



Date: 20160209

Docket: IMM-3048-15

Citation: 2016 FC 171

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 9, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

AMANDEEP KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Amandeep Kaur, her brother Parminder Singh and her sister Amanpreet Kaur are Indian citizens.¹ They are also known, respectively, by the names Sandeep Kaur, Sarabjot Singh, and Mandeep Kaur. In 2001, Ms. Kaur arrived in Canada from Abu Dhabi. She

¹ Judgments similar to this one were rendered in dockets IMM-3015-15 and IMM-3047-15 with respect to the applications for judicial review submitted by Parminder Singh and Amanpreet Kaur, respectively.

was accompanied by her parents, her sister, her brother and their younger brother, Balraj Singh. Before her departure, Canadian authorities issued her a temporary resident visa in the name of Amandeep Kaur. At the time, Ms. Kaur was a minor child.

[2] After their arrival in Canada, Ms. Kaur's parents applied for refugee status for themselves and their children. Canadian authorities approved these applications for the mother and the children. However, Citizenship and Immigration Canada (CIC) then learned that Ms. Kaur and her family had obtained refugee and permanent resident status in Canada using false identities. CIC subsequently revoked these statuses.

[1] In February 2013, a CIC immigration officer approved the application for permanent residence on humanitarian and compassionate grounds for Ms. Kaur, who was then an adult, on the condition that she comply with the statutory requirements, i.e., a medical examination, a criminal record check, and possession of valid identity or travel documents. However, on June 8, 2015, immigration officer Marie G eralde Georges (the officer) refused to grant Ms. Kaur permanent resident status because she had failed to provide the documents required to prove her identity under section 178 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227) (Regulations).

[2] Today, Ms. Kaur is applying for judicial review of this decision under subsection 72(1) of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27). She specifically claims that the officer made an error when she insisted that she prove her identity [TRANSLATION] "beyond a reasonable doubt." The Minister replied that the officer had reasonably concluded that, according

to her analysis of the file and the proof provided, her doubts as to Ms. Kaur's identity had not been allayed.

[3] The issue is to determine whether the officer committed an error in law by inappropriately formulating the burden of proof that Ms. Kaur had to meet to prove her identity in her application for permanent residence.

[4] For the reasons that follow, Ms. Kaur's application for judicial review is allowed because the Court finds that the officer erroneously invoked and applied the standard of proof that is applicable in criminal proceedings, namely proof beyond a reasonable doubt, in her assessment of Ms. Kaur's identity. It is clear, however, that the officer should have used and applied the only standard of proof applicable in civil proceedings, namely the balance of probabilities.

II. Background

[5] In her decision, the officer concluded that Ms. Kaur had failed to provide the authentic identity documents required under sections 50 and 178 of the Regulations. The officer reviewed all the documents that Ms. Kaur had sent to Canadian authorities since her application for permanent residence for humanitarian and compassionate considerations was approved in February 2013.

[6] More specifically, in January 2014, Ms. Kaur had submitted to CIC a solemn declaration, a notarized declaration from her mother stating that she is her biological child, a copy of her birth certificate, and a certified copy of the translation of the birth certificate. Because of the identity

fraud committed by Ms. Kaur's parents, the officer proceeded with a detailed review of Ms. Kaur's documents and submissions. Consequently, Indian authorities advised the officer that the original birth certificate, which Ms. Kaur had submitted in September 2014, had been altered and did not match the certificate issued at the time of her birth. The officer noted in her decision that an official document containing an alteration, no matter how minimal, cannot be accepted.

[7] In her reasons, the officer also referred to the questions that Ms. Kaur was asked on the subject of her passport. She was not satisfied with Ms. Kaur's response that she was no longer in possession of her passport, nor was she satisfied with the explanations Ms. Kaur gave with respect to the reasons why she could not get her passport from the Indian Embassy in Canada for the purposes of her refugee claim. She emphasized that Ms. Kaur had not provided documents supporting her claim to this effect. The officer therefore did not consider credible Ms. Kaur's explanations about the absence of her passport and the impossibility of obtaining a valid passport. The officer determined that Ms. Kaur had entered Canada with a passport and visa issued in her true identity and that her passport had not been seized by a smuggler as alleged, because her father had kept his. In addition, because she had applied for refugee protection under a false name, there was nothing to prevent a new passport from being issued in her real name.

[8] The officer also noted in her decision that in March 2015, Ms. Kaur sent her a new birth certificate obtained through her uncle in February 2015, and the Canadian Embassy in India confirmed its authenticity. However, the officer also noticed that the document was issued after Ms. Kaur arrived in Canada and believed that the document was obtained in order to satisfy

immigration authorities and to contradict the information obtained during the verification of the first birth certificate, which proved to have been falsified.

[9] Lastly, the officer gave little weight to Ms. Kaur's mother's solemn declaration attesting to her daughter's identity because of the lack of credibility and the previous fraud that her mother had committed with Canadian authorities in the initial refugee claim.

[10] After the officer did a complete analysis of the file, she concluded her decision by stating that Ms. Kaur did not prove [TRANSLATION] "beyond a reasonable doubt" that she is indeed Amandeep Kaur and the officer was thus not satisfied as to her identity.

III. Analysis

[11] The Minister argued that based on the officer's reasons, it is clear that the burden of proof imposed on Ms. Kaur was not onerous. He stated that the officer made her decision based on facts that had no connection to the burden of proof, including the observation that Ms. Kaur had submitted a falsified birth certificate and did not have the required documents. The Minister argued that the issue of identity is a crucial factor in any application for permanent residence and that Ms. Kaur was simply unable to provide the documents required by Canadian law.

[12] At the hearing before the Court, the Minister's counsel added that the officer's explicit finding referring to Ms. Kaur's failure to prove her identity [TRANSLATION] "beyond a reasonable doubt" at the end of her reasons was not a key statement in the decision, qualifying it instead as [TRANSLATION] "an unfortunate phrase." The Minister stated that the officer's reasons were

enough to prove that she had applied the appropriate legal test in this case, namely the balance of probabilities. In support of his arguments, the Minister specifically cited *Alam v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 (*Alam*) at paragraph 9.

[13] The Court does not agree with the Minister's position and cannot accept the arguments submitted by the Minister's counsel, even though they were well articulated and presented at the hearing. Regardless of how the Minister would like to portray the officer's analysis and assessment of the evidence, the fact remains that with respect to the burden of proof cited by the officer, the decision was clearly and transparently worded. The officer's only mention of the burden of proof is in the very last paragraph of the decision, in which she specifically states that [TRANSLATION] "after a complete review of this file, the applicant has not proved to me beyond a reasonable doubt that she is Amandeep Kaur." Such words leave little room for interpretation.

[14] This is a blatant error. It is clear that this is not the burden of proof that applies when assessing the authenticity and probative value of identity documents required for an application for permanent residence. In his written submissions and at the hearing, the Minister also acknowledged that this burden must instead be satisfied according to the balance of probabilities.

[15] Of course, as stated in *Alam*, cited by the Minister, where the tribunal has articulated "the gist of the appropriate standard of proof," the Court will not intervene (*Alam* at paragraph 9). However, the Court will remit a matter in circumstances in which the wrong test has been applied or it is unclear as to which test has been applied (*Srirenganathan v. Canada (Citizenship*

and Immigration), 2015 FC 730 at paragraph 11; *Canada (Citizenship and Immigration) v. Neubauer*, 2015 FC 260 at paragraph 24).

[16] At any rate, *Alam* was not of great assistance to the Minister. Justice O'Reilly states therein that when a court has elevated the standard of proof, or when an excessive burden of proof is imposed on the applicant, a new hearing should be ordered. He concludes that in circumstances where the tribunal has made an error of law regarding a fundamental issue, such as the appropriate standard of proof, the Court should generally order a new hearing unless it is clear that the claim could not possibly succeed (*Alam* at paragraph 16). *Alam* involved a case where the standard of the balance of probabilities seemed to have been elevated by the tribunal with respect to its application to the facts in this case. The Court notes that the civil standard still applied and that the issue in dispute was instead the modification and scope of the burden of balance of probabilities that the applicant had in fact been required to satisfy.

[17] However, this case is not one in which the tribunal articulated the gist of the appropriate standard of proof, but one in which it misstated how this standard was to be applied. Instead, this is a situation where the officer clearly used the wrong standard of proof and thereby imposed on Ms. Kaur an onerous burden of proof that should apply only in criminal cases. There is no doubt that this standard is inappropriate for assessing an application for permanent residence and its statutory requirements and that, in these circumstances, a new hearing is required. The Court cannot support such a statement made without any qualification or reservation, nor can it accept the Minister's counsel's suggestion to see it as simply an unfortunate phrase.

[18] Moreover, the Minister did not provide any references to excerpts from the decision that could suggest that despite the clarity of the language used in her conclusion, the officer had in fact applied the burden of balance of probabilities. Nothing in the decision allows the Court to find that this statement by the officer is an insignificant blunder that does not reflect the standard of proof used and that the burden of proof imposed on Ms. Kaur was in fact less onerous. The Court also disagrees with the Minister's opinion that overall, the burden of proof is not a key factor in the decision because Ms. Kaur made false statements and submitted falsified supporting documents with her application for permanent residence.

[19] The Court instead finds that upon reading the officer's reasons, it is impossible to determine whether the evidence at her disposal would have sufficed to satisfy the burden of balance of probabilities. Since the only mention of burden of proof is found at the end of the decision, everything indicates that this was indeed the legal test applied by the officer throughout her analysis. The Court has no way of knowing whether, guided by the burden of proof on a balance of probabilities, the officer would still have found that the new birth certificate was not sufficient to prove Ms. Kaur's identity, or if her assessment of Ms. Kaur's explanation about her missing passport or her mother's credibility would have been different.

[20] The Court is aware that if it refers the matter back to CIC, the outcome may be the same after a new review conducted in light of the civil standard of proof on a balance of probabilities. However, this is an assessment that CIC must conduct and to which Ms. Kaur is entitled in the decision regarding her application for permanent residence. Informed by these reasons of the egregious error committed by the officer and the standard of proof to be applied, another

immigration officer might nevertheless come to a similar conclusion. However, another officer might also come to a different conclusion. The Court cannot say that the case leans so heavily against granting Ms. Kaur's application for permanent residence that sending the case back to CIC would serve no useful purpose (*Lemus v. Canada (Citizenship and Immigration)*, 2014 FCA 114 at paragraph 38).

[21] That being said, the Court acknowledges that immigration officers have a duty to defend the integrity of the immigration system and of Canadian legislation and to ensure that permanent residence is not granted to people who cannot prove their identity or who attempt to do so under false pretenses. However, in the performance of these duties, officers cannot subject applicants for permanent residence to requirements or to a standard of proof not applicable to Canadian civil cases.

IV. Conclusion

[22] For all of the above reasons, Ms. Kaur's application for judicial review must be allowed because the officer used an improper legal test in finding that Ms. Kaur had not proven her identity beyond a reasonable doubt.

[23] The parties did not raise any questions for certification in their written and oral representations and the Court agrees that there are none in this case.

JUDGMENT

THE COURT ORDERS that:

1. The application for judicial review is allowed;
2. The decision rendered on June 8, 2015 by immigration officer Marie G eralde Georges is rescinded;
3. The matter is referred back to Citizenship and Immigration Canada for redetermination by another immigration officer.
4. No serious questions of general importance were certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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