

Kibondo Kilongozi c. Canada (Citoyenneté et Immigration), 2026 CF 928

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Federal Court



Cour fédérale

Date: 20260710

Docket: IMM-17426-24

Citation: 2026 FC 928

Montréal, Quebec, July 10, 2026

PRESENT: Mr. Justice Gascon

BETWEEN:

JEAN LUCIEN KIBONDO KILONGOZI

Applicant

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

REASONS AND JUDGMENT

I. Overview

[1] The applicant, Jean Lucien Kibondo Kilongozi, is a minor living in the Democratic Republic of Congo [DRC], who is now 16 years old. For more than a decade, he has been trying to reunite with his adoptive father living in Canada, Mr. Uziel Kilongozi Nyembo.

[2] Jean Lucien¹ seeks judicial review of a decision rendered on August 30, 2024 [Decision] by an officer [Officer] of the Migration Section of the Canadian Embassy in Dakar (Sénégal) [Embassy] refusing his permanent resident visa application as a family member of a protected person in Canada, namely, Mr. Kilongozi Nyembo, his adoptive father. The Officer was not satisfied that their relationship was a genuine parent-child relationship and thus found that Jean Lucien did not meet the statutory and regulatory requirements set out in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The Officer was instead of the view that the evidence demonstrated a family relationship as nephew and uncle between Jean Lucien and Mr. Kilongozi Nyembo.

[3] Jean Lucien argues that the Decision is both unreasonable and procedurally unfair. He submits that the Officer failed to grapple with the substance of the submissions and erred in concluding that his responses provided during an interview with the Officer outweighed the declarations and documentary evidence on file provided by his adoptive father. With respect to breaches of procedural fairness, Jean Lucien claims that the Officer failed to provide an audio recording or a transcript of the interview and that, as such, there exists no verifiable record of what was actually said during that interview. He maintains that the Officer's notes are unreliable and should not be presumed to be an accurate recollection of the interview.

[4] The Minister of Citizenship and Immigration [Minister] responds that Jean Lucien has not established a reviewable error. The Minister argues that the Decision is reasonable in light of

¹ The first name of Jean Lucien is used to facilitate the reading of these reasons and not by lack of respect for Mr. Kibondo Kilongozi.

the context of the file, including important inconsistencies regarding Jean Lucien's living history declared on file compared to what he said during his interview. The Minister also submits that the decision-making process was procedurally fair having regard to all the circumstances, which include Jean Lucien's age, cognitive development and capacity to communicate.

[5] For the reasons below, this application for judicial review will be dismissed. Despite the legitimate concerns associated with visa officers interviewing foreign minor children abroad without a parent, guardian or representative present, I am satisfied that, in the particular circumstances of this case and in the absence of sufficient and probative evidence provided by Jean Lucien's adoptive father in support of his son's permanent resident visa application, the Officer approached the situation she was faced with in an appropriate manner by attempting to gather more information directly from Jean Lucien. Neither Mr. Kilongozi Nyembo nor his counsel opposed to Jean Lucien's interview before it took place. In addition, both Mr. Kilongozi Nyembo (the adopter) and Jean Lucien (the adoptee) had multiple occasions to address the Officer's concerns but repeatedly failed to adduce any useful evidence to support their claimed parent-child relationship. In the absence of any concrete evidence adduced by Jean Lucien himself as part of this judicial review — beyond bold assertions made on his behalf —, I am not convinced that the process through which the Decision was rendered was not overall fair.

[6] I am also satisfied that the Officer's Decision in refusing Jean Lucien's visa application is reasonable. The Officer meaningfully grappled with the information and submissions provided by both Jean Lucien and Mr. Kilongozi Nyembo at various stages of the process. Her reasoning is intelligible and the inconsistencies she reported were adequately characterized as "important". Based on the evidentiary record that was before the Officer — which was, at best, weak —, it

was open for the Officer to determine that Jean Lucien and his adoptive father had not met their onus to demonstrate a genuine parent-child relationship within the meaning of paragraph 4(2)(b) of the IRPR.

II. Background

A. *Previous hearing adjournment*

[7] Before diving into the substantive issues raised before the Court, I make the following remarks to put this matter in context.

[8] The hearing of this case on the merits was initially scheduled for Monday, April 20, 2026. This date was set in an order granting leave dated February 12, 2026 (*Kibondo Kilongozi v Canada (Immigration and Citizenship)* (February 12, 2026), Ottawa IMM-17426-24 (FC) (*per* St-Louis ACJ) [Order Granting Leave]. As is the practice of the Court, the Order Granting Leave set out the procedural steps and timelines leading to the hearing of the application for judicial review. The Order Granting Leave provided that the applicant's further memorandum of argument, if any, was to be served and filed before March 30, 2026, and that this further memorandum was to replace the applicant's initial memorandum of argument and reply, if any.

[9] On Friday, April 17, 2026 at 4:06 p.m. — that is, the very last business day before the scheduled hearing —, counsel for Jean Lucien served counsel for the Minister with an undated “Supplemental Memorandum of Argument” [Supplemental Memorandum] raising different arguments based on different case law than the ones previously raised by the applicant in his

initial memorandum of argument [Initial Memorandum]. Counsel for Jean Lucien filed the Supplemental Memorandum with the Court on Sunday, April 19, 2026 at 8:51 p.m. — that is, less than 24 hours before the scheduled hearing on the merits. Leave was not sought and no explanations whatsoever accompanied this excessively late service and filing.

[10] At the scheduled hearing, after considering the oral submissions of both parties on the situation, I reluctantly agreed to adjourn the hearing on the merits of the application, bearing in mind the best interests of Jean Lucien as a minor child currently in the DRC and to allow a full and fair debate on the issues raised by his application for judicial review (*Kibondo Kilongozi v Canada (Immigration and Citizenship)* (April 21, 2026), Vancouver IMM-17426-24 (FC) at 3–4 (*per* Gascon J.) [Adjourning Order]). I, however, emphasized that this late filing was clearly prejudicial to the Minister and was contrary to the Court’s procedural norms and guidelines, to elementary procedural fairness and to the Order Granting Leave (Adjourning Order at 2–3). I also expressed serious concerns with this unacceptable and reprehensible behaviour by counsel for Jean Lucien and advised counsel that any failure to respect the terms of the new scheduling order would lead to an award of costs against him personally (Adjourning Order at 3–4).

[11] More importantly, I also confirmed with counsel for Jean Lucien that his Supplemental Memorandum was to be treated as a further memorandum as opposed to a reply, thus replacing the Initial Memorandum (Adjourning Order at 4). As such, I agree with counsel for the Minister who now raises that the Court should only consider the applicant’s Supplemental Memorandum and that any argument only raised in the Initial Memorandum should be deemed abandoned (*Khodayarinezhad v Canada (Citizenship and Immigration)*, 2024 FC 818 at paras 10–11, 18).

[12] I must emphasize that the excessively late filing wasted the time of both the Court and counsel for the Minister, who had reviewed the materials and prepared for the April 20, 2026 hearing on the basis of submissions that were later abandoned. Moreover, as of the start of the rescheduled hearing on the merits, counsel for the applicant had still not refiled a dated and signed version of the Supplemental Memorandum, despite the Court's direction and the undertaking he had given at the April 20, 2026 hearing (Scheduling Order at 3). This is, again, deplorable behaviour.

[13] More importantly, bearing in mind the professional obligations incumbent upon lawyers, the resulting adjournment ultimately caused further delay to Jean Lucien himself. Indeed, as will be further exposed below, Jean Lucien was 6 years old at the time his permanent resident visa application as a family member of a protected person was filed, back in 2016, and he has been waiting for a final determination since then. He is now 16.

B. *Factual context*

[14] Jean Lucien and his adoptive father are citizens of the DRC. Jean Lucien was born in August 2009 and was allegedly taken in by Mr. Kilongozi Nyembo and his wife when he was only two months old.

[15] In July 2010, Mr. Kilongozi Nyembo fled the DRC for Canada, leaving behind his wife and his three adopted children: his wife's two biological children and Jean Lucien. Mr. Kilongozi Nyembo made a refugee claim upon his arrival in August 2010, based on political persecution

after being arrested by Congolese government agents. He was recognized as a person in need of protection pursuant to section 97 of the IRPA.

[16] In December 2012, Jean Lucien — who was three years old at the time — was officially adopted by Mr. Kilongozi Nyembo (who was in Canada at this point) and his wife, as recognized by a DRC court. Jean Lucien's biological parents were still alive and consented to the adoption. This was the culmination of the adoption process that Mr. Kilongozi Nyembo and his wife had started with the help of a lawyer in December 2009. The authenticity and legality of Jean Lucien's adoption are not in dispute.

[17] In May 2016, Mr. Kilongozi Nyembo applied for permanent residence in Canada and included in his application his wife and three adopted children as dependents (subsection 176(1) of the IRPA). He became a permanent resident of Canada in November 2018 and a Canadian citizen in June 2024.

[18] Whereas Mr. Kilongozi Nyembo's wife and two other adopted children arrived in Canada in late 2021, Jean Lucien's application for permanent residence as a family member of Mr. Kilongozi Nyembo was refused. In March 2022, Mr. Kilongozi Nyembo filed an application for leave and judicial review of the negative decision before this Court, in Court file no IMM-2238-22. In October 2023, the Court granted Mr. Kilongozi Nyembo's application for judicial review and ordered the decision to be set aside and the case remitted back for reconsideration by another officer (*Nyembo v Canada (Citizenship and Immigration)*, 2023 FC 1336 (*per* Régimbald J.) [*Nyembo*]).

[19] In November 2023, the Embassy therefore reopened Jean Lucien's visa application and requested additional documents, namely, (i) proof that he lived with his adoptive parents; (ii) a letter explaining his situation and his current living conditions; (iii) proof of communications between him and his adoptive parents (such as e-mails, online messaging, telephone call records, etc.); (iv) proof of financial support from his adoptive parents; and (v) photos of him with members of his adoptive family taken on different occasions and at different times.

[20] In January 2024, Jean Lucien and his adoptive father submitted additional documents in response. Notably, Mr. Kilongozi Nyembo provided (i) news articles about the issue of child kidnapping in the Upper Katanga region and the city of Lubumbashi in the DRC, where Jean Lucien lives; (ii) four pictures allegedly of Jean Lucien (I say allegedly as, on its face, one of the pictures clearly looks to have been altered or photoshopped); (iii) three screenshots of online conversations dated February, April and August 2023; (iv) nine payment receipts showing transfers of funds averaging \$245 between Mr. Kilongozi Nyembo and his sister in the DRC, dated March, May, October and November 2022 and June, October, November and December 2023; (v) an explanation letter; and (vi) the consent of Jean Lucien's parents to his adoption dated June 2021. In his e-mail, Mr. Kilongozi Nyembo also explained that it was difficult to provide pictures of Jean Lucien and him together as the house they lived in burned down.

[21] In May 2024, the Officer reviewed the file. She concluded that there was indeed a relationship between Jean Lucien and his adoptive parents, but she was not persuaded that their relationship was a genuine parent-child relationship. She noted that there was little proof of cohabitation between Jean Lucien and his adoptive mother (who were said to have lived together

for more than 10 years). She thus requested that an interview be scheduled with Jean Lucien to evaluate the nature of the relationship.

[22] On June 28, 2024, the Officer conducted a virtual interview with Jean Lucien — who was 14 years old at the time. The interview lasted 35 minutes, was conducted in French and no interpret was requested by Jean Lucien or his adoptive father nor deemed necessary by the Officer. Jean Lucien was not accompanied during the interview with the Officer. The interview notes and the Officer's analysis were recorded in the Global Case Management System [GCMS] of Immigration, Refugees and Citizenship Canada [IRCC] the same day. In these notes, the Officer observed that she had remaining concerns about the genuineness of the parent-child relationship, given that the interview had “soulevé des préoccupations additionnelles” [TRANSLATION] “raised additional concerns”.

[23] As she explained in her affidavit filed by the Minister in response to this application for judicial review, and as appears from the GCMS notes, the Officer decided not to put her concerns to Jean Lucien during the interview because he was a minor. She also did not call Mr. Kilongozi Nyembo during the interview. She rather decided to send a procedural fairness letter [PFL] to Mr. Kilongozi Nyembo “to provide them with more time to respond to [her] concerns”. A few days after the interview, on July 1, 2024, a PFL was indeed sent to Jean Lucien and Mr. Kilongozi Nyembo, noting the inconsistencies between the child's declarations at the interview and the information submitted by his adoptive father on the record. The PFL identified several factual inconsistencies and asked for specific information regarding Jean Lucien and his relationship with his adoptive parents.

[24] In late July 2024, Mr. Kilongozi Nyembo responded to the PFL. He reiterated the information he had initially provided with respect to his adopted son's living history and to the adoption timelines. He emphasized that Jean Lucien is without his parents and siblings in the DRC, that he “vit dans un environnement d’instabilité et d’hostilité envers les enfants exposés à des pires formes de travaux dans le mines” [TRANSLATION] “lives in an environment marked by instability and hostility toward children who are exposed to the worst forms of labour in mines” and that he had to travel more than 2 000 kilometres to attend the interview with the Officer. Mr. Kilongozi Nyembo also blamed the Officer for not asking that a representative be designated to accompany Jean Lucien at the interview, which he maintained is contrary to subsection 167(2) of the IRPA, the teachings of the Federal Court of Appeal in “*Stum c Canada (Ministre de la Citoyenneté et de l’Immigration)*, 2004 CAF 148” [an inexistent decision] and the 2009 Congolese law on child protection. He asked the Officer to ignore these inconsistencies, which “sont, sans nul doute, liées à l’environnement dans lequel l’enfant a passé son entrevue” [TRANSLATION] “are, without a doubt, related to the environment in which the child was interviewed”.

[25] In a separate correspondence, Mr. Kilongozi Nyembo also requested the audio recording and transcript of the interview but was told to make a request pursuant to the *Access to Information Act*, RSC 1985, c A-1. At the hearing before this Court, counsel for Jean Lucien confirmed that such a request was never made, and I understand that no audio recording or transcript was ever provided to Jean Lucien, Mr. Kilongozi Nyembo or their counsel. This is an issue that will be dealt with below.

C. *The Decision under review*

[26] In August 2024, the Officer rendered the Decision. In her two-page long reasons, the Officer listed the relevant statutory and regulatory provisions governing permanent residency for protected persons. She then engaged more specifically with Jean Lucien's application, though in a cursory manner, and stated as follows:

Votre entrevue a eu lieu avec moi à eu lieu virtuellement au Centre de Réception des demandes de visas à Kinshasa, le 28 juin 2024 en Français. Lors de l'entrevue vous n'avez à aucun moment indiqué que vous aviez de la difficulté à comprendre mes questions. Une lettre d'équité procédurale vous a été envoyée le 3 juillet 2024. Votre réponse a été reçue le 30 juillet 2024. J'ai examiné votre réponse et les informations figurant dans le dossier et je ne suis pas satisfaite que vous ayez apaisé les préoccupations.

[...]

Selon l'information dont nous disposons, je ne suis pas satisfaite que vous satisfaites aux exigences de la Loi. Par conséquent, votre demande est refusée.

[TRANSLATION]

Your interview took place with me virtually at the Visa Application Centre in Kinshasa on June 28, 2024, in French. During the interview, you did not at any point indicate that you were having difficulty understanding my questions. A procedural fairness letter was sent to you on July 3, 2024. Your response was received on July 30, 2024. I have reviewed your response and the information on file, and I am not satisfied that you have addressed the concerns.

...

Based on the information available, I am not satisfied that you meet the requirements of the Act. Therefore, your application is refused.

[27] The GCMS notes taken by the Officer dated August 30, 2024, which in turn refer to the GCMS notes dated May 14, 2024 and June 28, 2024, provide further light on the analysis

conducted by the Officer and on the grounds for refusing Jean Lucien's visa application. These notes — which form part of the Decision — reveal the Officer's rationale and can be summarized as follows.

[28] First, the Officer noted that there were many inconsistencies between Jean Lucien's declarations during the interview and the information on file provided by his adoptive father. Of importance, Jean Lucien declared that he was adopted in 2023, whereas the documents on file rather reveal that his adoption was finalized in December 2012. Moreover, Jean Lucien declared that he has lived with his biological mother for the first two years of his life, between 2009 and 2012 approximately, that he then moved in with his adoptive father's sister (in the house where he currently resides) and that he lived with a paternal uncle in 2015 or 2016. Jean Lucien also said that, in 2017, his adoptive father and his wife came to live at the same place as he and his adoptive aunt, that his adoptive father stayed with them for approximately two months until he left for Canada and that his adoptive mother left for Canada in 2019, meaning that he only lived with his adoptive mother between 2017 and 2019. However, the information on file declared by his adoptive father was that Jean Lucien was taken in by his adoptive father and his wife when he was two months old and that they all lived together until his adoptive father left for Canada, in 2010. Jean Lucien then remained with his adoptive father's wife until 2021.

[29] The Officer granted more weight to Jean Lucien's statements of who he lived with at which times rather than to the statements of Mr. Kilongozi Nyembo. She also determined that it seemed like they have lived together for much less time than initially claimed. Despite specific requests to that effect — made after the first judicial review was granted by this Court and also in the convocation e-mails for the interview —, there was little evidence provided with respect to

the alleged cohabitation between Jean Lucien and his adoptive mother in the relevant time period. The Officer was not satisfied that the information provided was truthful given these important inconsistencies, and she determined that the credibility of Jean Lucien and of the information on file was undermined.

[30] With respect to Mr. Kilongozi Nyembo's concerns that Jean Lucien was interviewed alone, the Officer noted that subsection 167(2) of the IRPA does not relate to interviews concerning the eligibility of applicants. She observed that Mr. Kilongozi Nyembo "did not express any concern in advance of the interview" despite being aware of it. She reported that she ensured that Jean Lucien "was able to understand [her] during the interview" and that she sent the PFL after the interview to provide both Jean Lucien and his adoptive father a reasonable opportunity to respond to her concerns. She found that Mr. Kilongozi Nyembo's response to the PFL provided little new information and did not alleviate her concerns related to his relationship with Jean Lucien.

[31] The Officer acknowledged that Jean Lucien does not have a relationship with his biological parents. She also noted that there was evidence of financial support between his adoptive father and Jean Lucien's adoptive aunt, who is taking care of him, and that Jean Lucien was in communication with the members of his adoptive family in Canada. The Officer was nevertheless of the view that this was however "compréhensible étant donné qu'il est leur neveu" [TRANSLATION] "understandable given that he is their nephew", and that there was little information indicating that the relationship between Jean Lucien and his adoptive father or his wife has ever been a parent-child relationship. The Officer noted that Jean Lucien had difficulty describing their relationship beyond stating that they love each other. As such, the Officer

concluded that while there is “some relationship” between the adoptive father, his wife and Jean Lucien, “the nature of this relationship [is] not clear”.

[32] The Officer found that having lived with his aunt for most of his life and not having demonstrated a parent-child relationship with Mr. Kilongozi Nyembo or his wife, the best interests of Jean Lucien was to remain within his adoptive aunt’s family circle. In the end, the Officer was not satisfied, on a balance of probabilities, that Jean Lucien met the definition of a dependent child of Mr. Kilongozi Nyembo and his wife as an adopted child and therefore found that he could not be considered a member of his family under the IRPR.

D. *Standard of review*

[33] The Supreme Court of Canada’s landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] established a presumption that reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 at para 35 [Pepa]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [Mason]), unless the circumstances lend themselves to the application of one of the recognized exceptions to this presumption (*Canadian Society of Authors, Composers and Music Publishers v Entertainment Software Association*, 2022 SCC 30 at para 28; *Vavilov* at paras 33–64, 69–72).

[34] The parties both submit, and I agree, that the standard of reasonableness applies to decisions finding that an adoption did not create a genuine parent-child relationship or to

negative permanent residency decisions (*Ndikumana v Canada (Citizenship and Immigration)*, 2026 FC 316 at para 15 [*Ndikumana*]; *Nyembo* at para 13).

[35] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on “an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Pepa* at para 46; *Mason* at para 64; *Vavilov* at para 85). The reviewing court must therefore ask whether the “decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99, citing notably *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74).

[36] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention,” seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Pepa* at paras 46–47; *Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13).

[37] The standard of reasonableness is rooted in the principle of judicial restraint and deference, and it requires reviewing courts to show respect for the distinct role that the legislature has chosen to give to administrative decision makers, more particularly on findings of fact and the weighing of evidence (*Mason* at para 57; *Vavilov* at paras 13, 24, 46, 75). Absent

exceptional circumstances, a reviewing court will not interfere with the factual findings of an administrative decision maker (*Vavilov* at paras 125–126, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55; *Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 3).

[38] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100).

[39] Despite the presumption of reasonableness, the approach to be taken with respect to procedural fairness issues has not changed following *Vavilov* (*Vavilov* at para 23). It has typically been held that correctness is the applicable standard of review for determining whether a decision maker complies with the duty of procedural fairness and the principles of fundamental justice (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Canada (Attorney General) v McBain*, 2017 FCA 204).

[40] However, although the reviewing exercise is akin to correctness review, the Federal Court of Appeal has affirmed that questions of procedural fairness are not truly decided according to any particular standard of review. Rather, it is a legal question to be answered by the reviewing court, and the court must be satisfied that the procedure was fair having regard to all of the circumstances (*Algoma Steel Inc v Canada (Attorney General)*, 2023 FCA 164 at para 22 [*Algoma Steel*]; *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Association of Refugee Lawyers v*

Canada (Immigration, Refugees and Citizenship), 2020 FCA 196 at para 35, leave to appeal to the Supreme Court of Canada dismissed, no 39522 (August 5, 2021); *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [CPR]).

[41] Consequently, the test is whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*Algoma Steel* at para 22; *CPR* at para 56; *Higgins v Canada (Attorney General)*, 2018 FCA 49 at para 17). No deference is owed to the decision maker on issues of procedural fairness (*Amer v Shaw Communications Canada Inc*, 2023 FCA 237 at para 51; *Maritime Employers Association v Syndicat des débardeurs (Canadian Union of Public Employees, Local 375)*, 2023 FCA 93 at para 81).

III. Analysis

A. *Statutory and regulatory framework*

[42] One of the objectives of the Canadian immigration system is to see families being reunited in Canada (paragraph 3(1)(d) of the IRPA). This is why individuals who are granted protected person status can include in their application for Canadian permanent residency any of their family members (subsection 176(1) of the IRPR).

[43] A family member in respect of a protected person means notably their dependent child (paragraph 1(3)(b) of the IRPR). This includes their adopted child who is less than 22 years of age and is not a spouse or a common-law partner (see the definition of “dependent child” in section 2 of the IRPR). For the purposes of the IRPR, the term “adoption” means an adoption that creates a legal parent-child relationship and severs the pre-existing legal parent-child relationship (subsection 3(2) of the IRPR). Moreover, a foreign national will not be considered an adopted child of a person if the adoption either (i) was entered into primarily for the purpose of acquiring any status or privilege under the IRPA, or (ii) did not create a genuine parent-child relationship (subsection 4(2) of the IRPR).

[44] The effects of those provisions and the framework under which to examine an application for permanent residency as an adopted child of a protected person in Canada were recently addressed by Justice Phuong T.V. Ngo in *Ndikumana*. These can be summarized as follows.

[45] The use of the term “or” by Parliament indicates that the scenarios provided for in subsection 4(2) of the IRPR are disjunctive. This means that to exclude an applicant pursuant to that provision, it is sufficient for a decision maker to conclude that one or the other of these elements is present. Conversely, this entails that an applicant must demonstrate that the adoption was not entered into primarily for immigration purposes and that the adoption created a genuine parent-child relationship between the adoptee and the adopter (*Ndikumana* at paras 21–22, 51–52, 57, 73–74). The burden of establishing the quality of the relationship as a genuine parent-child relationship is on the applicant (*Ndikumana* at para 44; *Singh Rangi v Canada (Citizenship and Immigration)*, 2013 FC 548 at para 8). The failure of the applicant to

meet their onus on the second criterion provided for in paragraph 4(2)(b) of the IRPR is fatal (*Ndikumana* at paras 2, 51–52, 75).

[46] An immigration officer charged with deciding such an application has to assess the adoption from both a legal standpoint and a practical standpoint in terms of the relationship it created (*Ndikumana* at para 57). In other words, while the legal validity of the adoption is a prerequisite, it is not determinative, in and on itself, to satisfy the requirements of the IRPR and the IRPA. Indeed, an applicant must also demonstrate the quality of the relationship between the adopter and the adoptee, that is the genuineness of the parent-child relationship (*Ndikumana* at paras 2, 23). An adopter has to demonstrate that, from a practical perspective, he or she has acted as a parent, and how he or she has done so (*Ndikumana* at para 57).

[47] This requires an immigration officer to conduct a qualitative assessment of the relationship created by the adoption, by considering the relevant factors (*Ndikumana* at paras 23–24). This is a mandatory step (*Ndikumana* at para 43). However, in *Ndikumana*, the Court was faced with little to no jurisprudence regarding the relevant factors to take into account in assessing the genuineness of a parent-child relationship for the purposes of subsection 4(2) of the IRPR. After a thorough review of related case law, the Court adopted a number of factors emanating from decisions applying a similar test and rendered pursuant to paragraph 5.1(2)(a) of the *Citizenship Act*, RSC 1985, c C-29 and subsection 2(1) of the *Immigration Regulations*, 1978, SOR/93-44 (which were replaced by the IRPR in 2002) (*Ndikumana* at paras 31, 39, 42–45).

[48] Notably, as per *Ekhtor v Canada (Citizenship and Immigration)*, 2022 FC 1303, such relevant factors may include:

- a. whether there is a commitment on the adoptive parent to raise the child as their own and to meet the child's material and emotional needs as they arise;
- b. whether an adoptive parent not only legally, but practically, has taken on the role of parents in the applicant's life; and
- c. whether the assertion of an adoptive relationship is reflected in the reality.

[49] As per *Hurd v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 719, 235 FTR 77, the relevant factors may include:

- (a) motivation of the adopting parents;
- (b) to a lesser extent the motivation and conditions of the natural parents;
- (c) authority and suasion of the adopting parent(s) over the adopted child;
- (d) supplanting the authority of the natural parent(s) after adoption;
- (e) relationship of the adopted child with the natural parent(s) after adoption;
- (f) treatment of the adopted child versus the natural children by the adopting parent(s);
- (g) relationship between the adopted child with the natural parent(s) before the adoption;
- (h) changes flowing from the new status of the adopted child such as records, entitlements, etc. and including documentary acknowledgment that the child is the son or daughter of the adoptive parent(s); and
- (i) arrangements and actions taken by the adoptive parent(s) as they relate to caring, providing and planning for the adopted child.

[50] In any case, the Court emphasized that the qualitative assessment of the relationship the adoption created is a factual exercise that must be conducted on a case-by-case basis (*Ndikumana* at para 44). There is no stringent rule nor set of criteria to work through, such as a checklist (*Ndikumana* at para 43). While they may be useful, the factors mentioned above and set out in the case law, whether pursuant to section 176 of the IRPR (like is the case here), section 117 of the IRPR (sponsorship applications in the family class) or subsections 5.1(1) or (2) of the *Citizenship Act*, RSC 1985, c C-29, are not exhaustive (*Ndikumana* at para 44).

[51] With these guidelines in mind, I now turn to analyzing the merits as well as the process leading to the Decision under review.

B. *The Decision is procedurally fair*

[52] On July 15, 2024, Mr. Kilongozi Nyembo requested to be provided with an audio recording or transcript of the interview, after the PFL was sent and before he responded to it. IRCC responded that, to obtain access to notes, documents or other personal information contained in a file, an access to information pursuant to the *Access to Information Act* needed to be filed. As of the date of this hearing, there is no indication that such a request was ever filed by Jean Lucien or his adoptive father, and whether this resulted in the disclosure of a transcript and/or audio recording.

[53] I acknowledge that those documents are unlikely to exist, given that they were not included in the Certified Tribunal Record produced pursuant to section 17 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [Rules]. Moreover, in her

affidavit filed before this Court, the Officer recognized that “to the best of [her] information and belief, IRCC does not audio record interviews with applicants for permanent residence applications”. The Court expressed a similar conclusion in *Abukar v Canada (Citizenship and Immigration)*, 2025 FC 1905 at paragraph 15 *in limine*.

[54] Jean Lucien argues that the Officer’s failure to provide an audio recording or transcript of the interview results in a breach of procedural fairness for three main reasons: (i) there is no way to know whether the GCMS notes are accurate, meaning his version of the events should be preferred; (ii) there is no indication that the Officer acted adequately in interviewing a minor child; and (iii) he is unable to know what was said during the interview and is thus deprived of the opportunity to contradict it or make submissions as to the weight that should be attached to it.

[55] This argument must fail for four reasons: (i) IRCC is under no obligation to record interviews taking place in their visa offices — even though this might be good practice —; (ii) Jean Lucien did not adduce any evidence contradicting the GCMS notes and as such, there is no reason to doubt the veracity and reliability of those notes taken contemporaneously by the Officer in the exercise of her duties; (iii) there exists no statutory bar to interviewing minors; and (iv) Jean Lucien necessarily knew what was said during the interview and was otherwise offered a fair chance after the interview to alleviate the Officer’s persisting concerns.

[56] Before addressing these four reasons in turn, it must first be underscored that the duty of procedural fairness is “eminently variable”, inherently flexible and context specific (*Vavilov* at para 77, citing *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 22–23).

- (1) No statutory or regulatory obligation to record interviews at visa offices or to provide an audio recording or transcript to failed applicants

[57] Counsel for Jean Lucien could not point the Court to any statutory or regulatory right to an audio recording or verbatim transcript of an interview occurring at a visa office abroad. Indeed, the IRPA and the IRPR are silent on this issue. No bulletin or memorandum from IRCC providing for such a practice was adduced as evidence. The excerpt from this Court in *Divya v Canada (Citizenship and Immigration)*, 2022 FC 620 at paragraphs 18–20 [*Divya*], relied on by Jean Lucien, does not stand for the proposition that a transcript or recording of an interview is mandatory and that the failure to provide either result in a breach of procedural fairness. At most, this decision encourages administrative decision makers in immigration matters to record hearings and interviews as a matter of best practice (see also *Ali v Canada (Citizenship and Immigration)*, 2023 FC 757 at para 11 [*Ali*]). In addition, the passage from *Divya* singled out by Jean Lucien is clearly *obiter dictum*.

[58] Albeit in different contexts, this Court has previously found that there is no obligation for hearings before the Immigration and Refugee Board [IRB] to be recorded (*Danaj v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 402 at para 31; *Antunano Martinez v Canada (Citizenship and Immigration)*, 2019 FC 744 at para 7). The same prevails for mandatory hearings before officers charged with pre-removal risk assessments pursuant to section 113.01 of the IRPA (*Ali* at paras 8–14; *Ashenafi v Canada (Citizenship and Immigration)*, 2022 FC 1331 at paras 11–16 [*Ashenafi*]).

[59] In the absence of an obligation to that effect, the failure to record the interview does not necessarily result in a breach of procedural fairness. As the Supreme Court of Canada held in

Canadian Union of Public Employees, Local 301 v Montreal (City), 1997 CanLII 386 (SCC), [1997] 1 SCR 793, “[i]n the absence of a statutory right to a recording, courts must determine whether the record before it allows it to properly dispose of the application for appeal or review”.

[60] As further developed in these reasons, I am satisfied that this is the situation here and that the GCMS notes allow me to properly dispose of this application for judicial review.

(2) No evidence was adduced contradicting the accuracy of the GCMS notes

[61] The evidence this Court possesses with respect to the contents of the interview at issue is as follows: (i) the detailed and contemporary-filed GCMS notes taken by the Officer; (ii) the Officer’s supporting affidavit dated July 12, 2026; and (iii) two paragraphs contained in Mr. Kilongozi Nyembo’s affidavit dated November 28, 2024, filed in support of this application for judicial review.

[62] But what is mostly striking is not what found its way into the record but rather what is actually missing from it. There is strictly no evidence emanating from Jean Lucien himself about how things unfolded during the interview. Such an affidavit would have been clearly admissible as part of this application for judicial review (*Sultani c Canada (Sécurité publique et Protection civile)*, 2026 CF 115 at para 26 and the cases cited therein). Only Mr. Kilongozi Nyembo provided an affidavit. But it contains inadmissible hearsay, as Mr. Kilongozi Nyembo declares that (i) “[a]ccording to [Jean Lucien] he was asked questions on how he was adopted and the process of adoption, the date on which his adopted father left for Canada and the other members

of his adopted family”, and that (ii) “[Jean Lucien] reported that he felt he was forced to respond to some questions on which he did not have answers. I believe his information to be true”.

[63] It bears emphasizing that nowhere does Jean Lucien nor his adoptive father take issue with the contents of the GCMS notes taken by the Officer. There is no evidence adduced to doubt the veracity or reliability of the Officer’s GCMS notes, including of the questions asked and the answers provided. Indeed, Jean Lucien did not file any affidavit explaining his own version of the interview that would demonstrate that his testimony was misunderstood, taken out of context or even construed of all pieces. Nowhere does Jean Lucien advances that the GCMS notes are an inaccurate recollection of the answers he provided at the interview.

[64] This is precisely the element distinguishing this case from the situations prevailing in *Divya, Selamssa v Canada (Citizenship and Immigration)*, 2017 FC 966 [*Selamssa*], *Neto v Canada (Minister of Citizenship and Immigration)*, 2004 FC 565 [*Neto*] and *Gibson v Canada (Citizenship and Immigration)*, 2024 FC 1478 [*Gibson*], all relied on by Jean Lucien in this application for judicial review. In *Divya*, the Court was faced with “two very different versions of what occurred” during the interview as the applicant’s sworn version of the interview contradicted, in several respects, the version appearing in the GCMS notes (*Divya* at para 17). Similarly, in *Selamssa*, the Court was unpersuaded that the interview in that case was procedurally fair to the applicant since “the competency or adequacy of the translation at the interview [was] open to question in view of the Applicant’s affidavit” [emphasis added] (*Selamssa* at para 20). In *Neto*, the Court found that “it [was] a reviewable error for the IRB to make an assumption that the translation is accurate, particularly in the face of the objection as to it’s [sic] accuracy voiced by the Applicant” [emphasis added] (*Neto* at para 6) during the course

of her sworn testimony before the IRB. In *Gibson*, the Court faulted the officer for failing to “grapple with the evidence of the Applicant that he never made the statements attributed to him in the notes that are relied on by the Officer” (*Gibson* at para 28). Here, apart from bold declarations, counsel for Jean Lucien did not adduce any evidence pointing out to the inaccuracy of the contents of the GCMS notes or indicating that Jean Lucien never made the declarations at issue. In other words, there are simply no contradicting versions.

[65] Jean Lucien argues that the Officer’s notes should be discounted and his version given more weight. He emphasizes that “GCMS notes that record what transpired during interviews of candidates [...] are not admissible to prove the truth of their contents” and that “sworn evidence of an applicant as to statements made at an interview is to be preferred to notes made by the interviewer that are not accompanied by an affidavit” (*Tedla v Canada (Citizenship and Immigration)*, 2025 FC 686 at paras 22–23 [*Tedla*]; *Fsahaye v Canada (Citizenship and Immigration)*, 2019 FC 1657 at para 15). However, Jean Lucien’s reliance on these two cases is misplaced, as he fails to take into account that (i) he adduced no sworn evidence contradicting the Officer’s version and (ii) the Officer indeed filed a supporting affidavit to confirm her GCMS notes.

[66] The failure to provide counterevidence to contradict the Officer’s notes and version as to how the interview unfolded is particularly fatal in the context where the Minister filed additional evidence to the GCMS notes, that is, the Officer’s own supporting affidavit. This Court held that “an affidavit from the officer who conducted the interview attesting to the accuracy of the GCMS notes would be sufficient to allow the GCMS notes to be treated as evidence for the truth of their contents” (*Tedla* at para 22 *in fine*, citing *Mekonnen v Canada (Citizenship and*

Immigration), 2024 FC 1927 at para 14 *in fine*; see also *Chou v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 14890 at para 13, *aff'd* 2001 FCA 299, cited in *Divya* at para 19). This is precisely the case here.

[67] For completeness and the sake of the readers' understanding, I find it helpful to include the contents of the GCMS notes of the interview about the questioning of Jean Lucien. They read as follows:

QUESTION :Q : Quelle est votre date de naissance ? R : 12 août 2009. Q : Où êtes-vous né ? R : Lubumbashi. Q : Où habitez-vous ? R : Lubumbashi dans la combi Annex. Q : Allez-vous à l'école ? Où ? En quelle année ? R : Oui, à Blaise Pascale, plateau au 5-ème scientifique. Q : Avec qui d'autre vivez-vous ? R : J'habite chez ma tante paternelle Joséphine Muloye Kilongozi actuellement, et avec mes cousins et le père, environ 10 ou plus personnes. Q : Depuis quand vivez-vous avec eux ? R : Depuis six ou huit ans. Q : Avec qui viviez-vous auparavant ? Depuis quand ? R : Chez ma mère, Mwauka Tshimanga. Oui ma mère biologique. J'y ai habité environ 2 ans de 2009 à 2012 environ, après ma naissance. J'ai passé une année chez mon oncle paternel en 2015/16. Q : Qui considérez-vous comme vos parents ? R : NYEMBO, UZIEL KILONGOZI et Zawadi Jeannette. Q : Est-ce que vous avez habité avec eux ? R : Oui, en 2017, j'ai habité avec mon père adoptif pendant quelques mois et avec sa femme pendant quelques années, de 2017 à 2019. Mais dans la même maison où je réside actuellement. Avant 2017 ils habitaient à Lubumbashi mais à un autre endroit. Q : Quand est-ce que vous avez été adopté ? R : En 2023. Q : Est-ce que vous avez habité avec votre père adoptif ? R : Oui, en 2017 avant son départ pour le Canada. Q : Avez-vous une relation avec lui ? R : Oui, père-et fils. Je l'aime et il m'aime. Il envoie les fonds pour payer mes études. Q : Est-ce que vous avez habité avec votre mère adoptive ? R : Oui, pendant environ 2 ans. Q : Comment décririez-vous votre relation avec eux ? R : Mère et fils très attaché. Je l'aime et elle m'aime comme mère. (Note agente : demandeur a des difficultés à répondre en donnant des détails.) Q : Est-ce que vos parents biologiques sont encore en vie ? R : Je sais qu'ils ont en vie, mais je ne sais pas. Q : Ils habitent où ? R : Je ne sais pas. Q : Quand les avez-vous vus pour la dernière fois ? R : Il y a longtemps, peut-être cinq ou dix ans, nous ne sommes pas en contact. Q : Est-ce que vous avez une relation avec eux ? R : Pas vraiment, mais il reste une relation de sang. Q : Quand votre

famille adoptive est-elle partie pour le Canada ? R : Mon père lui il est parti pour le Canada, je ne sais pas la date, et il est revenu, je ne sais pas la date mais pendant environ 5 ans. Il est passé deux mois chez ma tante et en 2017 il est parti encore pour le Canada. Ma mère adoptive est partie en 2019. Ma mère adoptive a habité avec mon père adoptif et à part de moi jusqu'aux deux mois avant son départ quand ils ont emménagé chez ma tante et moi. Q : Êtes-vous restés en contact ? De quelle manière ? R : WhatsApp, on fait des appels. Q : Où vivent-ils ? R : À Ottawa, je sais pas le logement, je crois que c'est une maison. Q : Ils ont des enfants ? R : 2 enfants. Q : Travail ? R : Ma mère est ménagère et mon père je sais pas son job. Q : Où vivriez-vous si vous deviez aller au Canada ? R : Chez mon père et ma mère. Q : Parlez-vous avec eux de votre avenir ? R : Oui, mes planifications pour mon plan future, mon métier, de devenir chimiste.

[TRANSLATION]

QUESTIONS: Q: What is your date of birth? A: August 12, 2009. Q: Where were you born? A: Lubumbashi. Q: Where do you live? A: In Lubumbashi, in the Annex commune. Q: Do you go to school? Where? What grade are you in? A: Yes, at Blaise Pascale, plateau at the 5th, science. Q: Who else do you live with? A: I currently live with my paternal aunt, Joséphine Muloye Kilongozi, my cousins, and the father, about 10 or more people. Q: How long have you lived with them? A: For six or eight years. Q: Who did you live with before that? Since when? A: With my mother, Mwauka Tshimanga. Yes, my biological mother. I lived with her for about two years, from 2009 to around 2012, after I was born. I also spent one year with my paternal uncle in 2015–2016. Q: Whom do you consider to be your parents? A: Nyembo Uziel Kilongozi and Zawadi Jeannette. Q: Have you lived with them? A: Yes. In 2017, I lived with my adoptive father for a few months and with his wife for a few years, from 2017 to 2019. It was in the same house where I currently live. Before 2017, they lived in Lubumbashi but elsewhere. Q: When were you adopted? A: In 2023. Q: Have you lived with your adoptive father? A: Yes, in 2017, before he left for Canada. Q: Do you have a relationship with him? A: Yes, father-and-son. I love him and he loves me. He sends money to pay for my education. Q: Have you lived with your adoptive mother? A: Yes, for about two years. Q: How would you describe your relationship with them? A: Mother-and-son very close. I love her and she loves me like a mother. (Officer's note: applicant has difficulty answering by providing details.) Q: Are your biological parents still alive? A: I know they are alive, but I don't know. Q: Where do they live? A: I don't know. Q: When did you last see them? A: A long time ago, maybe five or ten years

ago. We are not in contact. Q: Do you have a relationship with them? A: Not really, but we are related by blood. Q: When did your adoptive family leave for Canada? A: My father left for Canada, I don't know the date, and he came back, I don't know the date, but for about five years. He stayed for two months at my aunt's, and in 2017 he left again for Canada. My adoptive mother left in 2019. She lived with my adoptive father and apart from me until two months before her departure, when they moved in with my aunt and me. Q: Have you stayed in contact? How? A: Through WhatsApp. We make phone calls. Q: Where do they live? A: In Ottawa. I don't know the address. I think it's a house. Q: Do they have children? A: Two children. Q: What do they do for work? A: My mother is a homemaker, and I don't know what my father's job is. Q: Where would you live if you were to leave for Canada? A: With my father and mother. Q: Do you talk with them about your future? A: Yes. We talk about my plans for the future and my career, of becoming a chemist.

[68] Here, I find that these notes are neither cursory nor ambiguous. On the contrary, the Officer made lengthy and detailed observations. This is not a situation where it is impossible to ascertain accurately the content of the questioning and responses that transpired between the Officer and Jean Lucien during the interview, far from it (see *Ashenafi* at paras 14, 16 by analogy).

[69] In her affidavit, the Officer asserts that these notes “are an accurate and faithful summary of the interview” and that she “never entered false or misleading information in a GCMS notes entry”. She also explains that she “draft[s] the interviewee’s answers as the interview occurs” and that “[j]ust like the questions, [she] note[s] the answers as close to word for word as [she] can”. In this case, the GCMS shows that the interview notes were uploaded the very same day the interview was conducted. The notes were thus recorded contemporaneously with the interview. The Officer also affirms in her affidavit that she cannot modify a GCMS entry once it

has been uploaded. She further assures that she “acted impartially in discharging [her] duties as the decision maker in this case”.

[70] The Officer was not cross-examined on the contents of her affidavit. There is no reason to doubt her assertions and impartiality. Neither Jean Lucien nor his adoptive father provided any reason why the Officer would “untruthfully record his interview” or “in such a marked and detailed manner, fabricate the substance of the interview with false contemporaneous notes of what [he] was actually asked and answered” (*Gebremichael v Canada (Citizenship and Immigration)*, 2024 FC 884 at para 26).

[71] Moreover, the lack of contradicting evidence adduced by Jean Lucien means that he does not dispute having made the declarations at issue (see *Ashenafi* at para 16 by analogy). Even if I were to consider the hearsay contained in Mr. Kilongozi Nyembo’s affidavit, the paragraph stating that Jean Lucien “was asked questions on how he was adopted and the process of adoption, the date on which his adoptive father left for Canada and the other members of his adopted family” is fully aligned with the Officer’s notes. In other words, this part of Jean Lucien’s version of the interview hearing does not contradict the Officer’s version.

[72] Contrary to Jean Lucien’s submissions, I have no reason to doubt that the Officer’s notes provide “a verifiable record of what was actually said”. As such, I find that the GCMS notes constitute an accurate recollection of how the interview unfolded and are adequate for this Court to conduct this application for judicial review.

- (3) The impact of the absence of counsel or designative representative at the interview on the probative value of the declarations

[73] At the outset, I acknowledge that this case raises legitimate concerns associated with visa officers interviewing foreign minor children abroad without a parent, guardian or representative present. This is particularly so when the declarations of a minor child are then compared to those of their parent, and the application refused on the basis of inconsistencies between the two. On the other hand, I am also mindful of the fact that the Officer was conducting her mandatory duty under the IRPA and the IRPR to assess the genuineness of the parent-child relationship and thus, the practical effect of the adoption, which may require in some cases that an adoptee and an adopter be interviewed separately. Also, Jean Lucien was 14 years old at the time and thus, cannot be said of being a child of tender age. Reassuringly, the Officer in her affidavit stated that she “infrequently interview[s] minors”.

[74] That being said, in his Supplemental Memorandum, Jean Lucien does not take issue anymore with the fact that he was interviewed by the Officer without a parent, guardian or representative present. As such, I will not comment further on the Officer’s decision, on IRCC’s practice of interviewing unaccompanied foreign minors or on the procedural safeguards that may be appropriate in that context. My analysis is instead confined to the specific arguments raised by Jean Lucien in this application for judicial review.

[75] Relying on *Jesuthasan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 872 at paragraphs 11–12 [*Jesuthasan*], Jean Lucien argues that “there are certain requirements that an Immigration Officer before must take before and during the interview in order for them to be able to exercise the discretion to conduct such an interview, and that a

transcript or audio recording of the interview is essential to determine if those requirements were fulfilled and whether in the context as a whole, it was proper to put reliance on what allegedly was stated during that interview.” His arguments therefore relate closely to the absence of transcript or audio recordings — such absence meaning that there is no indication that the Officer has complied with the “general non-written guidelines” set out by this Court in *Jesuthasan*. In turn, this could impact the probative value of the declarations given by Jean Lucien at the interview.

[76] In his Supplemental Memorandum, Jean Lucien cited the Manitoba Court of Appeal’s decision in *DL v ANCR*, 2024 MBCA 17 at paragraphs 42–45 to argue that the Officer should have followed a nine-step protocol in interviewing him. At the outset, I note that the excerpts cited by Jean Lucien rather come from the first instance decision in that matter, in *DL v ANCR*, 2022 MBQB 109 at paragraph 15. The Manitoba Court of Appeal then quashed the appeal for lack of jurisdiction to intervene in the application judge’s final order.

[77] In any event, Jean Lucien’s reliance on this so-called protocol enunciated by the Manitoba Court of Queen’s Bench (as it then was), while instructive, is not persuasive. The context prevailing in a child protection setting, or in criminal or penal setting like in *MB v Child and Family All Nations*, 2021 MBQB 188, *Stefureak v Chambers*, 2004 CanLII 34521 (ON SC) and *R v NB*, 2018 ONCA 556 — all relied on by Jean Lucien —, is very different from that of an eligibility interview of an applicant at a visa post office by an administrative decision maker.

[78] In the case at hand, Jean Lucien and his adoptive father were properly informed via e-mail by the Embassy that an interview was to take place. Mr. Kilongozi Nyembo confirmed

Jean Lucien’s attendance by e-mail. Nevertheless, there is no indication that Jean Lucien, Mr. Kilongozi Nyembo or their counsel sought leave to have a parent, guardian or representative present during the interview or to attend accompanied by counsel. It is only after the interview, once a PFL was issued with respect to the Officer’s concerns that Mr. Kilongozi Nyembo vigorously raised this issue in his response — a month after the interview at issue had taken place.

[79] Moreover, while counsel for Jean Lucien argues before this Court that his client was accompanied to the Embassy by his adoptive cousin “who could have served as a designated representative”, no evidence was adduced, whether in an affidavit or otherwise, with respect to Jean Lucien being accompanied by this cousin, or his counsel, his adopter or himself requesting that his cousin be allowed to enter the interview and act as a designated representative. On the other hand, in her affidavit, the Officer states that she does not recall any request for the adoptive cousin to attend or participate in the interview, nor any request to grant the cousin entry to the building. There is indeed no evidence of such requests on file.

[80] This Court has previously found that there is no categorical bar to immigration officers interviewing minors without a designated representative present (*Jesuthasan* at para 11, cited in *Wohab v Canada (Citizenship and Immigration)*, 2022 FC 2 at paras 56–71 [*Wohab*]). This includes cases relating to *bona fide* adoptions, like in *Jesuthasan* and as is the case here. Rather, “[t]he duty of fairness for a visa officer who chooses to interview a child will vary depending on the circumstances” but, “[a]t a minimum, the visa officer must ensure that the child understands the nature of the proceeding, understands the importance of telling the truth, indicates a willingness to tell the truth and in circumstances where the questions relate to a previous time

frame, the officer must ensure that the child has the capacity to remember the time in question” (*Jesuthasan* at para 11).

[81] I pause to note that the interviewed child was 12 years old in *Jesuthasan*, and two months short of 16 years old in *Wohab*. Yet, the Court found that the officer did not breach procedural fairness in those cases. Here, Jean Lucien was 14 years old at the time of the interview, and less than two months shy of turning 15 years old.

[82] The Minister argues that the Officer discharged her duty to assess Jean Lucien’s cognitive abilities and comprehension by making introductory remarks at the beginning of the interview. Those remarks, as recorded in the GCMS notes, read as follows:

Je me présente. Je m’assure de la langue de l’entrevue, m’assure que le requérant peut entendre et bien comprendre moi-même. Prière d’être à l’aise de me demander à tout moment de répéter ou reformuler si vous ne comprenez pas une question. Est-ce que vous pouvez me comprendre ? Requéant indique qu’il peut me comprendre. J’explique l’objectif de l’entrevue. Je vérifie que le requérant a compris. J’informe le requérant de la confidentialité des informations qu’il me fournira lors de l’entrevue, qu’aucune information ne sera divulguée à quiconque pas autorisé. Je l’informe également de son obligation de dire la vérité et que le fait de ne pas répondre véridiquement peut avoir un impact négatif sur la demande de résidence permanent. Je vérifie que le requérant a compris. Le requérant a répondu par l’affirmative. Je demande au requérant s’il a des questions à ce stade. Requéant répondent par la négative. Vérifie les pièces d’identité et compare les photos versées au dossier au requérant pour confirmer leur identité. Je suis satisfaite de son identité, il a présenté un passeport délivré 16 février 2024.

[TRANSLATION]

I introduce myself. I make sure of the language of the interview, make sure that the applicant can hear and understand me. Please feel comfortable asking me at any time to repeat or reformulate if

you do not understand a question. Can you understand me? The applicant indicates that he can understand me. I explain the purpose of the interview. I verify that the applicant understands. I inform the applicant of the confidentiality of the information that he will provide to me during the interview, that no information will be disclosed to anyone not authorized. I also inform him of his obligation to tell the truth and that not answering truthfully may have a negative impact on the application for permanent residence. I verify that the applicant understands. The applicant responds in the affirmative. I ask the applicant if he has any questions at this stage. The applicant responds in the negative. I verify the identity documents and compare the photos on file with the applicant to confirm their identity. I am satisfied with his identity, he presented a passport issued February 16, 2024.

[83] In her affidavit, the Officer explains that she “would not proceed with the rest of the interview if there were any issues with this portion of the interview”. These remarks enable her to be satisfied that an applicant understands “the goal of the interview in the context of the application”, that “they must tell the truth” and that “an applicant understands [her] and feels comfortable advising [her] if they do not comprehend a question”.

[84] I observe that this introductory “script” contains no indication that it was adapted to use language appropriate for a minor child. I emphasize that, in such circumstances, a visa officer should use age-appropriate language and avoid generic or abstract statements that a child may not fully understand.

[85] That said, there is no evidence suggesting that Jean Lucien did not understand these remarks, lacked the cognitive ability to understand the nature of the interview or to differentiate truth from falsehood, or had any trouble communicating in French — the language of the interview. I also note that the questions asked to Jean Lucien related to his living history and were straightforward, worded in a simple manner and open-ended. The Officer states in her

affidavit that she does “not recall [Jean Lucien]’s demeanor being unusual during the interview” and that he rather “generally seemed at ease.” Without any evidence to the contrary, other than a hearsay statement contained in Mr. Kilongozi Nyembo’s affidavit, I have not been convinced that the Officer breached procedural fairness in the manner the interview was conducted (see *Wohab* at para 66 by analogy).

[86] Moreover, I underline that the Officer was sensitive to Jean Lucien’s age by deciding not to confront him during the interview with the inconsistencies between his declarations and the information provided by the adopter on his application. As she explains in her affidavit as well as in the GCMS notes, the Officer rather decided to issue a PFL to allow both Jean Lucien and his adoptive father to address her persisting concerns:

The decision to not request a response during the interview was made considering the applicant’s age and to provide Mr. Nyembo the opportunity to respond as well.

[GCMS Notes dated August 30, 2024]

I made the decision to not put my concerns to the Applicant during the interview because he was a minor. Since the goal of the interview was just to gather information, I took this information away and presented my concerns to the sponsor.

[Officer’s affidavit at para 10]

[87] In short, given the lack of timely objection to Jean Lucien’s interview without an adult present and the lack of evidence that such a request was denied by the Officer or that Jean Lucien did not understand the nature of the proceeding, or that the interview was otherwise conducted in

an inappropriate manner, I am satisfied that the process was not procedurally unfair and that there are no grounds to quash the Decision on this basis.

(4) The process followed by the Officer was otherwise fair

[88] I am also satisfied that the Decision at issue was rendered following an otherwise fair process. The process followed by the Officer gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted.

[89] The absence of an audio recording or a transcript did not preclude Jean Lucien and Mr. Kilongozi Nyembo from responding to the PFL, nor from pursuing this application for judicial review. It bears emphasizing that Jean Lucien was the person interviewed and as such, was well placed to recall the contents of the interview. Moreover, the PFL sent after the interview contained, in a very detailed manner, the declarations he had made to the Officer — in other words, the substance of the relevant GCMS notes were included in the PFL. Then, as part of this application for judicial review, pursuant to Rules 9 and 17, Jean Lucien also gained access to the Officer's contemporaneous GCMS notes following the interview, including the above-mentioned transcript of the questions asked and the answers provided.

[90] The Officer provided a PFL that presented her concerns with the inconsistencies between the answers provided by Jean Lucien at the interview and the information provided by Mr. Kilongozi Nyembo on file. This letter precisely detailed the information the Officer recorded during the interview. In my view, and as submitted by the Minister, the Officer provided Jean Lucien and his adoptive father with a PFL that contained sufficiently detailed information to

know the case they had to meet and to give them an adequate and fair opportunity to respond to her concerns. This opportunity was indeed seized by Mr. Kilongozi Nyembo in his response to the PFL dated July 30, 2024.

- (5) The Officer awarded Jean Lucien and Mr. Kilongozi Nyembo an opportunity they were not entitled to by law

[91] One last note is worth mentioning.

[92] After the initial application for judicial review was granted by this Court, Jean Lucien and Mr. Kilongozi Nyembo were invited to provide, and did provide, additional information and documentary evidence in support of Jean Lucien's visa application. Despite those further submissions, the GCMS notes make clear that the Officer remained concerned about the lack or insufficiency of evidence supporting the claimed parent-child relationship. The Officer could well have stopped her assessment and analysis there. It is trite law that the onus is on a visa applicant to put their best foot forward by providing all relevant supporting documentation and sufficient credible evidence in support of his application. A visa officer is under no legal obligation to seek to clarify a deficient application. Nor is an applicant entitled to a personal interview if the application is ambiguous or if adequate supporting material is not included.

[93] The Officer nevertheless decided to go further and to interview Jean Lucien, thereby affording the adopter and the adoptee another chance to demonstrate the genuineness of their asserted parent-child relationship. As the Officer explained in her affidavit, the interview conducted in this case was an atypical one, as its purpose was specifically to gather information given the "little documentary evidence of cohabitation on file to support the assertion that the

sponsor and his spouse had cared for [Jean Lucien] since [Jean Lucien] was two months old until [his adoptive father] and his spouse's respective departures from the country". As the Officer further observes, this is different from a regular interview which, "in addition to gathering information, is an opportunity for an officer to present concerns to an applicant and receive a response", and to confront an applicant.

[94] The interview thus afforded Jean Lucien and Mr. Kilongozi Nyembo another opportunity to bolster their application when it should have been complete from the outset after the first judicial review was granted. The interview was a bonus step they were not entitled to by law. However, they did not make a satisfactory use of that opportunity as the interview failed to fill the gaps in the documentary evidence and rather raised additional concerns for the Officer.

C. *The Decision is reasonable*

[95] As rightfully pointed out by counsel for the Minister, that argument seems to have been wholeheartedly abandoned as it does not appear anywhere in Jean Lucien's Supplemental Memorandum. I will, however, briefly comment on that aspect for the sake of completeness.

[96] At the outset, I emphasize that concluding that a parent-child relationship is not genuine has serious ramifications and must not be undertaken lightly. This triggers a heightened duty of justification. That said, in this case, I find that the Officer's Decision does have the required transparency, intelligibility and justification to satisfy the standard of reasonableness (*Vavilov* at para 101). The Officer's analysis is very detailed, thorough and intelligible. Contrary to Jean Lucien's assertions, the Officer did grapple with his submissions provided in response to

the PFL. In the absence of any procedural fairness issue, I cannot find that the Officer erred by considering the declarations he made during the interview. While Jean Lucien and his adoptive father obviously disagree with the weight that the Officer assigned to those declarations as opposed to the documentary evidence adduced and declarations of Mr. Kilongozi Nyembo on file, absent exceptional circumstances, it is not the Court's role to reweigh the evidence (*Vavilov* at para 125). There are no such exceptional circumstances here.

[97] Since Jean Lucien did not identify any other alleged shortcoming in the Decision, he has not met his onus of demonstrating that the Decision is unreasonable. The Court's intervention is thus unwarranted.

IV. Conclusion

[98] For the above-mentioned reasons, Jean Lucien's application for judicial review is dismissed. In the circumstances of this case — where no contradicting evidence was adduced —, I find that the Decision was reached in a procedurally fair manner. The absence of an audio recording or transcript does not prevent this Court from fulfilling its role on judicial review given that there is no reason to doubt the reliability and accuracy of the contemporary-uploaded GCMS notes of the Officer. The Officer was also sensitive to the fact that she was interviewing a minor and the manner in which the interview was conducted does not amount to a breach of procedural fairness. On the contrary, the interview allowed Jean Lucien and his adoptive father an opportunity to complete and bolster their otherwise deficient application, even though it did not result in the intended effect.

[99] The Officer also reasonably accounted for the evidence before her, notably in light of the inconsistencies between the declarations made by Jean Lucien during the interview and the declarations and documentary evidence on file provided by his adoptive father. It was open for the Officer to determine that Jean Lucien and Mr. Kilongozi Nyembo had not met their onus to demonstrate a genuine parent-child relationship within the meaning of paragraph 4(2)(b) of the IRPR.

[100] As the Minister is not asking for costs, none will be awarded, even though the actions of counsel for Jean Lucien are certainly regrettable and were specifically condemned by the Court in the Adjourning Order.

[101] There are no questions of general importance to be certified.

JUDGMENT in IMM-17426-24

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.
2. There is no question of general importance to be certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-17426-24

STYLE OF CAUSE: JEAN LUCIEN KIBONDO KILONGOZI v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JULY 6, 2026

JUDGMENT AND REASONS: GASCON J.

DATED: JULY 10, 2026

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