

Federal Court



Cour fédérale

Date: 20160209

Docket: IMM-3047-15

Citation: 2016 FC 170

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 9, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

AMANPREET KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Amanpreet Kaur, her brother Parminder Singh and her sister Amandeep Kaur are Indian citizens.¹ They are also known, respectively, by the names Mandeep Kaur,

¹ Judgments similar to this one were rendered in dockets IMM-3015-15 and IMM-3048-15 with respect to the applications for judicial review submitted by Parminder Singh and Amandeep Kaur, respectively.

Sarabjot Singh and Sandeep Kaur. In 2001, Ms. Kaur arrived in Canada from Abu Dhabi. She 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 Amanpreet Kaur. At the time, Ms. Kaur was a minor child.

[2] After their arrival in Canada, Ms. Kaur's parents applied for refugee protection for themselves and their children. Canadian authorities approved these applications for the mother and the children. However, Citizenship and Immigration Canada [CIC] subsequently learned that Ms. Kaur and her family had obtained refugee and permanent resident status in Canada using false identities. CIC then 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 9, 2015, immigration officer Marie-Géralde 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, pursuant to her review 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 criminal standard of proof, i.e. proof beyond a reasonable doubt, in her assessment of Ms. Kaur’s identity. However, it is clear that the officer should have used and applied only the civil standard of proof, i.e. the balance of probabilities.

I. Background

[5] In her decision, the officer found 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 had been approved on humanitarian and compassionate grounds in February 2013.

[6] More specifically, in January 2014, Ms. Kaur had submitted to CIC a solemn declaration, a notarized declaration from her mother indicating that she is her biological child, a copy of her

birth certificate, and a certified copy of the translation of the birth certificate. Because Ms. Kaur's parents had committed identity fraud, the officer performed a detailed verification 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 any alteration, however minor, cannot be accepted.

[7] The officer's reasons also made reference to the questions Ms. Kaur was asked regarding 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 Ms. Kaur's explanation as to why she was unable to obtain her passport from the Indian Embassy in Canada, which she required for her application for refugee protection. She pointed out that Ms. Kaur had not provided any documents supporting her claim in this regard. The officer therefore found that Ms. Kaur's explanations regarding the absence of her passport and her inability to obtain a valid passport lacked credibility. The officer determined that Ms. Kaur had entered Canada with a passport and visa indicating 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 her mother's lack of credibility and the previous fraud she had committed with Canadian authorities in the initial refugee claim.

[10] After performing a complete review of the file, the officer concluded her decision by stating that Ms. Kaur did not demonstrate [TRANSLATION] "beyond a reasonable doubt" that she is indeed Amanpreet Kaur, and the officer was thus not satisfied with her identity.

II. Analysis

[11] The Minister argued that based on the officer's reasons, it was clear that the burden of proof on Ms. Kaur was not excessive. He contended that the officer had made her decision based on facts unrelated to the burden of proof, including the finding 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 element 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 argued that the officer’s reasons were sufficient to prove that she had applied the appropriate legal test in this case, i.e. 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 the burden of proof cited by the officer was articulated clearly and transparently in the decision. The only mention of the burden of proof by the officer is in the final 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 Amanpreet Kaur.” These words leave little room for interpretation.

[14] This is an egregious 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. Rather, in his written submissions and at the hearing, the Minister acknowledged that the burden to be applied was on the balance of probabilities.

[15] Admittedly, as established in *Alam*, cited by the Minister, the Court will not intervene where the tribunal has articulated “the gist of the appropriate standard of proof” (*Alam* at paragraph 9). However, the Court will remit a matter in circumstances where it is unclear which test has been applied or if the wrong 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. Rather, this is a situation where the officer clearly used the wrong standard of proof, thereby imposing on Ms. Kaur an onerous burden of proof, which 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 that it simply be considered 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 documents in support of 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 the 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 record leans so heavily against granting Ms. Kaur's application for permanent residence that referring the matter 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 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.

III. Conclusion

[22] For the foregoing reasons, Ms. Kaur's application for judicial review must be allowed because the officer used an incorrect legal test in finding that Ms. Kaur had not proved 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 9, 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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STYLE OF CAUSE: AMANPREET KAUR v THE MINISTER OF
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