Federal Court of Appeal | Cour d'appel fédérale

Date: 20140401

Docket: A-155-13

Citation: 2014 FCA 81

CORAM: **GAUTHIER J.A.**
TRUDEL J.A.
MAINVILLE J.A.

BETWEEN:

MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

BUROU JEANTY DUFOUR

Respondent

Heard at Montréal, Quebec, on January 15, 2014.

Judgment delivered at Ottawa, Ontario, on April 1, 2014.

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: TRUDEL J.A.
MAINVILLE J.A.

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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] The Minister of Citizenship and Immigration (the Minister) is appealing from the decision of Justice Martineau of the Federal Court (the judge) allowing the application for judicial review of Burou Jeanty Dufour (respondent) and quashing the decision of the citizenship officer to deny the citizenship application made by the respondent under section 5.1 of the *Citizenship Act*, R.S.C. 1985, c. C-29 (the Act).

[2] For the reasons that follow, the appeal should be dismissed with costs.

A. BACKGROUND

[3] The respondent was born on June 5, 1987, in Haiti. His biological father died when he was five years old. His biological mother died in 2007.

[4] Joseph Dufour (Mr. Dufour) is a Canadian citizen. Between 1999 and 2002, Mr. Dufour, a retired teacher, worked as a lay missionary and cooperant in Haiti. He met the respondent's family when he was the respondent's teacher. The respondent's mother worked long hours but still had difficulty earning enough to feed her three children. She wanted a better life for her son. The neighbourhood children saw the respondent as an easy target and picked on him. The respondent quickly bonded with Mr. Dufour, who acted as his guide.

[5] The psychological assessment report, prepared as part of the process for having the Haitian adoption judgment recognized in Quebec, describes the motivations and reasons of the adoptive parent, Mr. Dufour, as follows:

> [TRANSLATION]
> Before he left on his mission, [Mr. Dufour] was considering joining the deaconate and becoming a priest. He realized that he would accomplish more as a missionary. When he went to Haiti, he wasn't thinking about adopting; he was going there to help. Some parents asked him to adopt some children, and he said to himself, why not? He knew that this would mean sacrifices on his part, but he was ready for it. He could have had a quiet and golden retirement. For him, material things are fine, but they don't make for a fulfilling life. He believes more in moral values and love. His children have given his life meaning.
>
> . . . It pains him enormously to see young children in misery. He feels he has the necessary resources for founding a family and giving children a favourable

> environment for developing to their best potential. He will do whatever it takes to be a good father to Burou and Jonathan (A.B., page 234).

[6] It should be noted that Mr. Dufour also adopted a second child from another family, Jonathan. He came to Canada at the same time as the respondent, in the same circumstances. He is now a Canadian citizen.

[7] Mr. Dufour began adoption proceedings in Haiti and obtained a judgment from the competent court on September 17, 2001, after satisfying the court that he had duly served notice of the proceedings on the [TRANSLATION] "Haitian attorney general's office" and had received confirmation that the attorney general's office had no objections to the adoption. However, since his mission was not over yet, Mr. Dufour remained with the respondent in Haiti for several months. On June 18, 2002, the respondent accompanied his adoptive father to Canada on a Haitian passport with a visitor's visa.

[8] It appears from the notes in the Citizenship and Immigration Canada (CIC) file that this was not his first visit to Canada (A.B., page 252). It should also be noted that the respondent's Haitian passport, issued on January 14, 2002, actually describes him as Burou Jeanty Dufour. It is admitted that Mr. Dufour had originally tried to obtain forms from the Canadian Embassy in Haiti to apply for citizenship for the respondent and Jonathan. For reasons unknown to Mr. Dufour, the Embassy did not provide him with such forms (the file has since been destroyed). This was when he obtained visitor's visas for his sons.

[9] On October 7, 2002, the Court of Québec recognized the adoption judgment rendered in Haiti. The Director of Youth Protection was impleaded in the Quebec proceedings, as prescribed by Quebec law at the time, and he did not object to the recognition of the Haitian judgment.

[10] On December 19, 2003, the respondent received a Quebec selection certificate stating that the Quebec government had indeed processed his application for permanent residence in the family class (A.B., page 288).

[11] Further to an application made in February 2003 (A.B., page 270), the respondent, sponsored by his adoptive father, was granted permanent residence status on humanitarian and compassionate considerations on February 4, 2004. In 2005, he filed an application for citizenship under section 5 of the Act. The application was denied because he had not included the basic fees and his application did not meet the minimum residency requirements at that time (he eventually met these requirements on or about April 12, 2006).

[12] On November 27, 2009, the respondent filed an application for Canadian citizenship for a person adopted by a Canadian citizen after 1947, under section 5.1 of the Act.

[13] In parallel to the events described above, between 2007 and 2010, the respondent was convicted of various offences under the *Criminal Code*, and a removal order was issued against him. Given all the proceedings brought against him since the removal order was made, if he is not granted citizenship, he will be removed to Haiti very soon.

[14] On July 21, 2010, CIC confirmed that the review of Part 1 of the respondent's application (verification that the adoption was made by a Canadian citizen) had been completed. CIC's Web site indicated in July 2010 that a certificate of citizenship had been sent to the respondent on March 4, 2011. According to CIC, this was a clerical error because, in fact, on November 15, 2011, CIC notified the respondent that his application (Part 2) was still being processed. The file was sent to multiple offices (Sydney, Ottawa and Montréal) before finally being sent to the officer who made the decision on behalf of the Minister.

B. DECISION OF THE CITIZENSHIP OFFICER

[15] On March 16, 2012, the Minister sent the respondent a letter informing him that his application for citizenship had been denied. The letter refers in no particular order to various findings made by the citizenship officer who ended up completing the review of [TRANSLATION] "this case". In his memorandum, the Minister submits that there were in fact only two grounds for denying the application, namely, non-compliance with paragraphs 5.1(3)(*a*) and 5.1(3)(*b*) of the Act. However, as I note below in my analysis, it may well be that there are only two relevant grounds under the Act, but the fact remains that the officer considered all the points raised in the letter to be relevant. I have attempted to summarize these points as follows:

- There was no written confirmation from the Secrétariat à l'adoption internationale (Quebec international adoption secretariat, SAI), as required by paragraph 5.1(3)(*a*) of the Act.

- The adoption did not meet established rules in Haiti. According to Haitian law at that time, the Institut du Bien-être Social et de Recherches (Haitian institute of social welfare and research, IBESR) had jurisdiction over all adoption applications. The documents of record show that Mr. Dufour, the adoptive father, obtained [TRANSLATION] "the adoption authorization and the adoption judgment from the Bureau des Affaires Sociales [Haitian social affairs office], not the IBESR as required by Haitian authorities".

- In the light of the facts (particularly, the criminality) described in the letter, the officer concluded that the citizenship application under subsection 5.1(3) had been made to circumvent the removal order made against the respondent on March 5, 2009.

- The adoption was entered into primarily for the purpose of acquiring a status in Canada, contrary to paragraph 5.1(3)(*b*) of the Act. It is difficult to tell what led to this finding. In her affidavit, the officer states that what led her to this conclusion was the fact that it was the respondent's mother who raised the possibility of an adoption and that Mr. Dufour did not declare that he had adopted the respondent in September 2001 when he applied for visitor's visas for his children. These two findings are indeed in the letter, but in different parts of it. I also note that in the letter, right after making this finding, the officer states that, [TRANSLATION] "[a]fter the Canadian Embassy in Haiti refused to give your adoptive father the

> necessary forms to apply for Canadian citizenship, you entered Canada as a visitor and were granted permanent resident status on humanitarian and compassionate considerations".

C. DECISION OF THE FEDERAL COURT

[16] On April 4, 2013, the judge allowed the application for judicial review, quashed the decision and referred the application back for redetermination on the basis of the evidence on record, the applicable law and the reasons for judgment in the case bearing the neutral citation 2013 FC 340.

[17] At paragraph 16, the judge discusses the standard of review that he applied:

> Generally speaking, the reasonableness standard applies in the present case: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Jardine v Canada (Citizenship and Immigration)*, 2011 FC 565 at paras 16-17 [*Jardine*]. However, the Court is better placed than a citizenship officer to interpret domestic and foreign adoption law, so the correctness standard should apply to this issue: Dunsmuir at para 55; (*Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 62; *Taylor v Canada (Citizenship and Immigration)*, 2006 FC 1053 at paras 34-36; *Canada (Citizenship and Immigration) v Taylor*, 2007 FCA 349 at para 4.

[18] The judge then found that the decision was unreasonable, for the following reasons:

(i) The authenticity of the adoption judgment and the applicant's Haitian birth certificate was not in issue, nor was the jurisdiction of the Court of Québec or the validity of its final judgment. In such circumstances, the officer could not call into question the validity of the Haitian judgment under Haitian law (paragraph 49 of the Reasons).

(ii) In addition, the judge was persuaded that CIC had singled out the respondent's file for special treatment, as the administrative process followed in this case confirmed that officials were uneasy about the respondent's criminality. According to the judge, "[t]he evidence on record shows that they were working towards an outcome: they were trying to find a legal reason for the citizenship officer to refuse the 2009 application made under section 5.1 of the Act" (paragraph 50 of the Reasons).

(iii) "In light of the particular circumstances of this case, there was no need to produce a certificate, issued by the Secretariat, confirming that the adoption complied with Quebec law. The lack of a certificate is merely a pretext for not approving the citizenship application" (paragraph 66 of the Reasons).

(iv) The evidence on record did not allow the officer to conclude that the applicant's adoption was entered into primarily for the purpose of acquiring a status or privilege in respect of immigration or citizenship (paragraph 71 of the Reasons).

[19] Finally, the judge added the following at paragraph 72:

> The impugned decision is unreasonable in every respect. The citizenship officer does not have the discretion to act for an oblique motive or to not approve a citizenship application that otherwise meets the conditions of section 5.1 of the Act.

D. RELEVANT STATUTORY PROVISIONS

[20] The right of a child adopted abroad by a Canadian citizen to apply for Canadian citizenship on this basis alone was included in the Act in 2007. At the time, this privilege was limited to adoptions made after February 17, 1977. In April 2009, Parliament amended this requirement to give all such children adopted after 1947 the benefit of this privilege. The relevant provisions of the Act and the *Citizenship Regulations*, SOR/93-246 (the Regulations), in force at the time the respondent filed his application read as follows:

Citizenship Act R.S.C., 1985, c. C-29	*Loi sur la citoyenneté* L.R.C. (1985), ch. C-29
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 immigration or citizenship.	*d)* elle ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté.
(2) Subject to subsection (3), the Minister shall on application grant citizenship to a person who was adopted by a citizen on or after January	(2) Sous réserve du paragraphe (3), le ministre attribue, sur demande, la citoyenneté à la personne adoptée par un citoyen le 1er janvier 1947 ou

1, 1947 while the person was at least 18 years of age if

(a) there was a genuine relationship of parent and child between the person and the adoptive parent before the person attained the age of 18 years and at the time of the adoption; and

(b) the adoption meets the requirements set out in paragraphs (1)(c) and (d).

(3) The Minister shall on application grant citizenship to a person in respect of whose adoption — by a citizen who is subject to Quebec law governing adoptions — a decision was made abroad on or after January 1, 1947 if

(a) the Quebec authority responsible for international adoptions advises, in writing, that in its opinion the adoption meets the requirements of Quebec law governing adoptions; and

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

subséquemment lorsqu'elle était âgée de dix-huit ans ou plus, si les conditions suivantes sont remplies :

a) il existait un véritable lien affectif parent-enfant entre l'adoptant et l'adopté avant que celui-ci n'atteigne l'âge de dix-huit ans et au moment de l'adoption;

b) l'adoption satisfait aux conditions prévues aux alinéas (1)c) et d).

(3) Le ministre attribue, sur demande, la citoyenneté à toute personne faisant l'objet d'une décision rendue à l'étranger prononçant son adoption, le 1er janvier 1947 ou subséquemment, par un citoyen assujetti à la législation québécoise régissant l'adoption, si les conditions suivantes sont remplies :

a) l'autorité du Québec responsable de l'adoption internationale déclare par écrit qu'elle estime l'adoption conforme aux exigences du droit québécois régissant l'adoption;

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

Citizenship Regulations
SOR/93-246

5.5 (1) An application made under

Règlement sur la citoyenneté
DORS/93-246

5.5 (1) La demande présentée en vertu

subsection 5.1(3) of the Act in respect of a person who is 18 years of age or more on the date of the application shall be

(a) made to the Minister in the prescribed form and signed by the person; and

(b) filed, together with the materials described in subsection (2), with the Registrar.

(2) For the purposes of paragraph (1)(b), the materials required by this section are

(a) a birth certificate or, if unobtainable, other evidence that establishes the person's date and place of birth;

(b) evidence that establishes that

(i) the decision that was made abroad in respect of the adoption took place on or after January 1, 1947, and

(ii) a parent of the person was a citizen at the time of the decision that was made abroad in respect of the adoption; and

(c) two photographs of the person of the size and type shown on a form prescribed under section 28 of the Act.

du paragraphe 5.1(3) de la Loi relative à une personne qui est âgée de dix-huit ans ou plus à la date de la présentation de la demande doit :

a) être faite à l'intention du ministre, selon la formule prescrite, et signée par la personne;

b) être déposée, accompagnée des documents prévus au paragraphe (2), auprès du greffier.

(2) Pour l'application de l'alinéa (1)b), les documents d'accompagnement sont les suivants :

a) le certificat de naissance ou, s'il est impossible de l'obtenir, une autre preuve établissant la date et le lieu de naissance de la personne;

b) une preuve établissant :

(i) que la décision prononçant l'adoption a été rendue à l'étranger le 1er janvier 1947 ou subséquemment,

(ii) qu'un parent de la personne était un citoyen au moment où la décision prononçant l'adoption a été rendue à l'étranger;

c) deux photographies de la personne correspondant au format et aux indications figurant dans la formule prescrite en application de l'article 28 de la Loi.

E. ISSUES

[21] First, the Minister submits that the judge erred in his choice of the applicable standard of review when he decided that the interpretation of the Act had to be reviewed on the correctness standard because the citizenship officer was in no better position than the Court to interpret it (Appellant's Memorandum, paragraph 21).

[22] The Minister further submits that the judge misinterpreted the Act in determining that the respondent's application for citizenship also had to meet the criteria set out under subsection 5.1(1) of the Act when he himself interpreted the Act as requiring that only the requirements under subsection 5.1(3) be applied.

[23] According to the Minister, the judge also erred in stating that in the circumstances, requiring a certificate from the SAI was unreasonable and that the evidence on record did not admit the conclusion that the respondent's adoption was entered into primarily for the purpose of acquiring a status or privilege in respect of immigration or citizenship.

[24] Having identified these errors, the Minister is asking the Court to determine whether the judge chose the right standard of review and applied it correctly, particularly in respect of the Minister's findings regarding the requirements set out in paragraphs 5.1(3)(*a*) and (*b*) of the Act. This is precisely the role of this Court in an appeal from a decision of the Federal Court rendered on an application for judicial review (see, for example, *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36).

F. ANALYSIS

1. Standard of review

[25] Upon reading paragraph 16 of the judge's reasons (reproduced at paragraph 17, above) in its context, it becomes clear that the judge did not apply the correctness standard to the interpretation of the Act but to the officer's interpretation of Quebec adoption law and of Haitian law where there is a Haitian judgment whose authenticity is unchallenged.

[26] In the context of this case, I agree with the judge that the correctness standard applies to the interpretation of Quebec adoption law and the effect of the Court of Québec judgment, since it is clear that Parliament did not intend to leave the assessment of such issues up to the Minister or his officers. The issue of the effect of judgments of Canadian courts is a question of law that is both of central importance to the legal system as a whole and outside the citizenship officer's specialized area of expertise, which means that the correctness standard applies: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 60.

[27] The Court need not decide what standard of review applies to the interpretation of Haitian law in general because, in this case, that issue does not arise. Here, the Court of Québec has already ruled on the validity of the Haitian judgment in the light of the relevant provisions of Haitian law.

[28] As for the interpretation of the Act, particularly the application of subsection 5.1(1) to adoptions made by a citizen who is subject to Quebec legislation, it should first be noted that the

parties agree that this issue is not very relevant to the present case, since the officer's errors, if any, are in the application of subsection 5.1(3). Indeed, the officer did not refer to subsection 5.1(1).

[29] Despite this, it is important to consider this issue, as the Minister points out, so that the judge's interpretation on this point does not govern in future cases. Although I would arrive at the same outcome, whatever standard is applied, I note that in this appeal, this question of law was not decided by the citizenship officer in question, but by the Federal Court judge. In such circumstances, the usual standard of review for appeals applies to this question involving the scope of subsection 5.1(1), which is the correctness standard on questions of law. Even if the citizenship officer had decided the issue (which is not the case here), this Court recently held in *(Canada) Minister of Citizenship and Immigration v. Kandola*, 2014 FCA 85, that the correctness standard would apply to a similar question of law.

[30] As the judge stated, it is the reasonableness standard that applies to questions of fact and to questions of mixed fact and law such as whether there was an adoption of convenience contrary to paragraph 5.1(3)(*b*).

2. Subsection 5.1(1) of the Act

[31] In his analysis of the applicable legislative scheme, the judge stated as follows:

> [24] Since paragraphs 5.1(3)(*a*) and (*b*) of the Act must be read together with subsection 5.1(1) of the Act, where applicable, the citizenship officer must among other things be satisfied that the adoption 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, including the law in force in the province of Quebec, and that the adoption was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.

[32] A textual, contextual and purposive interpretation of section shows, however, that only subsection 5.1(3) applies when a child is adopted by a Canadian citizen who is subject to the laws of Quebec.

[33] Apart from the wording itself of subsection 5.1(1), which begins by providing "[s]ubject to subsection (3)", if subsection 5.1(3) is read in the light of subsection 5.1(1), paragraph 5.1(3)(*b*) becomes redundant because both paragraphs 5.1(1)(*d*) and 5.1(3)(*b*) provide that the adoption must "not [be] entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship".

[34] The parliamentary debates pertaining to the introduction of section 5.1 of the Act also supports this interpretation. Although such is not always the case, *Hansard* may sometimes offer relevant evidence for inferring parliamentary intention (*A.Y.S.A. Amateur Youth Soccer Association v. Canada (Revenue Agency)*, 2007 SCC 42, [2007] 3 S.C.R. 217 at paragraph 12; *Canada 3000 Inc., Re; Inter-Canadien (1991) Inc. (Trustee of)*, 2006 SCC 24, [2006] 1 S.C.R. 865 at paragraph 57; *R. v. Morgentaler*, [1993] 3 S.C.R. 463 at page 484).

[35] In the present case, the debates surrounding the enactment of section 5.1 persuade me that subsection 5.1(3) should be read and interpreted without resorting to *Hansard*. When Bill C-14 was being considered by the Standing Committee on Citizenship and Immigration, the member from the Bloc Québécois, Meili Faille, proposed an amendment to subsection 5.1(3), by all accounts to eliminate paragraph 5.1(3)(*b*) regarding Quebec, which in her view was made redundant by paragraph 5.1(1)(*d*), which already addressed adoptions of convenience (CIMM, 39th Parliament, 1st Session, No. 013 (June 21, 2006), p. 8). However, in response to this proposed amendment,

Mark Davidson, Director, Department of Citizenship and Immigration, stated that the wording of paragraph 5.1(3)(*b*), regarding Quebec, had been deliberately replicated, specifically so it would apply to children adopted by Canadian citizens subject to the laws of Quebec. This is how he explained it:

> In working on Bill C-14 we have consulted quite extensively with all the provincial governments, and particularly with the Government of Quebec, in crafting this particular clause. As drafted in Bill C-14, it would include a safeguard to ensure that adoptions of convenience were not permitted. The amendment would remove that safeguard in the context of children who are being adopted by residents of Quebec.
>
> The clear indication we have had from the Province of Quebec is that they support the necessity of protecting against adoptions of convenience and would support Bill C-14 as originally adopted.
>
> . . .
>
> That provision is replicated in proposed paragraph 5.1(1)(*d*) when it also refers to adoptions of convenience, which would be the case for other adoptions. So this clause is not suggesting that there are more problems with adoptions of convenience of individuals destined for Quebec than for any other province. It's a problem across the board, therefore there need to be protections for individuals destined for any province, or for Canadians who are resident overseas and not coming back to Canada, where the provinces are not involved. (CIMM, 39th Parliament, 1st Session, No. 013 (June 21, 2006) p. 8). [Emphasis added.]

These comments suggest that section 5.1 was drafted with the intention that subsection (1) should apply to all adoptions by Canadian citizens, except where the adoptive parent is from Quebec. Therefore, only subsection (3) applies where the adoptive parent is a Canadian citizen subject to the laws of Quebec.

3. Paragraph 5.1(3)(*a*) – declaration in writing from the SAI

[36] As the parties did not have an opportunity to fully argue the issue whether subsection 5.1(3) applies to all adoptions by citizens domiciled in Quebec, there is no need for the Court to rule on the general application of subsection 5.1(3).

[37] For the purposes of this case, I will assume, without deciding, that it is indeed this provision that applies here, as both parties have argued.

[38] It is clear to me that although this contradicts the judge's conclusion, the Minister cannot disregard the requirement provided in paragraph 5.1(3)(*a*) of the Act. It is also beyond doubt that at the relevant time, the authority responsible for international adoptions within the meaning of this paragraph was indeed the SAI.

[39] That being said, it is clear that where a final judgment of the Court of Québec, the court of competent jurisdiction in such matters, has been rendered 10 years earlier, as in the present case, the SAI's task is simple. It is limited to verifying whether the Quebec judgment submitted to the officer is indeed authentic and final and whether the court that rendered that judgment had jurisdiction to do so.

[40] Paragraph 5.1(3)(*a*) does not allow the Minister or the SAI to call into question the validity of an adoption under Quebec law in such a case. Both of them are bound by the absolute presumption of *res judicata* (article 2848 of the *Civil Code of Québec* (C.C.Q.)).

[41] However, this conclusion does not settle the issue before us. Could the officer reasonably deny the application because the SAI had not advised of its opinion on the adoption in accordance with paragraph 5.1(3)(*a*)? In my view, the answer is clearly in the negative.

[42] The applicable Regulations in this case admit of no other interpretation. Under section 5.5 of the Regulations, the respondent had to file his application along with the documents listed in subsection 2, namely the following:

> (i) his birth certificate or any other evidence that establishes his date and place of birth;
>
> (ii) evidence that shows that the decision that was made abroad in respect of the adoption took place on or after January 1, 1947, and that his father was a Canadian citizen at the time of the decision that was made abroad in respect of the adoption; and
>
> (iii) two photographs in the prescribed format.

[43] The Minister prescribed, under section 28 of Act, the form to be used, and CIC offers an information kit to help applicants fill out all the prescribed forms.

[44] Two official guides published by CIC, *CIT 0009 – Application for Canadian citizenship for a person adopted by a Canadian citizen – Part 1* and *CIT 0014 – Application for Canadian citizenship for a person adopted by a Canadian citizen (on or after January 1, 1947): Part 2 – Adoptee's application*, explain how to file an application like the respondent's. Regarding Quebec

adoptions, which are of particular interest to us, the following is stated in guide CIT 0014 (A.B., page 386):

> 4. **Adoption documents for Quebec adoptions:**
>
> If the adoption has been finalized by the Quebec Court, one of the following documents can be provided:
>
> - Jugement d'adoption; or
> - Jugement sur requête en adoption; or
> - Reconnaissance de jugement d'adoption; or
> - Certificat d'inscription d'adoption; or
> - Attestation d'adoption; or
> - Lettre d'attestation d'adoption.
>
> **Format:** Clear and legible certified copy.

[45] In the Citizenship and Immigration Canada Manual, chapter *CP 14 – Adoptions*, at Section 13 entitled "Quebec adoptions – Subsection A5.1(3)" (the *CP14* manual), it is clearly stated that "the Quebec adoption authority **notifies CIC**, in writing, that the adoption meets the requirements of Quebec law governing adoptions" (page 38 of 81, Tab 44 of the Joint Book of Authorities).

[46] The respondent had, therefore, filed all the supporting documents for his application for citizenship as required under the Regulations and by the various tools made available to him by CIC. The onus was therefore on the citizenship officer to obtain the written confirmation from the SAI.

[47] It was entirely unreasonable for the Minister to deny the application because the SAI did not respond to the officer's emails. The little effort made to obtain such an answer makes this even more unacceptable. The officer never called and made no attempt whatsoever to contact someone

higher up to get a timely response to her emails. It is not even known whether the address used was checked or whether said emails were indeed received.

[48] I also note that it is just as unacceptable that the officer disclosed in her letter to the SAI certain facts that are in no way relevant to the issue to be determined under paragraph 5.1(3)(*a*), such as the respondent's criminality and the removal order. This is particularly troubling since it has already been necessary to point out in this case that these facts should not be taken into consideration in reviewing the application when a person involved had already expressed discomfort with granting citizenship in these circumstances before referring the case to the officer in the Case Management Branch in Ottawa (A.B., page 193).

[49] It is also difficult to understand why the officer began her email to the SAI with the words [TRANSLATION] "[w]e are not satisfied that the adoption was made in accordance with the SAI's rules" and ended by writing, [TRANSLATION] "Because of the court deadline, would it be possible to confirm for us, by January 18, 2012, whether the adoption complies with the SAI's rules? If it does not comply with the SAI's rules, despite a judgment of the Court of Québec, what would be the next steps?" (A.B., pages 128-129) (emphasis added). There is every indication that the officer did not understand the effect of the Court of Québec judgment in Quebec law.

[50] Indeed, the only answer that the SAI could have given in the light of the Court of Québec judgment was that the respondent's adoption met the requirements of Quebec adoption law. In these exceptional circumstances, with the SAI's refusal or failure to provide the only possible response, it was up to the officer to assess the case in the light of the final judgment of the Court of Québec.

[51] An applicant cannot be held responsible for, or be penalized by, a lack of diligence on the part of a citizenship officer or even the SAI.

4. Paragraph 5.1(3)(*b*) – adoption of convenience

[52] Under paragraph 5.1(3)(*b*) of the Act, the Minister may determine that an otherwise legal adoption was entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship. However, the officers acting on his behalf must give appropriate weight to judicial decisions, if any. When an adoption has been approved by the Court of Québec, as it was in this case, it must be proved that the court judgment was obtained by fraud against the legal system. This is a very high standard that has clearly not been met in the present case.

[53] This is even more important when one considers that Parliament's intention was to facilitate the granting of Canadian citizenship to children adopted abroad by Canadian citizens. Parliament thus minimized the distinction between such children and biological children born abroad to Canadian citizens.

[54] Normally, adopting a child abroad necessarily involves obtaining a status or privilege in relation to immigration or citizenship because cases in which the Canadian parent adopts with no intention of returning to live in Canada with the new child immediately or in the medium term are rare.

[55] Adoptions of convenience are limited to situations where the parties (the adoptee or the adopter) have no real intention to create a parent-child relationship. They are adoptions where appearances do not reflect the reality. They are schemes to circumvent the requirements of the Act or of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[56] If there is a true intention to create a parent-child relationship and this relationship is in the best interests of the minor child, it cannot normally be concluded that the adoption is entered into primarily to create a status or a privilege in relation to immigration or citizenship.

[57] Even in cases where there is no Canadian court judgment certifying the lawfulness of the adoption, there must be clear evidence that it is an adoption of convenience. This is why the relevant circumstances to be considered under section 11.10 of the *CP14* manual (a non-exhaustive list) state that a decision-maker must take into account a variety of factors existing at the time of the adoption, as well as the situation of the child before and after the adoption, even though the intention with which we are concerned is that of the parties at the time of the adoption. As the *CP14* manual states, it is all these factors taken together that allow a decision-maker to determine whether the parties had a particular intention contrary to paragraph 5.1(3)(*b*) at the time of the adoption. It is surprising to note that the officer in this case never refers to these criteria in her analysis or in her affidavit, and that section 11.10 of the *CP14* manual is not included in the excerpts from manuals filed in the appeal book (see Exhibit "B" in the affidavit of Nicole Campbell, pages 77 et seq. of the A.B., and in particular pages 321-322 of the A.B.).

[58] It is rare to have direct evidence that one of the parties intended to defraud the other or that both parties primarily intended to acquire a status or privilege in relation to immigration on the basis

of a family relationship that does not reflect the reality of their situation. One can certainly imagine such scenarios, for example, where one or both parties were members of or used a network for providing foreign nationals with a status or privilege in relation to immigration or citizenship.

[59] In the vast majority of cases, the administrative decision-maker must infer malicious intent from all the relevant circumstances.

[60] To infer intent, the decision- maker must first have duly proven facts on which to base his or her reasoning or logical deductions. Intent cannot be inferred from a fact that is nothing more than one among many theories because such an approach amounts to pure speculation rather than logical reasoning.

[61] Therefore, to find that paragraph 5.1(3)(*b*) has been violated, the officer could not speculate on the intentions of the respondent and Mr. Dufour.

[62] Take for example the visitor's visas that Mr. Dufour obtained for his two sons. The officer said that Mr. Dufour did not declare the adoption in his visa application (A.B., page 128). From this fact, she inferred that his intention was primarily to acquire a status for the respondent rather than to create a true father-son relationship and live together in Quebec.

[63] When we look at the record, it is immediately apparent that this fact—not declaring the adoption—is far from proven because the visa application file was destroyed. All that remains are a few ambiguous notes in the database. The database confirms that Mr. Dufour did indeed apply for a

visa for "Dufour, Burou Jeanty", whose name appears under the heading "Family members" (A.B., page 252).

[64] The visa officer also noted that a letter from the parents had been submitted (A.B., page 252). Since the respondent's father had been dead for many years, either the officer mistakenly wrote "parents" in the plural form or he was processing the visas of the respondent and Jonathan at the same time and was referring to the respective parents of the two children, that is, the respondent's biological mother and Jonathan's biological father. In either case, we cannot know whether the relationship between the respondent and/or Jonathan and Mr. Dufour was explained in this letter, nor is it clear whether such a letter was required at the time in the case of an adopted orphan child who was not both motherless and fatherless.

[65] There is no evidence or mention on record that would indicate that in 2002 a visitor's visa could not be issued to a child adopted by a Canadian citizen who was residing abroad at that time. The visa officer was satisfied that the respondent and Mr. Dufour had gone on similar trips in the past. Is it not also possible and logical to think that Mr. Dufour had indeed declared his relationship and that the officer knew that these trips were being made to regularize the children's status in Quebec?

[66] Furthermore, in the light of the circumstances, is it likely that a visa officer would have simply ignored the fact that both (possibly all three) travellers had the same family name, Dufour, while the biological parent or parents had a different one? It is possible that the citizenship officer

herself would not have issued a visa in such circumstances, but this is not tangible evidence that Mr. Dufour failed to declare his relationship with the respondent.

[67] These simple questions illustrate that the citizenship officer did not have tangible evidence allowing her to infer malicious intent on Mr. Dufour's part or to infer that the judgment of the Court of Québec was obtained fraudulently. She had nothing more than a theory. Indeed, as she herself noted on December 6, 2011, [TRANSLATION] "there is no indication that the officer was aware that Joseph Dufour had adopted Burou" (A.B. page 128) and nothing more.

[68] Another example of unacceptable speculation needs to be reviewed. In her assessment of the application (A.B., pages 104 et seq.), the officer stated the following in her analysis of Mr. Dufour's intentions: [TRANSLATION] "In addition, the mission in Haiti did not recognize the adoption authorization or the adoption judgment from the Bureau des Affaires sociales because they refused to give them the required forms to apply for Canadian citizenship".

[69] Not only was there no record of this in Haiti, but in my view what is more serious is that the officer does not appear to have taken into account or to have even realized that in 2002, a child adopted abroad, even in total compliance with Haitian law, was not entitled to apply for Canadian citizenship on this basis. Why could the mission in Haiti have given Mr. Dufour such forms? Here again, the officer's finding is purely speculative.

[70] The reasonableness standard requires that the Court review the decision maker's file to determine whether there was a ground or evidence that might support the decision-maker's

conclusion. This is exactly what the judge does at paragraphs 67 to 71 of his reasons. In my opinion, the judge correctly applied the standard in this regard. He did not err in concluding as follows:

> 71. In the present case, the evidence on record does not admit the conclusion that the adoption was entered into primarily for the purpose of acquiring a status or privilege in respect of immigration or citizenship. . . .

[71] After in-depth study, the Minister's conclusion that there was an adoption of convenience here is simply not one of the possible outcomes in respect of the facts and law in this case.

5. Other irrelevant considerations

[72] As I have already stated, the officer contacted the Canadian mission in Haiti to [TRANSLATION] "authenticate the [Haitian] adoption judgment" (A.B., page 146).

[73] First, on this point, it should noted that she does not seem to have considered that the Court of Québec had already reviewed the relevant provisions of Haitian law and had concluded that [TRANSLATION] "the rules regarding consent to a child's adoption and his eligibility for adoption were followed" (A.B., page 171). Once recognized by the Court of Québec, the Haitian judgment produces the same effects as an adoption judgment rendered in Quebec from the time the decision granting the adoption was pronounced in Haiti (article 581 C.C.Q.).

[74] Second, although it is true that her contact at the mission in Haiti raised the question of the role that the IBESR normally plays, she concluded that it was impossible for her to confirm the legality of the adoption without reviewing more documents (A.B., page 132).

[75] On the basis of this evidence, the officer concluded [TRANSLATION] "that this adoption does not meet the established rules in Haiti" (A.B., page 101).

[76] Clearly, the evidence on record does not support that conclusion, and while it is relevant (for example, in respect of section 11.10 of the *CP14* manual), it is totally unreasonable.

[77] Finally, at the hearing, the Minister acknowledged that under the Act, the removal order and the criminality that led to its being made are not relevant to the analysis that the officer was responsible for conducting under subsection 5.1(3) of the Act. However, as I have said, not only did the officer refer to the intention to circumvent the effect of the removal order in the decision, but she also dealt with these subjects at length in her assessment and referred to the removal in her conclusion/recommendations (see A.B., pages 104 et seq.). The Minister submits that, despite this, the officer did not actually consider these aspects, simply because she ended her assessment with the following words: [TRANSLATION] "note that the fact that Mr. Dufour has a criminal record has no impact on the decision on his application for Canadian citizenship. Although this does not influence my decision and I conclude that Mr. Dufour does not meet the requirements of subsection 5.1(3) of the *Citizenship Act*" (A.B., page 108). This argument is puzzling.

G. CONCLUSION

[78] In my opinion, the appeal should be dismissed with costs. In light of the particular circumstances in this case, the Minister undertook in a letter sent to the Court on January 22, 2014, subject to the filing of an application for leave to appeal to the Supreme Court by either of the parties, to render a new decision on the respondent's citizenship application no later than 14 days after the expiration of the time to serve and file an application for leave to appeal as provided in paragraph 58(1)(*a*) of the *Supreme Court Act*, R.S.C. 1985, c. S.26.

[79] Furthermore, in the same circumstances, the Canada Border Services Agency undertook not to enforce the removal order so long as a new decision on the citizenship application has not been rendered.

[80] Absent an appeal, the new decision will therefore have to be rendered within the time mentioned above. The officer will have to try to obtain a declaration in writing from the SAI. However, if this declaration cannot be obtained within the stipulated time, the decision will have to be made on the basis of the record as it is currently constituted, in accordance with these reasons.

"Johanne Gauthier"
J.A.

"I agree
Johanne Trudel J.A."

"I agree
Robert M .Mainville J.A."

Certified true translation
François Brunet, Revisor

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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