

Federal Court



Cour fédérale

Date: Feb. 9, 2016

Docket: IMM-3015-15

Citation: 2016 FC 169

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 9, 2016

In the presence of the Honourable Mr. Justice Gascon

BETWEEN:

PARMINDER SINGH

applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] The applicant, Parminder Singh, and his two sisters, Amanpreet Kaur and Amandeep Kaur, are citizens of India.¹ They are also known, respectively, by the names Sarabjot Singh,

¹ Judgments similar to this one were rendered in dockets IMM-3047-15 and IMM-3048-15 with respect to the requests for judicial review respectively submitted by Amanpreet Kaur and Amandeep Kaur.

Mandeep Kaur and Sandeep Kaur. In 2001, Mr. Singh arrived in Canada from Abu Dhabi. He was accompanied by his parents, his sisters and their younger brother, Balraj Singh. Before his departure, the Canadian authorities issued him a temporary resident visa in the name of Parminder Singh. At the time, Mr. Singh was a minor child.

[2] After their arrival in Canada, Mr. Singh's parents presented a claim for refugee protection for themselves and their children. The Canadian authorities granted these claims to the mother and the children. However, Citizenship and Immigration Canada (CIC) then learned that Mr. Singh and his family had obtained refugee and permanent resident status in Canada using false identities. CIC subsequently revoked these statuses.

[3] In February 2013, a CIC immigration officer accepted the permanent residence application for humanitarian reasons for Mr. Singh, who had since become an adult, on the condition that he comply with the statutory requirements, namely a medical exam, a criminal records check and the possession of valid identity or travel documents. However, on June 9, 2015, immigration officer Marie G eralde Georges (the officer) refused to grant Mr. Singh permanent residence status because he had failed to provide the documents required to prove his identity under Section 178 of the *Immigration and Refugee Protection Regulations* (SORS/2002-227) (Regulations).

[4] Today, Mr. Singh has asked, by virtue of subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, for judicial review of this decision. He claims, in particular, that the officer made an error when she insisted that he prove his identity "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 Mr. Singh’s identity had not been allayed.

[5] The issue is to determine whether the officer committed an error in law by inappropriately formulating the burden of proof that required Mr. Singh to prove his identity in his application for permanent residence.

[6] For the following reasons, Mr. Singh’s request for judicial review is granted because the Court has concluded that the officer erroneously invoked and applied the standard of proof that is applicable in criminal proceedings, namely the proof beyond a reasonable doubt, in her assessment of Mr. Singh’s identity. It is clear, however, that the officer should have used and applied the only standard of proof applicable in civil proceedings, namely a balance of probability.

II. Background

[7] In her decision, the officer concluded that Mr. Singh had failed to provide the authentic identity documents required under Sections 50 and 178 of the Regulations. The officer reviewed all the documents that Mr. Singh had sent to the Canadian authorities since his application for permanent residence was approved for humanitarian reasons in February 2013.

[8] More specifically, in January 2014, Mr. Singh had submitted to CIC a solemn declaration, a notarial declaration from his mother stating that he is her biological child, a copy of his birth certificate, and a certified copy of the birth certificate's translation. Because of the identity fraud committed by Mr. Singh's parents, the officer proceeded with a detailed review of Mr. Singh's documents and submissions. She was thus advised by the Indian authorities that the original copy of Mr. Singh's birth certificate, which he had submitted in September 2014, had been altered and did not correspond to the certificate issued upon Mr. Singh's birth. The officer noted in her decision that an official document containing an alteration, no matter how minimal, cannot be accepted.

[9] In her reasons, the officer also referred to the questions that Mr. Singh was asked on the subject of his passport. She was not satisfied with Mr. Singh's response that he was no longer in possession of his passport nor was she satisfied with the explanations Mr. Singh gave with respect to the reasons why he could not get his passport from the Indian Embassy in Canada for the purposes of his claim for refugee protection. She emphasized that Mr. Singh had not provided documents supporting his claim to this effect. The officer therefore did not consider credible Mr. Singh's explanations about the absence of his passport and the impossibility of obtaining a valid passport. The officer determined that Mr. Singh had entered Canada with a passport and visa issued in his true identity and that his passport had not been seized by a smuggler as he so alleged, because his father had kept his. In addition, since his claim for refugee protection had been presented under a false name, there were no impediments to the issuance of a new passport in his true name.

[10] In her decision, the officer also noted that in March 2015, Mr. Singh sent her a new birth certificate obtained through his uncle in February 2015, and the Canadian Embassy in Indian confirmed its authenticity. However, the officer noticed that the document had been issued after Mr. Singh arrived in Canada and felt that the document had been obtained in order to satisfy immigration and to counteract the information obtained during the verification of the first birth certificate, which proved to have been falsified.

[11] The officer gave little weight to the solemn declaration of Mr. Singh's mother attesting to the identity of her son, due to its lack of credibility and the past fraud that she had committed with the Canadian authorities in the initial claim for refugee protection.

[12] After the officer did a complete analysis of the file, she concluded her decision by stating that Mr. Singh had not demonstrated "beyond a reasonable doubt" that he is in fact Parminder Singh and that she was thus not satisfied as to his identity.

III. Analysis

[13] The Minister argued that based on the officer's reasons, it is clear that the burden of proof imposed on Mr. Singh 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 Mr. Singh had submitted a falsified birth certificate and did not have the required documents. The Minister argued that the question of identity is a crucial factor in any application for permanent residence and that Mr. Singh was simply unable to provide the documents required under Canadian law.

[14] During the hearing before the Court, the Minister's attorney added that the officer's explicit finding referring to Mr. Singh's failure to prove his identity "beyond a reasonable doubt" at the end of her reasons was not a key statement in the decision, qualifying it instead as an "unfortunate phrase." The Minister stated that the officer's reasons were enough to show that she had applied the appropriate legal test in the case, namely a balance of probability. In support of his arguments, the Minister specifically cited *Alam v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 4 [*Alam*] at paragraph 9.

[15] The Court does not agree with the Minister's position and cannot accept the arguments submitted by the Minister's attorney, even though they were well articulated and presented during 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 expression of the burden of proof is found in the very last paragraph of the decision, in which she specifically states that "after the complete analysis of this file, the applicant did not prove to me beyond a reasonable doubt that he is Parminder Singh." Such a statement leaves little room for interpretation.

[16] This is a case of a blatant error. It is clear that the burden of proof is not applicable when evaluating identification documents' authenticity and probative value in an application for permanent residence. In his written submissions and during the hearing, the Minister acknowledged that this burden must instead be satisfied according to a balance of probability.

[17] Of course, as stated in *Alam*, cited by the Minister, the Court will not intervene if a Court made its ruling based on “the gist of the appropriate standard of proof” (*Alam* at paragraph 9). However, the Court will remit a matter in circumstances where the wrong test has been applied or when it is unclear 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).

[18] In addition, *Alam* was not much help to the Minister. Judge O’Reilly states therein that when a Court has elevated the standard of proof, or when an onerous burden of proof was imposed on the applicant, a new hearing should be ordered. He concludes that in circumstances where the Board 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 para. 16). The *Alam* case involved a situation in which the Court seemed to have elevated the standard of a balance of probability with respect to its application to the facts in this case. The Court notes that the applicable civil standard was respected and that the dispute was instead about the modulation and amplitude of the burden of a balance of probability that had been required of the applicant.

[19] However, this case is not one in which the Court articulated the gist of the appropriate standard of proof but one in which it poorly worded the way in which this standard should be applied. Instead, this is a situation where the officer clearly used the wrong standard of proof and thereby imposed on Mr. Singh an onerous burden of proof that should govern only criminal proceedings. There is no doubt that this standard has no place in reviewing an application for permanent residence and its statutory requirements and that, in these circumstances, a new hearing must be ordered. The Court cannot support such a statement made without any qualification or reservation, nor can it accept the Minister's attorney's suggestion to see it only as an unfortunate phrase.

[20] Moreover, the Minister provided no reference to excerpts from the decision that could suggest that despite the clarity of the language used in its conclusion, the officer could very well have applied the burden of a balance of probability. Nothing in the decision allows the Court to find that this sentence cited by the officer is an insignificant blunder that does not reflect the standard of proof used and that the burden of proof imposed on Mr. Singh could indeed have been less onerous. The Court also disagrees with the Minister's opinion that overall, the burden of proof is not a determining factor in the decision because Mr. Singh made false statements and submitted falsified supporting documents with his application for permanent residence.

[21] 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 a balance of probability. Since the only expression of the burden of proof is found at the end of the decision, everything indicates that this was indeed a legal test applied by the officer throughout

her analysis. The Court has no way of knowing whether, guided by the burden of proving a balance of probability, the officer could have found that the new birth certificate was not sufficient to prove Mr. Singh's identity, or if her assessment of Mr. Singh's explanation about his missing passport or his mother's credibility would have been different.

[22] The Court is aware that by sending the case back to CIC, the result may have been the same after a new review conducted in light of the civil standard of a balance of probability. However, this is an assessment that CIC must conduct and to which Mr. Singh is entitled in the decision regarding his application for permanent residence. It is possible that, informed by the reasons for the blatant error committed by the officer and of the standard of proof that should have applied, another immigration officer may nevertheless have come to a similar conclusion. However, another officer may have also come to a different conclusion. The Court cannot say that the case leans so heavily against granting Mr. Singh's request for permanent residence that sending the case back to the CIC would serve no useful purpose (*Lemus v. Canada (Citizenship and Immigration)*, 2014 FCA 114 at paragraph 38).

[23] 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 that is not that which Canadian civil cases require.

IV. Conclusion

[24] For the above-mentioned reasons, Mr. Singh's application for judicial review must be granted because the officer used an improper legal test by finding that Mr. Singh had not proven his identity beyond a reasonable doubt.

[25] 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'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The decision rendered on June 9, 2015 by immigration officer Marie G eralde Georges shall be rescinded;
3. The case shall be returned to Citizenship and Immigration Canada for a new review by another immigration officer.
4. No questions of general importance were certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3015-15

ENTITLED: PARMINDER SINGH v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 21, 2016

**REASONS FOR JUDGMENT
AND JUDGMENT:** GASCON J

DATE OF REASONS: FEBRUARY 9, 2016

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