Federal Court  Cour fédérale

Date: 20100617

Docket: T-1773-09

Citation: 2010 FC 663

Ottawa, Ontario, June 17, 2010

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ABDELOIHED AZZIZ
ZAKIA MESBAHI
FARID AZZIZ, MINOR

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants are challenging the legality of the decision dated October 15, 2009, by Denise Couture, analyst, of the Case Management Branch, Citizenship and Immigration Canada (the analyst), refusing to issue a citizenship certificate to Farid Azziz (Farid or the child).

[2] The analyst found that the child was not a "person…born outside Canada after February 14, 1977 and at the time of his birth one of his parents…was a citizen". Farid is therefore not a Canadian citizen under paragraph 3(1)(*b*) of the *Citizenship Act*, R.S.C.1985, c. C-29 (the Act); hence this application for judicial review.

I – LEGAL FRAMEWORK

[3] According to paragraph 3(1)(*b*) of the Act, any person born outside Canada after February 14, 1977, and at the time of the person's birth one of the person's parents was a Canadian citizen is automatically a Canadian citizen by birth. In such cases, under subsection 12(1) of the Act and subject to any regulations made thereunder, the Minister of Citizenship and Immigration (the Minister) issues a certificate of citizenship to any citizen who has applied for one. In practice, the certificate is issued to the citizen after his or her application has been reviewed by a citizenship officer exercising the powers conferred by the Minister under section 23 of the Act.

[4] In this regard, section 10 of the *Citizenship Regulations, 1993*, SOR/93-246 (the Regulations) specifies that the application for a certificate must be made in prescribed form and filed together with evidence that establishes that the applicant is a citizen and two photographs of the principal applicant. That said, the applicant must furnish any additional evidence that may be required to establish his or her citizenship (section 28 of the Regulations).

[5] In practice, the Department has developed guidelines that specify, where applicable, who may submit an application for a certificate and what evidence is usually considered acceptable to establish that a person meets the conditions set out in the Act and the Regulations. For the purposes of this judgment, let us mention the following: *Citizenship Policy Manual*, specifically Chapter CP 3 – Establishing Applicant's Identity (Manual CP 3) and Chapter CP 10 – Proof of Citizenship

(Manual CP 10); *Consular Manual* CP 17 (Manual CP 17); and *Operational Bulletin 154* (Bulletin 154).

[6] Visa offices and consular missions abroad are authorized to receive applications for certificates of citizenship (proof of citizenship) submitted outside Canada by an applicant. However, the final decisions are generally made at the Citizenship and Immigration Canada (CIC or Department) Case Processing Centre located in Sydney, Nova Scotia (CPC-S). That said, Passport Canada may issue a limited validity passport to children under two years of age for whom proof of citizenship has never been issued, provided that it is established that the child is a Canadian citizen, which is not the case here.

II – FACTUAL BACKGROUND

[7] Abdeloihed Azziz (or Aziz, according to his certificate of citizenship) is a Canadian citizen. He is married to Zakia Mesbahi, who is also a Canadian citizen. On March 19, 2009, they went to Morocco, their country of origin. Farid was born in Casablanca on March 30, 2009. According to the birth certificate issued by the Moroccan authorities, Farid is the presumptive son of the couple.

[8] On May 6, 2009, Mr. Azziz submitted to the Canadian embassy in Morocco (the Embassy) an application for a certificate to which he attached proofs of citizenship for himself and for Ms. Mesbahi, their marriage certificate, the child’s birth certificate, and a notice of birth signed by a midwife.

[9] However, the Embassy staff responsible for processing the application had doubts about the truthfulness of the entries in the documents submitted. The advanced age of Ms. Mesbahi (who was 51 years old) and the fact that Farid was not born in a hospital gave rise to some serious questions. A consular officer contacted Mr. Azziz, who explained to him that Farid had allegedly been conceived following *in vitro* fertilization at the Royal Victoria Hospital (Hospital) in Montréal in the summer of 2008.

[10] Ms. Mesbahi authorized the Embassy to contact the Hospital (as well as the OVO Clinic, a private clinic in Montréal where she had also planned to have fertility treatments). However, the Hospital checked its records but found no file on Ms. Mesbahi. The couple was also unable to provide proof of payment for the *in vitro* fertilization treatment.

[11] Mr. Azziz explained, in the affidavit he submitted in support of this application, that the couple had been the victims of fraud on the part of the physicians at the Hospital. The physicians allegedly told the couple to pay cash in exchange for a reduced treatment fee and then disposed of Ms. Mesbahi's file.

[12] Given Mr. Azziz's insistence on obtaining the requested proof of citizenship for Farid, the Embassy referred the file to the Citizenship and Immigration Canada Case Processing Centre located in Sydney, Nova Scotia (CPC-S), and suggested that a DNA test be administered to establish parentage between the child and one of his presumptive parents.

[13] On June 22, 2009, the application for a certificate was apparently received by the CPC-S, but nothing occurred in the file before the beginning of August. Given its complexity, the file was referred in early August 2009 to Denise Couture (the analyst), who works in Ottawa at the CIC Case Management Branch.

[14] In this case, the analyst acted as a citizenship officer. She was fully authorized to make a final decision on behalf of the Minister.

[15] On August 5, 2009, Mr. Azziz sent the following new documents to the Department (new evidence):

(a) A medical certificate dated July 14, 2009, from Dr. Maan Malouf, a Montréal gynaecologist who had treated Ms. Masbahi from March 2000 for infertility and fibromas. He also performed a myomectomy (removal of part of the muscles of the uterus) on Ms. Mesbahi in 2007. However, he never treated her following the *in vitro* fertilization treatment she supposedly received in June or July 2008. Ms. Mesbahi's last visit to his office was in August 2008. It appears that Ms. Mesbahi then had a uterus consistent with that of a 10-week pregnancy. However, he relied on Ms. Mesbahi's statement that she was pregnant. No pregnancy test or ultrasound was administered to corroborate whether Ms. Mesbahi was indeed pregnant at that time.

(b) Three medical documents from Morocco, all dated March 23, 2009. They are a liaison chart from an emergency physician, a prescription, and a consultation note from a gynaecologist who apparently examined Ms. Mesbahi. In this latter document, the gynaecologist, Dr. Aicha Hakdaoui, certified that this was an [TRANSLATION] "uncomplicated" pregnancy of about 38 weeks.

[16] However, the new evidence did not dissipate all of the analyst's doubts. In her affidavit, the analyst explained why Dr. Malouf's certificate was not conclusive, and that she had serious reasons for believing that the three Moroccan medical documents were fabricated. Moreover, in August 2009 she went to the trouble of requesting written confirmation from the Hospital of any medical treatment received by Ms. Mesbahi. In fact, Ms. Mesbahi did not receive any *in vitro* fertilization treatments in 2008. Given the insufficiency of the evidence submitted in support of the application for a certificate, the analyst asked Mr. Azziz on August 31, 2009, to provide certificates from the gynaecologists that Ms. Mesbahi purportedly consulted during the other months of her alleged pregnancy. Ultrasounds could also confirm that the *in vitro* fertilization treatment succeeded.

[17] In the meantime, the analyst requested the assistance of Dr. Shaun Gollish, M.D., FRCS (C), Acting Director of Strategy, Policy and Communication at the Department. Dr. Gollish confirmed that, in the case of an *in vivo* fertilization treatment, the mother's ovum is fertilized using a donor's sperm inseminated in the uterus; a DNA test of one of the parents with the child could therefore prove the child's parentage. However, an *in vitro* fertilization treatment is a more complex process;

although the sperm of the natural father, or that of an anonymous donor, may be used in the external fertilization process, usually an ovum of the natural mother will be used.

[18] Dr. Gollish's conclusions are definite: given Ms. Mesbahi's advanced age and her previous gynaecological problems, and in the absence of evidence confirming the *in vitro* fertilization treatment, Dr. Gollish did not believe that a fertilized egg could have been implanted in her uterus. Incidentally, the evidence in the record does not make it possible to clearly establish in what manner the alleged donation of ova was obtained and handled, where applicable, by the Hospital. It is not clear whether there was an anonymous donor (an advertisement by the couple published in a newspaper shows that they were looking for an egg donor).

[19] At the same time, in August 2009, the analyst discussed her doubts in various telephone conversations with Mr. Azziz or his counsel. Mr. Azziz was very aggressive at that time and the analyst made sure that there was a third person present during the interviews. In addition, administrative measures had to be taken to filter the calls from Mr. Azziz, who was insistent and stepped up the number of calls or threats. In fact, the senior administrative assistant complained to management that Mr. Azziz had threatened her that [TRANSLATION] "he will go to the media and cut off his fingers to get attention" and [TRANSLATION] "another time he was going to commit suicide in front of the CIC building" (internal memo dated August 27, 2009, by Denise Jackson).

[20] Despite the analyst's written request of August 31, 2009, to obtain the documents indicated, Mr. Azziz, who in the meantime had retained the services of a lawyer, refused to submit any further

documents or DNA evidence. The explanations provided by Mr. Azziz or his counsel for not submitting DNA evidence varied over time. These explanations were confusing and contradictory and were not corroborated by any medical expertise.

[21] For example, Mr. Azziz explained in his affidavit that he had consulted genetic testing specialists in Morocco. He explained that at that time he wanted to submit irrefutable DNA evidence to the Embassy in order to end once and for all [TRANSLATION] “an unnecessary argument”.

[22] At paragraph 33 of his affidavit, Mr. Azziz went on to say the following:

> [TRANSLATION]
> Unfortunately, the two specialists that I consulted, Professor CHADLI of the Pasteur Institute in Casablanca and Professor SOUFIANE of the ENAKHIL Clinic in Rabat, told me that a DNA test would be pointless because of the genetic manipulations that led to the birth of my son. Since it was not my sperm and since ova from a third person were used, a genetic test would not make it possible to irrefutably establish that my wife and I are the biological parents of Farid.

However, Mr. Azziz did not provide any documentary evidence from the specialists in question confirming that they had been consulted or setting out their medical opinion on the subject.

[23] In her affidavit, the analyst also questioned the truthfulness of Mr. Azziz’s allegations regarding the exclusive use of sperm from an anonymous donor. Referring to notes taken during telephone conversations she had with Mr. Azziz or his counsel and that are reproduced in the

Certified Tribunal Record of the court (CTR), the analyst mentioned the following at paragraphs 21 to 23 of her affidavit:

> [TRANSLATION]
> I consider it surprising that the applicant clearly stated at paragraph 12 of his affidavit that he had agreed to sperm from a donor being used for the fertilization treatment given that from the start of our conversations and up to the refusal of the application, Mr. Aziz always maintained that he was uncertain whether it was his sperm, that of a donor, or a mixture of the two that had been used. That is why the DNA test was suggested to confirm that Farid is his natural child. Further, it appears from my notes in the file, at pages 26 and 27 of the file, that Mr. Aziz was initially reluctant to undergo DNA testing because he said that he did not have the means to pay for it. In this case, I was willing to give him time to have it done (CTR, pages 17, 26, 27, 28 and 29).
>
> In response to paragraph 33 of Mr. Aziz's affidavit, I submit that Mr. Aziz did not provide any document from these two specialists in Morocco indicating that a DNA test would be pointless because of genetic manipulations. Further, just what information was provided to these specialists is unknown. However, I agree that if neither Mr. Aziz's sperm nor Ms. Mesbahi's ova were used, there is no point in requesting a DNA test. This was in fact confirmed to me by our Medical Services (CTR, page 71).
>
> If Mr. Aziz had stated at the outset during our telephone conversations that donor sperm had been used, I would not have insisted on proceeding with the DNA test because it is obvious that, with an egg donor and a sperm donor, this test is pointless. But Mr. Aziz continued to insist that **he was uncertain** as to whether his own sperm had been used. That is why Mr. Aziz was asked to take a DNA test, given his uncertainty about this and given the lack of any document on the *in vitro* fertilization. According to his own version of the facts at that time, if his sperm had been used, the DNA test would have established the genetic relationship between father and child and the matter would have been settled.

[24] At the end of the day, the analyst did not believe that Ms. Mesbahi was pregnant and gave birth to the child, which is enough to reject the documents submitted by Mr. Azziz in support of the

application for a certificate. Finding that the couple had not submitted the [TRANSLATION] "required documents" and that the documents in the record did not constitute evidence that Farid was indeed the [TRANSLATION] "natural child" of Mr. Azziz or Ms. Mesbahi, the analyst refused to issue a certificate of citizenship since Farid was not a "person…born outside Canada after February 14, 1977 and at the time of his birth one of his parents…was a citizen". The analyst so informed the applicants' counsel by letter dated October 15, 2009 (final decision).

III –ISSUES AND STANDARD OF REVIEW

[25] In the case under review, the applicants contend that the analyst's final decision dated October 15, 2009, was made without regard for the evidence before her and that the entire decision-making process was of a nature to give rise to a reasonable apprehension of bias. In this respect, the applicants stress that the analyst's final decision and the process that led to it were, for the purposes of judicial review, an [TRANSLATION] "indivisible whole", while the requests for additional evidence made by the Canadian authorities were abusive and showed that they were biased. Moreover, throughout the process, the government employees involved expressed their prejudice and acted in a hostile manner towards Mr. Azziz.

[26] However, the respondent submits that, although parentage may be established by a birth certificate, additional evidence, including a DNA test, may be required in cases of doubt. Given the many credibility problems in this file, the Canadian authorities were rightly entitled to require other documentary evidence and even a DNA test to prove the child's parentage. In the case at bar, the

applicants did not discharge the burden of proving that Farid is a Canadian citizen. Moreover, there is no apprehension of bias or breach of any principle of procedural fairness. Instead, it was Mr. Azziz who was agitated, impatient and aggressive, while the analyst remained patient, courteous and understanding towards him.

[27] Having analyzed the standard of review based on the usual tests, I am of the opinion that the correctness standard applies to the questions of law raised in this case, while the reasonableness standard applies to the findings of fact regarding which the analyst has recognized expertise. The questions of procedural fairness or bias are subject to the standard of correctness.

[28] In this respect, an analyst's decision concerning the sufficiency of the evidence submitted by an applicant to confirm the citizenship of a person is reasonableness (*Worthington v. Canada*, 2008 FC 409, [2009] 1 F.C.R. 311 at paragraph 63). The reference to the standard of "correctness" in the published French version of this decision, which was rendered in English by my colleague Justice O'Keefe, was a translation error that has since been corrected. (The text appearing on the Court's Web site, at http://decisions.fct-cf.gc.ca/fr/2008/2008cf409/2008cf409.html, incorporates this correction.)

[29] With regard to the question of apprehension of bias on the part of an administrative decision-maker, the appropriate answer is that which would be given by "an informed person, viewing the matter realistically and practically—and having thought the matter through". The apprehension of bias "must be a reasonable one, held by reasonable and right minded persons,

applying themselves to the question and obtaining thereon the required information" (*Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at page 394, Grandpré J., dissenting; see also *Valente v. The Queen*, [1985] 2 S.C.R. 673 at page 685).

[30] For the following reasons, this application for judicial review must fail.

IV– REASONABLENESS OF THE FINAL DECISION

[31] Let us first examine the respective arguments made by the applicants and the respondent regarding the sufficiency of the evidence submitted by the applicants to show that they are the natural parents of the child.

Applicants

[32] The applicants' basic argument in order to have the analyst's final decision set aside is that the documentary evidence originally submitted to the Embassy was sufficient to find that Farid was indeed the couple's son and that the Embassy and the analyst arbitrarily disregarded or failed to consider this evidence. In addition, the Canadian authorities erred and acted in a perverse or capricious manner by insisting, throughout the processing of this file, on a DNA test as proof of parentage.

[33] Relying on *M.A.O. v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1406, 242 F.T.R. 248 (*M.A.O.*), the applicants stress the exceptional nature of DNA evidence. According

to them, it was inappropriate to require it in this case, given that it probably would not have been convincing since both the ovum and possibly the sperm used during the *in vitro* fertilization treatment resulting in the birth of Farid came from anonymous donors. In these circumstances, the Embassy's and the analyst's insistence on a DNA test amounts to bad faith.

[34] The applicants also note that the Department does not have any specific policy concerning cases in which assisted reproduction technologies are used. The ordinary policies concerning children of Canadian citizens who are born abroad provide that parentage can be proven through a birth certificate issued by the authorities of the country of the child's birth. These policies provide for the use of a DNA test only in cases of doubt.

[35] According to the applicants, the preferred role of the birth certificate is confirmed by article 523 of the *Civil Code of Québec (C.C.Q.)*, the first paragraph of which provides that "[p]aternal filiation and maternal filiation are proved by the act of birth, regardless of the circumstances of the child's birth". In the case at bar, the applicants submitted Farid's birth certificate, which states that Ms. Mesbahi is his mother. The notice of birth signed by the midwife also confirms this.

[36] Relying on the case law, the applicants contend that a document issued by a foreign authority, such as Farid's birth certificate in this case, must be presumed valid. In any case, the respondent has not questioned the authenticity of the birth certificate. Since there is no evidence of its invalidity, it must serve as proof of its contents. Thus, the Canadian authorities could not

[TRANSLATION] “take the place of the local authorities by making decisions concerning the child’s parentage in their stead”.

[37] In so doing, the applicants argue that the Canadian authorities conducted an [TRANSLATION] “unwarranted and arbitrary inquisition”, questioning the couple’s personal choices. The applicants argue that the public administration cannot invade a citizen’s privacy in this way. Justice Dickson (as he then was), in *Hunter et al. v. Southam Inc.*, [1984] 2 S.C.R. 145, at pages 159-160 (*Southam*), referred to the “public’s interest in being left alone by government”.

[38] In the case at bar, the applicants contend that Mr. Azziz was forced against his will to reveal to the consular officer at the Embassy that the couple had resorted to *in vitro* fertilization and other private details concerning their health and finances. This information was therefore obtained inappropriately and cannot be used against the applicants by the Canadian authorities.

[39] In any case, according to the applicants, the new evidence submitted in August 2009 to the analyst – Dr. Malouf’s certificate and the Moroccan medical documents – confirm Ms. Mesbahi’s pregnancy. The analyst’s doubts about the authenticity of the Moroccan medical certificates are unwarranted because she is not a handwriting expert and is not familiar with the structure of Moroccan hospitals. Moreover, the Embassy could have – and should have – checked with the physicians in question, but nothing indicates that it did so. The new evidence and the documents previously submitted by the applications were [TRANSLATION] “arbitrarily disregarded” by the analyst.

Respondent

[40] The respondent contends that any consular officer or analyst responsible for examining an application for a citizenship certificate is required to ask for additional documentary evidence or a DNA test when parentage is questionable, as it is in this case. The respondent asserts that the more the Embassy or CIC asked for evidence concerning Farid's birth, the more the information provided by the applicants raised doubts. Thus, the couple did not discharge the burden of showing that Farid is the natural child of either of the presumptive parents. The analyst's negative finding is a possible outcome and is reasonable in the circumstances.

[41] The respondent stresses the lack of any evidence in the record concerning the purported *in vitro* fertilization that took place at the Hospital, despite numerous attempts to verify this. Mr. Azziz's explanation in his affidavit that the couple were the victims of fraud is not viable. The Court must not give credence to the applicants' gratuitous allegations, especially given that they are not supported by any evidence, such as written correspondence between the applicants and the Hospital or legal proceedings undertaken by the applicants against the Hospital and the physicians in question.

[42] Moreover, the respondent asserts that the Department's medical experts had serious reservations about Ms. Mesbahi's ability to undergo *in vitro* fertilization, given the complexity of such a procedure and Ms. Mesbahi's previous medical record, which shows that she underwent a myomectomy in 2007. Nor is there tangible evidence of Ms. Mesbahi's pregnancy in the record. Dr.

Malouf's certificate is not conclusive. Dr. Malouf merely observed that Ms. Mesbahi's uterus was [TRANSLATION] "consistent with that of a 10-week pregnancy". Moreover, there is no evidence that, even if Ms. Mesbahi was truly pregnant at the time she consulted Dr. Malouf, her pregnancy went to term.

[43] The respondent points out that Dr. Malouf, who did treat Ms. Mesbahi from 2000, did not see her again after the consultation in August 2008. In fact, it seems that she did not have any medical treatment during all the months of her pregnancy, which is very surprising given her advanced age and the risk of complications due to her health problems and the *in vitro* fertilization. Mr. Azziz's explanation to the effect that his wife had allegedly entrusted herself to God's will is implausible, because Ms. Mesbahi had regularly consulted Dr. Malouf in the past and apparently had no objection to a gynaecological follow-up prior to her pregnancy.

[44] Finally, the respondent contends that it was reasonable for the analyst to doubt that a mother concerned with her health and that of her unborn child would expose herself to the risk associated with a long plane trip, without medical authorization, at 38 weeks of pregnancy and that she would choose to give birth with a midwife rather than in a hospital. Again, Mr. Azziz's explanation that his wife preferred giving birth in Morocco and that she did not want a caesarean in a hospital there (because she did not want a scar and the couple did not have the money to pay for the operation) is not plausible. Considering the risks of complications, Ms. Mesbahi's advanced age and the fact that Mr. Azziz said that the couple had already agreed to pay over $23,000 in Canada for the *in vitro* fertilization, the analyst could reasonably dismiss Mr. Azziz's explanations.

[45] Given the serious doubts raised by all of these circumstances, the respondent contends that the documents provided by the applicants could not be determinative; however, the analyst did take everything into account before making her final decision. The respondent notes that the analyst explicitly referred to Farid's birth certificate in her decision. The midwife's notice of birth is mentioned in the notes in the file and the letters sent to Mr. Azziz, which shows that it was considered. The certificates of Dr. Malouf and the Moroccan physicians were also considered by the analyst, as it appears in the notes in the file.

[46] Regarding the Moroccan medical certificates, the analyst notes in her affidavit that they contain inconsistencies that raise doubts as to their authenticity. Two of these documents were allegedly signed by the same physician, on the same day, in two different hospitals. It also seems unlikely that the gynaecologist consulted by Ms. Mesbahi could have diagnosed an [TRANSLATION] "uncomplicated" pregnancy when the consultation in fact occurred further to complications that brought Ms. Mesbahi to emergency.

[47] Finally, the respondent dismisses the applicants' arguments that Farid's birth certificate was sufficient evidence of his parentage and that they could not be required to submit other evidence, particularly a DNA test. The authenticity of a foreign document, such as a birth certificate, can always be questioned. Moreover, such a document may be authentic without its contents being true, especially if it was obtained [TRANSLATION] "illegally, fraudulently or in a suspicious manner". Under these circumstances, its probative value is reduced.

[48] Given the insufficiency of the evidence submitted by the applicants, a DNA test could have proven to be a way of resolving the situation. If Mr. Azziz's version of the facts is to be believed, Mr. Azziz said that he was not certain whether it was his sperm or that of a donor that had been used for the *in vitro* fertilization (and even this fact was not revealed right from the beginning). Thus, there is at least one possibility that a DNA test would establish that Farid was indeed his son, and the analyst's proposals that Mr. Azziz undergo such a test did not amount to administrative [TRANSLATION] "hounding".

Analysis

[49] Following my analysis of the parties' respective arguments about the issue of the sufficiency of the evidence, I am not convinced in this case that the consular officer and the analyst made a reviewable error by requiring additional evidence from the applicants. The analyst's final decision is reasonable in the circumstances. In this regard, the Court accepts all of the respondent's arguments in this case.

[50] It should be remembered that, in reviewing the lawfulness of an administrative decision on a reasonableness standard, as set out by the Supreme Court of Canada, "[t]ribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making

process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47).

[51] First, after having examined the reasons for rejecting the application for a certificate based on all of the evidence in the court record, I find that the analyst's final decision is reasoned, that it relies on the evidence (or on its insufficiency) and that it falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. In short, given the very serious doubts about parentage between Farid and one of the applicants, it was reasonable for the analyst to find that the child born in Casablanca on March 30, 2009, was not a "person…born outside Canada after February 14, 1977 and at the time of his birth one of his parents…was a citizen".

[52] The applicants place a great deal of emphasis on departmental policies to justify their arguments that the final decision is unreasonable or otherwise breaches procedural fairness. In my opinion, the departmental policies are rather neutral and can be also used to support the respondent's position in this case.

[53] Thus, section 5.3 of Manual CP 17 provides that the following documents may be accepted to establish parentage between a child and a parent who is a Canadian citizen:

- the child's birth certificate showing the name of the child and the name of the parent; or

- results of a DNA test prepared by a company that has been accredited by the Standards Council of Canada and whose results are accepted by CIC.

[54] For a person born outside Canada to a Canadian parent on or after February 15, 1977, section 2.7 of Manual CP 10 provides that "[the] birth certificate showing parentage, issued by the responsible government authorities in the country where the person was born", together with "proof that a parent was a Canadian citizen at the time of the person's birth" usually establishes entitlement to proof of citizenship.

[55] Moreover, section 5.1 of Manual CP 3 mentions that "DNA testing is an acceptable way to establish parentage in cases in which the documentary evidence is insufficient or impossible to find". [Emphasis added.]

[56] Finally, according to Bulletin 154, in an emergency, even in the absence of a certificate of citizenship or a Canadian passport, a visa officer at a consular post abroad may issue a "facilitation visa" to presumptive Canadians under 18 years of age who are coming to Canada either to reside with their Canadian parent(s) or for humanitarian and compassionate reasons. In the latter case, the minor must be in possession of a valid foreign national passport or travel document. Satisfactory evidence must be presented to prove that at least one parent is Canadian and the visa officer must be satisfied of the parent-child relationship. In this case, the issuance of a facilitation visa will not impact the minor's citizenship status and has no effect on the official determination by CIC on an application for proof of citizenship on behalf of the minor.

[57] It is clear from the Regulations and the relevant departmental policies that the official documents – especially the birth certificate – are the preferred, but not the only, means of establishing the parentage of a child for whom an application for citizenship is made under paragraph 3(1)(*b*) of the Act. DNA testing is a backup method. Departmental policies are not the Act and cannot in any way fetter the exercise of the administrative discretion conferred on the citizenship officer to require other evidence in cases of doubt, as permitted by section 28 of the Regulations.

[58] The administrative decision-maker, be it the visa officer abroad or a citizenship officer in Canada, must decide whether the documentary evidence in support of an application for a temporary visa or proof of citizenship, and particularly the birth certificate of the child for whom the application is made by one of the presumptive parents, is authentic and sufficient to recognize the child as a Canadian citizen. In cases of doubt, it is not unreasonable to ask the applicant for other documents if they may be useful.

[59] I am of the opinion that the circumstances of this file are such that a DNA test could validly be required from the presumptive father, who had always suggested that his sperm could have been mixed with that of an anonymous donor. Moreover, in *M.A.O.*, above, at paragraph 83, Justice Heneghan found that although other forms of evidence must be considered before DNA evidence, there may be circumstances in which DNA evidence would be necessary.

[60] It should be remembered that, absent a DNA test, the government employees suggested that Mr. Azziz provide other forms of evidence to corroborate that his wife had indeed been pregnant (ultrasounds, Hospital record, gynaecological notes from physicians who followed Ms. Mesbahi's pregnancy). However, he did not provide any of these.

[61] As the Supreme Court of Canada recognized, the right of a citizen to be left alone by government "must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement" (*Southam*, at page 160). However, in each case in which a citizen has a reasonable expectation of privacy, these two interests must be balanced; the government's right cannot prevail simply because the government is enforcing the law (*Southam*, at page 159).

[62] In the case at bar, unlike the situation in *Southam*, there was no search or seizure. Generally, the administrative context (such as the case here where an application is made for a citizenship certificate) is different from the criminal context. A citizen, in an administrative proceeding, does not benefit from all the mechanisms available in a criminal proceeding (see, for example, *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, at paragraph 88).

[63] There is therefore no question here of imposing on the respondent complex procedural warnings as the Supreme Court did in *Southam*. The Canadian authorities to whom the application for a citizenship certificate, visa or passport is addressed have full discretion in deciding to proceed

with an in-depth investigation when an application raises serious doubts as to the truthfulness of the information it contains. Nevertheless, I agree that this decision cannot be arbitrary and must be able to be rationally supported by the respondent. Deciding otherwise would mean that mere caprice on the part of a government employee would be sufficient to force a citizen to reveal private or even embarrassing information that the government does not have any reason to know. That is not the case here.

[64] It should be remembered that a person completing an application for a citizenship certificate declares that the information provided is true, accurate and complete. This means that government employees are entitled to ask the applicant personal questions to ensure that the information contained in the application is true and accurate.

[65] That said, in this case, the consular officer and the analyst did not act in a perverse or capricious manner by asking Mr. Azziz personal questions and by asking the applicants for additional evidence. Rather, it is the applicants who, by their suspicious behaviour, prompted legitimate questions by the Canadian authorities. Their account is implausible in many respects.

[66] The probative nature of the child's birth certificate to prove his parentage depends on the plausibility of Ms. Mesbahi giving birth and her physical condition. In this case, the affidavits in the record show that the Embassy staff and the analyst were concerned by Ms. Mesbahi's advanced age and by the fact that she allegedly gave birth to Farid at a midwife's instead of in a hospital.

[67] Certainly, the documents issued by a foreign state are presumed to be valid and serve as proof of their contents, as a matter of comity to that foreign state (see *Ramalingam v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 7241, at paragraph 5). However, this presumption may be rebutted after verifying the authenticity of the foreign document and the truthfulness of an applicant's assertions (for example, *Harakrishna v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 515, 205 F.T.R. 317).

[68] To be even clearer, although the entries in a foreign act of civil status serve as proof of their contents, their truthfulness may always be challenged by the competent Canadian authorities, even if the authenticity of such documents is not in question.

[69] It must be remembered in this case that the Moroccan birth certificate and the Moroccan passport seem to have been issued by the authorities merely on the basis of the statements of the presumptive parents to the effect that they are the natural parents of the child, statements that the consular officer and the analyst could question based on the file as a whole.

[70] Even in this Court, the applicants have not produced credible material evidence concerning Ms. Mesbahi's presumptive delivery, other than a certificate provided by the midwife. No person who attended the birth, including the presumptive mother, provided an affidavit confirming the truthfulness and accuracy of the entries in the Moroccan act of civil status. Nor is there any evidence in the court record explaining how the applicants obtained a birth certificate and a passport for the child from the Moroccan authorities. In short, we have absolutely no information on how the child's

birth was reported and who reported it. Like the Canadian authorities, this Court has serious doubts about the truthfulness and accuracy of the information mentioned in the semi-authentic documents produced by the applicants.

[71] In this case, the respondent is not contesting the birth of the child in Morocco on the date entered on his birth certificate. What is problematic is the parentage between the child and one of the presumptive parents. Once Mr. Azziz stated that the child had been conceived following *in vitro* fertilization, it was perfectly legitimate to investigate further.

[72] There is nothing reprehensible about considering that, as of a certain age, pregnancy presents increased risks and that a mother would want to protect herself from these risks – among other things, by giving birth in a hospital, where she would receive, if necessary, more advanced care than that provided by a midwife. Thus, I believe that it was reasonable for the respondent or his representative to ask for explanations on the subject.

[73] At the risk of repeating myself, the applicants had the burden of proving to the Canadian authorities that Farid was indeed the couple's natural child. Paragraph 3(1)(*b)* of the Act concerns only the natural children of a parent who is a Canadian citizen at the time of the birth. For example, a child adopted in a foreign country is not automatically granted citizenship status. The applicants did not meet this burden to the satisfaction of the analyst and her final decision is reasonable in this respect.

[74] Moreover, the Hospital did not have any records on Ms. Mesbahi, which is very strange and affects the credibility of the statements made by the applicants that Ms. Mesbahi became pregnant following an *in vitro* fertilization treatment. In the absence of any evidence corroborating the accusations of fraud levelled by Mr. Azziz, the analyst was perfectly entitled to not attach any weight to these gratuitous accusations.

[75] Moreover, Mr. Azziz's explanations exclusively concern the actions of the physicians and do not indicate how the Hospital, a respectable internationally recognized public institution, could have disposed of Ms. Mesbahi's record overnight. *In vitro* fertilization is a costly and extremely complex medical procedure that would have required several consultations and involved other members of the medical and paramedical staff working at the Hospital.

[76] Moreover, it is even more surprising that there was no medical follow-up after the delicate operation in June or July 2008. After all, Ms. Mesbahi not only was treated by a gynaecologist for several years before her pregnancy, but also would have consulted physicians after having had complications only a few days before her presumptive delivery in Morocco.

[77] The applicants contend that the analyst was not entitled to [TRANSLATION] "judge" the not always judicious choices they made. Once again, the applicants' explanation is a little too glib in the circumstances. In my opinion, the analyst was entitled to judge not the wisdom of the choices allegedly made by the applicants but their probability, and that is what she did in this case by not attaching any probative weight to Mr. Azziz's explanation.

[78] It was also reasonable for the analyst to attach little probative value to the new evidence submitted by the applicants in August 2009. Dr. Malouf's certificate, which indicates that it was Ms. Mesbahi who told him that she was pregnant, would be puzzling for anyone. As for the Moroccan medical documents, they contain contradictions that the analyst could take into account even without being a handwriting expert.

[79] Once again, it must be remembered that the analyst had to carefully examine the evidence and arrive at a conclusion concerning the probative value of the documentary evidence submitted by the applicants. That is what she did, and her decision to attach little weight or disregard this evidence is not unreasonable in the circumstances.

V – APPEARANCE OF BIAS

[80] Alternatively, the applicants contend that the conduct or remarks of the government employees involved in processing their file give rise to a reasonable apprehension of bias, which the respondent denies. The Court also rejects the applicants' contentions.

[81] First, according to the applicants, the Embassy staff [TRANSLATION] "insulted" Mr. Azziz in May 2009 by questioning him about the possibility that he and his wife could have had a child given their age: the consular officer was not entitled to make a negative judgment about the [TRANSLATION] "choices" they made. In the Court's opinion, this argument is not convincing.

This is nothing less than a variation of the applicants' first argument concerning the invasion of privacy which was already rejected by the Court. As I already explained above, the Embassy staff's concerns were not unreasonable and I therefore cannot conclude that they demonstrate any sort of bias.

[82] Second, an employee of the Department of Foreign Affairs and International Trade, which Mr. Azziz contacted in order to obtain information, allegedly told him in July 2009 that [TRANSLATION] "Morocco is country of child traffickers" and that he had to prove he was not one. However, the remarks in question were made by a person working in another department. This latter employee had no involvement in the decision-making process, and consequently the unforgivable remarks noted above do not give rise to any reasonable apprehension of bias on the part of this administrative decision-maker. Nor do I believe that the above-mentioned statement in the affidavit of the principal applicant, whose credibility is seriously tainted in the Court's opinion, is sufficient to establish that these remarks were actually made.

[83] Third, the applicants claim that, during telephone conversations in August 2009, the analyst and the employee who was assisting her allegedly demonstrated hostility towards Mr. Azziz and their prejudices concerning the use of *in vitro* fertilization. The applicants are also questioning the objectivity of Dr. Gollish, who never examined Ms. Mesbahi. In short, the applicants' attempts to obtain a citizenship certificate were doomed to failure.

[84] As can be seen, the applicants are equating the government employees' doubts about the truthfulness of Mr. Azziz's statements with the fact that the employees asked him for additional evidence, thereby demonstrating their lack of objectivity and open-mindedness. This is also a variation of an argument already dismissed by the Court. The government employees' doubts were serious. That said, I give credence to the version of facts given by the analyst in her affidavit. Providing supporting evidence, the analyst explained that it was instead Mr. Azziz who was unreasonable and demonstrated impatience and aggression.

[85] To be even more clear, this was not a case of questioning the applicants' personal choices based on prejudices or stereotypes, but assessing the plausibility of statements made by the applicants that were not medically verified. The analyst was therefore entitled to seek the assistance of experts in the field. Dr. Gollish's questioning was legitimate and was based on the medical documentation provided by the applicants and Mr. Azziz's unverified statements. As an expert, Dr. Gollish could validly entertain doubts that Ms. Mesbahi could have given birth to the child in view of her gynaecological history and the fact that was no evidence of *in vitro* fertilization in the record.

[86] In conclusion, in the Court's opinion, the applicants' criticisms were without basis and "an informed person, viewing the matter realistically and practically—and having thought the matter through" would not conclude that the applicants' file had been treated with bias or that the facts asserted above raise a reasonable apprehension of bias.

VI – CONCLUSION

[87] The Court finds that the impugned decision is reasonable and that there is no reasonable apprehension of bias in this case.

[88] Nor is this an exceptional case in which the Court, in light of the evidence submitted by the parties in this application for judicial review, should exercise any residual discretion in order to declare that the child is a Canadian citizen and order the Minister to issue a citizenship certificate to the child.

[89] In this respect, I would add that the evidence adduced by the applicants in support of their application for judicial review, including Mr. Azziz's affidavit, is not conclusive and does not enable the Court to declare today that Farid is the natural son of Mr. Azziz or of Ms. Mesbahi.

[90] In passing, neither Ms. Mesbahi nor the midwife submitted an affidavit, and Mr. Azziz told the government employees involved in the case that he was not present when Ms. Mesbahi gave birth and Farid was born.

[91] At best, the information provided to the authorities by Mr. Azziz was contradictory and ambiguous and has remained so. At worst, the Court is today entitled to wonder whether Mr. Azziz has told the whole truth and if he has not lied outright to the authorities and the Court about the child's parentage. In either case, there is no reason to order the Minister to issue a citizenship certificate to the child.

[92] In view of the foregoing reasons, the application for judicial review will therefore be dismissed by the Court. In view of the result, the respondent will be entitled to costs.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the application for judicial review is dismissed with costs.

"Luc Martineau"
Judge

Certified true translation
Susan Deichert, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1773-09
STYLE OF CAUSE:	**ABDELOIHED AZZIZ ZAKIA MESBAHI FARID AZZIZ, MINOR and MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	MONTRÉAL, QUEBEC
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DATED:	JUNE 17, 2010

APPEARANCES:

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