Date: 20061110

Docket: IMM-120-06

Citation: 2006 FC 1362

BETWEEN:

AMARJIT KAUR DHINDSA
RAJWINDERPAL KAUR DHINDSA
LAKHWINDERPAL SINGH DHINDSA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER

GIBSON J.

INTRODUCTION

[1] These reasons follow the hearing of an application for judicial review of a decision of an Immigration Officer (the "Officer") at the Canadian High Commission in New Delhi, India whereby the Officer, following an interview with Amarjit Kaur Dhindsa (the "principal Applicant") and Rajwinderpal Kaur Dhindsa, who was alleged to be the adopted daughter of the principal Applicant, deleted Rajwinderpal Kaur Dhindsa from the principal Applicant's sponsored application for permanent residence in Canada. The decision is dated the 19th of October, 2005.

[2] Lakhwinderpal Singh Dhindsa is the son of the principal Applicant and is her sponsor. He was earlier found eligible to sponsor the principal Applicant.

[3] Early on in the hearing of this application for judicial review, counsel for the Respondent objected to the inclusion of Lakhwinderpal Singh Dhindsa as an Applicant. The objection was raised in the written materials filed on behalf of the Respondent. No position was taken on behalf of the Applicants in written materials or at the hearing of the application. I am satisfied that the objection is well taken. My Order disposing of this application for judicial review will delete Lakhwinderpal Singh Dhindsa as an Applicant.

BACKGROUND

[4] The principal Applicant alleges that she and her late husband took Rajwinderpal Kaur Dhindsa, born the 15th of January, 1984, in adoption in 1993 in accordance with *The Hindu Adoption and Maintenance Act, 1956.* The principal Applicant further alleges that she and her husband observed all necessary rites and rituals essential for a Hindu adoption. Rajwinderpal Kaur Dhindsa's biological father and mother allegedly gave her in adoption. No adoption deed was registered at the time of the adoption and it would appear to be not in dispute that no such registration was required to perfect the alleged adoption.

[5] The principal Applicant's husband died on the 9th of October, 1996. The principal Applicant alleges that, in order to protect the inheritance rights of her allegedly adopted daughter, she then determined to register the adoption and an adoption deed was in fact registered on the 1st of January, 1997.

[6] From before the date of the alleged adoption, Rajwinderpal Kaur Dhindsa and her biological father and mother lived in the same home as the principal Applicant and her husband. They continued to do so until Rajwinderpal Kaur Dhindsa's biological parents moved out of the home in 1995 or 1996.

THE DECISION UNDER REVIEW

[7] The substance of the decision under review is in the following terms:

> …
> According to the Deed of Adoption dated 10 Jan 1997 provided to our office, you adopted, Rajwinderpal Kaur, in 1993 as per the Hindu rites and rituals. During the interview both you, and Rajwinder Kaur stated that she was adopted in 1993. During the interview on 18 Oct 2005 you stated:
>
> " In 1995 they (Balvir and Puran Singh) shifted to Maler Kotla, and my husband expired in 1996, after that I decided that tomorrow my son or my daughter in-law should not have any objections so I went to the courts and got the papers drafted for the adoption."
>
> You also stated that you, your family and your sister (Rajwinderpal Kaur's mother), and her family lived together until 1996.
>
> I am not satisfied that a physical giving and taking [in] connection with your claimed adoption, as required by section 11(vi) of the Adoptions Act, was performed IN 1993. I am also not satisfied that the adoption created a genuine parent-child relationship as her real parents were living with you at the time of the adoption.
>
> Accordingly Rajwinderpal Kaur is not a member of the family class described in section 117(1)(b) of the Immigration and Refugee Protection Regulations.
>
> Given the foregoing, I conclude that Rajwinderpal Kaur is not a "dependent child" as defined in section 2 of the Immigration and Refugee Protection Regulations.
>
> Since Rajwinderpal Kaur is not a dependent child according to the Immigration and Refugee Protection Regulations, I have deleted her from your application.
> …

THE LEGISLATIVE AND REGULATORY SCHEME

[8] The provisions of law relevant to this application for judicial review are extensive and reasonably complex. They are set out in full in a schedule to these reasons.

THE ISSUES

[9] In his Memorandum of Fact and Law, counsel for the Applicants identified three issues: first, whether, on the facts before the Officer, the Officer erred in law in that he deleted Rajwinderpal Kaur Dhindsa from her alleged adoptive mother's, the principal Applicant's, application, concluding that she was not the adopted daughter of the principal Applicant; secondly, whether the deletion of Rajwinderpal Kaur Dhindsa from the principal Applicant's application and thus the rejection of Rajwinderpal Kaur Dhindsa's application to immigrate by the Officer has the effect of depriving the sponsor of a right to appeal under subsection 63(1) of the *Immigration and Refugee Protection Act*[1] (the "*Act*")and thus ousts the Immigration Appeal Division's jurisdiction to determine whether Rajwinderpal Kaur Dhindsa was a member of the family class and its humanitarian and compassionate jurisdiction; and finally whether, in all of the circumstances of this matter, the Officer's decision was patently unreasonable.

[10] Counsel for the Respondent essentially only restates the issues but reduces them to two: first, whether the Officer erred in a reviewable manner in finding that Rajwinderpal Kaur Dhindsa was not a dependent child of the principal Applicant; and secondly, whether the Officer erred in a reviewable manner in informing the Applicants that, since Rajwinderpal Kaur Dhindsa was not a member of the family class, the sponsor of the principal Applicant, Lakhwinderpal Singh Dhindsa,

[1] S.C. 2001, c. 27.

had no right of appeal to the Immigration Appeal Division or, put another way, does subsection 63(1) of the *Act* have any application with respect to this matter.

[11] I prefer the Respondent's statement of the issues. As in all applications for judicial review such as this, the issue of standard of review also arises.

ANALYSIS

Standard of Review

[12] In *Liu v. Canada (Minister of Citizenship and Immigration)*[2], my colleague Justice Snider wrote at paragraph 14:

> An application to be admitted to Canada as an immigrant involves a discretionary decision on the part of the visa officer, who is required to make that decision on the basis of specified statutory criteria. The standard of review to be applied to a visa officer's decision with respect to a finding of fact is patent unreasonableness. …

[13] I am satisfied on the facts of this matter that Rajwinderpal Kaur Dhindsa, through her inclusion in the principal Applicant's sponsored application to come to Canada, as an alleged dependant child of the principal Applicant and therefore as a member of the family class, applied to be admitted to Canada and that the decision to delete her name from the principal Applicant's application in effect amounted to rejection of her application. Thus, the foregoing quotation is directly applicable and I find no basis on the facts of this matter to vary from my colleague's conclusion that the appropriate standard of review on the first issue question before the Court is, in general terms, patent unreasonableness.

[2] (2003), 231 F.T.R. 148 (not cited before the Court).

[14] The foregoing being said, the basis of the Officer's conclusion in that regard involved application of the facts underlying this matter to the interpretation of the *Hindu Adoptions and Maintenance Act, 1956.* In *Canada (Minister of Citizenship and Immigration) v. Sharma*[3], Justice Wetston wrote at paragraph 56:

> The content of the foreign law is a question of fact. How the foreign law is applied is a question of law.

Against the foregoing, I am satisfied that the analysis of the Officer leading to the conclusion that the principal Applicant's alleged adoption of Rajwinderpal Kaur Dhindsa was not valid should be reviewed on a standard of review of reasonableness *simplicter*.

[15] The application of the conclusion that Rajwinderpal Kaur Dhindsa is not a dependent child in relation to the principal Applicant and therefore not a member of the family class to subsection 63(1) of the *Act* is, equally, a matter of application of the particular facts on this application for judicial review to the interpretation of subsection 63(1) and should, therefore, be reviewed on a standard of review of reasonableness *simpliciter*.

[16] I have arrived at the foregoing conclusions after taking into account all of the relevant factors underlying a pragmatic and functional analysis.

The Officer's finding that Rajwinderpal Kaur Dhindsa is not a dependent child of the principal Applicant

[17] Pursuant to paragraph 11(vi) of the *Hindu Adoptions and Maintenance Act, 1956*, to be valid, the adoption of Rajwinderpal Kaur Dhindsa by the principal Applicant and her husband, in

[3] [1995] F.C.J. No. 1151 (not cited before the Court).

1993, had to involve the actual giving of the child by her biological parents and the taking of the child in adoption by the principal Applicant and her husband, with intent to transfer the child from the family of its birth.

[18] As noted earlier in these reasons, the Officer wrote in her reasons for deleting Rajwinderpal Kaur Dhindsa from the principal Applicant's sponsored application for immigration to Canada:

> I am not satisfied that a physical giving and taking [in] connection with your claimed adoption, as required by section 11(vi) of the Adoptions Act, was performed IN 1993. I am also not satisfied that the adoption created a genuine parent-child relationship as her real parents were living with you at the time of the adoption.

[19] Counsel for the Applicants urged that there was no evidence before the Officer to support the Officer's concern that there was no actual giving and taking in adoption with intent to transfer Rajwinderpal Kaur Dhindsa from her biological parents to the principal Applicant and her husband. Rather, counsel notes, both the principal Applicant and Rajwinderpal Kaur Dhindsa, at their interview with the Officer, stated that there had been a giving and taking in 1993 in accordance with Hindu rites and rituals and that that oral assurance was supported by the following paragraph contained in the principal Applicant's affidavit filed herein:

> 3. My late husband, Mangal Singh and I took the Applicant, Rajwinderpal Kaur Dhindsa born January 15, 1984, in adoption in 1993 in accordance with the *Hindu Adoption and Maintenance Act* observing all necessary rites and ceremonies essential to a Hindu adoption.

[20] Counsel urged that the foregoing was confirmed by the registration of an adoption deed, albeit some years later, and that the presumptions set out in sections 12 and 16 of the *Hindu Adoptions and Maintenance Act, 1956* would appear to have been ignored by the Officer.

[21] I reject the submission of counsel for the Applicant that there was "no evidentiary basis" for the Officer's concerns and conclusion regarding what took place in 1993. First, there was no evidence whatsoever before the Officer as to a "giving" by Rajwinderpal Kaur Dhindsa's biological parents. Secondly, Rajwinderpal Kaur Dhindsa's biological parents continued to live in the same home with the principal Applicant, her husband, her son and Rajwinderpal Kaur Dhindsa until some time in 1995. There was no evidence before the Officer as to the relationship between Rajwinderpal Kaur Dhindsa and her biological parents on the one hand and her purported adoptive parents on the other during the time between the purported adoption and the time when the biological parents left the common home.

[22] Against the totality of the evidence before the Officer, I am satisfied that it was reasonably open to the Officer to conclude that the giving and taking in adoption required by paragraph 11(vi) of the *Hindu Adoptions and Maintenance Act, 1956* had not been established to her satisfaction. The onus was on the principal Applicant. She simply failed, without explanation, to meet that onus.

[23] With regard to the Officer's expression of concern regarding the creation of a "genuine" parent-child relationship, counsel for the Applicant provided essentially no submissions. By contrast, counsel for the Respondent urged that, on the evidence before the Officer, it was open for the Officer to conclude that there was insufficient evidence to show that the adoption was genuine.

[24] The concept of "genuineness" is reflected in section 4 of the *Immigration and Refugee Protection Regulations*[4] (the "*Regulations*"). In order for an allegedly adopted child not to be

[4] SOR/2002-227.

considered an adopted child under that provision, there must be both a finding of lack of genuineness and also a finding that the adoption was "…entered into primarily for the purpose of acquiring any status or privilege under the [Immigration and Refugee Protection] Act." I conclude that there was no evidence before the Officer or the Court to support a finding that the purported adoption of Rajwinderpal Kaur Dhindsa was entered into primarily for the purpose of acquiring any status or privilege under the *Act*. Certainly, counsel for the parties referred me to none.

[25] Based on the foregoing brief analysis, I conclude that the Officer's determination that the purported adoption of Rajwinderpal Kaur Dhindsa by the principal Applicant and her husband did not create a "genuine" parent-child relationship was reasonably open to her but that that determination was of no consequence in the absence of a finding that the purported adoption was entered into for the purpose of acquiring any status or privilege under the *Act*.

[26] The Officer's conclusion regarding "validity", which I have found to be reasonably open, was itself sufficient to be dispositive of the first issue on this application against the Applicants.

The Deletion of Rajwinderpal Kaur Dhindsa from the Principal Applicant's Application for Immigration to Canada

[27] Counsel for the Applicants urged that the Officer's action in deleting Rajwinderpal Kaur Dhindsa's name from the principal Applicant's application deprived the principal Applicant or her sponsor of a right to appeal under subsection 63(1) of the *Act* and, thus, ousted the jurisdiction of the Immigration Appeal Division of the Immigration and Refugee Board to determine whether or not, on the facts of this matter, Rajwinderpal Kaur Dhindsa was in fact a member of the family class,

that the principal Applicant is an appropriate "sponsor" and therefore whether humanitarian and compassionate considerations should entitle Rajwinderpal Kaur Dhindsa to immigrate to Canada.

[28] For ease of reference, subsection 63(1) of the *Act*, which is quoted in the Schedule to these reasons, is repeated here.

63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	**63.** (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

[29] Section 65 preserves the humanitarian and compassionate considerations jurisdiction of the Immigration Appeal Division in the limited circumstances outlined therein. Section 65 of the *Act* is also reproduced in the Schedule to these reasons.

[30] Counsel for the Applicants urged that deletion of Rajwinderpal Kaur Dhindsa from the principal Applicant's application, and thus, impliedly, the rejection of Rajwinderpal Kaur Dhindsa's application, derived the sponsor, that is to say the principal Applicant, or, and this is to this judge unclear, the sponsor of the principal Applicant, and I interpret the Applicant's materials to imply the former and I read subsection 63(1) to identify the latter, of a right of appeal to the Immigration Appeal Division and, thus, potentially at least, of a right to have humanitarian and compassionate considerations in respect of Rajwinderpal Kaur Dhindsa taken into account.

[31] Counsel urged that the deletion of Rajwinderpal Kaur Dhindsa from the principal Applicant's application amounted to an "arbitrary action" contrary to the principles of natural

justice and fairness, and that the appropriate course of action that should have been adopted by the Officer was to simply deny the principal Applicant's sponsored application for immigration to Canada, thus rejecting the principal Applicant's application on the basis of the Officer's conclusion that the inclusion of Rajwinderpal Kaur Dhindsa in the application rendered the whole of the application unsupportable. The result of such action would, in the submission of counsel, leave open to the "sponsor" the full range of appeal rights to the Immigration Appeal Division including an appeal from the Officer's conclusion that Rajwinderpal Kaur Dhindsa was not a proper party to the principal Applicant's application.

[32] Counsel for the Respondent urged that the Officer directed his or her mind to the proper questions before him or her and that the decision to delete Rajwinderpal Kaur Dhindsa was open to her, thus leaving the application of the sponsored principal Applicant alone, open to be determined on its own merits.

[33] Neither counsel referred the Court to statutory, regulatory or judicial authority on this issue. I am satisfied that no such authority governs my decision in this regard.

[34] Against the scheme of the *Act* and the *Regulations* read as a whole, I am satisfied that the course followed by the Officer was open to her. An individual purporting to be an adopted child, such as Rajwinderpal Kaur Dhindsa, will not be a proper member of the family class capable of being included in a putative parent's application for immigration to Canada, if the purported adoption is found not to be in accordance with law. Such was the case here, and I have already

found in these reasons that the conclusion that Rajwinderpal Kaur Dhindsa was not an adopted child of the principal Applicant in accordance with law was open to the Officer.

[35] In the circumstances, I can find no basis flowing from the rejection of the qualifications of Rajwinderpal Kaur Dhindsa, to reject the application for immigration to Canada, sponsored by her son, which sponsorship was found to be valid, of the principal Applicant. Once again in the circumstances, the Officer had no basis, based upon the rejection of Rajwinderpal Kaur Dhindsa's inclusion in the principal Applicant's application, to reject the principal Applicant's own application. The well-foundedness of that application turned on entirely different facts, not evaluated at the moment of rejection of Rajwinderpal Kaur Dhindsa's qualifications. Thus, the only course reasonably open to the Officer was to delete Rajwinderpal Kaur Dhindsa's participation in the principal Applicant's application and then to go on from there to consider the principal Applicant's application on its own merits.

[36] Based upon the foregoing brief analysis, I find no basis in fact, mixed fact and law or law, or indeed in fairness and equity, to overturn the Officer's decision to delete Rajwinderpal Kaur Dhindsa's name from the principal Applicant's application for immigration to Canada.

[37] The foregoing conclusion results, as counsel for the Applicants submits, in a narrowing of the jurisdiction of the Immigration Appeal Division and, indeed, in the elimination of the jurisdiction of that tribunal to consider the merits of the deletion. That being said, as evidenced by this application for leave and for judicial review, this Court retains jurisdiction to consider the merits of the deletion and to adjudicate on that decision. What is purported to be lost is the jurisdiction of

the Immigration Appeal Division, in the very limited circumstances outlined in section 65 of the *Act*, to take into account humanitarian and compassionate considerations flowing from the deletion of Rajwinderpal Kaur Dhindsa's name from the principal Applicant's application. Such a result would not flow if this Court, on judicial review, had determined that in fact the Officer had erred in a reviewable manner in determining Rajwinderpal Kaur Dhindsa not to be the adopted daughter of the principal Applicant. Such is not the case. In the result, nothing is in fact lost.

CONCLUSION

[38] For the foregoing reasons, this application for judicial review will be dismissed.

CERTIFICATION OF A QUESTION

[39] At the close of the hearing of this application for judicial review, counsel were advised that the Court's decision would be reserved. Counsel were also advised that an opportunity would be provided for them to make submissions on certification of a question. Counsel for the Applicant will have five (5) days from the date of the reasons herein to file with the Court and serve on counsel for the Respondent submissions on certification. Thereafter, counsel for the Respondent will have five (5) days to serve and file responding submissions. Once again thereafter, counsel for the Applicant will have three (3) days to file and serve responding submissions. Only thereafter, or in the event of any party failing to take advantage of the opportunity hereby provided, will the Court's Order issue.

"Frederick E. Gibson"
JUDGE

Ottawa, Ontario
November 10, 2006

SCHEDULE

1. *THE IMMIGRATION AND REFUGEE PROTECTION ACT*

Subsection 12(1) reads as follows:

12. (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident	12. (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement

Subsections 63(1) and 64(3) read as follows:

63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	63. (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.
…	…
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.	64. (3) N'est pas susceptible d'appel au titre du paragraphe 63(1) le refus fondé sur l'interdiction de territoire pour fausses déclarations, sauf si l'étranger en cause est l'époux ou le conjoint de fait du répondant ou son enfant.

Section 65 reads as follows :

65. In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.	**65.** Dans le cas de l'appel visé aux paragraphes 63(1) ou (2) d'une décision portant sur une demande au titre du regroupement familial, les motifs d'ordre humanitaire ne peuvent être pris en considération que s'il a été statué que l'étranger fait bien partie de cette catégorie et que le répondant a bien la qualité réglementaire.

2. *THE IMMIGRATION AND REFUGEE PROTECTION REGULATIONS*

The opening words of section 2 and the relevant portions of the definition "dependant child" read as follows:

2. The definitions in this section apply in these Regulations.	**2.** Les définitions qui suivent s'appliquent au présent règlement.
…	…
"dependent child", in respect of a parent, means a child who	enfant à charge » L'enfant qui :
(*a*) has one of the following relationships with the parent, namely,	*a*) d'une part, par rapport à l'un ou l'autre de ses parents :
…	…
(ii) is the adopted child of the parent; and	ii) soit en est l'enfant adoptif;
(*b*) is in one of the following situations of dependency, namely,	*b*) d'autre part, remplit l'une des conditions suivantes :
(i) is less than 22 years of age and not a spouse or common-law partner,	(i) il est âgé de moins de vingt-deux ans et n'est pas un époux ou conjoint de fait,
…	…

Section 4 reads as follows:

4. For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act.	**4.** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait, le partenaire conjugal ou l'enfant adoptif d'une personne si le mariage, la relation des conjoints de fait ou des partenaires conjugaux ou l'adoption n'est pas authentique et vise principalement l'acquisition d'un statut ou d'un privilège aux termes de la Loi.

Section 116 reads as follows:

116. For the purposes of subsection 12(1) of the Act, the family class is hereby prescribed as a class of persons who may become permanent residents on the basis of the requirements of this Division.	**116.** Pour l'application du paragraphe 12(1) de la Loi, la catégorie du regroupement familial est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents sur le fondement des exigences prévues à la présente section.

Section 117 reads as follows:

117. (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is	**117.** (1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :
…	…
(*b*) a dependent child of the sponsor;	*b*) ses enfants à charge;
(*c*) the sponsor's mother or father;	*c*) ses parents;
…	…
(2) A foreign national who is the adopted child of a sponsor and whose adoption took place when the child was under the age of 18 shall not be considered a member of the family class by virtue of that adoption unless it was in the best interests of the child within the meaning of the Hague Convention on Adoption.	(2) N'est pas considéré comme appartenant à la catégorie du regroupement familial du fait de sa relation avec le répondant l'étranger qui, ayant fait l'objet d'une adoption alors qu'il était âgé de moins de dix-huit ans, est l'enfant adoptif de ce dernier, à moins que l'adoption n'ait eu lieu dans l'intérêt supérieur de l'enfant au sens de la Convention sur l'adoption.
3) The adoption referred to in subsection (2) is considered to be in the best interests of a child if it took place under the following circumstances:	(3) L'adoption visée au paragraphe (2) a eu lieu dans l'intérêt supérieur de l'enfant si les conditions suivantes sont réunies :
…	…
(*c*) the adoption created a genuine parent-child relationship;	*c*) l'adoption a créé un véritable lien affectif parent-enfant entre l'adopté et l'adoptant;
(*d*) the adoption was in accordance with the laws of the place where the adoption took place;	*d*) l'adoption était, au moment où elle a été faite, conforme au droit applicable là où elle a eu lieu;
…	…

3. THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

Section 5 reads as follows:

5.(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

…

Clause 11(vi) reads as follows:

11. In every adoption, the following conditions must be complied with:-

…

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption;

...

Section 12 reads as follows:

12. An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

Section 16 reads as follows:

16. Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-120-06
STYLE OF CAUSE:	AMARJIT KAUR DHINDSA RAJWINDERPAL KAUR DHINDSA LAKWINDERPAL SINGH DHINDSA Applicants and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	October 29, 2006
REASONS FOR ORDER:	GIBSON J.
DATED:	November 10, 2006

APPEARANCES:

Mr. Jaswant Singh Mangat	FOR THE APPLICANTS
Ms. J. Michaely	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mangat & Company Mississauga, ON	FOR THE APPLICANTS
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT