

Federal Court



Cour fédérale

Date: 20200121

Docket: IMM-2108-19

Citation: 2020 FC 67

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 21, 2020

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

JULIE OGANDA TONDA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Julie Oganda Tonda is applying for judicial review of the decision of the Immigration Appeal Division [IAD], dated March 12, 2019, in which the IAD dismissed her appeal for lack of jurisdiction pursuant to subsection 64(3) of the Immigration and Refugee Protection Act [IRPA], which provides as follows:

64 (3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.

[2] First of all, I am of the view that the IAD was correct in finding that Ms. Tonda's orphaned niece, who is the subject of her sponsorship application, does not fall within the exception in this provision.

[3] However, Ms. Tonda filed before the Court, as new evidence, a judgment granting simple adoption of the child Oganda Victoria (the subject of the sponsorship application by Ms. Tonda and her husband), rendered by the court of first instance of Libreville, Gabonese Republic, and dated January 22, 2019.

[4] While the reviewing court will, in principle, refuse to consider any evidence that was not before the administrative decision maker, it may do so when deciding a question of procedural fairness, or when the grounds for review are based on some jurisdictional error (*Canadian Union of Public Employees, Local 301 v Montréal (City)*, [1997] 1 SCR 793, at para 86; *McFadden v Canada (Attorney General)*, 2005 FCA 360, at para 15).

[5] Since the only issue currently before the Court is whether the IAD had jurisdiction to hear Ms. Tonda's appeal, and since the new evidence is relevant to the analysis of that issue, it is allowed.

[6] That said, as a specialized administrative tribunal, the IAD is in the best position to determine whether the simple adoption judgment rendered on January 22, 2019, by the Gabonese Court is such as to make Victoria Ms. Tonda's dependent child within the meaning of the IRPA. The matter is therefore returned to the IAD for redetermination on the issue of its jurisdiction and, if appropriate, on the merits of the appeal.

[7] The parties did not propose any questions of general importance for certification, and no such question arises from the facts of this case.

JUDGMENT in IMM-2108-19

THIS COURT ORDERS as follows:

1. The application for judicial review is allowed;
2. The decision of the Immigration Appeal Division, dated March 12, 2019, is set aside, and the matter is returned to the Immigration Appeal Division for redetermination.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
This 31st day of January 2020.

Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2108-19

STYLE OF CAUSE: JULIE OGANDA TONDA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: NOVEMBER 27, 2019

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: JANUARY 21, 2020

APPEARANCES:

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