

Federal Court



Cour fédérale

**Date: 20120124**

**Docket: T-1179-11**

**Citation: 2012 FC 91**

**Ottawa, Ontario, January 24, 2012**

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

**BETWEEN:**

**DEREK SATNARINE  
STEPHANIE ANGEL PERSAUD**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review of the decision of a Citizenship Officer, dated June 28, 2011, refusing the citizenship application of Derek Satnarine for his adopted daughter, Stephanie Angel Persaud (referred to collectively as the Applicants). The Officer was not satisfied that Stephanie's adoption was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship under subsection 5.1(1)(d) of the *Citizenship Act*, RSC, 1985, c C-29 (the *Act*).

[2] For the following reasons, the application is dismissed.

I. Background

[3] Derek Satnarine first met Stephanie Angel Persaud and decided to adopt her while she was visiting Toronto in 2005. She is the biological daughter of his sister currently living in Guyana. Stephanie's mother did not consent to this adoption until 2008. In the intervening period, Derek did not visit Stephanie.

[4] Since March 2008, Stephanie has been living in Canada with Derek and has not returned to Guyana. She continues to contact her biological parents on Christmas, New Year's and birthdays.

II. Decision Under Review

[5] In her letter, the Officer reviewed information gleaned during separate interviews with the Applicants regarding the adoption including that:

- Derek had adopted Stephanie to help out his sister and ensure a better life in Canada where Stephanie, who excelled academically, could pursue an academic career in accounting at Ryerson University
- Stephanie made regular and continuous phone calls to her biological parents on special occasions and holidays
- Stephanie had not gone back to Guyana to visit her biological parents or siblings because there is a matter of her getting a visa to come back to Canada

- Derek had not opened a Registered Education Savings Plan (RESP) for Stephanie's future education, stating that he could not because she does not have a Social Insurance Number
- When asked whether having an additional family member posed a financial strain, Derek stated that this was only the case when Stephanie had to go for medical treatment, since she does not yet have an Ontario Health Card
- Stephanie is given an allowance of \$500 per month
- Stephanie stated she goes to the mall with Derek as part of 'fun things' to do as a family
- Stephanie has a pending application for permanent residence, filed under humanitarian and compassionate (H&C) considerations
- Having spent most of her childhood with her biological family, Stephanie was 14 years old at the time of adoption and had met Derek only once prior

[6] Based on this information, the Officer was not satisfied that the adoption was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship. The evidence indicated the relationship between the Applicants began only after the adoption took place in 2008. There was a continuing relationship between Stephanie and her birth mother through regular contact.

[7] Moreover, the reasons given as to why the adoption took place were for the purpose of helping out her birth mother and giving Stephanie a better quality of life and education in Canada.

As a consequence, the Citizenship Officer determined that Derek had failed to establish Stephanie met the requirements for citizenship.

### III. Issues

[8] This application raises the following issues:

- a) Did the Officer err in her assessment of the evidence?
- b) Did the Officer breach procedural fairness or fetter jurisdiction by seeking third party assistance in preparing her reasons?

### IV. Standard of Review

[9] The Officer's fact-driven inquiry and assessment of evidence necessitated by section 5.1 of the *Act* attracts the reasonableness standard of review (see *Jardine v Canada (Minister of Citizenship and Immigration)*, 2011 FC 565, [2011] FCJ no 782 at paras 16-17). Based on this standard, the Court should not intervene unless the decision falls outside the range of possible, acceptable outcomes or does not accord with the principles of justification, transparency and intelligibility (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47).

[10] By contrast, questions of procedural fairness and jurisdiction, as raised by the Applicants under Issue B, demand the correctness standard (see *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, 2009 CarswellNat 434 at para 42-43).

## V. Analysis

### A. *Did the Officer Err in her Assessment of the Evidence?*

[11] The Applicants dispute the Officer's factual findings as being made without regard for the evidence or in a perverse and capricious manner. They insist that their affidavits contradict those findings.

[12] Based on the Respondent's submissions, however, I am not convinced that the Officer's assessment of the evidence would be considered unreasonable.

[13] For example, Stephanie's affidavit contests the Officer's conclusion that there are "regular and continuous telephone calls" to her biological mother or regular contact more generally. However, she confirms that calls are made on Christmas, New Year's and birthdays. This is not at odds with the Officer's summation that there is regular contact on "special occasions and holidays."

[14] Stephanie's affidavit acknowledges that she was refused visitor's visas on 2 occasions, but insists that she was never asked whether the "entire family was refused visitor visas numerous times" as implied by the Officer. I note that the Officer merely stated "it appears" as though the

information was found in the file rather than attributing this assertion to any specific statement from Stephanie.

[15] Derek's affidavit claims that he "did not state that [he had] not set aside funds for her education" and was only asked about the RESP. The Officer's statement in this regard is nonetheless consistent with his response to the question "Have you started an RESP for Stephanie's future education – college, university?" Notes taken during the interview indicate that Derek stated: "No. Cannot open account for her – does not have SIN. I have not set aside funds for university."

[16] Similarly, Derek takes issue with the Officer referring to the question of "whether having an additional family member living with you posed a financial strain" in his affidavit. The Officer asked him more specifically in the interview whether "[a]dopting Stephanie would have incurred added expense. How has this affected you financially?" Although the wording is slightly different, it elicits a similar response. The Officer made reference to Stephanie not having a Health Card as well as Derek paying her bills and a \$500 allowance. This evidence is reflected in the Officer's decision and the Applicants' affidavits.

[17] Derek's affidavit also elaborates on his reasons for adopting Stephanie. He refers to the financial support he could provide, giving the difficulties facing his sister in caring for her on her own. Derek expresses his desire to have a child of his own and give Stephanie a better life and education in Canada. The Officer's assessment that the reasons were to help out her birth mother and give Stephanie a better quality of life and education in Canada reflects these statements and do not amount to misconstruing the evidence.

[18] The Applicants have also expressed disbelief in the Officer's conclusion that their relationship began after the adoption took place in 2008. They note that Stephanie started living with Derek in March 2008 but the adoption order was not rendered until December 10, 2008. Prior to living with Derek, however, the Applicants had only met on one occasion in 2005. Irrespective of the exact date of the adoption order, they began living together and only developed any sort of relationship starting in 2008 for the purposes of the adoption contemplated by Derek as early as the first meeting in 2005. The Officer's conclusion was justified.

[19] Although Justice Richard Mosley faulted a citizenship officer for attributing no weight to certain key contradictory pieces of evidence relating to an adoption in *Jardine*, above at para 29, he acknowledged that "deference may still have been owed to the officer and the decision found to fall within the range of acceptable outcomes defensible in respect of the facts and law had it been clear that the officer properly considered the totality of the evidence."

[20] The Officer considered the totality of the evidence in this case and is entitled to considerable deference in the assessment of facts. There was no key piece of contradictory evidence ignored by the Officer amounting to an error as in *Jardine*, above.

[21] The Applicants' affidavits confirm much of the information presented in the Officer's decision and the concerns raised amount to a disagreement with the exact wording used and weighing of the evidence. As the Officer's assessments are within the range of possible, acceptable outcomes, the Court's intervention is unwarranted.

B. *Did the Officer Breach Procedural Fairness or Fetter Jurisdiction by Seeking Third Party Assistance in Preparing her Reasons?*

[22] The Applicants also take issue with the Officer seeking assistance from a Program Coordinator in the preparation of her reasons. They characterize this as an error going to jurisdiction, since the Officer has a statutory mandate to consider and render the decision that cannot be shared with others.

[23] However, I am prepared to agree with the Respondent that there was no fettering of jurisdiction or breach of procedural fairness in this instance. The Program Coordinator provided editing suggestions related to style and formatting or adding certain details. Despite some minor adjustments to the wording, the drafts and subsequent refusal letter clarify that the Officer reached her own conclusion and wrote the reasons independently. The suggestions provided did not relate to or affect the final outcome.

VI. Conclusion

[24] The Officer was reasonable in her assessment of the evidence and concern that the adoption had been entered into for the purpose of acquiring a status or privilege in relation to immigration or citizenship contrary to subsection 5.1(1)(d). There was no breach of procedural fairness or fettering of jurisdiction in having third party assistance for editing where the Officer remains the sole decision-maker.



[25] Accordingly, this application is dismissed.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application is dismissed.

“ D. G. Near ”

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Judge

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

**DOCKET:** T-1179-11

**STYLE OF CAUSE:** SATNARINE ET AL. v. MCI

**PLACE OF HEARING:** TORONTO

**DATE OF HEARING:** JANUARY 9, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT BY:** NEAR J.

**DATED:** JANUARY 24, 2012

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