

Federal Court



Cour fédérale

**Date: 20131211**

**Docket: T-764-13**

**Citation: 2013 FC 1243**

**Toronto, Ontario, December 11, 2013**

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

**BETWEEN:**

**LANCIA DAVIS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

**I. Introduction**

[1] In April 2009, Lancia Davis (DOB: August 18, 1989) and her younger sister Terika Davis (DOB: December 23, 1991), both citizens of Jamaica, were adopted by their Canadian grandmother, Ida Brown (Ida). Based on the adoption, Lancia and Terika each applied for Canadian citizenship in June 2009. The same Citizenship Officer (Officer) rejected both applications on the same grounds.

As a result, Lancia and Terika filed separate Applications for judicial review with the Court challenging the rejection decisions (Docket T-764-13 for Lancia and Docket T-765-13 for Terika).

[2] Because Lancia was more than 18 years old on the date of adoption, her application for citizenship was governed by s. 5.1 (2) of the *Citizenship Act* (R.S.C., 1985, c. C-29) (*Act*). Because Terika was less than 18 years old on the date of adoption, her application for citizenship was governed by s. 5.1 (1) of the *Act*. Section 5.1 (1) and (2) reads as follows:

<p>5.1 (1) Subject to subsection (3), the Minister shall on application grant citizenship to a person who was adopted by a citizen on or after January 1, 1947 while the person was a minor child if the adoption</p> <p>(a) was in the best interests of the child;</p> <p>(b) created a genuine relationship of parent and child;</p> <p>(c) was in accordance with the laws of the place where the adoption took place and the laws of the country of residence of the adopting citizen; and</p> <p>(d) was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.</p> <p>(2) Subject to subsection (3), the Minister shall on application grant citizenship to a person who was adopted by a citizen</p>	<p>5.1 (1) Sous réserve du paragraphe (3), le ministre attribue, sur demande, la citoyenneté à la personne adoptée par un citoyen le 1er janvier 1947 ou subséquemment lorsqu'elle était un enfant mineur. L'adoption doit par ailleurs satisfaire aux conditions suivantes :</p> <p>a) elle a été faite dans l'intérêt supérieur de l'enfant;</p> <p>b) elle a créé un véritable lien affectif parent-enfant entre l'adoptant et l'adopté;</p> <p>c) elle a été faite conformément au droit du lieu de l'adoption et du pays de résidence de l'adoptant;</p> <p>d) elle ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté.</p> <p>Note marginale :Cas de</p>
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on or after January 1, 1947 while the person was at least 18 years of age if

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

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

personnes adoptées — adultes

(2) Sous réserve du paragraphe (3), le ministre attribue, sur demande, la citoyenneté à la personne adoptée par un citoyen le 1er janvier 1947 ou subséquemment lorsqu'elle était âgée de dix-huit ans ou plus, si les conditions suivantes sont remplies :

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

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

[3] With respect to the applications for citizenship, the Officer interviewed Lancia, Terika, and Ida and took contemporaneous notes of each interview. The interview notes constitute the evidence upon which each rejection decision was made (Tribunal Record, pp. 009 to 040). In the opening to each of Lancia's and Terika's decisions, the Officer made a specific statement of facts drawn from the interview notes directed at the circumstances of each individual. However, with only slight factual variation, the primary conclusions reached in both decisions are identical: a "genuine relationship of parent and child" did not exist, and the adoption was "primarily for the purpose of acquiring a status or privilege in relation to immigration and citizenship".

[4] As a result, for clarity, the Reasons for Order and Order (ROO) in each of Lancia's and Terika's Applications for judicial review will take the following approach: APPENDIX 1 to each

ROO will provide the Officer's specific statement of facts expressed in the decision rendered; and the narrative of each ROO will provide the Officer's reasons for decision. Given the high degree of similarity in the content of the decisions under review, there is a high degree of similarity with respect to my analysis of the issues presented by the Officer's findings of fact and reasons for decision. Thus, for clarity and to avoid unnecessary repetition, the ROO with respect to Lancia's Application will be the Master from which certain findings will be incorporated by reference into the ROO with respect to Terika's Application. APPENDIX 2 to Lancia's ROO contains what I find to be specifically relevant evidence with respect to the purpose of the adoptions.

[5] There is one unique feature that distinguishes Terika's Application, which is the requirement that her best interests be addressed in determining her application for citizenship. This feature will be addressed in the ROO with respect to Terika.

[6] It is agreed that the standard of review of the rejection decisions is reasonableness. Counsel for both Lancia and Terika argues that the rejection decisions under review are unreasonable. For the reasons which follow, I agree with this argument.

## **II. A Genuine Relationship of Parent and Child?**

[7] The specific statement of the facts directed at Lancia's circumstances is quoted in APPENDIX 1 of these reasons. The Officer's reasons for decision are as follows:

Based upon the information provided in your application and during the interviews, you do not meet the requirements of paragraphs 5.1(2)(a) and 5.1(1)(d) of the *Citizenship Act*. In coming to this decision, I considered all of the evidence and the factors set out in paragraph 5.3(3)(a) of the *Citizenship Regulations*.

I am not satisfied that there was a genuine relationship of parent and child between the person and the adoptive parent before the person attained the age of 18 years and at the time of the adoption. I note that you were 19 ½ years old at the time of the adoption and that you had lived with your birth father prior to the adoption. The evidence suggests that the relationship between you and your birth parents has remained the same; you are maintaining regular contact with them and your birth father continuing to provide guidance and some financial support for your care.

During your interview, you indicated that your birth father was financially stable and gainfully employed and always provided you with the necessities of life, such as shelter, food, and making sure you were enrolled in school. The evidence indicates that the relationship between you and your birth father was a typical parent-child relationship prior to the adoption.

It is understood that Ida has been caring for you since July 22, 2008; however, it appears that your relationship with her is a typical grandparent-grandchild relationship. Therefore, I am not satisfied that there was a genuine relationship of parent and child between you and Ida before you attained the age of 18 years and at the time of the adoption.

[Emphasis added]

[8] As mentioned, the Officer's reasons for decision with respect to Terika are virtually identical to Lancia's. As a result, Counsel for Lancia and Terika advances the following argument challenging the Officer's analysis of the evidence on both applications for citizenship:

Here, it is submitted that the Officer has asked herself the wrong legal question. Whether or not the Applicant's relationship with her adoptive parent resembles that of a grandparent-grandchild is irrelevant to the question of whether a genuine relationship of parent and child exists. The existence of a genuine parent and child relationship does not rule out the possibility of a simultaneous existence of a genuine grandparent and grandchild relationship, and vice-versa. Any given relationship between two people may have different mutually inclusive characteristics, manifestations and titles. People often have different ways of describing and understanding their relationships, none of which is necessarily inconsistent with any other. For instance, a spouse may at once be a life partner, a best

friend, a confidant and a lover. In the same way, to a child, an individual may at once be both a parent and a grandparent.

The Officer ought to have assessed whether, based on the *Guzman* factors previously outlined and the evidence given, whether the Applicant and her adoptive parent exhibited signs of being in a genuine parent and child relationship. Instead she made an irrelevant determination that the two appeared to be in a grandchild and grandparent relationship, and explicitly used this finding as reason to refuse the Applicant's application. This incorrect legal analysis warrants judicial intervention.

(Applicant's Memorandum of Argument, paras. 63 and 64)

I agree with this argument. The Officer's reasons display what I find to be an erroneous belief that there exists a difference between a "typical parent-child relationship" and a "typical grandparent-grandchild relationship" without the need to provide elaboration as to the quality of each relationship or the difference between the two.

[9] To determine whether a genuine relationship of parent and child exists between an adoptive parent and the person adopted, an immigration officer is first required to find the true nature of a parent-child relationship. This step is necessary in order to establish a verifiable standard by which to judge whether the facts found support the conclusion that such a relationship exists. Counsel for Lancia and Terika advances the decision in *Guzman v. Canada (Minister of Citizenship & Immigration)* (1995), 33 Imm. L.R. (2d) 28 (Imm. & Ref. Bd. (App. Div.) at page 32 as reasoning leading towards such an approach:

The question then is, what constitutes a genuine relationship of parent and child? Or more appropriately, what are the factors that could be considered in assessing the genuineness of a parent-child relationship in respect of an adoption within the meaning of the Immigration Regulations, 1978?

The answer to such a question may appear to be intuitive, however, upon reflection, like all considerations involving human conditions, the answer is inherently complex. Nonetheless, guidance may be found in the commonly accepted premise that generally parents act in the best interest of their children.

With this in mind, the panel identified some of the factors that may assist in assessing a relationship of parent and child. These are:

- (a) motivation of the adopting parent(s) and;
- (b) to a lesser extent, the motivation and conditions of the natural parent(s);
- (c) authority and suasion of the adopting parent(s) over the adopted child;
- (d) supplanting of the authority of the natural parent(s) by that of the adoptive parent(s);
- (e) relationship of the adopted child with the natural parent(s) after adoption;
- (f) treatment of the adopted child versus natural children by the adopting parent(s);
- (g) relationship between the adopted child and adopting parent(s) before the adoption;
- (h) changes flowing from the new status of the adopted child such as records, entitlements, etc., including documentary acknowledgment that the adopted child is the son or daughter of the adoptive parents; and
- (i) arrangements and actions taken by the adoptive parent(s) as it relates to caring, providing and planning for the adopted child.

This list of factors is not exhaustive. Some factors may not be applicable to facts of a particular case while others not included in this list may be relevant.

[Emphasis added]

[10] I agree that the *Guzman* analysis is helpful in pointing out the need for a disciplined approach to be applied in concluding on the “genuine relationship” and “primary purpose” questions. However, while the opinion in *Guzman* asks the right question, being “what constitutes a genuine relationship of parent and child”, the answer is not clearly provided. In my view the answer cannot be avoided by an immigration officer in reaching a decision under s. 5.1 of the *Act*.

[11] When considering the evidence in the present case, the first question the Officer should have answered is: “What am I looking for in the evidence?” The answer is the standard that should be applied in reaching a conclusion on the evidence. The Officer only saw a “grandparent-grandchild” relationship between Ida and Lancia and Terika. Finding the answer requires a much deeper level of analysis. At the deeper level, with respect to Ida’s conduct, perhaps the question is: “Is this something a loving parent would do?” A loving parent would provide care and comfort to a child, but most importantly, an unyielding long-term commitment to act in the child’s best interests. Regardless of the familial relationship seen on the surface, at the deeper level of analysis of the evidence this is what the Officer should have been looking for.

[12] In my opinion, by not asking the right questions and clearly stating the answers found on the “genuine relationship” issue in the decisions rendered on Lancia’s and Terika’s citizenship applications, the Officer’s reasoning lacks transparent and intelligible justification that renders the decisions under review unreasonable.

[13] There is also a second fundamental problem with the Officer’s approach to decision-making on each Application.



[14] The reasons for decision under consideration display the Officer's understanding of the relevance of an adopted person's relationship to his or her natural parents in concluding whether a genuine relationship of parent and child exists with respect to the adoptive parents. It appears that the Officer is under the impression that the existence of a continuing relationship between Lancia and Terika and their natural parents creates some sort of bar to a finding that the relationship between Ida and Lancia and Terika is a genuine relationship of parent and child.

[15] In the decision quoted above, the Officer states that:

Based upon the information provided in your application and during the interviews, you do not meet the requirements of paragraphs 5.1(2)(a) and 5.1(1)(d) of the *Citizenship Act*. In coming to this decision, I considered all of the evidence and the factors set out in paragraph 5.3(3)(a) of the *Citizenship Regulations*.

[Emphasis added]

[16] Section 5.3(3) of the *Citizenship Regulations (Regulations)*, SOR 93-246 reads as follows:

(3) The following factors are to be considered in determining whether the requirements of subsection 5.1(2) of the Act have been met in respect of the adoption of a person referred to in subsection (1):

(a) whether, in the case a person who has been adopted by a citizen who resided in Canada at the time of the adoption,

(i) a competent authority of the province in which the citizen resided at the time of the adoption has stated in writing

(3) Les facteurs ci-après sont considérés pour établir si les conditions prévues au paragraphe 5.1(2) de la Loi sont remplies à l'égard de l'adoption de la personne visée au paragraphe (1):

a) dans le cas où la personne a été adoptée par un citoyen qui résidait au Canada au moment de l'adoption :

(i) le fait que les autorités compétentes de la province de résidence du citoyen au moment de l'adoption ont

that it does not object to the adoption, and

déclaré par écrit qu'elles ne s'opposent pas à celle-ci,

(ii) the pre-existing legal parent-child relationship was permanently severed by the adoption; and

(ii) le fait que l'adoption a définitivement rompu tout lien de filiation préexistant;

(b) whether, in all other cases, the pre-existing legal parent-child relationship was permanently severed by the adoption.

b) dans les autres cas, le fait que l'adoption a définitivement rompu tout lien de filiation préexistant.

It appears that a literal reading of the *Regulation* had a compelling influence on the Officer in reaching the determination. However, I find that the Officer's interpretation of the *Regulation* ignores other important interpretive considerations.

[17] Government of Canada Guidelines were available to the Officer to assist in the decision-making under review: *CP14 Adoption: Grant of Canadian Citizenship for Persons Adopted by Canadian Citizens on or after January 1, 1947 (Guidelines)* (Applicant's Book of Authorities, Tab 10).

[18] *Guideline 12.5* speaks to the recognition that only a "full adoption" will accomplish Canada's policy goals:

Adoption under subsections A5.1(1) and A5.1(2) is intended to mean a full adoption that severs the pre-existing legal parent-child relationship between the biological parents and the adopted child. Sections R5.1, R5.2 and R5.3 provide factors for consideration to assist citizenship officers in determining whether or not the requirements of subsections A5.1(1) and A5.1(2) have been met. One such factor is whether or not the pre-existing legal parent-child ties between the biological parents and the adopted child have been permanently severed by the adoption.

[...]

Assessing the severance of the pre-existing legal parent-child ties between the biological parents and the adopted child serves several purposes. It ensures:

- that the best interests of the adopted child are respected;
- that immigration program integrity is upheld by preventing the future sponsorship of the biological parents by the adopted child; and
- that the adoption is a full adoption (as opposed to a simple adoption or guardianship) that meets the eligibility requirements of subsections A5.1(1) or A5.1(2).

An assessment of the severance of ties will only apply where the biological parents of the adopted child, with whom they had a legal parent-child relationship prior to the adoption, are still living. This requirement is not relevant in cases of orphaned or abandoned children, where no pre-existing parent-child relationship exists.

[19] The Heading to *Guideline 12.5.3* is “*Severance of the existence of a pre-existing legal parent-child relationship as not a requirement but rather a factor for consideration*”. The *Guideline* provides guidance on how the *Regulations* are to be interpreted:

An application for a grant of Canadian citizenship under A5.1 can only be refused if it does not meet the requirements of the Citizenship Act, a final decision should not be based solely on an assessment of the factors for consideration listed in the Citizenship Regulations. The factors listed in the Citizenship Regulations are intended to assist citizenship officers in determining whether or not the requirements of section A5.1 have been met.

As a regulatory factor for consideration, the severance of the pre-existing legal parent-child ties between the biological parents and the adopted child should be assessed as an indicator of whether or not an adoption meets the requirements of subsections A5.1(1) or A5.1(2).

However, it is important to note that only an adoption that is recognized in law as a full adoption, where the adoptive parents have full parental rights with respect to the adopted child, meets the requirements of subsections A5.1(1) or A5.1(2). A simple adoption or a guardianship, where the pre-existing legal parent-child ties

between the biological parents and the adopted child are not fully and permanently severed, does not meet the requirements for the granting of citizenship to an adopted child under subsections A5.1(1) or A5.1(2).

[20] *Guideline 12.7* makes it clear that, for relative adoptions, the severance of the pre-existing legal parent-child relationship between the biological parents and the adopted child should not be considered to be a bar to the maintenance of an ongoing relationship between the two, and the relationship between the two should not have detrimental impact in reaching a conclusion on whether a genuine relationship between parent and child exists between the adoptive parent and the adopted child:

12.7. Relative adoptions

Where the adopted child is related to the adoptive parents, the pre-existing legal parent-child relationship should be severed under the law. While the biological parents should no longer be acting as parents to the adopted child after the adoption has taken place, an ongoing relationship and contact between the adopted child and the biological parents and extended family may still occur. However, the new parent-child relationship between the adopted child and the adoptive parents should be evident and not simply exist in law. Moreover, evidence that the biological parents fully comprehend the effects of a full adoption and that they have provided their consent to the adoption should also support a determination that the requirements of subsections A5.1(1) or A5.1(2) have been met.

[Emphasis added]

[21] As a result, I find that the Officer's interpretation of the *Regulations* without regard for the *Guidelines* renders the decision under review unreasonable.

**III. Adoption for the Purpose of Acquiring Status or Privilege in Relation to Immigration or Citizenship?**

[22] The Officer's finding on this question is as follows:

I am also 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 reasons given by both you and Ida as to why this adoption took place were for the purpose of providing you with a better education, economic gains, family ties and a better quality of life in Canada.

As a result, you have failed to establish that you meet the requirements for a grant of Canadian citizenship and therefore, your application has been refused.

[Emphasis added]

In my opinion, the finding in the emphasized paragraph does not conform to the interview evidence quoted in APPENDIX 2 as to the circumstances that caused Ida to consider adopting both Lancia and Terika. There was ample evidence on the record before the Officer going to prove that Ida's motivation leading to the adoption of Lancia and Terika was primarily for their protection.

[23] On a fair reading of the interview notes, it is clear that it was the father's statements of support for the adoptions, rather than Ida's motive in making the adoption proposal, which produced the reasons relied upon by the Officer. On the evidence, the father's opinion was elicited after Ida made the decision to adopt Lancia and Terika. I find that the Officer's failure to accurately analyse the evidence in reaching the "purpose" conclusion renders the Officer's decision under review unreasonable.

[24] In addition, in my opinion, the evidence and conclusions with respect to the nature of the relationship between Ida and Lancia and Terika, is inextricably linked to the making of a finding with respect to the purpose for which the citizenship applications were filed. Therefore, unreasonable decision-making on the relationship issue will cause unreasonable decision-making on

the purpose issue. This is so because a relative adoption based on the existence of a parent-child relationship implicates practical family unification issues. In my opinion, these issues must be addressed in reaching a conclusion on the purpose of the adoption. A practical family unification issue in the present case was the evidence that Ida was determined to do the very best she could to protect the safety and welfare of her grandchildren for whom she had great love. I find that the Officer's failure to address the purpose of the adoptions with this very important consideration in mind renders the decision under review unreasonable.

**IV. Result**

[25] For the reasons provided, the decision under review must be set aside.

**APPENDIX 1**

Ms. Lancia Lesette DAVIS  
106 - 177 Pendrith Street Toronto, Ontario M6G 1S1

March 22, 2013

Dear Ms. Davis:

I have completed the assessment of your Application for Canadian citizenship for a person adopted by a Canadian citizen (on or after January 1, 1947). This letter is to inform you that your application has been refused for the reasons set out below.

You were present with your legal counsel, Nathan Higgins, in this office on March 5, 2013 and were interviewed by me. I had previously interviewed Ida Brown, your adoptive mother and grandmother on January 22, 2013. During the interviews, I was provided with the following details which I considered before making my decision:

Ida stated that the reason she decided to adopt you was to help out her brother, Oral Conrad Davis, your birth father, who is residing in Jamaica. She continued to state that her brother was no longer able to provide a safe environment for you, so she thought it best that you join your extended family in Canada. During your visit to Canada, you advised Ida that you would like to remain permanently in Canada. You continued to state that you contacted your birth father requesting and explaining to him your reasons for wanting to remain permanently in Canada with Ida. You stated that he agreed with your decision because he felt that your grandmother would be a better role model and parent than himself, that you would have the opportunity to obtain a better education, the opportunity to attend church regularly and a better quality of life overall; therefore, he gave his consent for Ida to adopt you.

Ida stated that you resided with your birth parents and sister, Terika Anna-Stacia Davis, from birth until approximately 8 years old, around which time your birth parents separated. At this time, you began residing with your birth mother and sister at the home of your grandparents, Maye and Nathan Ellis. However, you stated that you do not remember residing with your birth parents as a family, only residing with your birth mother and sister at your grandparent's house since a young age. You continued to state that at approximately the age of 13, you went to reside with your birth father and step-mother (common-law) at their family home. Further to this, Ida stated that your birth father continued to support you and your sister financially

after your birth parents separation and during the time that you were living with your grandparents.

Both you and Ida stated that you had a good relationship with your birth father and that the issue lay with your step-mother, Shelly-Ann Earle. You both continued to state that your step-mother was verbally abusive with you and also physically abusive with you on one occasion. Eventually, this resulted in you moving out and living in a home owned by your birth father. You stated that you were 16 years old when you and your sister began these new living arrangements. Further, you stated that Ida paid for you to attend community college for one year in Jamaica. Both you and Ida stated that your birth father worked very hard to provide for the family and described him as a humble person with a kind nature. You both stated that your birth father is a "good father" because he always provided the necessities of life for both you and your sister. However, you said that you felt that he was not there for you emotionally and for parental support when needed.

Ida, stated that she was very concerned for your safety in Jamaica due to your step- mother's abusive behavior and also because there had been a few girls raped behind your birth father's house. Also, Ida had expressed concern for the well-being of both you and your sister residing alone in a one-room house that only had a kitchen but no washroom. For this reason, your grandmother suggested that both you and your sister come to visit her in Canada. On July 22, 2008, you and your sister arrived in Canada as visitors. During your visit, you informed your grandmother that you did not want to return to Jamaica and that you wished to remain in Canada. Upon this request, your grandmother and her two daughters, Deon and Marsha, decided to call the immigration office and inquire as to the possibility of you being able to remain in Canada permanently. You stated that the immigration officer advised your grandmother to adopt you and your sister since your birth parents are not Canadian citizens. At this time, your grandmother contacted a legal representative at West Toronto Community Legal Services. In turn, they directed her to an adoption lawyer, who initiated the adoption proceedings.

During your interview, you stated that your relationship with your grandmother only intensified after the adoption. You stated that the two of you became closer and that she became more of a mother figure to you showing you love and appreciation.

During Ida's interview, she informed me that your relationship with your birth parents remained the same after the adoption and that there is regular contact with your birth father through texting and



telephone conversations, as well as regular contact with your birth mother through texting and Facebook. Furthermore, she stated that your birth father continues to be involved in making decisions about your affairs and provides you with financial support and gifts whenever he is able to do so.

(Tribunal Record, pp. 001 to 002)

## APPENDIX 2

The following notes were taken by the Officer in the interview with Lancia on March 5, 2013

(Tribunal Record, pp. 009 to 017):

### **Pages 009, 010**

[Lancia] arrived Canada on July 22, 2008 as per ppt stamp (copy on file)

Came as a visitor. Came to visit grandma Ida Brown

Arrived together with her sister Terika Davis on July 22, 2008

Purpose for visit: to spend time with grandma

Why never left. as soon as arrived in Canada that it is more safe here in Canada to live than Jamaica b/c a girl got raped a couple of blocks away from their home in Jamaica and it was terrifying.

Also always made sure that she was indoors and off the streets by 7:00 pm after school b/c of gun shots - that she could hear and are use...there was gun shots at her front yard and she was scared b/c she didn't know what could happen b/c she and her sister Terika were alone at the house.

Any other reasons that you wanted to stay

Yes b/c you were living alone with your sister Terika b/c step-mother was abusive verbally and physically (only one time)

How long lived with step-mother

From the age of 13 years old to 16 years old.

### **Pages 010, 011, 012**

Abusive in which way

She held her down on the bed to take money that her dad had given her but she refused to give it to her b/c she bit her leg (thigh) very hard and she took the money

1<sup>st</sup> grabbed her

2<sup>nd</sup> struggling to get away from her

3<sup>rd</sup> she was pushed on the bed trying to take money away from her

4<sup>th</sup> bit her on the leg (thigh area) so that she would stretch out and she was successful in taking the money away from her

5<sup>th</sup> then ran away and step-mother was cursing as they ran off (they being her Lancia and her sister Terika). She didn't physical hurt Terika (sister). Just talked bad about her

Told birth father about the situation that happened. He argued with the step-mother but it didn't make a difference b/c they still got on with their relationship and Lancia & her sister Terika were left to deal with her again.

Lancia & Terika were told by their father to stay at his other house that was 4 house away from where the father and step-mother were staying

Lancia and Terika agreed to move there. Lancia was 16 yrs old at this time. She knows that she was 16 yrs old b/c she graduated high school at 16 yrs old and when this happened she had already graduated. Her sister Terika was 14 yrs old.

## **Page 012**

Lancia stayed there with her sister Terika & Grandma sent money for her to go to the community college @ "Cambridge Community College" in in Sav-Annah ramar Westmoreland in Jamaica. Lancia attended college for one year. Then at the age of 18 yrs old in the summer (July/2008) she came to visit her grandmother & then told her the story about being abused by step-mother and that they couldn't get alonged (sp) and that she felt safe here.

## **Page 013**

What did grandma say

She was sympathetic and felt worry for them b/c Lancia said that she started crying and told her grandmother she didn't want to go back there (Jamaica)

Grandma showed her love and affection that she had never experienced and she felt comfortable around her b/c she could talk to her about personal issues that she was keeping to herself  
Grandma showed more love and affection after the adoption b/c especially after the adoption b/c she could call her mother even after she is her grandmother.

**Page 014, 015**

In or about September/2008 Lancia sat down with grandma Ida to discuss options to remain in Canada

1<sup>st</sup> choice. Grandma said that she wanted to see if she could get her, Lancia, and sister Terika adopted.

Therefore she contacted a social worker who is her friend, Joan, to get information on how to get them adopted

She collected some adoption lawyer numbers. She call David who is an adoption lawyer and he was the one that completed the process of the adoption

Grandma never talked to her about sponsoring her and having her become legally a PR of Canada. She only spoke to her about being adopted

In the meantime while waiting for the adoption to go through they were not able to go to high school. They only returned back to high school after the adoption in 2009

Grandma spoke to the biological father (who is her son) about adopting Lania and Terika

Lancia spoke to father too and told him that she didn't want to come back b/c she didn't feel safe and that he didn't spend time with her and her sister Terika b/c he is at work most of the time or at the step-mother's house

**Page 016, 017**

Dad - He agreed to let them go with grandma – He said ok b/c grandma would be a better role model and parent to them b/c she would always be there financially and show affection towards them

b/c she is very loving and understanding & she could talk to her about anything.

Dad - He also thought that it was better for them to stay in Canada b/c the school system was not as good in Jamaica and very expensive to continue going to College there in Jamaica. Also Lancia had already graduated from high school in Jamaica the age of 16 yrs old and had already done one year college in Jamaica but when she came to Canada and went to high school here, she learned things that she had not been taught in Jamaica. The school system in Canada is better and so he, dad, felt that this would be a good thing also about remaining in Canada and being adopted by her grandma. Grandma would be able to provide her with a better education. Furthermore, she also provided the opportunity of going to church regularly because back in Jamaica Lancia claims to only go to church very rarely

**Page 017, 018**

Summing it up Dad felt that overall this was the right decision (being adopted by grandma) b/c Lancia & she sister Terika would have a parent that would constantly be there, an opportunity to better education, an opportunity to be involved in the church community as well as grandma being financially responsible for them.

Father never sent any money as far as Lancia is aware of

She only received from him a few gifts such as bread, fruit, fish, slippers and a top

Dad never has sent b/day or x-mas cards nor gifts since her arrival in Canada

Talk to father by phone occasionally. How are you doing? Very short conversations

The following notes were taken by the Officer in the interview with Ida after the interview with

Lancia (Tribunal Record, pp. 027 to 028):

**Page 027**

How often did you travel to Jamaica since Terika's birth

Once a year it varied from 2 – 4 weeks every year

Tell me about your relationship with Terika prior to the adoption

Had a good relationship with them

Always sent money every 3 – 4 months around Sept, Jan & March/April

Would send \$150 - \$200 each time

When went down brought clothes/shoes, toys for Terika & Lancia

How much time spent with them? – all the time – would take them to her house in Jamaica & they would sleep & stay for the time she was there – 2 – 4 weeks

Overall relationship very good & would call her “mamma”

### **Page 028**

Relationship now - No change after the adoption

Had a good relationship with them

#### Reason for Adopting Terika

Was an abusive relationship with her step-mother-not physical

Starve from food, nothing to eat after school

Had to do house chores after school

Went to school late

Was unable to get her homework done

She would shout at them & swear

Step-mother only physical abusive with sister Lancia but only one time “serious”

‘biting and hitting’

[Emphasis added]

**ORDER**

**THIS COURT ORDERS that** the decision presently under review is set aside, and the matter is referred back for redetermination by a different citizenship officer on the directions that:

1. The redetermination be in accordance with the reasons for decision provided herein;  
and
2. Counsel for the Applicant has the right to make further updated submissions.

“Douglas R. Campbell”

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Judge

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

**DOCKET:** T-764-13

**STYLE OF CAUSE:** LANCIA DAVIS V THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 3, 2013

**REASONS FOR ORDER AND  
ORDER:** CAMPBELL J.

**DATED:** DECEMBER 11, 2013

**APPEARANCES:**

Nathan Higgins FOR THE APPLICANT

Modupe Oluyomi FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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Barristers and Solicitors  
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