

II. The IAD's Decision

[5] A child is not considered to be adopted if the adoption was entered into primarily for the purpose of acquiring immigration status, or if it did not create a genuine parent-child relationship: *Immigration and Refugee Protection Regulations*, SOR-2002-227, s 4 (enactments cited are set out in Annex A). The burden fell on Ms. Brar to persuade the IAD that neither of these stipulations applied to the adoption of Gungeet.

[6] The IAD began its analysis with the question of whether the adoption created a genuine parent-child relationship, and considered the following factors:

- the motivation for the adoption;

- the extent to which the adoptive parents have maintained care and control over the child since the adoption;
- the nature and extent of contact between the adoptive parents and the child;
- the extent of the parties' knowledge of one another; and
- the plans and arrangements for the child's future.

[7] The IAD accepted that Ms. Brar and Mr. Beniwal had originally wanted to adopt a child because they were having trouble conceiving a child of their own. But, after the adoption, and after they had children of their own, it appeared more likely they were trying to help provide a better life and opportunities for a relative.

[8] With respect to the issue of care and control, Ms. Brar filed some financial documents showing money transfers to India intended to provide for Gungeet's care and schooling. However, the IAD found the documents to be lacking in details about Gungeet's needs and the actual extent of the financial assistance she received from her adoptive parents.

[9] Further, it was unclear, according to the IAD, to what degree Ms. Brar and Mr. Beniwal played a role in Gungeet's upbringing, especially given their limited contact. Mr. Beniwal did not travel to India for the adoption. In fact, Ms. Brar and Mr. Beniwal did not visit Gungeet for another four years after the adoption. They visited again two years after that. In the meantime, they exchanged telephone calls, letters, cards, and photographs. The IAD found that the parties had only superficial knowledge of one another.

[10] As for Gungeet's future, Ms. Brar and Mr. Beniwal planned to help further her education; she hopes to be a doctor someday.

[11] Based on its consideration of the applicable factors and the corresponding evidence, the IAD found that Ms. Brar had not established the development of a genuine parent-child relationship with Gungeet. It appeared that the adoption was entered into primarily for the purpose of acquiring permanent resident status for Gungeet.

III. Was the IAD's Decision Unreasonable?

[12] Ms. Brar contends that the IAD erred by failing to consider the special nature of adoptions. Obviously, it is difficult for the parties to develop a parent-child relationship when they have not had an opportunity to live together, and when the child is under the care of others.

[13] In addition, Ms. Brar submits that the IAD's reasons are contradictory. On the one hand, the IAD accepts that the original motivation for the adoption arose from the difficulty Ms. Brar and Mr. Beniwal were having in conceiving a child. Yet, on the other hand, the IAD concludes that the adoption was entered into mainly for immigration purposes.

[14] Ms. Brar also notes that the IAD seemed to believe that little had changed for Gungeet after the adoption and failed to take account of the fact that Gungeet had ceased living with her biological parents, moved in with her grandparents, and changed her family name. While she lived in the same city as her biological parents, and continued to attend the same school as her siblings, it would be

unrealistic, Ms. Brar points out, to expect Gungeet to sever all ties with her family after the adoption.

[15] Regarding Gungeet's care, Ms. Brar wonders what further evidence of financial support the IAD expected to see. The documents she filed showed transfers of many thousands of dollars over the course of several years for Gungeet's benefit. Further, the IAD failed to mention a letter from Gungeet's school corroborating the interest Ms. Brar and Mr. Beniwal had shown in her studies.

[16] Taken together, Ms. Brar argues that these errors caused the IAD to reach an unreasonable conclusion. In my view, however, on reviewing the evidence and reading the IAD's reasons as a whole, I cannot conclude that its conclusion was unreasonable.

[17] The IAD accepted that the original motivation of Ms. Brar and Mr. Beniwal had been to adopt a child because of their difficulties conceiving a child of their own. But this was just one factor to consider when determining the overall purpose of the adoption. After considering all of the relevant factors and the evidence as whole, the IAD found that the purpose of the adoption was to assist Gungeet's admission to Canada, notwithstanding that the original motivation was sincere.

[18] Regarding the extent of changes in Gungeet's life after the adoption, the IAD reasonably observed that she went to the same school, lived in the same town, and continued to have contact with her family. This was, of course, natural under the circumstances but, again, it was only one of a number of factors the IAD had to consider.

[19] With respect to care and control, the IAD reasonably expected to see evidence of the extent of Gungeet's financial needs and the manner in which Ms. Brar and her husband had met them. The documents tendered by Ms. Brar indicated neither (although they did show money transfers to India). Further, there was little evidence before the IAD regarding the quality of the ongoing relationship between the adoptive parents and Gungeet. The contacts were apparently superficial and few.

[20] As for the letter from the school, while it would obviously have been desirable for the IAD to have referred to it, I find that its content was general and did not attest to a long-standing or active involvement in Gungeet's education.

[21] Accordingly, I find that the IAD's decision was not unreasonable. It fell within the range of acceptable and defensible outcomes based on the facts and the law.

IV. Conclusion and Disposition

[22] Looking at the IAD's reasons and the evidence as a whole, its conclusion that Gungeet's adoption was entered into for purposes of acquiring immigration status in Canada was reasonable - that is, justified, transparent and readily intelligible. 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”

Judge

Annex "A"

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

Bad faith

Mauvaise foi

4. (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership

4. (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

(b) is not genuine.

b) n'est pas authentique.

Adopted children

Enfant adoptif

(2) A foreign national shall not be considered an adopted child of a person if the adoption

(2) L'étranger n'est pas considéré comme étant l'enfant adoptif d'une personne si l'adoption, selon le cas :

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

(b) did not create a genuine parent-child relationship.

b) n'a pas créé un véritable lien affectif parent-enfant entre l'adopté et l'adoptant.

Sponsorship of adopted children

Parrainage de l'enfant adopté

(3) Subsection (2) does not apply to adoptions referred to in paragraph 117(1)(g) and subsections 117(2) and (4).

(3) Le paragraphe (2) ne s'applique pas aux adoptions visées à l'alinéa 117(1)g) et aux paragraphes 117(2) et (4).

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-385-11

STYLE OF CAUSE: KULVIR KAUR BRAR v MCI

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: July 12, 2011

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

DATED: July 26, 2011

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