

Federal Court



Cour fédérale

**Date: 20211019**

**Docket: T-1449-19**

**Citation: 2021 FC 1101**

**Ottawa, Ontario, October 19, 2021**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**JONARD CAPINPIN CRUZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] Jonard Capinpin Cruz seeks judicial review of a decision of a citizenship officer (Officer) that refused a Canadian citizenship application for his niece and adopted daughter who is a citizen of the Philippines. Mr. Cruz submits that the decision should be set aside because the Officer breached procedural fairness, and the Officer's decision is unreasonable.

[2] For the reasons below, Mr. Cruz has not established that the Officer breached procedural fairness or that the decision is unreasonable. Accordingly, this application is dismissed.

II. **Preliminary Issue: Admissibility of Evidence**

[3] Mr. Cruz filed an affidavit in support of this application for judicial review. The respondent argues that parts of the affidavit (paragraphs 7-8 and exhibits F-G) are inadmissible as they contain evidence that was not before the Officer: *Popov v Canada (Minister of Citizenship and Immigration)*, 2009 FC 898 at para 35. Mr. Cruz submits that the evidence is admissible under an exception to the usual rule, because it supports his allegation that the Officer breached procedural fairness: *Scarlett v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1051 at para 9, citing *Rizvi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 717 at para 29. He submits that the evidence relates to his expectations of the procedure that the Officer would follow, and his efforts to obtain documents that the Officer had requested.

[4] As a general rule, the evidentiary record on judicial review is restricted to the evidentiary record that was before the decision-maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 [*Assn of Universities and Colleges of Canada*] at para 19. A reviewing court must be mindful that its role is not to make findings of fact or re-decide the merits of the matter. Restricting the evidence to the record recognizes the distinct roles of the decision-maker and the reviewing court, and exceptions to the general rule must be consistent with these roles: *Assn of Universities and Colleges of Canada* at para 20. Three exceptions that do not offend these distinct roles relate to evidence that: (i) provides general background information to assist the Court in understanding the issues relevant to the judicial

review, without providing evidence relevant to the merits of the administrative decision; (ii) explains procedural defects that cannot be found in the record, so that the Court can fulfill its role of reviewing for procedural unfairness; and (iii) highlights a complete absence of evidence before the administrative decision-maker when it made a particular finding: *Assn of Universities and Colleges of Canada* at para 20.

[5] In my view, paragraphs 7-8 and exhibits F-G of Mr. Cruz' affidavit meet the first and second exceptions above. This evidence has some relevance to the question of whether the Officer breached procedural fairness, and I find it to be admissible.

### III. Standard of Review

[6] Questions of procedural fairness are reviewable on a standard that is akin to correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. The duty of procedural fairness is “eminently variable”, inherently flexible, and context-specific: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77 [*Vavilov*]. A court assessing a procedural fairness question is required to ask whether the procedure was fair, having regard to all of the circumstances: *Canadian Pacific Railway* at para 54.

[7] Whether the Officer's decision is reasonable is determined according to the guidance set out in *Vavilov*. The reasonableness standard of review is a deferential but robust form of

review: *Vavilov* at paras 12-13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the reviewing court must focus on the decision actually made, and consider whether the decision as a whole is transparent, intelligible and justified: *Vavilov* at paras 15 and 83. In this regard, it is not enough for the outcome of a decision to be justifiable; the decision must be justified by the decision-maker, by way of the reasons: *Vavilov* at para 86. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85.

[8] The party challenging the decision bears the onus of demonstrating that it is unreasonable: *Vavilov* at para 100.

#### IV. Analysis

[9] Mr. Cruz is a Canadian citizen living in Winnipeg, Manitoba with his wife and their three sons. Mr. and Ms. Cruz wanted a daughter and petitioned to adopt Ms. Cruz' niece from the Philippines. The Regional Trial Court of Dagupan City, Philippines granted the petition. The adoption was completed in the Philippines on July 10, 2014.

[10] A foreign child who has been adopted by a Canadian citizen is eligible to be granted Canadian citizenship if the adoption meets certain requirements of the *Citizenship Act*, RSC 1985, c C-29 [*Citizenship Act*]. The requirements that are relevant to this judicial review application are underlined below:

### **Adoptees — minors**

5.1 (1) Subject to subsections (3) and (4), the Minister shall, on application, grant citizenship to a person who, while a minor child, was adopted by a citizen on or after January 1, 1947, was adopted before that day by a person who became a citizen on that day, or was adopted before April 1, 1949 by a person who became a citizen on that later day further to the union of Newfoundland and Labrador with Canada, if the adoption

(a) was in the best interests of the child;

(b) created a genuine relationship of parent and child;

(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;

(c.1) did not occur in a manner that circumvented the legal requirements for international adoptions; and

(d) was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.

[Emphasis added.]

### **Cas de personnes adoptées — mineurs**

5.1 (1) Sous réserve des paragraphes (3) et (4), le ministre attribue, sur demande, la citoyenneté soit à la personne adoptée avant le 1<sup>er</sup> janvier 1947 par une personne qui a obtenu qualité de citoyen à cette date — ou avant le 1<sup>er</sup> avril 1949 par une personne qui a obtenu qualité de citoyen à cette date par suite de l'adhésion de Terre-Neuve-et-Labrador à la Fédération canadienne — soit à la personne adoptée par un citoyen le 1<sup>er</sup> janvier 1947 ou subséquemment, lorsqu'elle était un enfant mineur.

L'adoption doit par ailleurs satisfaire aux conditions suivantes :

a) elle a été faite dans l'intérêt supérieur de l'enfant;

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

c) elle a été faite conformément au droit du lieu de l'adoption et du pays de résidence de l'adoptant;

c.1) elle a été faite d'une façon qui n'a pas eu pour effet de contourner les exigences du droit applicable aux adoptions internationales;

d) elle ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté.

[Soulignements ajoutés.]

[11] The citizenship application for Mr. Cruz' adopted daughter was processed through the Canadian Embassy in Manila, Philippines.

[12] Following an initial review of the application, the Officer mailed a "procedural fairness" letter to Mr. Cruz, asking him to provide the following information and documentation within 30 days:

- Adoption petition;
- DSWD (Department of Social Welfare and Development) Child Study Report;
- Manitoba Home Study Report;
- Letter of No Objection/Notification Agreement from Manitoba;
- Certificate of Conformity of Intercountry Adoption issued by Intercountry Adoption Board; and
- Documentary evidence of parent-child relationship such as photos together.

(Note, "Manitoba" refers to Manitoba Families, Child and Family Services Division, and "Intercountry Adoption Board" refers to Inter-Country Adoption Board (or ICAB) of the Philippines.)

[13] Although dated May 30, 2016, the Officer's letter was mailed on June 14, 2016 and Mr. Cruz received it on June 24, 2016. Mr. Cruz responded by letter dated June 27, 2016. He provided some of the requested documentation and asked for more time "to complete these requirements and submit it right away upon completion". In July and August 2016, Mr. Cruz submitted more documents. When he submitted the requested DSWD Child Study Report from the Philippines, Mr. Cruz provided a further letter indicating that he did not have the remaining documents and was waiting for them.

[14] Mr. Cruz states that he did not receive any further communication from the Canadian Embassy until the application was refused close to three years later, on May 30, 2019. The Officer's refusal letter states:

Based on the information you have provided you do not meet the requirements of paragraph(s) 5.1(1)(c), and 5.1(1)(c.1) of the *Citizenship Act*. In coming to this decision I considered all of the evidence and the factors set out in the *Citizenship Regulations*.

I am not satisfied that the adoption was completed 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.

I am not satisfied that the adoption did not occur in a manner that circumvented the legal requirements for international adoptions.

As a result, you have failed to establish that you meet the requirements for a grant of Canadian citizenship and this application has been refused.

A. *Did the Officer breach procedural fairness?*

[15] Mr. Cruz submits the Officer's behaviour created a legitimate expectation that notice would be provided in advance of any refusal, and the Officer breached the duty of procedural fairness by failing to provide such notice: *Kandiah v Canada (Minister of Citizenship and Immigration)*, 2018 FC 1096 at para 25.

[16] Mr. Cruz concedes that, as of the date of the refusal, he had not provided the following documents requested by the procedural fairness letter of May 2016:

- Manitoba Home Study Report;
- Letter of No Objection/Notification Agreement from Manitoba; and
- Certificate of Conformity of Intercountry Adoption issued by Intercountry Adoption Board.

[17] However, the Officer had accepted late documents previously, and allowed the application to remain outstanding for a lengthy period of time. In the circumstances, Mr. Cruz submits the Officer's actions gave rise to a legitimate expectation that the Officer would not

refuse the application without providing a further opportunity to submit the remaining documents by a certain date. Mr. Cruz argues that section 5.1 of the *Citizenship Act* is intended to ensure that families are “constituted as supportively and quickly as possible”, and strong procedural protections are required: *Bhagria v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1015 at para 60.

[18] The respondent argues that a legitimate expectation must arise from some conduct of the decision-maker or another relevant actor, not an applicant’s assumptions or beliefs. If a public authority has “made representations about the procedure it will follow in making a particular decision” or “if it has consistently adhered to a certain procedural practice in the past”, there may be a legitimate expectation that the procedure will be followed in the future: *Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 94 [*Agraira*]. The practice or conduct said to give rise to the legitimate expectation must be clear, unambiguous and unqualified: *Agraira* at para 95, citing Donald JM Brown and John M Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §7:1710.

[19] The respondent submits that nothing about the Officer’s conduct gave rise to a legitimate expectation that the Officer would send another letter and provide a further opportunity to submit documents before making a decision regarding the application. The respondent submits that the fact the Officer accepted documents after the 30-day deadline in the May 2016 letter does not amount to a “clear, unambiguous and unqualified” representation that Mr. Cruz would have an unlimited amount of time to submit the outstanding documentation, or that he would be given notice before a decision was made.



[20] I am not persuaded that the Officer breached procedural fairness.

[21] The Officer's May 30, 2016 letter provided notice of the documents required to determine whether the citizenship application for Mr. Cruz' adopted daughter would be granted. Mr. Cruz sent a first set of documents on June 27, 2016. According to the Global Case Management System (GCMS) notes, the Officer received these documents on July 4, 2016, and after noting that four documents had not been provided, the Officer contacted Ms. Cruz by telephone. The GCMS notes indicate that the Officer explained the requested documents and that Ms. Cruz "said that they already communicated with Manitoba and ICAB re: pending docs".

[22] In August 2016, Mr. Cruz submitted one of the four remaining documents—the DSWD Child Study Report. No documents from the Manitoba authority or the ICAB were submitted.

[23] The next entry in the GCMS notes is dated May 30, 2019. It indicates that three documents had not been submitted and that the application was refused.

[24] I agree with the respondent that the Officer's conduct did not give rise to a legitimate expectation that the Officer would notify Mr. Cruz before rendering a decision, or provide a further opportunity to submit the outstanding documents by a certain date. By accepting late documents and allowing the application to remain outstanding for a lengthy period of time, the Officer did not make a clear, unambiguous or unqualified representation that the citizenship application would, in effect, be held in abeyance until Mr. Cruz had submitted the outstanding

documents or until the Officer had given notice that the application would be denied by a certain deadline for the failure to provide the documents.

[25] Mr. Cruz' letters to the Canadian Embassy in June and August 2016 explained that he was attempting to obtain the outstanding documents, and that he needed additional time. Ms. Cruz told the Officer, during the July 2016 telephone call, that she and Mr. Cruz had already been in contact with the Manitoba authority and the ICAB regarding the outstanding documents. In light of these communications, I accept that the Officer's conduct gave rise to a legitimate expectation that the Officer would allow sufficient time for Mr. Cruz to submit the outstanding documentation. In my view, the Officer did so. The evidence does not establish that three years was insufficient time to obtain the requested documents.

[26] Mr. Cruz states that prior to the refusal, he was actively attempting to obtain the outstanding documentation with the assistance of the Manitoba authority. In this regard, Mr. Cruz' affidavit attaches a December 22, 2017 letter from the Manitoba Families, Child and Family Services Division asking the Inter-Country Adoption Board of the Philippines to determine the child's eligibility for adoption, and a January 4, 2018 response from the ICAB indicating that all adoptions that would remove a child from their habitual country of residence must be the subject of an original application to the ICAB. These letters do not establish that Mr. and Ms. Cruz had been actively attempting to obtain the outstanding documents since the communications with the Officer. The affidavit evidence does not establish that Mr. Cruz could not have obtained the necessary documents within three years by exercising reasonable diligence, or that factors beyond his control prevented him from obtaining them. Moreover, Mr.

Cruz did not inform the Canadian Embassy of his efforts to obtain the documents, or of any difficulties that he may have encountered in obtaining them. Mr. Cruz states in his affidavit that he and his wife “did not think that [they] were to contact Citizenship except to provide documents requested by them”; however, the affidavit does not give a reason for that belief. In oral submissions, Mr. Cruz asserted that the Canadian Embassy discourages communications, other than when providing documents, but this assertion is not supported with evidence.

[27] In conclusion, I am not persuaded that the Officer’s conduct gave rise to a legitimate expectation that the citizenship application would effectively be held in abeyance, or that Mr. and Ms. Cruz would have an unlimited amount of time to submit outstanding documents unless the Officer provided notice to the contrary. Mr. and Ms. Cruz may have been operating under an assumption or belief that the application was being held in abeyance; however, that assumption or belief did not reasonably arise from the Officer’s conduct. To the extent that the Officer’s conduct led to a legitimate expectation that Mr. and Ms. Cruz would be afforded sufficient time to submit the outstanding documents, I am not satisfied that three years was insufficient. The Officer did not breach procedural fairness.

B. *Is the Officer’s decision reasonable?*

[28] Mr. Cruz submits that the Officer’s decision is unreasonable because the refusal letter does not explain why the citizenship application does not meet the requirements of paragraphs 5.1(1)(c) and 5.1(1)(c.1) of the *Citizenship Act*. He states that the reason provided to support the refusal, found in the GCMS notes, was that the application does not meet the requirements because Mr. Cruz and Ms. Cruz were residents of Canada at the time of the adoption:

Based on the documents on file, I am satisfied that the adoptive were residents of Canada at the time of the adoption. Therefore, sections 5.1(1)(c) and (c.1) of the Citizenship Act have not been met. Application refused.

[29] Mr. Cruz argues that the above explanation is incomprehensible, and erroneous. Mr. Cruz submits that while the GCMS notes indicate that he had not submitted certain required documents, the Officer's notes and the refusal letter do not explain why those documents were required or how the failure to provide them led to the conclusion that paragraphs 5.1(1)(c) and 5.1(1)(c.1) of the *Citizenship Act* were not met. As a result, he submits the Officer's reasons are not transparent or intelligible, and the Officer committed a reviewable error.

[30] The respondent submits that Mr. Cruz misinterprets the Officer's reasons, and I agree.

[31] Both the refusal letter and the GCMS entry explaining the refusal make clear that the application was refused for failure to meet the requirements of paragraphs 5.1(1)(c) and 5.1(1)(c.1) of the *Citizenship Act*. The GCMS entry reads:

Adoptive parent was informed of documents required to meet s.5.1(1)(c) of the Citizenship Act via letter dated May 2016. Upon receipt of some of the requested documents, the adoptive parent was contacted by telephone and it was explained what additional documents were required. In August 2016, the adoptive parent submitted the DSWD Child Study Report. I note that the following documents have still not been received: -Manitoba Home Study Report -Letter of No Objection/Notification Agreement from Manitoba -Certificate of Conformity of Intercountry adoption issued by ICAB. Based on the documents on file, I am satisfied that the adoptive [parents] were residents of Canada at the time of the adoption. Therefore, section s5.1(1)(c) and (c.1) of the Citizenship Act have not been met. Application refused. Refusal letter finalized and sent.

[32] The reference to the adoptive parents' residence is not unintelligible or erroneous.

Paragraph 5.1(1)(c) of the *Citizenship Act* requires proof that the adoption was in accordance with the laws of the adoptive parents' country of residence. As a Canadian resident, Mr. Cruz was required to submit proof that the adoption was in accordance with the laws of Canada.

[33] I am not satisfied that the Officer failed to adequately explain or justify the reasons for refusing the citizenship application. According to paragraphs 5.1(1)(c) and 5.1(1)(c.1) of the *Citizenship Act*, Mr. Cruz was required to demonstrate that his daughter's adoption (i) was in accordance with the laws of the place where the adoption took place (Philippines) and the country of residence of the adopting citizen (Canada), and (ii) did not occur in a manner that circumvented the legal requirements for international adoptions. The May 30, 2016 letter set out the documentary proof that the Officer required in this regard, and after receiving only some of the documents, the Officer followed up and explained the documents that had been requested. From the Officer's letter and the follow-up telephone call, Mr. and Ms. Cruz were aware that they required approvals from the relevant Manitoba authority and from the ICAB of the Philippines. They told the Officer in July 2016 that they had already communicated with these agencies, and they would submit the documents as soon as they received them. No documents from the Manitoba authority or the ICAB were submitted.

[34] Reasons given by an administrative body must not be assessed against a standard of perfection (*Vavilov* at para 91) and they must be read in light of the history and context of the proceedings (*Vavilov* at paras 91 and 94). When read in light of the history and context of the

application for Canadian citizenship, the refusal letter and GCMS notes explain the reasons for the refusal in a clear manner.

[35] The Officer's reasons were justified, transparent, and intelligible, and Mr. Cruz has not established a reviewable error that would render the decision unreasonable.

V. **Conclusion**

[36] This application for judicial review is dismissed. The Officer did not breach procedural fairness and the Officer's decision is reasonable.

[37] Neither party proposes a question for certification. I find there is no question to certify.

**JUDGMENT in T-1449-19**

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

1. This application for judicial review is dismissed.
2. There is no question for certification.

"Christine M. Pallotta"

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Judge

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

**DOCKET:** T-1449-19

**STYLE OF CAUSE:** JONARD CAPINPIN CRUZ v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEO CONFERENCE

**DATE OF HEARING:** JULY 12, 2021

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**DATED:** OCTOBER 19, 2021

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