IMMIGRATION AND REFUGEE BOARD
IMMIGRATION APPEAL DIVISION

COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
SECTION D'APPEL DE L'IMMIGRATION

IAD File No. / N° de dossier de la SAI : VA4-02596
Client ID no. / N° ID client : 4486-4074

Reasons and Decision – Motifs et décision

AMENDED
Sponsorship

Appellant(s) / **Appelant(s)**

RUPINDERJT KAUR NIJJAR

Respondent / **Intimé**

The Minister of Citizenship and Immigration
Le Ministre de la Citoyenneté et de l'Immigration

Date(s) and Place of Hearing / **Date(s) et Lieu de l'audience**

13 September 2005
Vancouver, BC

Date of Decision / **Date de la Décision**

13 September 2005
Reasons signed on: 12 October 2005

Panel / **Tribunal**

Mona Beauchemin

Appellant's Counsel / **Conseil de l'appelant(s)**

Massood Joomratty
Barrister & Solicitor

Minister's Counsel / **Conseil de l'intimé**

Jeff Williamson

Oral Reasons for Decision

[1] Rupinderjit Kaur NIJJAR appealed, pursuant to subsection 63(1) of the *Immigration and Refugee Protection Act* (*Act*)[1], the refusal concerning the sponsored application for landing of her adopted son Harbir Singh NIJJAR, the applicant, a citizen of India.

[2] The refusal letter to the applicant, dated September 15, 2004, indicates that the visa officer, after having reviewed the file, concluded that the application be denied because the adoption was void in accordance with the *Hindu Adoptions and Maintenance Act (HAMA) 1956*[2] of India and thus was not valid or recognized by Canadian law.

[3] At the start of the hearing, it was agreed that, given the references to other sections of the Canadian law in the decision and the comments made by the visa officer in the CAIPS notes, it would be considered that the *bona fides* of the adoption was also an issue to be dealt with in this case, provided the adoption were found valid.

Background

[4] The appellant and her husband, Harinder Singh Nijjar, were born respectively on November 16, 1961 and September 15, 1958. They married on June 25, 1989. This was a second marriage for both of them. From a first marriage, the appellant's husband had a son, Navjot Singh Nijjar, born in Canada on October 22, 1984. The appellant's husband adopted the applicant with the consent of his wife by a deed of adoption dated March 5, 2001. The adopted son was born in India on June 20, 1991.

Analysis

[5] The first question to be dealt with is the validity of the adoption under the *HAMA*. There are several sections of the *HAMA* that are relevant to this decision. They read as follows:

---

1 *Immigration and Refugee Protection Act,* S.C. 2001, c. 27.

2 *Hindu Adoptions and Maintenance Act.* Act no. 78 of Year 1956, dated 21st. December, 1956.

" 5(1) No adoption shall be made after the commencement of this *Act* by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void."

" 7 Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

" 8 Any female Hindu –

(a) who is sound of mind,

(b) who is not a minor, and

(c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind,

has the capacity to take a son or daughter in adoption."

" 11 In every adoption, the following conditions must be complied with:

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;"

Some provisions of the *Immigration and Refugee Protection Regulations* (*IRPR*)[3] are also relevant. They read as follows:

" 117(2) A foreign national who is the adopted child of a sponsor and whose adoption took place when the child was under the age of 18 shall not be considered a member of the family class by virtue of that adoption unless it was in the best interests of the child within the meaning of the Hague Convention on Adoption"

(3) The adoption referred to in subsection (2) is considered to be in the best interests of a child if it took place under the following circumstances:
(…)

(c) the adoption created a genuine parent-child relationship;

---

[3] *Immigration and Refugee Protection Regulations*, SOR/2002-227, June 11, 2002, *Canada Gazette*, Part II, June 14, 2002, page 1.

(d) the adoption was in accordance with the laws of the place where the adoption took place;"

[6] By virtue of paragraph 2(b)(1) of the *HAMA*, this act applies not only to Hindus but also to Sikhs, which is the religion of the appellant and her husband, and was the religion of the appellant's son at the time of his birth.

[7] In accordance with sections 7 and 8 of the *HAMA*, a male Sikh can adopt a son with the consent of his wife but a female Sikh who is married and living with her husband cannot adopt in her own right. Section 11(i) of the *HAMA* provides that a person who adopts a son must not have a Sikh son, whether by legitimate blood relationship or by adoption, living at the time of the adoption. By virtue of subsection 5(1) of the *HAMA*, an adoption made contrary to the provisions of this act is void.

[8] In the case at hand, both the appellant and her husband are Sikhs and the applicant was Sikh at the time of his birth. Counsel for the appellant argued that there was no evidence at this point that the son was still alive and had not converted to another religion that would not be covered by the *HAMA*, since the appellant and her husband have not seen this boy in 15 years. According to him, there is no reason for them to embark on a mission to find the child.

[9] The Minister's representative argued that the burden was on the appellant to prove, on the balance of probabilities, that their appeal should be allowed, and I agree with him. It was the responsibility of the appellant and her husband to present their evidence. They were informed of the problems found by the visa officer in a letter of September 15, 2004. They had the opportunity to see the CAIPS notes and the appellant's husband, who is the one who was interviewed, was made aware of the problems the visa officer had with the adoption at that time.

[10] At the interview, when asked how old his son was, the appellant's husband indicated that he was 20 years old[4]. The appellant's counsel asked me to avoid doing a microscopic analysis of the evidence. I do not think it is microscopic to look at a question and an answer that are clearly stated. The appellant's husband had the opportunity at that time, if he thought that his son had passed away or had converted, to say so. He simply said that he was 20 years old.

---

[4] Appeal Record page 95.

[11] There is no reason for this tribunal to assume that the situation has changed. Assuming that the child has passed away or has converted would be mere speculation on the part of this tribunal. Not an inch of evidence was presented in that respect, except to say that the son was not seen for 15 years.

[12] I therefore conclude, on a balance of probabilities, that the adoption is not valid under the *HAMA* and, in consequence, that it is not valid in Canadian law, particularly pursuant to subsection 117(2) and (3)(d) of the *IRPR*. Therefore the appeal is dismissed in law.

[13] In consequence, the tribunal cannot look at the *bona fides* of the adoption since, for the purposes of the Canadian immigration law, there is no valid adoption and the applicant is not a member of the family class.

[Edited for clarity, spelling, grammar and syntax.]

NOTICE OF DECISION

The appeal is dismissed

M^e Mona Beauchemin
Mona Beauchemin

12th day of October 2005
Date (day/month/year)

Judicial review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.