Federal Court of Appeal Cour d'appel fédérale

Date: 20160615

Docket: A-195-15

Citation: 2016 FCA 183

CORAM: **PELLETIER J.A.**
STRATAS J.A.
GLEASON J.A.

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

ABREYAH CALICIA YOUNG BY HER LITIGATION GUARDIAN PATRICE YOUNG

Respondent

Heard at Toronto, Ontario, on January 14, 2016.

Judgment delivered at Ottawa, Ontario, on June 15, 2016.

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: STRATAS J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] Ms Patrice Young (Ms Young), a Canadian citizen, adopted her cousin's daughter, Abreyah Calicia Cockburn (now Abreyah Calicia Young – "Abreyah") who, pending the resolution of these proceedings, continues to reside with her natural mother (Ms Lisa Pope) in St. Vincent and the Grenadines. As part of the adoption process, Ms Young submitted character references and medical information. In addition, she was the subject of a detailed home study

conducted by an Alberta child welfare agency which found that Ms Young's home was appropriate for reception of an adopted child. These documents were submitted to the authorities in St. Vincent and the Grenadines. Once the adoption was finalized by order of the High Court of Justice of the Supreme Court of the Eastern Caribbean in November 2013, Ms Young immediately filed an application for Canadian citizenship on behalf of her adopted daughter. The application was considered by a Visa Officer from the Canadian High Commission in Trinidad and Tobago who dismissed it because, in her opinion, the adoption did not meet any of the statutory criteria set out in subsection 5.1(1) of the *Citizenship Act*, R.S.C. 1985, c. C-29 [the *Act*]. Ms Young, acting as litigation guardian for her adopted daughter, brought an application for judicial review of the Visa Officer's decision in her daughter's name. In a decision reported as 2015 FC 316, the Federal Court allowed the application for judicial review and returned the matter for reconsideration by a different Visa Officer. The Minister of Citizenship and Immigration now appeals from the Federal Court's decision.

[2] For the reasons which follow, I would dismiss the appeal.

[3] Since the essential facts are set out above, I will turn immediately to my analysis. The details of the Visa Officer's decision will be set out in the course of my analysis so as to avoid repetition.

I. ANALYSIS

[4] As this is an application for judicial review of an administrative decision, the standard of review is reasonableness, as set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1

S.C.R. 190 [*Dunsmuir*], subject to certain exceptions, none of which apply here. But reasonableness does not necessarily mean obviousness, as was recognized long ago in *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, [1997] 1 S.C.R. 748, [1996] S.C.J. No. 116, at paragraph 57:

> The difference between "unreasonable" and "patently unreasonable" lies in the immediacy or obviousness of the defect. If the defect is apparent on the face of the tribunal's reasons, then the tribunal's decision is patently unreasonable. But if it takes some significant searching or testing to find the defect, then the decision is unreasonable but not patently unreasonable.

[5] While this discussion occurs in the context of the Court's attempt to distinguish between an "unreasonable" and a "patently unreasonable" decision, the fact that a certain amount of probing is required is consistent with a reasonableness analysis. As we shall see, the application of the reasonableness standard to the facts of this case requires a certain amount of looking past the obvious to bring the question of reasonableness into focus.

[6] This Court, sitting on appeal from the Federal Court as the reviewing court, is to examine if the latter chose the correct standard of review and applied it correctly: *Telfer v. Canada Revenue Agency*, 2009 FCA 23, 386 N.R. 212, at paragraph 18. In effect, this Court steps into the shoes of the Federal Court and reviews the original decision: *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23, at paragraph 247, *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paragraphs 46-47.

[7] The Federal Court correctly identified reasonableness as the standard of review which it was to apply to the Visa Officer's decision. Its analysis led it to conclude that the Visa Officer's decision was unreasonable. Before us, the Minister argues strenuously that the Federal Court

misdirected itself in the application of that standard. While conceding that not everyone would necessarily come to the same conclusion, the Minister argues that, on the facts as she observed or found them, the Visa Officer's decision was one which fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. The Minister argues that the Visa Officer's decision was entitled to deference and ought not to have been disturbed by the Federal Court, hence this appeal.

[8] This appeal turns on the interpretation of the conditions set out in section 5.1 of the *Act*. The law as to statutory interpretation requires that statutes be interpreted "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, [1998] S.C.J. No. 2, at paragraph 21. This requires a "textual, contextual and purposive analysis to find a meaning that is harmonious with the *Act* as a whole": *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at paragraph 10.

[9] The starting point is the legislative framework within which the decision was taken. At the time the Visa Officer's decision was taken, the relevant provision of the *Act* read as follows:

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	b) elle a créé un véritable lien affectif

parent and child;	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.

[10] This provision was added to the *Act* by amendment in 2007. In order to put the amendment in context, I reproduce below portions of the Parliamentary debates when Bill C-14, *An Act to amend the Citizenship Act (Adoption)*, which included what has now become section 5.1 of the *Act*, was introduced for second reading. Given that both parties rely upon these debates in support of their case (Appellant's memorandum of fact and law at paragraph 29, Respondent's memorandum of fact and law at paragraphs 80, 83), I presume that no objection will be taken to my referring to them:

> Currently, Canadian citizens residing in Canada who wish to adopt a foreign-born child abroad must first sponsor the child as a permanent resident. Only after that step has been taken can an application be made for citizenship. With this bill we are making it easier for Canadian parents to obtain Canadian citizenship for their foreign-born adopted children, whether the parents reside in Canada or abroad.
>
> …
>
> Bill C-14 gives children adopted overseas access to citizenship without having first to apply for permanent residence. It reduces delays in getting citizenship for children who are becoming part of Canadian families. It is an expression of our desire as Canadians to see new families constituted as supportively and as quickly as possible.
>
> …
>
> This legislation streamlines the process for families. It augments the fairness of our system as a whole. It has the support of Canadians across the country. That is

> because we listened carefully to any concerns raised in our consultations, concerns for example about the possibility of individuals adopting children merely to help them acquire citizenship, adoptions of convenience as they are known. We crafted the bill to deal specifically and coherently with these concerns.
>
> Among other safeguards, Bill C-14 ensures that the existence of a genuine parent-child relationship is demonstrated, that the best interests of the child are being met, that a proper home assessment has been made, that the birth parents have given their consent to the adoption, and that no person will achieve unwarranted gain as a result of the adoption.
>
> Official Report (Hansard) of the House of Commons Debates, 39th Parliament 1st session, Volume 141, Number 39, June 13, 2006, p. 2307

[11] These extracts show that the legislation was intended to provide a benefit to Canadians adopting children abroad while at the same time guarding against certain possible abuses. Prominent among these was the possibility of adoptions of convenience, that is, adoptions entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship. However, the statute must be read so that the search for abusive practices does not deprive Canadians of the intended benefit of the legislative changes.

[12] In this context, it is useful to reflect upon what is meant by an adoption of convenience, a phrase which suffers from its association with “marriages of convenience”. In a marriage of convenience, two strangers who have no intention of living together go through a form of marriage for the purpose of perpetrating a fraud on the immigration system. The parties do not share anything except their objective of “gaming” the immigration system. Once their objective is achieved, they go their separate ways.

[13] In the case of adoptions of infants or young children, the analogy to marriages of convenience is inapt. An infant cannot go, or be sent, on its way once it has been granted citizenship. It requires care and nurturing. If an adoptive parent undertakes to provide that care and nurturing, it is difficult to see how the adoption could be said to be an adoption of convenience. As the age of the adopted child increases, the need for care and nurturing decreases and the possibility of independent living increases, which may justify a closer scrutiny of the surrounding circumstances.

[14] The conviction that an adoption is an adoption of convenience must rest on more than the awareness of the advantages to be gained by adoption. Every parent adopting a child from a country which does not have Canada's advantages will be aware of the advantages which the child will have in Canada relative to its country of birth. If that were the test, there would be no genuine adoptions for purposes of this legislation. The issue is not the knowledge of the relative advantages of life in Canada but the commitment of the adoptive parent to raise the child as their own, meeting the child's material and emotional needs as they arise.

[15] This Court considered the issue of adoptions of convenience in *Dufour v. Canada (Minister of Citizenship and Immigration)*, 2014 FCA 81, [2015] 3 F.C.R. 75 [*Dufour*] at paragraphs 54-56:

> 54 Normally, adopting a child abroad necessarily involves obtaining a status or privilege in relation to immigration or citizenship because cases in which the Canadian parent adopts with no intention of returning to live in Canada with the new child immediately or in the medium term are rare.
>
> 55 Adoptions of convenience are limited to situations where the parties (the adoptee or the adopter) have no real intention to create a parent-child relationship. They are adoptions where appearances do not reflect the reality. They are

> schemes to circumvent the requirements of the Act or of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
>
> 56 If there is a true intention to create a parent-child relationship and this relationship is in the best interests of the minor child, it cannot normally be concluded that the adoption is entered into primarily to create a status or a privilege in relation to immigration or citizenship. [emphasis in the original]

[16] The essence of an "adoption of convenience" is that it does not reflect reality.

[17] An example of an adoption of convenience can be found *in Davis v. Canada (Minister of Citizenship and Immigration)*, 2015 FCA 41, [2015] F.C.J. No. 115 (Quicklaw) [*Davis*]. In that case, two young women, aged 17 and 19, entered Canada on visitors' visas to visit their grandmother. After a short period of time, they decided that they wished to stay. Rather than returning to Jamaica and applying to immigrate through the normal channels, they persuaded their grandmother to adopt them and then applied for citizenship.

[18] Their application for citizenship was refused on the basis that their adoption was primarily for the purpose of obtaining citizenship. The young women in question would almost certainly not have been eligible for admission to Canada as permanent residents as they probably could not bring themselves within any of the economic classes and, as I read the *Immigration and Refugee Protection Regulations*, SOR/2002-227, their grandmother could not have sponsored them. There is nothing to suggest that they could have claimed refugee status. Adoption, or marriage to a Canadian citizen, was the only way in which they could qualify for citizenship. On those facts, this Court held that the immigration officer's conclusion that the adoption was entered into for the purpose of acquiring an advantage with respect to immigration and citizenship was reasonable.

[19] It must also be borne in mind that the criteria set out in subsection 5.1(1) are not intended to second guess the decision of the child welfare authorities in the child's and the adoptive mother's respective jurisdictions. Those officials are responsible for assessing and approving the adoption itself, usually subject to some form of judicial oversight. At the point at which an application for citizenship is made, that process is complete. The only issue is whether the child will be granted Canadian citizenship on the strength of that adoption.

[20] I now turn to an examination of the Visa Officer's decision, the material portions of which are reproduced below:

> In particular, in your document submission and at interview, you have failed to satisfy me that this adoption is in the best interests of the child pursuant to subsection 5.1(1)(a) of the **Citizenship Act**. Further, you have failed to satisfy me that this adoption has created a genuine relationship of parent and child pursuant to subsection 5.1(1)(b) of the **Citizenship Act**. In addition you have failed to satisfy me that this adoption was not entered into primarily for the purpose of acquiring status or privilege in relation to immigration or citizenship pursuant to subsection 5.1(1)(d) of the **Citizenship Act**.
>
> Section 5.1(3)(c)(iii) of the **Citizenship Regulations** stipulates the pre-existing legal parent-child relationship must be permanently severed by the adoption. Based on your submission and interview, I am not satisfied that the pre-existing parent-child relationship has been severed as the child continues to reside with her biological mother in a parent-child relationship.
>
> Appeal Book at p. 45-46 [emphasis in original]

[21] The Minister now concedes that the legal parent-child relationship was in fact severed by the adoption, as required by sub-paragraph 5.1(3)(*c*)(iii) of the *Citizenship Regulations* SOR/93-246, "regardless of the parties' subsequent decision to have the child continue to reside with the biological mother": Appellant's memorandum of fact and law, at paragraph 63. Given that concession, I need not say more about that aspect of the case.

[22] Furthermore the Visa Officer did not specifically examine the application of paragraph 5.1(1)(*c*) of the *Act* which requires that the adoption have been "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." There is no issue that the Abreyah's adoption was in accordance with the laws of St. Vincent and the Grenadines and the laws of Canada, subject to the terms of the *Act* itself.

[23] The Visa Officer's first ground for refusing the application for citizenship is that she had not been persuaded that the adoption was in the best interests of the child. In her notes setting out the rationale for her decision, reproduced at pages 113-119 of the Appeal Book, the Visa Officer noted that both the biological mother and the adoptive mother considered the best interests of the child on the basis of the advantages that come from having status in Canada – medical care, education – but did not consider other matters such as family ties, parental love, parent-child relationship. The Visa Officer did not believe that the adults had considered "the effects of uprooting the child, establishing new parental relationships, losing a close parent etc." In the end result, the Visa Officer was not satisfied that it was in the best interests of the child:

> …to be uprooted from her biological mother with whom she shares a very close relationship and be brought into a home with an adoptive parent she met for the 2nd time yesterday and an adoptive father she has never met, to be raised by two adults with whom she has a very limited relationship and definitely not a parent-child relationship.
>
> Appeal Book, at pages 114-115

[24] The Minister argues that while not everyone might come to the same conclusion, the Visa Officer's decision was within the range of acceptable outcomes having regard to the facts and the law.

[25] Without wishing to diminish the importance of being attentive to the best interests of the child, I point out that the *Act* is not child welfare legislation. It is true that the statutory direction to the Visa Officer is to ensure that the adoption "was in the best interests of the child" but this must be understood in the context of the mischief which the conditions set out in subsection 5.1(1) are intended to prevent, namely child trafficking and adoptions of convenience. The question for the Visa Officer is not whether the child will be better served by staying in the natural mother's home as opposed to the adoptive mother's home. That is a question which the Visa Officer is not equipped to answer on the basis of a file review and a brief interview with the interested parties. The question for the Visa Officer is whether the adoption was undertaken for a purpose other than providing a true home for the child. If it was, it is not in the best interests of the child.

[26] The concept of the best interests of the child is one which has been part of our law for some time, particularly, but not exclusively, in family law. The question of who is best placed to assess the best interests of the child arose in *Young v. Young*, [1993] 4 S.C.R. 3, [1993] S.C.J. No. 112, a custody and access case where the question of whether expert evidence was required to assist the Court in identifying the best interests of a child. While the Supreme Court divided on various issues raised in that appeal, all the judges agreed that the persons best able to provide evidence as to a child's best interests are the parents: see *Young*, at paragraphs 156, 185, 236. Interestingly, in discussing the role of the Court in deciding on the best interests of the child, McLachlin J. (as she then was) noted that:

> Like all legal tests, it [the best interests of the child] is to be applied according to the evidence in the case, viewed objectively. There is no room for the judge's personal predilections and prejudices. The judge's duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do.
>
> (*Young*, at paragraph 203.)

[27] What is true for judges must also be true for visa officers. The Visa Officer obviously had a view as to what she thought was best for Abreyah. With respect, that was not the question which the *Act* required her to answer. That question was whether the adoption was undertaken for a purpose other than providing her a home where she was wanted and would be loved. Both the natural mother and the adoptive mother believed that the adoption was in Abreyah's best interests. Those views, even though expressed in terms which the Visa Officer found wanting, were entitled to consideration.

[28] Given that Abreyah would require care and nurturing for a number of years, it is difficult to see how or why Ms Young would accept that burden if she was not truly concerned with Abreyah's welfare. In my view, the Visa Officer's decision on this element was unreasonable because it did not consider the meaning of paragraph 5.1(1)(*a*) of the *Act* in the context of the statutory purpose, and focussed instead on her own view of what was in Abreyah's best interest. This is an instance of the principle, discussed above, that assessing reasonableness requires looking past the obvious. On the surface, the Visa Officer's conclusions as to the best interests of the child are reasonable; it is only when one digs a little deeper into the statutory scheme that the problem comes into focus and the unreasonableness of the Visa Officer's conclusion becomes apparent.

[29] The Visa Officer refused Abreyah's citizenship application on the further ground that the adoption was entered into for the purpose of acquiring status or privilege in relation to immigration or citizenship, contrary to paragraph 5.1(1)(*d*) of the *Act*. In her notes, the Visa Officer indicates that she came to that conclusion because Ms Pope, and Ms Young gave inconsistent and contradictory answers to the question as to how the decision to adopt was arrived at. In the Visa Officer's view, "this was not a decision about relationships and parenting but about the benefits of Canadian citizenship": see Appeal Book at page 118. Later in her notes, the Visa Officer concludes "I am of the opinion that the adoption was entered into in order to provide the child access to Canada's generous health care and education systems": see Appeal Book at page 118.

[30] The mere fact of enabling a child to benefit from Canada's "generous" health and education systems is not an indication of an adoption of convenience. Something more is required. If, for example, the natural parents of the child agree to assume all the costs related to the care of the child and the adoptive parents essentially treat the child as a boarder, then one could speak of an adoption of convenience. But where the adoptive parents intend to fully assume their obligation to care for and nurture the adopted child, the fact that the child will have access to the same health and education systems as other Canadians is not a reason to conclude that the adoption is an adoption of convenience.

[31] Without limiting the scope of "for the purpose of acquiring a status or privilege in relation to immigration or citizenship" to the facts of the *Davis* case discussed earlier in these

reasons, the latter provides an example of the type of situation which paragraph 5.1(1)(*d*) was intended to catch.

[32] Awareness of the material advantages which will accrue to a child as a result of an adoption does not necessarily lead to the conclusion that the adoption is entered into *primarily* to provide the child with those material advantages. This is particularly true in the case of adoption of young children who will require care and nurturing for an extended period of time. A genuine commitment on the part of the adoptive parents to provide that care and nurturing militates against the conclusion that the adoption was entered into *primarily* for the purpose of gaining an advantage or a privilege with respect to citizenship or immigration.

[33] In this case, the Visa Officer was very much influenced by the inconsistent answers as to how the decision to adopt was reached. In some cases, inconsistent answers may affect the credibility of the applicant and give reasons to disbelieve an applicant's assertions and explanations which, if explained in reasons, could justify rejecting an application. But, in a case like this where the Visa Officer's decision was a product of irrelevant factors, the decision cannot stand.

[34] In the circumstances, I find that the Visa Officer's conclusion on the issue of whether the adoption was entered into for the purpose of acquiring a status or privilege in relation to immigration or citizenship was unreasonable because the factors upon which she relied could not logically support the conclusion to which she came.

[35] The final ground on which the Visa Officer refused the application for citizenship was that she had not been convinced that the adoption created a genuine relationship of parent and child, as required by paragraph 5.1(1)(*b*) of the *Act*. The Visa Officer based her decision on the lack of visits by Ms Young, and the lack of "any effort to establish a bond with the child at this very tender age": see Appeal Book at page 116. I take it from this that the Visa Officer interpreted the *Act* to require that a genuine parent-child relationship exist prior to the adoption.

[36] Since paragraph 5.1(1)(*c*) of the *Act* requires that the adoption be in accordance with the laws of the place where the adoption took place, paragraph 5.1(1)(*b*) cannot be directed to the question of whether there was a legally valid adoption as this would create a redundancy as between the two paragraphs. The issue raised by paragraph 5.1(1)(*b*) is the link between the adoption and the relationship between the child and the adoptive parent, specifically whether there is a "genuine" relationship of parent and child between them.

[37] The *Act* applies to all adoptions of minor children, without regard to their ages. It is difficult to know how one could find a genuine parent-child relationship in the case of the adoption of an infant when parent and child meet each other for the first time when the parents attend in the foreign country to take the child into their care. Clearly, there is no pre-existing relationship between those parents and that child. Any genuine parent-child relationship will develop over time as the parties live with each other. As a result, it is unlikely that Parliament meant to impose the obligation that there be a pre-existing relationship between parent and child as a condition of granting Canadian citizenship.

[38] Once again, this condition must be examined in the light of the statutory objectives. It would substantially defeat the objective of the legislation if, in every case, the adoptive parents had to demonstrate an existing parent-child relationship in order to satisfy paragraph 5.1(1)(*b*). How long would parents who adopted a newborn infant have to live with that infant in its country of birth so as to establish the existence of a genuine parent-child relationship? What kind of emotional attachment would be required to satisfy this condition? Could this condition be satisfied without a longstanding prior relationship between the adoptive parents and the adopted child? These questions demonstrate the difficulty of attempting to assess the quality of the parent-child relationship with young children at the time of the citizenship application.

[39] Paragraph 5.1(1)(*b*) does not require the adoptive parent to pass an emotional litmus test. It is designed to deal with the situation described earlier where the adoptive parents would essentially operate as a boarding house for their adopted child with the natural parents continuing to meet the child's material needs. This type of situation is more likely where the child is older and more able to function independently. The condition is best understood in the negative: is there reason to believe that the adoption will not, in the future, result in a genuine parent-child relationship?

[40] In *Perera v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1047, [2001] F.C.J. No. 1443 [*Perera*], the Federal Court held that the question of whether a genuine parent-child relationship was created had to be examined in light of the future rather than the past:

> The words "a genuine parent and child relationship being created as a result of the adoption" are pregnant with significance. They point to a future relationship to be created, not to the confirmation of a present situation. An adoption is a forward-looking relationship.
>
> (*Perera*, at paragraph 16.)

[41] The Visa Officer was critical of Ms Young for not visiting Abreyah more often and developing a relationship with her. But this line of inquiry betrays a misunderstanding of the statutory purpose. There is no requirement that the parent-child relationship be demonstrable at the time of the citizenship application. The Visa Officer must be alive to indications that there is no intention to establish a genuine parent-child relationship, as opposed to passing judgment on the quality of the current quality of the relationship. For these reasons, I find that the Visa Officer's conclusion on this point was unreasonable.

[42] If one looks at the Visa Officer's decision globally, it is striking for its lack of a narrative thread. In other words, the Visa Officer's conclusion that the adoption was primarily for the purpose of gaining an advantage in immigration or citizenship cannot be integrated into any credible scenario as to what would happen once Abreyah arrived in Canada as a citizen. What would Ms Young do with this young child she adopted, apparently so that she could take advantage of Canada's generous health and education systems? Would she pay someone else to look after her? Would she seek to have her taken into care by the child welfare authorities? Realistically, Ms Young would have to care for the child herself just as she would have to accept the costs of raising a young child. Is it reasonable to conclude that a person would assume these obligations solely for the purpose of immigration fraud? Or, would a person who assumed these

obligations be engaged in immigration fraud? I think not. This is what distinguishes this case from cases like *Davis*.

[43] I would therefore dismiss the appeal.

"J.D. Denis Pelletier"

J.A.

"I agree

David Stratas J.A."

"I agree

Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	STRATAS J.A. GLEASON J.A.
DATED:	JUNE 15, 2016

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