Federal Court  Cour fédérale

**Date: 20140714**

**Docket: IMM-4026-13**

**Citation: 2014 FC 679**

**Ottawa, Ontario, July 14, 2014**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**LUIS ANTONIO ALVARADO DUBKOV**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. INTRODUCTION

[1] Mr. Luis Antonio Alvarado Dubkov is a citizen of Guatemala. In June 2009, he arrived in Canada as a temporary resident to live with his maternal uncle, Mr. Chavez, and his family, all Canadian citizens. In Guatemala, Mr. Dubkov had lived with his mother and relatives until she passed away in January 2009. He had never lived with his father, and remained in the care of maternal relatives while in Guatemala after his mother passed away.

[2] In August 2011, having just reached adulthood, Mr. Dubkov was adopted by the Chavezes who then became his adoptive parents.

[3] In September 2011, Mr. Dubkov applied for Canadian citizenship as the adult adoptee of Canadian citizens. For his application to succeed, he had to establish both that there existed a genuine parent child relationship between him and the Chavezes before he reached the age of eighteen and at the time of the adoption, and that the adoption was not entered into primarily to gain a citizenship status or privilege.

[4] The Citizenship Officer refused the application, unsatisfied that the evidence provided by Mr. Dubkov and his adoptive parents established the existence of a genuine parent-child relationship at the appropriate time, and unsatisfied that the adoption was primarily entered into for reasons other than gaining a citizenship status or privilege.

[5] Mr. Dubkov filed for judicial review asking this Court to set aside the Officer's decision. He argues that the relationship between him and the Chavezes met the requirements and that the Officer did not consider the facts and the evidence and thus reached unreasonable conclusions. The respondent argues that the decision is reasonable, that the Officer found the evidence insufficient, and points out that the Chavezes provided no affidavit to support Mr. Dubkov's position before this Court.

[6] The questions raised in this case pertain to the evaluation of the facts and evidence by the Officer and I concur with the parties that the applicable standard of review is that of

reasonableness. In that context, considerable deference must be accorded to the Officer's decision and the Court will grant relief if it finds the decision was made in a perverse or capricious manner or without regard to the material before her. The decision will be reasonable if it falls within the possible outcomes given the facts and the law and provides sufficient transparency, intelligibility and justification (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[7] The Court finds that the Officer's decision is reasonable for the reasons set out below.

## II. CONTEXT: CANADIAN CITIZENSHIP AS AN ADULT ADOPTEE

[8] At the heart of Mr. Dubkov's case is the possibility for the adult adoptee of Canadian citizens to apply for Canadian citizenship. Section 5.1(2) of the *Citizenship Act*, RSC 1985, c C-29 outlines the requirements an applicant must meet in order to succeed, two of which are relevant in this case, namely:

> 1. There must be a genuine relationship of parent and child between the person and the adoptive parent before the person attained the age of eighteen years and at the time of the adoption; and
>
> 2. The adoption must not have been entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.

[9] In turn, the *Citizenship Regulations*, SOR/93-246 outline the factors to consider in determining if these requirements have been met. They include the examination of whether or not the pre-existing legal parent-child relationship was permanently severed by the adoption.

[10] These provisions are reproduced in the Annex to these Reasons.

## III. QUESTIONS

[11] This judicial review raises the three following questions:

(1) Did the Officer err in finding that Mr. Dubkov failed to establish the existence of a genuine parent-child relationship with the Chavezes before the age of eighteen and at the time of adoption?

(2) Did the Officer err in finding that Mr. Dubkov failed to satisfy her that the applicant's adoption was not entered into primarily for a citizenship or immigration status or privilege?

(3) Did the Officer fail to consider evidence presented by the Chavezes or provide adequate reasons?

## III. POSITION OF THE PARTIES AND ANALYSIS

### **Question 1: Did the Officer err in finding that Mr. Dubkov failed to establish the existence of a genuine parent-child relationship with the Chavezes before the age of eighteen and at the time of adoption?**

#### (a) Mr. Dubkov's submissions

[12] Mr. Dubkov argues that the Officer's finding that he had a parent-child relationship with his birth father is unreasonable. He rather submits that his relationship with his birth father was not "typical" as the Officer characterized it, but on the contrary, that his birth father was largely absent and contented to play merely a peripheral role in his life, even after the death of his

mother. Further, the fact that Mr. Dubkov's birth father had a minor ongoing relationship with him does not mean that the pre-existing legal parent-child relationship was not permanently severed by the adoption (*Adejumo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1485 at paras 12-14, citing the Citizenship and Immigration Canada [CIC] *Operation Bulletin 183*).

[13] Mr. Dubkov argues that the Officer's reliance on the fact that he did not call the Chavezes "mom" and "dad" was unreasonable. He submits that the evidence had been that he did not feel comfortable calling them "mom" and "dad" in Spanish, as he had grown up referring to them as "aunt" and "uncle", but he did call them "mom" and "dad" when speaking in English.

[14] Mr. Dubkov submits that the Court has laid out non-exhaustive factors to be considered in assessing the genuineness of a parent-child relationship in *Buenavista v Canada (Minister of Citizenship and Immigration)*, 2008 FC 609 at para 8 [*Buenavista*] and that the Officer failed to consider these factors. He argues that an analysis of these factors point toward a genuine parent-child relationship between himself and the Chavezes, and that without considering these factors, the Officer's decision lacked transparency, intelligibility and justification (citing *Davis v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1243 at paras 9-11 [*Davis*]).

(b) Respondent's submissions

[15] The respondent argues that the Officer's findings are reasonable. Mr. Dubkov's birth father did have an ongoing relationship with him, and it was open to the Officer to conclude that

it was a parent-child relationship. Even non-custodial parents can have parent-child relationships with their children, and there is no one "typical" parent-child relationship.

[16] Mr. Dubkov's contention that the Officer misunderstood his evidence regarding his being uncomfortable calling the Chavezes "mom" and "dad" only in Spanish is just that – a contention, without support in the evidence.

[17] Further, the *Buenavista* factors are merely non-exhaustive factors. The key question is whether the decision is reasonable, not whether the Officer went through a list of factors. The Court should not rely on *Davis* because it is currently before the Federal Court of Appeal.

(c) Analysis

[18] The Officer's determination that the Chavezes did not have a genuine parent-child relationship with the applicant before age eighteen and at the time of the adoption is a finding of fact. The Court must afford significant defence to the Officer's factual findings, particularly where, as here, the determination falls within the core of the decision-maker's expertise. As such, Mr. Dubkov must show that the Officer's determination was made "in a perverse or capricious manner or without regard to the material before it" (*Federal Courts Act*, RSC 1985, c F-7, s 18.1(4)(*d*)).

[19] The onus is on Mr. Dubkov to provide evidence that a genuine parent-child relationship existed at the relevant time, that is, to show that the Chavezes had, not only legally, but

practically, taken on the role of parents in the applicant's life (*Rai v Canada* (*Minister of Citizenship and Immigration*), 2014 FC 77 at para 21).

[20] The Officer's reasons for finding that there was no such relationship are far from perfect. Her first reason is that she found that Mr. Dubkov had a typical parent-child relationship with his birth father. While I would not necessarily characterize the relationship between Mr. Dubkov and his birth father as a "typical" parent-child relationship, or at least not as an ideal one, the relevant question is not whether the reviewing court would have come to a different conclusion, but rather whether, in light of the record, the finding was unreasonable.

[21] However, I need not address the reasonableness of this first finding because the Officer provides a second reason for finding there was no such genuine parent-child relationship: she found that Mr. Dubkov's relationship with the Chavezes was akin to a typical uncle/aunt-nephew relationship. While she does not provide a fulsome analysis to support this finding, the record reveals that the Officer's determination on this point was reasonable.

[22] First, there is some inconsistency in the applicant's evidence with respect to the nature of the relationship between the Chavezes and Mr. Dubkov before he moved to Canada. He testified that after the death of his mother, the Chavezes kept in touch with him through phone and email, but it was infrequent, irregular contact. In contrast, the Chavezes testified that there was constant, regular contact. Mr. Dubkov and the Chavezes have provided minimal evidence substantiating their pre-Canada relationship. The Chavezes testified that they saw Mr. Dubkov three to four times during various visits to Guatemala, but it appears that only one of these visits took place

after the death of his birth mother. The Chavezes also testified that they provided financial assistance to Mr. Dubkov after the death of his birth mother, but there is no documentary evidence to support this. In other words, the record does not clearly support the conclusion that prior his move to Canada; the Chavezes played a parental role in Mr. Dubkov's life.

[23] Second, even for the period after he moved to Canada in 2009, Mr. Dubkov has not provided significant documentary evidence to substantiate that the Chavezes' care for him rose to the level of a genuine parent-child relationship. While it is evident from the interview notes that the Chavezes care for Mr. Dubkov very much and have apparently provided for and supported him throughout his time in Canada (and the Officer acknowledges as much in her decision), the applicant's burden is to demonstrate not merely that his adoptive parents cared for and supported him, but rather that there was a genuine parent-child relationship. Given the dearth of documentary evidence to that effect, the Officer's conclusion that the Chavezes' relationship with Mr. Dubkov was akin to that of an uncle and aunt rather than parents is not perverse or capricious or unfounded on the basis of the record.

[24] The fact that the Officer did not engage in a thorough analysis of the record or meticulously break down her reasoning does not render her decision unreasonable. The Supreme Court has held that in assessing the reasonableness of a decision, "the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador* (*Treasury Board*), 2011 SCC 62 at para 14 [*Newfoundland Nurses*]). While the Court "should not substitute [its] own reasons", it may, if necessary, "look to the record for the purpose

of assessing the reasonableness of the outcome" (*Newfoundland Nurses* at para 15). Indeed, even where the decision-maker's reasons "do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them" (*Newfoundland Nurses* at para 12). These principles have been followed and applied in a number of cases (see e.g. *Andrade v Canada* (*Minister of Citizenship and Immigration*), 2012 FC 1490 at paras 7-13 [*Andrade*]; *Persaud v Canada* (*Minister of Citizenship and Immigration*), 2012 FC 274 at para 15; *Rahal v Canada* (*Minister of Citizenship and Immigration*), 2012 FC 319 at paras 30-31).

[25] Therefore, the Officer was not required to provide a detailed account of the evidence or explain her entire thought process in her reasons.

[26] Mr. Dubkov argues that the Officer should have gone through the factors articulated in *Buenavista* and that her failure to do so was unreasonable. I disagree. Just because the Officer did not expressly work through that list does not mean she failed to consider the substance of the relevant factors listed therein.

[27] Since the record supports the Officer's determination, it was not made in a perverse or capricious manner or without regard to the material before her. The Officer's finding that there was not a genuine parent-child relationship is therefore reasonable and should not be disturbed.

**Question 2: Did the Officer err in finding that Mr. Dubkov failed to satisfy her that his adoption was not entered into primarily for a citizenship or immigration status or privilege?**

(a) Mr. Dubkov's submissions

[28] The Officer found that the reasons Mr. Dubkov and the Chavezes entered into the adoption were, "besides for the purpose of belonging to a family, a better education, economic gains and a better quality of life in Canada". Mr. Dubkov argues that it was unreasonable for the Officer to find that these ancillary benefits overrode the situation surrounding his adoption, which point to a genuine parent-child relationship. He submits that nothing about the adoption suggests it was a sham or done in bad faith.

[29] The Officer also failed to consider CIC's operational manual Citizenship Policy 14 – Adoptions [the CP14 Guidance Document], which provides guidance on assessing whether adoptions are genuine. Mr. Dubkov submits that the majority of the factors listed therein indicate that his adoption was not entered into primarily for a citizenship benefit purpose. This Court has previously set aside a decision for failing to take into account the CP14 Guidance Document (*Tran* v *Canada* (*Minister of Citizenship and Immigration*), 2012 FC 201).

(b) Respondent's submissions

[30] The respondent submits that the Officer's finding was reasonable because, although the Officer recognized that part of the reason for adoption was to provide Mr. Dubkov with a sense of belonging, Mr. Dubkov and the Chavezes also stated it was to obtain the benefits of citizenship, such as a better education, economic gains, and a better quality of life.

[31] The respondent also notes that when the adoption occurred, Mr. Dubkov was already an adult, and so the adoption had very limited legal significance, and also had no effect on the personal relationship between the applicant and the Chavezes.

[32] The respondent further submits that Mr. Dubkov, who bears the burden of proof, needed to show that he would have proceeded with the adoption even if there was no chance of obtaining a citizenship benefit. He has not done so.

(c) Analysis

[33] The Officer's determination that the adoption was entered into primarily for the purpose of acquiring a citizenship privilege is also a factual finding to be afforded significant deference. Her reasoning in support of this finding was that, in addition to the purpose of belonging to a family, Mr. Dubkov and the Chavezes indicated that the adoption took place so that Mr. Dubkov could have "a better education, economic gains and a better quality of life in Canada".

[34] This sparse reasoning leaves much to be desired. However, a review of the record supports the reasonableness of the Officer's finding, for at least two reasons.

[35] First, Mr. Dubkov has provided no documentary evidence showing any urgency or motivation to complete the adoption process before Mr. Dubkov turned eighteen, even though it appears he had no status in Canada for some time. While Mr. Dubkov attached a copy of an "Affidavit of Adoption Applicants" form, sworn by the Chavezes on August 5, 2009, there is no indication that this is the form which initiated the adoption that was ultimately granted after the applicant turned eighteen. There is also no evidence that the Chavezes or Mr. Dubkov were pressuring or urging his birth father to sign the consent form, which he ultimately did on June 12, 2011. During the interview, the Chavezes testified that they did not adopt Mr. Dubkov right away because they wanted to give him the chance to see if he liked living with their family in

Canada. The record therefore does not show that Mr. Dubkov and the Chavezes were particularly eager to complete the adoption before he turned eighteen, after which adoption becomes a much simpler matter.

[36] Second, the record suggests that the costs of Mr. Dubkov's post-secondary education may have been a strong motivating factor for obtaining citizenship. Mr. Dubkov graduated high school in 2012 with good marks, but was accepted to university for the 2013-14 academic year, rather than the 2012-13 year. There is no indication as to why the applicant did not proceed to university in the year that he graduated. The Court asked the applicant's counsel at the hearing whether Mr. Dubkov was currently attending university, counsel was unable to provide an answer. Further, at the interview, the Chavezes stated that they were not prepared to pay for Mr. Dubkov to go to university as a foreign student because foreign student fees are much higher as compared to those for permanent residents or citizens.

[37] As discussed above, the Officer was not required to address every point in the evidence in her reasons. As her determination finds support in the record, it cannot be said to have been made in a perverse or capricious manner, or without regard to the record. It is therefore reasonable.

[38] I wish to briefly address Mr. Dubkov's argument that the decision was unreasonable because the Officer failed to follow the CP14 Guidance Document. A similar argument was made before my colleague, Justice Phelan, in *Kaur v Canada* (*Minister of Citizenship and*

*Immigration*), 2013 FC 1177. I find his holding at para 16 of that decision to be apposite in this case as well:

> I see no legal infirmity in the decision nor do I accept that the Officer ignored the departmental Guidelines. Not only are these Guidelines simply that, guidelines where not every factor must be addressed, but the Officer fully addressed all the relevant points in those Guidelines.

[39] For these reasons, the Officer's determination that Mr. Dubkov had failed to show that his adoption did not take place primarily for the purpose of obtaining a status or privilege relating to immigration or citizenship was reasonable, and should not be disturbed.

**Question 3: Did the Officer fail to consider evidence presented by the Chavezes or provide adequate reasons?**

(a) Mr. Dubkov's submissions

[40] Mr. Dubkov submits that the Officer failed to consider the evidence of the Chavezes in determining the genuineness of the parent-child relationship. Further, the Officer repeatedly refers to the Chavezes as his aunt and uncle, when they are in fact his adoptive parents, suggesting that the Officer was set on regarding them as aunt and uncle, not as his parents.

[41] Mr. Dubkov argues that the lack of reasons for the Officer's apparent rejection of the Chavezes evidence amounts to a reviewable error.

(b) Respondent's submissions

[42] The respondent notes that the Chavezes have not submitted any affidavit evidence on this application. It is therefore disingenuous for Mr. Dubkov to contest the Officer's factual findings or her assessment of the evidence.

[43] Further, the Supreme Court has clarified that adequacy of reasons is not a stand-alone procedural ground for quashing a decision. Rather, the adequacy of the reasons must be analyzed in conjunction with the reasonableness of the outcome (*Newfoundland Nurses* at paras 20-22). As the decision as a whole is reasonable, the attack the adequacy of the reasons cannot succeed.

(c) Analysis

[44] As discussed above, the adequacy of reasons is not a stand-alone ground for overturning a decision, and the Officer was not required to expressly address every piece of evidence before her. The decision-maker is presumed to have read all the evidence before her (*Andrad*e at para 11; *Guevara v Canada* (*Minister of Citizenship and Immigration*), 2011 FC 242 at para 41; *Ayala v Canada* (*Minister of Citizenship and Immigration*), 2007 FC 690 at para 23). Just because the Officer did not specifically mention the Chavezes' testimony does not mean she did not consider it and weigh it appropriately. Mr. Dubkov provided minimal documentary evidence to corroborate the statements of the Chavezes, and, as the respondent notes, the Chavezes themselves have not filed an affidavit in this application. There is therefore no indication that the Officer missed a crucial piece of documentation that ran contrary to her conclusions. I therefore reject the applicant's arguments on this point.

[45] Mr. Dubkov's complaint about the Officer's use of "aunt and uncle" when referring to the Chavezes appears to be a thinly veiled allegation of bias. There is no merit to this allegation.

## V. CONCLUSION

[46] For the above reasons, Mr. Dubkov's application for judicial review is dismissed.

## JUDGMENT

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed.

"Martine St-Louis"

Judge

ANNEX

*Citizenship Act*, RSC 1985, c C-29

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

| | |
|---|---|
| a person who was adopted by a citizen on or after January 1, 1947 while the person was at least 18 years of age if | 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) 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 | 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) the adoption meets the requirements set out in paragraphs (1)(c) and (d). | b) l'adoption satisfait aux conditions prévues aux alinéas (1)c) et d). |

*Citizenship Regulations*, SOR/93-246

| | |
|---|---|
| 5.3 (1) An application made under subsection 5.1(2) of the Act in respect of a person who was adopted while he or she was at least 18 years of age shall be | 5.3 (1) La demande présentée en vertu du paragraphe 5.1(2) de la Loi relative à une personne qui était âgée de dix-huit ans ou plus au moment de l'adoption doit : |
| (a) made to the Minister in the prescribed form and signed by the person; and | a) être faite à l'intention du ministre, selon la formule prescrite et signée par la personne; |
| (b) filed, together with the materials described in subsection (2), with the Registrar. | b) être déposée, accompagnée des documents prévus au paragraphe (2), auprès du greffier. |
| […] | […] |
| (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 | (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 |

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 that it does not object to the adoption, and

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

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

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

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

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

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4026-13 |
| **STYLE OF CAUSE:** | LUIS ANTONIO ALVARADO DUBKOV v MINISTER OF CITIZENSHIP AND IMMIGRATION |
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| **DATE OF HEARING:** | MAY 22, 2014 |
| **JUDGMENT AND REASONS:** | ST-LOUIS J. |
| **DATED:** | JULY 14, 2014 |

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| Mr. Lorne McClenaghan | FOR THE RESPONDENT |

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