Federal Court of Appeal | Cour d'appel fédérale

Date: 20150206

Dockets: A-46-14
A-47-14

Citation: 2015 FCA 41

CORAM: **DAWSON J.A.**
STRATAS J.A.
NEAR J.A.

Docket: A-46-14

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

TERIKA DAVIS

Respondent

Docket: A-47-14

AND BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

LANCIA DAVIS

Respondent

Heard at Toronto, Ontario, on November 24, 2014.

Judgment delivered at Ottawa, Ontario, on February 6, 2015.

REASONS FOR JUDGMENT BY:	DAWSON J.A.
CONCURRED IN BY:	STRATAS J.A.
	NEAR J.A.

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REASONS FOR JUDGMENT

DAWSON J.A.

[1] Lancia and Terika Davis, the respondents to these appeals, are sisters and citizens of Jamaica. On July 22, 2008, they arrived in Canada as visitors for a six-week stay with their grandmother, Ida Brown. While visiting, they decided that they would like to remain in Canada permanently. An immigration officer is said to have advised their grandmother to adopt them so that they could legally remain in Canada. Mrs. Brown adopted both sisters in April of 2009. At the time of the adoption Lancia was 19.5 years of age and Terika was 17.5. In June of 2009, the respondents applied for Canadian citizenship.

[2] On March 22, 2013, a Citizenship Officer refused their citizenship applications. The officer was not satisfied that there was a genuine parent-child relationship between the sisters and their grandmother. The officer noted that each girl's relationship with their birth parents appeared to have remained unchanged. As well, the officer was not satisfied that the adoptive relationship was not entered into primarily for the purpose of acquiring citizenship.

[3] Each respondent commenced an application for judicial review in the Federal Court of the refusal of her application for citizenship. For substantially the same reasons in each application, a judge of the Federal Court allowed each application for judicial review and

remitted each citizenship application to a different officer on the direction that the redetermination was to be in accordance with the Court's reasons (2013 FC 1243 and 2013 FC 1244).

[4] These are appeals from those decisions. These reasons dispose of both appeals, and a copy of these reasons shall be placed on each file.

[5] In allowing the applications for judicial review, the Judge stated that the officer's decisions were reviewable on the standard of reasonableness. I agree.

[6] The sole issue raised on these appeals is whether the Judge properly applied the reasonableness standard. For the reasons that follow, I have concluded that the Judge did not. Accordingly, I would allow these appeals.

[7] In order to assess whether the appropriate standard of review has been applied correctly, it is necessary for a reviewing court to "step into the shoes" of the lower court and so focus on the administrative decision at issue (*Agraira v. Canada (Public Safety and Emergency Preparedness*), 2013 SCC 36, [2013] 2 S.C.R. 559, at paragraph 46).

[8] It is now well-settled law that on judicial review reasonableness requires justification, transparency and intelligibility within the decision-making process. It is also well-settled that reasonableness also requires the outcome to fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[9] The range of acceptable outcomes varies with the context in which the administrative decision is made. In the present case, the task of the officer was to interview the respondents and their grandmother, to make findings of fact based on those interviews, and then to apply those facts to the applicable legislation. In this factually laden context, deference is owed to the expertise of the immigration officer both in finding facts and in applying those facts to the relevant provisions of the *Citizenship Act*, R.S.C. 1985, c. C-29. Put another way, this context broadens the range of possible, acceptable and defensible outcomes.

[10] In my view, on the record before her, the officer could reasonably conclude that no genuine parent-child relationship existed between the respondents and their grandmother at the relevant times. The respondents maintained regular contact with their birth parents and their birth father continued to provide guidance and some financial support (for example, he contributed some funds for the adoption procedure). Mrs. Brown and Terika told the officer that Terika's birth father continued to be involved in discussing decisions about her future.

[11] While the respondents argue that the officer placed undue weight on the level of contact between them and their birth parents, subparagraph 5.1(3)(*a*)(ii) of the *Citizenship Regulations*, SOR/93-246 requires an officer to consider whether the pre-existing legal parent-child relationship was permanently severed by the adoption.

[12] Similarly, in my view, the record before the officer allowed her to reasonably conclude that the respondents failed to demonstrate that the adoptions were not primarily for the purposes of obtaining Canadian citizenship.

[13] Lancia told the officer that an immigration officer had advised her grandmother that the only way she and her sister could remain in Canada was through adoption. Terika told the officer that Mrs. Brown said that she did not want to see the girls marry for the purpose of remaining in Canada legally.

[14] The respondents also argue that the officer failed to consider Terika's best interests. I disagree. Read with deference, the officer's reasons set out concerns regarding the safety of both respondents in Jamaica and the lack of parental support. The officer was therefore aware of these factors, and her decision was not unreasonable in the context of the record as a whole.

[15] Finally, the respondents argue that the officer ignored evidence or considered irrelevant factors. Again, I disagree. In my view, these submissions amount to a request that we substitute our view of the evidence for the officer's appreciation of the evidence. This is not permitted on reasonableness review.

[16] To summarize, on the records before her, the officer's decisions fell within the range of possible, acceptable and defensible outcomes.

[17] For these reasons, I would allow both appeals and set aside the decisions of the Federal Court. Pronouncing the judgments that the Federal Court ought to have pronounced, I would dismiss the applications for judicial review. The Minister does not seek costs, and I would not award costs.

"Eleanor R. Dawson"

J.A.

"I agree.
David Stratas J.A."

"I agree.
D. G. Near J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-46-14
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. TERIKA DAVIS
AND DOCKET:	A-47-14
STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v. LANCIA DAVIS
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 24, 2014
REASONS FOR JUDGMENT BY:	DAWSON J.A.
CONCURRED IN BY:	STRATAS J.A. NEAR J.A.
DATED:	FEBRUARY 6, 2015

APPEARANCES:

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