Date: 20090423

Docket: IMM-4172-08

Citation: 2009 FC 406

Ottawa, Ontario, April 23, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

PUNEET KAUR DEOL

Applicant

and

MINSTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (Act) for judicial review of a decision of an Officer of Citizenship and Immigration Canada (Officer) in Edmonton, Alberta, dated September 2, 2008 (Decision), refusing the Applicant's humanitarian and compassionate (H&C) grounds application made under section 25 of the Act.

BACKGROUND

[2] The Applicant was born in the United States on March 31, 1994 at Redmond, King County, Washington. She is a United States citizen and holds a United States passport.

[3] The Applicant has allegedly been cared for by her adoptive parents, who are Canadian citizens, since she was three month's old. She says she has continuously lived in Canada since that time. She says that, as a baby, she did not need any permits to move back and forth between the United States and Canada. She also says there was no financial assistance from her biological parents after she came to live with her adoptive parents in Canada. However, the Applicant was kept on her biological parent's health care in the U.S. as her adoptive mother allegedly was refused coverage for the Applicant by Alberta Health. The Applicant's biological mother is her adoptive mother's sister. The Applicant and her adoptive parents have visited the biological parents in the United States from time to time since the Applicant was a baby. They usually visit once a year from two to three days; sometimes the visit can be up to two weeks.

[4] The Applicant's adoptive parents had two previously adopted children at the time the Applicant was adopted. There was an adopted daughter who was born on November 18, 1977 and an adopted son who was born on March 9, 1978. The Applicant's adoptive parents tried to have children for 15 years, but the adoptive mother was infertile and treatments were unsuccessful.

[5] The Applicant says that her biological and adoptive mothers had an agreement in which her biological mother would have a child which her adoptive mother could raise. She says that the adoptive parents have paid for all of her food and clothing and have given her gifts. The Applicant says she has also received all of her education in Canada.

[6] After the agreement had been made between the two sisters, the Applicant's adoptive mother conceived a daughter who was born on March 15, 1995. The Applicant considers this child to be her sister. The adoptive mother also conceived and gave birth to another child, a son, in 2007.

[7] The Applicant calls her biological mother "mom," as does her adoptive mother's biological daughter. It was the Applicant's adoptive mother's biological daughter who allegedly began calling the Applicant's biological mother "mom."

[8] The Applicant was adopted in 2006. She says the legal adoption was not completed earlier because they "never perceived any need for it." The Applicant's adoptive mother says that she considered the Applicant her daughter and that there "never seemed to be any necessity to obtain legal papers to prove that fact." However, shortly after 2006, the Applicant's adoptive parents began to encounter difficulties regarding the Applicant's status at schools and sports activities and at border crossings because they did not have official adoption papers.

[9] The Applicant's adoptive parents sponsored the Applicant from within Canada. The Applicant has applied for a Permanent Residence Visa.

DECISION UNDER REVIEW

[10] The Officer in his notes to file noted the following immigration information for the Applicant:

Date	Event
27 SEP 2000	Study permit issued. First record of applicant entering Canada at Douglas POE with Biological father to start grade 1 at private school. Father stated only in Canada for this school year as is on a waiting list for private school in Seattle. Biological father stated he provides all financial assistance and that she is covered under US medical plan. Aunt and Uncle are declared as guardian of applicant.
30 JUL 2001	Study permit issued. Enters Canada again from Douglas POE under same terms as previous study permit remarks.
05 AUG 2002	Study permit issued. Enters Canada again from Douglas POE under same terms as previous study permit remarks.
14 AUG 2003	Visitor record issued. Enters Canada again from Pacific HWY POE under same terms as previous visitor record remarks.
16 JUL 2004	Visitor record issued. Enters Canada again from Pacific HWY POE under same terms as previous visitor record remarks.
26 AUG 2005	Visitor record issued. Enters Canada at LBPIA in Toronto returning from a trip to India.
09 JAN 2006	Decree of adoption issued for aunt and uncle.
04 DEC 2006	Humanitarian & Compassionate grounds application for permanent residence with sponsorship by adoptive parents is submitted to CPC V.
01 FEB 2007	Visitor record issued. Extension granted from Edmonton CIC.
04 Jul 2007	Application for permanent residence (H&C) received at Edmonton CIC.
15 MAR 2008	Visitor record issued by CPC V.
02 JULY 2008	Interview of applicant and adoptive parents at Edmonton CIC.

[11] The Officer noted that the Applicant was seeking an exemption from the in-Canada selection criteria based on H&C grounds or public policy considerations to facilitate processing of her permanent residence application from within Canada. The Officer noted that the Applicant bears the onus of establishing that having to obtain a permanent resident visa from outside Canada in the normal manner would result in hardship that is: i) unusual and undeserved; or ii) disproportionate.

Application Based on Best Interests of the Child and Establishment

[12] The Officer points out that the first record of the Applicant having entered Canada is September 27, 2000, at the age of 6, with her biological father at Douglas BC port of entry. Her father said at that time that she was starting grade one at Tempo private school and would be staying with her aunt and uncle. Her biological father also stated that he was providing all financial assistance for the Applicant's schooling and that the Applicant was covered in the U.S. for medical insurance. She was also on a waiting list for a private school in the U.S.

[13] The Officer noted that: the Applicant was issued a study permit every summer from 2001 to 2005; she visits her biological parents every year in the U.S.; and her biological parents visit her regularly in Canada. The Applicant also says that she talks to her biological parents regularly and calls them mom and dad. She told the Officer that she was lucky to have two sets of parents.

[14] The Officer noted that, during the interview, the adoptive parents stated that the reason why the Applicant stayed with them was because they did not have children of their own. But the Officer noted that the adoptive parents have other children not listed on the application, including a 30-year-old son, who is married and lives in Edmonton and was adopted in 1988, and a 31-year-old daughter who lives in B.C. and who is married and was adopted in 1988. They also have two other biological children: a daughter born in 1995 and a 6-month-old boy (at the time of the interview). This information was not declared on the application and was provided by the Applicant during the

interview. The Applicant also stated that she had a 26-year-old brother who lives in Seattle and is a real estate agent; she sees him regularly.

Best Interests of the Children Directly Affected and Establishment

[15] The Officer noted that the best interests of any child directly affected are a key factor in an H&C determination. He states that the Applicant is now 14 years old and claims to have lived in Canada since she was a baby, although no evidence was provided to support this claim. Immigration's records indicate she entered Canada at age 6.

[16] The Officer notes that the Applicant has been in private school since grade 1 and was recently adopted by her aunt and uncle, although she sees her biological parents regularly and calls them mom and dad. The Officer acknowledged that the Applicant has a close relationship with her family members in Canada and he acknowledges that she has been studying in Canada since grade 1 and that she plans on attending University in Canada in the near future to become a pharmacist or a marine biologist.

[17] The adoptive parents claim that they pay the international student fees for the private school attended by the Applicant, but no proof was provided. The Officer also notes that the application states that the Applicant has no other family other than her adoptive parents and no one in the U.S.. This was, however, a misrepresentation since the Applicant declared she had a parent/child relationship with her biological parents, as well as a relationship with her brother in Seattle. The

Officer also found the allegation that the adoptive parents had no other children, and that was why the Applicant was a child in their care, to be unsubstantiated.

[18] The adoptive parents said that Alberta Health Care would not provide coverage for the Applicant when they had previously inquired. However, the Officer contacted Alberta Health Care and was advised that they fully cover all children under a guardianship agreement, as well as adopted children. The Applicant has been and is currently covered for health care under her biological parents in the United States.

[19] The Officer concluded that, based on these factors, there was insufficient evidence to satisfy him that the best interests of any children would be compromised should the Applicant be required to present her application from outside of Canada while maintaining her visitor status and continuing her education in Canada. The Officer was of the opinion that the Applicant's adoption was one of convenience and the facts show that a parent/child relationship continues with the biological parents. As well, the Applicant is covered under U.S. health care through her biological parents. The reasons given by the adoptive parents for adopting the Applicant were not credible, as the adoptive parents have other children.

Conclusion

[20] The Officer cites section 3(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations):

(2) For the purposes of these Regulations, "adoption", for greater certainty, means an adoption that creates a legal parent-child relationship and severs the pre-existing parent-child relationship.	(2) Pour l'application du présent règlement, il est entendu que le terme «adoption» s'entend du lien de droit qui unit l'enfant à ses parents et qui rompt tout lien de filiation préexistant.

[21] The Officer notes that full adoptions are recognized for the purposes of Immigration to Canada and that ties with biological parents must be completely severed for a full adoption to exist.

[22] After considering all of the factors, the Officer concluded that there were insufficient H&C grounds to warrant an exemption from the legislative requirements.

ISSUES

[23] The issues raised by the Applicant are not entirely clear but appear to boil down to the following:

1) The Officer failed to question the Applicant's adoptive mother;

2) The Decision is patently unreasonable.

STATUTORY PROVISIONS

[24] The following provisions of the Act are applicable to these proceedings:

11. (1) A foreign national must, before entering Canada, apply	**11.** (1) L'étranger doit, préalablement à son entrée au

to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
Humanitarian and compassionate considerations	**Séjour pour motif d'ordre humanitaire**
25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.	**25. (1)** Le ministre doit, sur demande d'un étranger interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

[25] The following provision of the Regulations is applicable to this proceeding:

3(2) For the purposes of these Regulations, "adoption", for greater certainty, means an adoption that creates a legal parent-child relationship and severs the pre-existing legal parent-child relationship.	3(2) Pour l'application du présent règlement, il est entendu que le terme «adoption» s'entend du lien de droit qui unit l'enfant à ses parents et qui rompt tout lien de filiation préexistant.

STANDARD OF REVIEW

[26] The Applicant has not made written submissions on the standard of review but submitted at the hearing that the standard should be reasonableness.

[27] The Respondent submits that the Officer in this case was an expert charged by Parliament with determining the matters before him. The Respondent cites *Dunsmuir v. New Brunswick* 2008 SCC 9 for authority that a less intrusive judicial review process is warranted in this case. The standard of "reasonableness" does not equate to the old standard of "reasonableness *simpliciter*." Therefore, the standard of deference should be greater when dealing with issues within the expertise of the tribunal: *Dunsmuir* at paragraphs 48-49.

[28] The Respondent says that the Officer's Decision is within the range of reasonably acceptable outcomes. The Officer's conclusions were supported by clear and detailed reasons that were based on the evidence before him. The Court, therefore, should decline to intervene where the Applicant merely disagrees with those conclusions.

[29] The Respondent points out that the standard of reasonableness espoused by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v. Khosa* 2009 SCC 12 calls for significant deference to a tribunal's findings of fact and applications of discretion.

[30] The Respondent says that *Khosa* is applicable to this case not only because it applies to all judicial review cases in the Federal Court but because the Decision in this matter is the same type of discretionary, policy based H&C decision which was at issue in *Khosa*.

[31] The Respondent relies on paragraph 61 of *Khosa*:

> **61** My colleague Fish J. agrees that the standard of review is reasonableness, but he would allow the appeal. He writes:
>
> > While Mr. Khosa's denial of street racing may well evidence some "lack of insight" into his own conduct, it cannot reasonably be said to contradict-still less to outweigh, on a balance of probabilities-all of the evidence in his favour on the issues of remorse, rehabilitation and likelihood of reoffence. [para. 149]
>
> I do not believe that it is a function of the reviewing court to reweigh the evidence.

[32] In *Dunsmuir*, the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review": *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[33] The Supreme Court of Canada in *Dunsmuir* also held that the standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may

adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[34] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paragraph 61 (*Baker*), the Supreme Court held that the standard of review applicable to an officer's decision of whether or not to grant an exemption based on humanitarian and compassionate considerations was reasonableness *simpliciter*. Thus, in light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to this H&C Decision is reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at paragraph 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[35] In relation to issue number 1, and the failure of the Officer to question the adoptive mother of the Applicant, a procedural fairness issue is raised for which the standard of review is correctness: *Bouaroudj v. Canada (Minister of Citizenship and Immigration*) 2006 FC 1530 at paragraph 9; *Canada (Attorney General) v. Sketchley* 2005 FCA 404; and *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539.

ARGUMENTS

The Applicant

[36] The Applicant says that the Officer breached his obligations under section 25 of the Act by not questioning her adoptive mother. The Applicant alleges that an officer must make inquiries when there is a child involved in the matter. The failure of the Officer to question the adoptive mother is sufficient grounds to overturn the Decision. The Applicant also says that the Decision is patently unreasonable based on the facts sworn by the adoptive mother in her affidavit.

[37] The Applicant submits that she has been raised since she was a baby of three months by her adoptive parents in Canada. They have raised her as their own child and have provided her with the necessities of life. The Applicant alleges that her explanation as to why the adoption papers were not completed until 2006 is both credible and understandable. The suggestion by the Officer that the adoption is an adoption of convenience is unsupported by the facts and is without foundation. The Applicant also submits that the finding that the adoption was one of convenience is an affront to the Superior Court of the State of Washington.

[38] The Applicant further submits that the Officer's finding of an adoption of convenience may cause undue hardship to her in any further dealings that she has with the Immigration Department if it is allowed to stand. This is because:

1) It is undisputed that she has lived in Canada with her adoptive parents since she was three month's old;

2) She has been educated in Canada, and;

3) She has always been treated as though she was the natural daughter of her adoptive parents.

[39] The Applicant states that it would be totally unreasonable to suggest that she should have to leave Canada, which has been her home since she was three month's old. It would also be unreasonable for her to go to the U.S. to make an application to be allowed to live in the country she has been raised to consider as her homeland.

[40] The Applicant concludes that this matter should be resubmitted to another Officer with the direction that a Permanent Residence Visa be granted. The Visa should be granted on the basis that to refuse the Applicant Permanent Residence would offend against public policy considerations and would not be in the best interests of the child directly affected by the Decision on H&C grounds.

The Respondent

[41] The Respondent submits that the Applicant has not pointed to any unreasonable finding of fact on the evidence. Instead, the Applicant merely disagrees with the interpretation of the evidence and the outcome of the case. There is no evidence produced by the Applicant as to what was actually placed before the tribunal.

Failure to Interview Adoptive Mother

[42] The Respondent submits that, subsequent to *Khosa*, this Court considered a similar H&C application in *Abdirisaq v. Canada (Minister of Citizenship and Immigration)* 2009 FC 300 and held that the binding precedent of *Owusu v. Canada (Minister of Citizenship and Immigration)* 2004 FCA 38 held that there was no requirement for an interview and that the burden is on the Applicant to present evidence supporting her H&C application.

[43] The Respondent concludes that the evidence before the Officer supported the Officer's findings. An interview was held with the Applicant and her adoptive mother. The Officer considered the several important contradictions and inconsistencies in the evidence and made a Decision which was reasonably available on the facts of the case. There was no reviewable error in the Decision or the process.

Evidence Not Before the Tribunal

[44] The affidavit and exhibits provided in this application by the adoptive mother are intended to counter the findings of the Officer and there is nothing in the affidavit to show that any of the evidence was before the Officer on the H&C application. The Respondent notes that judicial review is conducted on the evidence before the Officer.

[45] The Respondent notes that much of the adoptive mother's affidavit argues that the Officer's findings were wrong; however, there is no substantive evidence which shows that the Officer made an error based on the evidence presented on the H&C application. In the absence of an allegation of jurisdiction or procedural unfairness, only the evidence before the Officer when the Decision was made is admissible. The Respondent requests that the affidavit and exhibits be disregarded by the Court to the extent that they relate to arguments about evidence which was not before the Officer.

[46] The Respondent submits that an H&C application is not an alternative immigration route for applicants who are unable, or who prefer not, to meet the criteria set out in the Act. It is an exceptional remedy based on special circumstances which justify setting aside the normal standards prescribed by law. See: *Serda v. Canada (Minister of Citizenship and Immigration)* 2006 FC 356 at paragraph 20 and *Legault v. Canada (Minister of Citizenship and Immigration)* 2002 FCA 125 at paragraphs 15-20 (*Legault*).

No Reviewable Findings of Fact, Re-weighing Evidence

[47] The Respondent submits that the Applicant's adoptive mother was present at the interview and was questioned by the Officer as needed. The adoptive mother was not the Applicant and the Applicant, at 14 years old, was old enough to be able to answer most of the questions herself. Regardless, the Respondent submits that there is no right or legitimate expectation of an interview on an H&C application; nor is there any duty on the Officer to question the Applicant's adoptive mother or to seek out considerations which were not raised by the application.

[48] The Respondent submits that the Applicant has the burden of establishing the facts which the decision-maker should consider. The Respondent cites and relies upon *Owusu* at paragraph 8:

> **8** H & C applicants have no right or legitimate expectation that they will be interviewed. And, since applicants have the onus of establishing the facts on which their claim rests, they omit pertinent information from their written submissions at their peril. In our view, Mr. Owusu's H & C application did not adequately raise the impact of his potential deportation on the best interests of his children so as to require the officer to consider them.

[49] The Respondent submits that the Officer's assessment of the best interests of the child in the present case was based on the Applicant's own submissions. The Federal Court of Appeal in *Owusu* at paragraph 5 has provided the following guidance:

> **5** An immigration officer considering an H & C application must be "alert, alive and sensitive" to, and must not "minimize", the best interests of children who may be adversely affected by a parent's deportation: Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 at para. 75. However, this duty only arises when it is sufficiently clear from the material submitted to the decision-maker that an application relies on this factor, at least in part. Moreover, an applicant has the burden of adducing proof of any claim on which the H & C application relies. Hence, if an applicant provides no evidence to support the claim, the officer may conclude that it is baseless.

[50] The Respondent submits that the Officer considered the documentary evidence and the submissions presented by the Applicant. The evidence supported all of the Officer's conclusions. The evidence contradicted the Applicant's assertion that she had been living in Canada since she was 3 months old: border documents revealed that she entered Canada for the first time at the age of 6 in order to go to school.

[51] The Respondent also notes that the evidence showed an ongoing relationship between the Applicant and her biological parents throughout her life, even after the adoption. This included visits every summer and at other times, ongoing health care funding (even to the present day) and previous financial support. The Respondent alleges that the suspicion of an adoption of convenience is not unreasonable on the evidence that was before the Officer. Even on this application, the Applicant's adoptive mother stated that the adoption was carried out in 2006 because they were having trouble at border crossings and with other legalistic situations.

[52] The Officer noted that the Applicant resided in the U.S.A. until she was 6 years old and moved to Canada. There is no evidence that the Applicant experienced undue hardship moving from the U.S. to Canada.

[53] The Respondent cites and relies upon *Legault* at paragraph 12:

> **12** In short, the immigration officer must be "alert, alive and sensitive" (Baker, para. 75) to the interests of the children, but once she has well identified and defined this factor, it is up to her to determine what weight, in her view, it must be given in the circumstances. The presence of children, contrary to the conclusion of Justice Nadon, does not call for a certain result. It is not because the interests of the children favour the fact that a parent residing illegally in Canada should remain in Canada (which, as justly stated by Justice Nadon, will generally be the case), that the Minister must exercise his discretion in favour of said parent. Parliament has not decided, as of yet, that the presence of children in Canada constitutes in itself an impediment to any "refoulement" of a parent illegally residing in Canada (see Langner v. Minister of Employment and Immigration (1995), 184 N.R. 230 (F.C.A.), leave to appeal refused, [1995] S.C.C.A. No. 241, SCC 24740, August 17, 1995).

[54] The Respondent concludes that the task of the Officer in this application was to determine whether there would be undue hardship for the Applicant if she were forced to apply for permanent residence from outside of Canada. In this case, the Applicant's submissions on her H&C application stated that she had no place to stay outside of Canada and nobody in the U.S. to look after her. These statements were contradicted by the evidence before the Officer, which revealed that her biological parents still played an active role in her life and that she had not lived with her adoptive parents since she was 3 months old; in fact her first entry to Canada was at the age of 6. Therefore, it was not unreasonable to accept those records over the unsupported statements made by the Applicant on her application.

[55] The Respondent submits that the Decision is not unreasonable. It adequately addresses the issues and makes findings based on the evidence before the Officer.

ANALYSIS

[56] The affidavit of Balbir Jaur Deol dated October 22, 2008 was prepared for purposes of this application and was not before the Officer when the Decision was made. Consequently, it will not be taken into account for the purposes of the decision I have to make. See *Sidhu v. Canada (Minister of Citizenship and Immigration)* 2008 FC 260 at paragraph 22; *Gallardo v. Canada (Minister of Citizenship and Immigration)* 2003 FCT 45 at para.7; *Samsonov v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1158 at para. 7; and *Asafov v. Canada (Minister of Employment and Immigration),* [1994] F.C.J. No. 713 (F.C.T.D.).

[57] The Applicant's allegation that the "failure of the Officer to question the adoptive mother of the Applicant is clearly in breach of the obligations of the Minister under section 25" is not supported by authority. The jurisprudence of this Court is quite clear that the onus is upon an applicant to provide all information necessary to satisfy an officer that an exemption is justified under section 25. See *Tran v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1377 at paragraph 4. As Justice Mosley pointed out in *Abdirisaq* at paragraph 6, there is no legal requirement to conduct an interview: *Owusu*; *Glushanytsya v. Canada (Minister of Citizenship and Immigration)* 2008 FC 725.

[58] In the present case, the Applicant was interviewed by the Officer in the presence of her adoptive mother and both of them were given every opportunity to place whatever facts and materials they wanted to place before the Officer.

[59] There has been no breach of procedural fairness on these facts, and no unreasonable approach to assessing the best interests of the Applicant as a child.

[60] In *Del Cid v. Canada (Minister of Citizenship and Immigration)* 2006 FC 326 at paragraph 30, Justice O'Keefe held as follows:

> **30** I am of the opinion that the immigration officer was under a duty to obtain further information concerning the best interests of the Canadian born children if the officer believed the information presented by the applicant to be insufficient to assess the best interests of the children.

[61] The Applicant seeks to rely upon these words as authority for a duty on the present facts for the Officer to make further inquiries (particularly of the adoptive mother) to clear up discrepancies between the written application and the Applicant's testimony at the interview.

[62] I believe that the present facts reveal a very different situation to the one that confronted Justice O'Keefe in *Del Cid*. In the present case, the Officer interviewed the Applicant in the presence of her adoptive mother and obtained the facts he needed to assess the Applicant's best interests as a child in so far as they were relevant to her section 25 application. The Officer ascertained the truth of the Applicant's situation and made his Decision based upon the evidence put forward by the Applicant and the evidence solicited at the interview.

[63] The Applicant disagrees with some of the conclusions reached by the Officer, but I do not think it can be said on the facts of this case that the Officer did not make the inquiries necessary to assess the Applicant's best interests.

[64] The Applicant and her adoptive mother were always in a position to provide evidence to support their case. As the Federal Court of Appeal decision in *Owusu* makes clear at paragraph 5, "an applicant has the burden of adducing proof of any claim on which the H&C application relies."

[65] The present case was not a situation where the Officer did not have sufficient information to assess the Applicant's best interests. He conducted an interview and supplemented and corrected the

facts and evidence put forward in the written application. He then made the Decision that Parliament says he has a right and an obligation to make.

[66] The Applicant now says that the Officer should have identified the problems and discrepancies in her application and given her adoptive mother an opportunity to address those problems and discrepancies. She says that the Officer's failure to do this means that her best interests were not addressed and that this renders the Decision unreasonable.

[67] In my view, this is nothing more than an argument that an H&C Officer is under an obligation to identify weaknesses and inconsistencies in an application and allow the Applicant an opportunity to correct them.

[68] An H&C Officer is not under any such obligation, even when the best interests of a child are being considered. As *Owusu* makes clear, the Applicant had the burden of adducing proof of "any claim" on which her H&C application relied. What is more, in the present case, the Officer conducted an interview and gave the Applicant an opportunity to elaborate further on the basis of her claim and to clarify matters that were not correctly set out in her written application.

[69] The Applicant also says that it was unreasonable for the Officer to conclude that there had been "an adoption of convenience." However, there were many facts before the Officer to support such a conclusion, notwithstanding the U.S. adoption certificate: the Applicant swore statements to be truthful that were not; reasons were given for her not wanting to go back to the U.S. and for the

adoption that were revealed as untrue at the interview; the Applicant's evidence that her status caused problems at border crossings and on other occasions; and significant inconsistencies between the Applicant's account of her history in Canada and the information recorded on the Respondent's system.

[70] It is possible to disagree with the Officer's conclusions on this issue, but I cannot say it falls outside the range of possible, acceptable outcomes that are defensible in respect of the facts and the law. It was the Applicant who controlled the facts that were placed before the Officer, as well as the answers she gave concerning her history and continuing relationship with her biological parents. It was the Applicant's adoptive mother who gave reasons for the adoption that did not stand up to scrutiny.

[71] After carefully reviewing the Decision, I am satisfied that, given the evidence before the Officer, it is reasonable within the meaning of *Dunsmuir* and *Khosa*. The Applicant disagrees with the Decision but has not raised a reviewable error.

[72] Counsel are requested to serve and file any submissions with respect to certification of a question of general importance within seven days of receipt of these Reasons for Judgment. Each party will have a further period of three days to serve and file any reply to the submission of the opposite party Following that, a Judgment will be issued.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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