

Federal Court



Cour fédérale

**Date: 20130115**

**Docket: T-662-12**

**Citation: 2013 FC 36**

**Ottawa, Ontario, January 15, 2013**

**PRESENT: The Honourable Mr. Justice Rennie**

**BETWEEN:**

**RASPER INNOCENT ATUTORNU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of a decision of an Immigration Officer dated March 9, 2012 denying an application for Canadian citizenship for a child adopted by a Canadian citizen. This application is granted.

*Facts*

[2] This application concerns Believe Nyuimedi Atutornu, an 18 year old girl and Ghana national. The applicant is her uncle. He was born in Ghana and left the country in 1998 to study in Belgium. He became a Canadian citizen in 2006.

[3] Believe was born in Ghana on August 6, 1994. Her biological parents are Daniel Atutornu, the applicant's brother, and Dorothy Adanuvor. Daniel Atutornu initially denied paternity and Dorothy Adanuvor was not able to care for Believe. Therefore, in 1998 the applicant and his wife adopted Believe in accordance with the village custom. After the applicant left Ghana, Believe, then two years old, lived with the applicant's wife and mother. In 2001, the applicant's wife also left Ghana and Believe continued to live with her grandmother.

[4] In 2009, the applicant returned to Ghana on the occasion of his mother's death. At this time, he formally adopted Believe. The applicant obtained an interim adoption order on October 9, 2009 from a Circuit Court in Ghana. The order stated that Believe had been adopted for an interim period of two years and thereafter absolutely if no objection was raised.

[5] The applicant also began the process of obtaining Canadian citizenship for Believe. To this end, he provided two long form birth certificates. The certificate dated October 20, 2009, after the adoption order, provides that the applicant and his wife are Believe's parents. The Registrar of Births and Deaths certified it to be a genuine copy.

[6] The earlier certificate dated September 5, 2009 provides that Daniel Atutornu and Dorothy Adanuvor are Believe's parents. The Registrar of Births and Deaths indicated, by checking a box,

that this birth certificate “is a fraudulent copy, as the particulars differ from the particulars in the register.”

[7] The Immigration Officer sent the applicant a procedural fairness letter dated November 29, 2011, inviting the applicant to provide additional evidence by January 29, 2012. The Officer also explained that the interim adoption order was not sufficient to prove the adoption.

[8] In response, the applicant expressed his willingness to provide a DNA test which would establish that Believe was his niece and asked for a two month extension of time. The Immigration Officer did not respond.

[9] The applicant nevertheless obtained DNA tests which demonstrated that Daniel Atornu and Dorothy Adanuvor are Believe’s biological parents. The applicant also obtained a final adoption order. This evidence was not considered by the Immigration Officer as he did not provide the applicant with an extension of time.

***Decision Under Review***

[10] In a decision dated March 9, 2012, the Immigration Officer denied the application for Canadian citizenship pursuant to subsection 5.1(1) of the *Citizenship Act* (R.S., 1985, c. C-29), finding that:

- (1) The adoption has not created a genuine relationship of parent and child as the biological parental rights have not been severed. The Immigration Officer noted that the applicant had only provided an interim adoption order, rather than a final order.

- (2) The adoption was not in accordance with the laws of the place where the adoption took place, namely Ghana. Again, the Immigration Officer referred to the lack of a final court order. Additionally, the Immigration Officer stated that the court in Ghana relied on a fraudulent document, the birth certificate showing the child's biological parents.
- (3) The Immigration Officer was not satisfied that the adoption was not entered into primarily for the purpose of acquiring immigration status, because he considered the evidence on the file to be unreliable.

[11] The Immigration Officer stated that he could not be sure of the true relationship between the persons involved in the adoption. On this issue, the Immigration Officer noted that the applicant's mother had applied for permanent residence in Canada but did not list Daniel Atutornu as her son in that application. The Immigration Officer also stated that Believe's biological father had not denied paternity when being interviewed by another immigration officer.

[12] The Officer considered the applicant's intention to provide DNA testing. The Immigration Officer concluded that this evidence would not directly address the fraudulent birth certificate. He faulted the applicant for not providing Believe's short form birth certificate which would have been issued soon after birth. Her biological mother had said that she could not locate it.

***Issue***

[13] The determinative issue is whether the Immigration Officer complied with the requirements of procedural fairness. This issue is reviewed on the standard of correctness. I have also considered

the Immigration Officer's treatment of the evidence which is assessed against a standard of reasonableness.

*Analysis*

[14] The Immigration Officer did not provide the applicant with a fair opportunity to respond to his concerns.

[15] The Immigration Officer doubted the true relationship between Believe, her biological parents, her grandmother and her adoptive parents. The DNA evidence would have been probative in addressing these concerns. Despite this, the Officer stated that it would not directly address the issue of the "fraudulent" birth certificate. This assessment of the evidence is unreasonable. The DNA evidence would have been relevant to the question as to the accuracy of the content of the birth certificate.

[16] The short form birth certificate had been lost, hence DNA evidence was the only way the applicant could address the Immigration Officer's concerns. By refusing to grant a modest extension of time, the Immigration Officer denied the applicant a fair opportunity to respond.

[17] I have also concluded that the decision, *per se*, is unreasonable.

[18] First, with regards to the "fraudulent" birth certificate, the Registrar of Births and Deaths indicated that the particulars differed from those on record. There is an explanation on the face of the record which the Officer did not consider. The birth certificate with the adoptive parents is

dated after the court order which transferred legal parenthood. The Registrar may have considered the original birth certificate to be no longer valid, in light of the adoption order. While the Court accepts, as a matter of principle, that official documents originating from the foreign country are genuine and are accepted as to the truth of their content, in these circumstances, the Officer had an obligation to consider the explanation offered. This applies particularly where, as here, the basis for the document being considered fraudulent was as a result of a discrepancy in the registration details, not that the document itself was a fraudulent copy. It was not reasonable for the Immigration Officer to fixate on the word “fraudulent” without also considering the Registrar’s explanation and the circumstances.

[19] Second, I do not see the significance of the fact that the applicant’s mother did not list Daniel Atutornu as her son for her permanent residence application. While this omission would certainly be relevant to the assessment of her own application, it should not prevent Believe from obtaining citizenship. It is irrelevant whether Daniel Atutornu and the applicant are actually brothers. What matters is that Daniel Atutornu is Believe’s biological father and does not object to the adoption. To conclude on this point, this omission takes on less significance if it is recognized that the applicant’s mother also failed to list four other of her children, a point not noted by the Officer.

[20] Finally, it was unreasonable for the Officer to have predicated his decision on the fact that the adoption order was, at that point, interim. As the interim order indicated and as the Officer had been advised, the order became final on October 9, 2011.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is granted and the decision is set aside. The matter is remitted to a different immigration officer for reconsideration.

"Donald J. Rennie"

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Judge

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

**DOCKET:** T-622-12

**STYLE OF CAUSE:** **RASPER INNOCENT ATUTORNU v THE  
MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** December 4, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** RENNIE J.

**DATED:** January 15, 2013

**APPEARANCES:**

Rasper Innocent Atutornu

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Khatidja Mooloo

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

William F. Pentney,  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT