Federal Court  Cour fédérale

Date: 20111216

Docket: T-955-11

Citation: 2011 FC 1485

Ottawa, Ontario, December 16, 2011

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

ANGELA TOLUWANI ADEJUMO AND OLUREMI OMOLOLA ADEJUMO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

REASONS FOR ORDER AND ORDER

[1] Angela Toluwani Adejumo is now 10 years of age. She is a Nigerian citizen. Her biological mother died when she was an infant and she has not lived with her father since she was 18 months old. Her father's sister, in other words her aunt, Oluremi Omolola, a Canadian citizen, who is herself childless, adopted her in full compliance of Nigerian law, and with the approval of the authorities in British Columbia, where she lives. Angela's application for Canadian citizenship was turned down by an immigration counsellor at Citizenship and Immigration Canada on the basis that the adoption did not create a genuine relationship of parent and child, and was entered into primarily

for the purpose of acquiring status or privilege in relation to immigration or citizenship. This is the judicial review of that decision.

[2] It used to be that such adoptions were dealt with under the *Immigration and Refugee Protection Act*. The adopted child first had to obtain permanent residence. However, the *Citizenship Act* was amended in December 2007 and April 2009 to deal with such situations. Section 5.1(1) now provides:

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 parent and child;	*b*) elle a créé un véritable lien affectif 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	*d*) elle ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à

immigration or citizenship.	l'immigration ou à la citoyenneté.

[3] Thus, it can be seen that the immigration counsellor's decision was based on subsections 5.1(1)(b) and (d) of the Act.

ANGELA'S PLIGHT

[4] Angela's father is a fairly well-to-do man by Nigerian standards. He spends most of this time working in the oil fields in Saudi Arabia. Ever since his wife died, young Angela has been living with his mother, her grandmother. However, she has become old and frail and cannot really care for her. Mr. Adejumo remarried, and has two children with his second wife. She is not particularly enthusiastic about having young Angela living under her roof (Cinderella anyone?).

[5] Mr. Adejumo's sister, Oluremi Omolola, a Canadian citizen who is divorced and childless, offered to adopt young Angela and treat her as her own. The adoption was approved on a preliminary basis by both the Nigerian and Canadian authorities in 2007 and granted in 2008. It is not contested that notwithstanding that young Angela has been denied entry to Canada and that for the most part Oluremi Omolola has been here, it is she who has made all important decisions with respect to Angela's schooling and medical care.

[6] Nevertheless, Angela's father is not completely out of the picture. He has not, to use the words of the counsellor, "truly severed his parent relationship to his daughter". He considers himself to be a father figure and capable of financially and emotionally supporting her. The counsellor

considered that a genuine parent-child relationship continued, and that therefore a genuine parent-child relationship could not be developed between aunt and niece as long as the natural father's relationship continued. There was no genuine parent-child relationship established to the exclusion of the father and step-mother.

[7] He then concluded: "[b]ased on this information I am not satisfied that this adoption was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship."

[8] Let me immediately say that this second ground was outright speculation and falls if the first ground falls.

ALL TIES OR LEGAL TIES

[9] Section 5.1 of the *Citizenship Regulations* prescribes the manner in which an application for citizenship under the Act is made. Certain factors are to be considered in determining whether the requirements of the Act have been met. Section 5.1(3)(a)(*ii*) states:

(3) The following factors are to be considered in determining whether the requirements of subsection 5.1(1) of the Act have been met in respect of the adoption of a person referred to in subsection (1):	(3) Les facteurs ci-après sont considérés pour établir si les conditions prévues au paragraphe 5.1(1) de la Loi sont remplies à l'égard de l'adoption de la personne visée au paragraphe (1) :
(*a*) whether, in the case of a person who has been adopted by a citizen who	*a*) dans le cas où la personne a été adoptée par un citoyen qui résidait au

resided in Canada at the time of the adoption,	Canada au moment de l'adoption :
…	[…]
(ii) the pre-existing legal parent-child relationship was permanently severed by the adoption;	(ii) le fait que l'adoption a définitivement rompu tout lien de filiation préexistant;

[10] Note that the English version calls for consideration of the "pre-existing legal parent-child relationship" while the French version speaks of "tout lien de filiation préexistant".

[11] The decision maker does not appear to have picked up on this difference, which I raised at the hearing in Vancouver. I called for supplemental memoranda.

[12] The parties, and the Court, agree that the first step is to establish whether there is a common meaning between the two versions. It is clear in this case that there is an ambiguity in that legal ties are not the same as all ties. Once the common meaning has been established, the Court must then determine whether that common meaning is consistent with Parliament's intent (*Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51, [2005] 2 SCR 539). Where one version is broader than the other, the common meaning would favour the more restricted or limited meaning (*Schreiber v Canada (Attorney General)*, 2002 SCC 62, [2002] 3 SCR 269). Consequently, the more restrictive wording of the English version must be favoured in this case. Therefore, it follows that the regulation does not call upon the biological father to severe all social

ties with his daughter. It is clear under Nigerian law that he no longer has any legal obligations towards her.

[13] Although not binding, Ministerial Guidelines may be helpful in informing decisions rendered by visa officers (*John v Canada (Minister of Citizenship and Immigration)*, 2010 FC 85, [2010] FCJ No 100 (QL)). In this case, the Minister's Guidelines allow the biological father to maintain a relationship with his child, particularly if that child has been adopted by a relative. In Citizenship and Immigration Canada's *Operation Bulletin 183*, it is stated that while the natural parent should no longer be acting as a parent, "an ongoing relationship and contact with the natural parent and extended family may still occur."

[14] Either the decision maker erred in law by not noting the distinction between the English and French versions of the regulation, or failed to give adequate reasons by not distinguishing *Operation Bulletin 183*. As the bulletin would likely have led to a different conclusion, he was under a duty to explain why it was not relied on (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 83 ACWS (3d) 264 (FC)). Furthermore, he did not take into account the decision of this Court in *Rubio v Canada (Minister of Citizenship and Immigration)*, 2011 FC 272, [2011] FCJ No 318 (QL).

[15] Consequently, I shall grant the judicial review and refer the matter back to another decision maker for re-determination.

RIGHT OF APPEAL

[16] The general rule is that any final decision of this Court may be appealed to the Federal Court of Appeal (*Federal Courts Act*, s 27). If this were still a permanent residence issue under the *Immigration and Refugee Protection Act*, an appeal would only lie if a serious question of general importance were certified (IRPA, s 74(d)).

[17] If this were a judgment in appeal from a decision of a citizenship judge under section 14(5) of the *Citizenship Act*, no appeal would lie therefrom (*Citizenship Act*, s 14(6)). However, it is not, and is not covered by that exception. Consequently, the Minister may appeal as of right.

COSTS

[18] Costs were not sought.

ORDER

FOR REASONS GIVEN;

THIS COURT ORDERS that

1. This application for judicial review is granted.

2. The decision, dated 29 March 2011, to refuse the application for Canadian citizenship of Angela Toluwani Adejumo, visa file number A090200005, is quashed and the matter is referred back to another decision maker for re-determination.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	ANGELA TOLUWANI ADEJUMO AND OLUREMI OMOLOLA ADEJUMO v MCI
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