

Federal Court



Cour fédérale

Date: 20180718

Docket: IMM-5630-17

Citation: 2018 FC 757

Vancouver, British Columbia, July 18, 2018

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

AMRINDERJEET SINGH GARHA

Applicant

and

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant, aged 33, is a citizen of India born in Kapurthala.

[2] On December 17, 2002, the Applicant first arrived in Canada with a study permit which was valid until December 31, 2004. On or about January 1, 2016, the Applicant entered Canada

on foot (this time, without a visa and without reporting at a port of entry) from the United States where he had been living since February 2011 without status.

[3] In June 2016, the Applicant married Satvir Kaur in British Columbia. Mrs. Kaur was previously married to the Applicant's brother, a Canadian citizen who sponsored Mrs. Kaur. In October 18, 2012, Mrs. Kaur became a permanent resident of Canada through the Spouse or Common-law Partner in Canada Class; however, Mrs. Kaur and the Applicant's brother divorced in 2015.

[4] In September 2016, the Applicant filed an application for permanent residence (a spousal sponsorship within Canada) as his wife, Mrs. Kaur, had now sponsored him. In October 2017, the Applicant was informed by Citizenship and Immigration Canada [CIC] that his wife was ineligible to sponsor him, as she was not a permanent resident for at least five years before she sponsored the Applicant.

[5] On December 21, 2017, an officer from the Canada Border Services Agency [CBSA] made a report pursuant to subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. According to the officer, the Applicant was inadmissible to Canada pursuant to section 41(a), specifically paragraph 20(1)(a) of the IRPA.

[6] On December 22, 2017, the Minister's delegate [Delegate] issued an exclusion order against the Applicant pursuant to subsection 44(2) of the IRPA, confirming the findings made by the CBSA officer.

[7] The Applicant is seeking judicial review of that exclusion order under subsection 72(1) of the IRPA. The Applicant argues that the Delegate misinterpreted CIC's Public Policy under subsection 25(1) of the IRPA to facilitate processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class [Public Policy].

II. Relevant Provisions

[8] The following are relevant to the present case:

Paragraph 20(1)(a) and section 41(a) of the IRPA:

Obligation on entry

20 (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

(a) to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence; and

...

Non-compliance with Act

41 A person is inadmissible for failing to comply with this Act

Obligation à l'entrée au Canada

20 (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver :

a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;

[...]

Manquement à la loi

41 S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de

résidence et aux conditions imposées.

(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and

Subparagraph 228(1)(c)(iii) of the *Immigration and Refugee Protection Regulations*,

SOR/2002-227 [IRPR]:

Specified Removal Order

Subsection 44(2) of the Act — foreign nationals

228 (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be

(c) if the foreign national is inadmissible under section 41 of the Act on grounds of

(iii) failing to establish that they hold the visa or other document as required under section 20 of the Act, an exclusion order,

Mesures de renvoi à prendre

Application du paragraphe 44(2) de la Loi : étrangers

228 (1) Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le cas où elle ne comporte pas de motif d'interdiction de territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déferée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :

c) en cas d'interdiction de territoire de l'étranger au titre de l'article 41 de la Loi pour manquement à :

(iii) l'obligation prévue à l'article 20 de la Loi de prouver qu'il détient les visa et autres documents réglementaires, l'exclusion,

III. Analysis

[9] The applicable standard of review to a decision of the Delegate issuing an exclusion order is that of reasonableness (*Mancilla Obregon v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 526 at para 6). This Court shall only intervene if the decision falls outside “a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[10] The sole issue in the present matter is whether the Delegate’s decision was unreasonable.

[11] For the following reasons, the application for judicial review is dismissed. The Court agrees with the Minister’s position. There is no reviewable error for the Court to intervene in the present application for judicial review.

[12] The Applicant argues that the Delegate should not have proceeded with the issuance of the removal order based on paragraph 20(1)(a) of the IRPA, because “applicants are exempt from the requirement of having a legal status and cannot be inadmissible due to a lack of status” (*Khodja v Canada (Citizenship and Immigration)*, 2011 FC 1087 at para 30 [*Khodja*]). The Court disagrees with the Applicant’s submissions in the present matter.

[13] In *Khodja*, above, the Applicant sought judicial review of the decision of an immigration officer who rejected the application for permanent residence in Canada under the Spouse or Common-law Partner in Canada Class. The definition of a person with a “lack of status”

described in the Public Policy was also pertinent to review the reasonableness of the decision. In the case at bar, however, the application for judicial review refers to the exclusion order issued against the Applicant, and it is based on inadmissibility findings which do not concern the Applicant's spousal sponsorship application whatsoever.

[14] Reference is made to *Khodja*, above, at paragraphs 2, 3, 29, 30, 45 and 54; reference is also made to *Duran v. Canada (MPSEP)*, 2007 FC 738, paragraphs 23, 24, 27, 28, 29 and 30.

[15] In fact, during his interview with a CBSA officer, as well as a Punjabi interpreter, the Applicant did not oppose to his violation of the IRPA and understood the purpose of the removal order (which is not about his sponsorship application). The Applicant acknowledged the fact that he entered Canada illegally in 2016 without holding a visa or other documents required under the Regulations.

Q: How did you enter Canada?

A: Walked through the farms.

...

Q: You've been to Canada before on a study permit, correct?

A: Yes.

Q: Why didn't you simply apply for a Canadian visa instead of sneaking into Canada?

A: I didn't know. It didn't come to my mind. There was nobody to guide me there.

...

I explained to the client that the report alleges that he failed to obtain a permanent resident visa before coming to Canada and that his spousal application does not overcome that violation.

Q: Do you understand the report?

A: Yes.

...

Exclusion Order is delivered and explained to the client.

Q: Do you understand the Exclusion Order?

A: But I don't want to go. My children are here.

Q: You understand that you violated immigration law, correct?

A: Yes.

Q: According to immigration law, if you violate, you receive a removal order.

A: [Client is silent.]

Q: Do you understand the order?

A: Yes.

(Certified Tribunal Record, Solemn Declarations from CBSA dated December 22, 2017, pp 9-10 and 12.)

[16] In the context of a removal order under subsection 44(2) of the IRPA, the Delegate has no duty to interpret, neither to apply, the Public Policy established by CIC. When issuing a removal order, the Public Policy does not apply to a CBSA officer, nor to the Minister's delegate, both working for the MPSEP. The purpose of the Public Policy is to permit spouses and common-law partners of Canadian citizens and permanent residents in Canada who do not have legal immigration status to apply and be assessed for permanent residence under subsection 25(1) of the IRPA. Therefore, the Court concludes that the Delegate rendered a reasonable decision in such a way that the exclusion order was issued by operation of law pursuant to paragraph 20(1)(a) and subsection 41(1) of the IRPA, as well as subsection 228(1) of the IRPR.

IV. Conclusion

[17] The application for judicial review is dismissed.

JUDGMENT in IMM-5630-17

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed.

There is no serious question of general importance for certification.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5630-17

STYLE OF CAUSE: AMRINDERJEET SINGH GARHA v THE MINISTER
OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

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