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**Toor v. Canada (Minister of  
Citizenship and Immigration)**

**Harvinder Kaur Toor, appellant, and  
Minister of Citizenship and Immigration, respondent**

[2000] I.A.D.D. No. 1617

[2000] D.S.A.I. no 1617

No. V99-02874-E

Immigration and Refugee Board of Canada  
Immigration Appeal Division  
Edmonton, Alberta

**Panel: Marilyn Baker**

Heard: November 6 and 9, 2000.

Oral Decision: November 9, 2000.

**Appearances:**

Brij Mohan, for the appellant.

Sylvia Rapaj, for the respondent.

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ORAL REASONS AND DECISION

PRESIDING MEMBER:

**1** Harvinder Kaur TOOR (the "appellant") appeals the refusal of the sponsored application for permanent residence of her adopted son, Randeep Singh TOOR (the "applicant") from India. The application was refused in a letter dated April 28, 1999, because, in the opinion of the visa officer, the applicant was not "adopted" in accordance with the definition of that term in section 2(1) of the

Immigration Regulations, 1978 (the "Regulations") because:

- contrary to clause 11(6) of the Hindu Adoptions and Maintenance Act (HAMA), the applicant was not given and taken in adoption with the intent of transferring him from his birth family to his adoptive family;
- the adoption did not create a genuine relationship of parent and child between the appellant and the applicant; and
- the purpose of the adoption was to gain the applicant's admission to Canada as a member of the family class.

**2** These are the issues on appeal.

### PRELIMINARY ISSUES

**3** The appellant's counsel expressed a strong concern about the errors evident in the Statutory Declaration made by Immigration official Keith Taylor with respect to the processing of this sponsorship application.<sup>1</sup> Counsel noted that there are several blatant mistakes in that Declaration, wherein the applicant is wrongly named and the date of the refusal letter is wrongly stated.

**4** The Minister's counsel noted that the official who made the Declaration is not the visa officer who conducted the interview and signed the refusal letter. That official was assigned to another post at the time of preparation of the Declaration.

**5** The Appeal Division finds that, indeed, there are two significant errors in the Declaration. There is no evidence, however, that the information contained in the CAIP's notes or the refusal letter<sup>2</sup> is incorrect or that the decision was improperly considered. Furthermore, at this de novo<sup>3</sup> hearing, the appellant has the opportunity to present new evidence or provide explanations which were either not provided, or unavailable at the time of the interview and refusal.

### SUMMARY OF EVIDENCE AND ANALYSIS

**6** The appellant, Harvinder Kaur Toor, the applicant, Randeep Singh Toor, and his uncle, the Power-of-Attorney, Harjit Singh Bajwa testified at the hearing - the latter two by teleconference from India.

**7** In refusing the application, the visa officer expressed a number of concerns, including the sparse attendance at the adoption ceremony, the applicant's age at the time of adoption, the applicant's lack of knowledge of the appellant's whereabouts, and the lack of visits by the appellant to India to visit the applicant. He did not find a genuine parent/child relationship existed.

**8** Ms. Toor is a 46 year-old woman who was landed in Canada in 1991 accompanying her parents. She is now a Canadian citizen. She has never married and lives with her brother and his family. She is one of seven of her parents' offspring. Two of her brothers, Baljit Singh Toor and

Kamal Kuldip Singh Toor, reside in India and the rest of her siblings are in Canada. Prior to immigrating, the appellant lived with her brothers and their families in the ancestral home in India. In 1997, Ms. Toor adopted her nephew, Randeep Singh, the son of her brother Kamal Kuldip. The boy was not quite 13 years old at the time. He has a brother who is four years younger. Ms. Toor did not return to India for the adoption. Rather, it was done through a Power-of-Attorney, Harjit Singh Bajwa, the boy's maternal uncle.<sup>4</sup> The witnesses' testimony and an Adoption Deed indicate that the ceremony occurred on June 8, 1997.<sup>5</sup>

**9** Questioned about the motivation for the adoption, Ms. Toor stated that Randeep Singh was born prematurely and that her sister-in-law, Ranjit Kaur, had a difficult time thereafter. She was hospitalized for several months with high blood pressure and when she was released from hospital, she was returned home to bed rest for about one and one-half years due to a heart condition. During that time, the appellant cared for the baby and they became very attached to each other. Even after Ranjit Kaur regained her health, the appellant stated that she continued to care for the child. She said she was like a mother to him and considered him to be her son. She testified that her family all knew of this relationship.

**10** No mention was made of these circumstances, however, when the visa officer interviewed the Power-of-Attorney, the applicant, and his natural parents in November 1998. During that interview, the visa officer questioned the motivation for the adoption.<sup>6</sup> The Power-of-Attorney stated that the appellant did not marry, and wanted a child, therefore, she asked for her brother's child. The appellant's brother echoed these comments and added that the appellant loved Randeep Singh very much and she wanted a child. The appellant's sister-in-law said they gave up their elder son because he was attached to the appellant and his younger brother was too young and "not aware of his aunt" so she asked for the elder boy. There was no mention at the interview of a premature birth and several years of illness such that Ranjit Kaur was unable to care for her firstborn, or that the appellant, in particular, was a primary caregiver for the child before she came to Canada. At this hearing, the Power-of-Attorney and the applicant testified that there was a special bond because the appellant "practically raised" Randeep Singh due to his mother's illness. There was no explanation for these differing accounts of the motivation for the adoption, which casts doubt on the reliability of the testimony in this regard.

**11** When the appellant immigrated to Canada, Randeep Singh was seven years old. She stated that she was not happy when she first arrived and was unsure if she would remain in Canada. She returned to India for six months in 1993, at which time she again lived with her brother and his family at the ancestral home.

**12** Ms. Toor testified that by 1997 she had decided that she would remain in Canada, however, she missed Randeep Singh. Her family suggested that because she was staying in Canada, she should adopt him and bring him here. Evidence adduced from the witnesses is that in January and February 1997, the appellant broached the subject of adoption with her brother and sister-in-law. They agreed. She then discussed arranging for a power-of-attorney and it was decided that Ranjit

Kaur's brother - who lives in a village about six kilometres from the Toor ancestral home - would be a suitable choice because he is an educated man and has children of his own with whom the applicant could live. The Power-of-Attorney was given to Harjit Singh Bajwa in early March 1997.

**13** There was conflicting testimony as to why the adoption ceremony did not occur until three months after the Power-of-Attorney was given. Harjit Singh Bajwa testified that he had to make arrangements with the boy's natural parents. Ms. Toor, however, stated that it was due to problems with the telephone. She said that she had difficulty getting through to Mr. Bajwa and that he was often away or busy. There was no explanation for these contradictions. There was also conflicting evidence as to why the appellant did not return to India for the adoption ceremony. Those interviewed by the visa officer in this regard stated that the appellant did not return to India because of work commitments. The Power-of-Attorney reiterated that reason in his testimony at this hearing. The appellant, however, made no reference to work commitments. She stated that she expected that the applicant would be able to come to Canada about six months after the adoption and that she was planning to travel to India at that time to bring him back to Canada. The appellant repeated that rationale several times. Furthermore, there is no indication of financial difficulties as the appellant testified that she has some \$10,000 in savings. There was no explanation for these discrepancies, which reflect negatively on the veracity of the testimony in this regard.

**14** The applicant's visa application was submitted five months after the adoption and the interview scheduled a year after that. However, the appellant did not visit her adopted son during that time. At the conclusion of the November 5, 1998 interview with the visa officer, those interviewed were apprised of the visa officer's doubts about the bona fides of the adoption,<sup>7</sup> and it is evident in a November 28, 1998 letter from the appellant to the applicant, where she talks of appealing the decision, that she was aware of this fact.<sup>8</sup> Still the appellant did not visit her adopted son. Indeed, her first trip back to India since 1993 occurred in January, 2000 following receipt of the formal letter of refusal of the sponsorship. By then Randeep Singh was 15 years old. The Appeal Division finds that the statements of a close bond and a parent and child relationship between the appellant and Randeep Singh are not borne out by the evidence. The appellant's explanation that she thought Randeep Singh would be coming to Canada in six months is implausible. The appellant did not see the applicant during the seven- year period from 1993 to 2000. She did not attend the adoption ceremony, and did not visit India for another two and one-half years thereafter. This reflects negatively on the bona fides of the adoption.

**15** In assessing whether a parent/child relationship is established with the adoptive parent, a number of factors can provide evidence of the nature of the relationship. Such factors include the motivation for adoption, communication between the adoptive parents and child, financial and emotional support provided to the child by the adoptive parents and the suasion the adoptive parents have over the adopted child.

**16** There are a number of letters of correspondence in evidence between the appellant and the applicant. The applicant testified that he has been writing to the appellant since 1991 when she

immigrated to Canada. He stated that he writes the letters himself and also addresses the envelopes. It is noted, however, that the applicant was only seven years old at the time the appellant left India. The letters in evidence commence after the 1997 adoption. Questioned why, if they have been in close contact over the years, the applicant told the visa officer that the appellant lives in Vancouver and not Edmonton, he appellant stated that Randeep Singh is young and got confused at the interview. Randeep Singh stated that he made a mistake and said the wrong thing.

**17** At the time of the interview, the applicant was 14 years old. If there was the level of contact and exchange attested to, it is implausible that he would not know where his adopted mother lives and would name another city in another part of the country. Furthermore, the statement that he was young and confused does not reflect the correspondence submitted in evidence purportedly from the applicant. The letters, commencing in 1997, sound mature and appear to be written by an adult. In August, the applicant writes:

I am pleased that you have filed my papers and that on the completion of papers, I shall be able to join with you...It is my great desire to live with you...

**18** In later correspondence, the applicant talks about receiving money from the appellant and buying his books and clothes and, "the remaining money I have kept at a safe place, and will spend that if and when the need arises".

**19** The Appeal Division finds that these are not the writings of a confused young person.

**20** Telephone bills submitted in evidence show a number of calls made to India at a number given as that of the Power-of-Attorney Harjit Singh Bajwa. The bills are in the name of Amarjit Toor, the appellant's brother, with whom she lives in Canada. The appellant stated that calls are not made in her absence, however, the bills show calls made during her time in India earlier this year. There was no explanation for this discrepancy in evidence.

**21** The appellant stated that she provides financial support for Randeep Singh. This she sends with her parents who visit India several times a year. Documentary evidence shows a handbook with some deposits and letters make reference to sending money to the applicant, however, the entries are few and are seemingly incomplete.<sup>9</sup> The appellant stated that she does not query the Power-of-Attorney as to what happens to the money, although she knows he pays school tuition and other expenses required for Randeep Singh.

**22** Questioned about the appellant's visit to India earlier this year, the witnesses testified that she stayed at the home of the Power-of-Attorney for the two months so that she could spend time with the applicant - that she visited her brothers once or twice during the day and stayed overnight with them once. The balance of her time was spent at the Bajwa home. The Appeal Division does not find this evidence plausible. The appellant's earlier testimony is that she lived in the ancestral home with her brothers and their families before coming to Canada. In 1993, she returned and spent six months there. That she would return seven years later and visit them at their nearby village only

once or twice, is not credible. More likely than not, this testimony was an attempt to bolster evidence of a strong bond with the applicant.

**23** The applicant testified that he has minimal contact with his natural parents and brother. He stated that he does not miss them and does not see them but for special occasions when they visit the Bajwa home. Queried about this further, the applicant stated several times that he has "nothing to do with them, is not related, so why go" to see them. This testimony is neither plausible nor credible. Even considering the applicant's relationship to his natural family from the perspective that he is now adopted, his natural parents and brother are still a part of his adoptive family. Furthermore, it is not as if he was separated from his natural family at a young age. Randeep Singh was twelve and one-half years old, and his brother was eight and one-half years of age, when he purportedly moved away from what was stated to be a loving supportive family. In the view of the Appeal Division, the statements about separation and a lack of relationship are not credible. The applicant's testimony appeared rehearsed and given in an artificial attempt to distance himself from his natural family.

**24** Viewing the evidence as a whole, the Appeal Division finds that the evidence is not persuasive that the adoption is bona fide. Despite testimony that there has been a strong bond between the appellant and applicant since his birth, the adoption did not occur until Randeep Singh was twelve and one-half years old. At the time of the 1997 adoption, the appellant had not seen the boy for four years and she was not present for the adoption. In fact, she did not visit nor see Randeep Singh for another two and one-half years. There is little evidence of emotional support or suasion provided by the appellant for the applicant. That is more likely than not, because his needs and requirements in this regard were provided by his natural parents and extended family in India. While there is evidence of some long distance contact and financial assistance, between the appellant and the applicant, particularly for his schooling requirements, this is most probably that of a loving aunt who wishes to assist her nephew and bring him to Canada to further his education.

**25** The appellant's counsel cited De Guzman<sup>10</sup> as an instructive analysis of determining the existence of a parent/child relationship. While the circumstances of that case differ on a number of points from the case at hand, the Appeal Division has used a similar analysis in reaching this decision.

**26** The Appeal Division finds that, on a balance of probabilities, the adoption was done in 1997 at an age and stage in the life of the applicant that he would be able to come to Canada to complete his studies with the support of his extended family - aunts and uncles and grandparents. The evidence is not persuasive that there is a genuine parent and child relationship between the appellant and the applicant or that there was an intent to transfer him from his birth family to his adoptive family.

## DECISION

**27** Considering the evidence overall, the Appeal Division finds that, on a balance of probabilities, there was no intent to transfer Randeep Singh Toor from his natural family to his adoptive mother,

that there is no evidence of a genuine parent and child relationship between the appellant and the applicant and that the purpose of the adoption was primarily to gain the applicant's admission to Canada as a member of the family class. The appeal, therefore, of Harvinder Kaur Toor with respect to Randeep Singh is dismissed for lack of jurisdiction, as the applicant is not a member of the family class.

(Edited for syntax, spelling, and punctuation).

#### ORDER

**28** The Appeal Division determines that Randeep Singh TOOR is not a member of the family class, within the meaning of the Immigration Regulations, 1978.

**29** The Appeal Division orders that the appeal from the refusal to approve the application for landing made by Randeep Singh TOOR be dismissed for lack of jurisdiction.

"Marilyn Baker"

Dated at Vancouver, B.C. this 23rd day of November, 2000.

qp/e/nc/qlndn/qlplh

1 Record, pp. 28-29.

2 Record, pp. 36-40.

3 Kahlon v. Canada (Minister of Employment and Immigration) (1989), 7 Imm. L.R. (2d) 91 (F.C.A.).

4 Record, p. 12.

5 Record, p. 16.

6 Record, pp. 31-34, CAIP's notes.

7 Record, pp. 34 and 35.

8 Exhibit A1 G.

9 Record, pp. 26-27.

10 De Guzman, Leonor G. v. M.C.I. (I.A.D. W95-00062), Ariemma, Bartley, Wiebe, August 16, 1995.