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Gill v. Canada (Minister of Citizenship and Immigration)

Balvir Singh Gill, appellant, and
Minister of Citizenship and Immigration, respondent

[1997] I.A.D.D. No. 240

No. V95-01623

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

Panel: A. Boscariol

Heard: February 10, 12 and 19, 1997
Decision: March 21, 1997

Appearances:

Brij Mohan, for the appellant.
Sylvia Rapaj, for the respondent.

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1 Balvir Singh Gill (the "appellant") appeals the refusal to approve the sponsored application for permanent residence of his adopted son, Ramandeep Singh Gill ("the applicant"), from India.

2 The grounds for the refusal,[1] and the matters at issue in this appeal, as agreed to by the parties are as follows:

1. the alleged adoption does not comply with subsection 11(vi) of the Hindu Adoptions and Maintenance Act, 1956 ("HAMA"), in that the parties to the adoption lacked the intent to transfer the applicant from the family of her birth to the family of adoption;
2. the alleged adoption failed to create a genuine parent and child relationship

between the appellant and the applicant as required pursuant to subsection 2(1) of the Immigration Regulations, 1978 (the "Regulations"); and

3. the purpose of the alleged adoption was to gain the applicant's admission to Canada as a member of the family class.

Summary of the Evidence

3 The 36 year old appellant was born in India, sponsored to Canada as a spouse, and was landed in December, 1989. He and his wife were married in March, 1988, and have two biological children, a daughter born in March, 1991, and a son born in August, 1993. The applicant was born in December, 1984 and is the elder biological son of the appellant's sister.

4 The appellant testified that he and his wife decided to adopt the applicant because they wanted a son. He stated that they did not wish to attempt to have a son biologically because his wife had had a miscarriage prior to giving birth to her daughter, and that she had felt ill throughout the nine months of her pregnancy when expecting her daughter. The birth of their biological son fifteen months after the adoption was characterized by the appellant as "an accident, God's will". The appellant and his wife chose the applicant as their adopted son because, according to the appellant, they already knew him and loved him. The appellant stated that he and his wife asked the applicant's biological parents to give the applicant to them in adoption, and the applicant's parents agreed, and confirmed their agreement in a letter. Neither the appellant nor his wife went to India for the adoption, but provided a power of attorney to Sukhdev Singh (the "attorney"), the applicant's paternal uncle, to adopt the applicant on their behalf.[2] An adoption ceremony then took place May 12, 1992, according to an adoption deed executed May 13, 1992.[3] In February, 1993, the appellant completed an Undertaking of Assistance on behalf of the applicant which was not received by the Immigration officials until August, 1993, more than one year after the adoption.[4] Following the adoption, the applicant has been living with the attorney, according to the testimony of the witnesses at the hearing.

5 Since the adoption, the appellant and his wife visited the applicant once in December, 1994, a trip which coincided with the appellant's brother's wedding in India. The appellant claims to be supporting the applicant through bank drafts sent to the attorney,[5] and through revenues earned from leased land in India owned by the appellant's family, a part to which the appellant is entitled. The appellant claims to speak to the applicant on the telephone once or twice per month, and provided copies of 38 letters, exchanged with the applicant.[6]

ANALYSIS

6 Counsel for the appellant emphasized that the key issue to be determined in this case is whether a parent and child relationship was created. I agree with counsel for the appellant, for if there is evidence that, on a balance of probabilities, a genuine parent and child relationship has been created as a result of the adoption, this same evidence may establish that the giving and taking of the child took place with the intent to transfer the child from his birth family to his adoptive family, and that

the adoption was not entered into for the purpose of gaining the applicant's admission to Canada. Counsel for the appellant then reviewed the factors set out in the Appeal Division decision of Guzman v. Canada (Minister of Citizenship and Immigration)[7] in assessing a parent and child relationship, as they apply to this case. I note that in Guzman, the legality of the foreign adoption was not in dispute, as it is in this case, hence, the issue of whether an intent to transfer the applicant to the adoptive parents did not arise.

7 The motivation, the first factor set out in Guzman, of the appellant and his wife for the adoption was their desire to have a son. In his explanation as to why having a son was important, the appellant first stated that in the Sikh culture a son is very important. When questioned about the importance of the eldest son in Sikh culture, given that the applicant is the eldest son of his biological parents, the appellant stated that he and his wife wanted a son to complete their family, and no other importance is placed on having a son within his family. He was not aware of any of other importance of a son within the Sikh culture, although he claimed to be a practicing Sikh. I find this somewhat contradictory, and therefore, do not find the appellant credible on this point.

8 His explanation as to why they decided to adopt rather than attempt to have a son was that his wife had a miscarriage , then was ill during her subsequent pregnancy which resulted in the birth of her daughter. This explanation is unsatisfactory, because the miscarriage did not stop the couples attempts at having more children, which resulted in the birth of their daughter. The appellant's wife felt ill during her pregnancy, but according to the appellant, continued to work throughout her pregnancy, except for the days she felt too ill. Two years later, his wife became pregnant again, and carried their son to term. I find that the appellant has not established a need on his part to adopt.

9 The appellant's evidence as to the circumstances of the applicant's biological parents was that they are comfortably well off and able to care for their children, and that they are good parents, therefore no need to give up a child on the part of the applicant's biological parents was established. The explanation provided by the appellant for wanting to adopt the applicant was because he and his wife loved the applicant and he loved them. Prior to immigrating to Canada, the appellant had known the applicant as an infant when the applicant's parents brought him to his family home to visit. The appellant and his wife also spent 2-3 days with the applicant during their wedding. While I do not doubt that there existed affection between the appellant and his nephew, the applicant, I find that the pre-adoption contact between the appellant and the applicant, as described by the appellant and the other witnesses, is not indicative of a relationship or of an emotional attachment of such a nature that would logically lead to adoption. It appears to have been no more than a relationship of uncle and nephew. More particularly, the extremely limited contact between the appellant's wife and the applicant prior to the adoption does not make it seem credible that a love so strong developed between them that it superseded the parents' love and would induce the applicant's parents to give up their eldest son.

10 In a genuine adoption, the motivation to adopt usually involves: a strong desire and/or possibly an inability on the part of adoptive parents to have a child or more children, together with a

need on the part of biological parents to give up a child they care about, or the existence of an inability or unwillingness on the part of the biological parents to care for a child, or a long term, loving relationship and connection between the adoptive parents and the child such that the legal adoption merely formalizes a preexisting parent and child relationship. I find the appellant's explanation of his motivation as well as that of the biological parents insufficient to assist in establishing a basis for a parent and child relationship in this case.

11 Neither the appellant nor his wife attended the adoption ceremony. Again the appellant's testimony as to the reasons for this was equivocal. The appellant first stated that he and his wife did not attend because they could not get time off work. When asked whether he requested time in order to attend the ceremony, he first stated that he did not bother because he knew he would be told he could not, then later stated that he knew he could not get the time off from work because he asked and was told verbally that he could not. When asked why he did not then attempt to take time from work in 1992 or 1993 to go and see the applicant, the appellant again stated that they were so busy at his place of work that he could not take the time to go visit the applicant. The appellant conceded that there was a slow down at his place of employment during the winter months, but insisted that he did not visit the applicant sooner because he could not get the time off work. However, he was given a leave of absence when he did request one in 1994. The appellant claims that the sole purpose for his trip in 1994 was to see the applicant, and that his brother decided to get married at the same time, so that his marriage would coincide with the appellant's trip to India. I do not find the appellant's testimony credible in this respect. When the applicant's natural father was questioned by the visa officer during his interview as to the appellant's visits to India, the applicant's natural father stated unequivocally that the appellant was in India to attend his brother's wedding.[8] I find that the appellant went to India in 1994 primarily for the purpose of attending his brother's wedding. If he truly wished to see the applicant as his son, I find that the appellant would have arranged to go to India sooner. In a genuine parent and child relationship, a parent would take the earliest opportunity to visit and be with his or her child. I am not satisfied that the appellant or his wife did so in this case.

12 I find it significant that the appellant did not apply to sponsor the applicant for one year after the adoption. In explanation, the appellant offered that he had sponsored his parents and brother earlier and understood that he required more financial resources in order to sponsor the applicant as well. The appellant made no inquiries of Immigration officials as to how he could bring his son to Canada at the earliest opportunity, he simply relied on the information in an immigration brochure, nor did it occur to him to sponsor his son instead of his brother. He also did not consider cancelling his sponsorship of his parents and brother in order to bring his son to Canada first. In a genuine relationship of parent and child, I find that a parent would make inquiries and would at least give consideration to ways of bringing the child to be with him at the earliest opportunity. This, by his own evidence, the appellant failed to do.

13 In their testimony at the hearing, the appellant, Sukhdev Singh, the attorney and the applicant were adamant to point out that, since the adoption, the applicant has never seen his biological

parents or siblings, notwithstanding the fact that they all live in the same village within one to two kilometers of each other. The attorney explained that he and this brother, he biological father of the applicant don't visit each other, because it is customary in the Punjab for brothers not to speak to each other. I did not find the testimony of the witnesses, particularly that of Sukhdev Singh on this point credible, and it is apparent that the impression they wished to convey was that of no contact between the applicant and his biological parents. However, the appellant concedes that input from the natural parents was required to fill out documents in India, including the applicant's passport. The Canadian High Commission in New Dehli also received the applicant's application for permanent residence and other related documents under a covering letter, albeit unsigned but under the applicant's biological father's name.[9] Given the exaggerated nature and the lack of credibility of the evidence provided concerning contact between the applicant and his biological parents, it is difficult to conclude whether all ties have been severed between them.

14 The appellant provided evidence of a great deal of correspondence between himself and the applicant, but conceded that the vast majority of it postdates the refusal. Evidence of bank drafts sent to India are not all sent to the attorney[10], therefore I do not find that all are evidence of support for the applicant. The appellant showed evidence of a life insurance policy which includes the applicant as a beneficiary along with his biological children as evidence of a parent and child relationship.[11] However, when questioned concerning his knowledge of the applicant, his favourite activities and subjects in school, notwithstanding the voluminous documentary evidence of contact, the appellant showed very little knowledge about the applicant. The quantity of documents cannot outweigh the appellant's lack of effort to be with the applicant at the earliest opportunity, nor the lack of evidence of a true connection between the appellant and the applicant provided in testimony.

15 In reviewing all of the evidence adduced, both through testimony and documents, I find that on a balance of probabilities, no genuine relationship of parent and child was created between the applicant and the appellant. This lack of a genuine relationship leads me to the conclusion that the applicant was not given to the appellant with the intent to transfer him from his birth parents to the appellant, notwithstanding the holding of a giving and taking ceremony, and outward prima facie compliance with HAMA. I also find that the lack of evidence of a genuine parent and child relationship is an indication that the purpose of the adoption was to gain the applicant's admission to Canada.

DECISION

16 The applicant, Ramandeep Singh Gill is not a member of the family class. The appeal of Balvir Singh Gill is dismissed for lack of jurisdiction.

"Anita Boscariol"

Dated at Vancouver, B.C. this 21 day of March, 1997.

qp/d/mwk

1 Record, p. 97.

2 Record, p. 34, Power of Attorney document.

3 Record, p 21.

4 Record, p. 1.

5 Exhibit A-1, item "H".

6 Exhibit A-1, item "L".

7 Guzman v. (Canada, Minister of Citizenship and Immigration), 33 Imm. L.R. (2nd) 28 (IAD).

8 Record, p. 76.

9 Record, p. 10.

10 Exhibit A-1, item "L".

11 Exhibit A-1, item "P".