Federal Court  Cour fédérale

Date: 20210127

Docket: IMM-5390-19

Citation: 2021 FC 93

Ottawa, Ontario, January 27, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

MANPREET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION ALSO KNOWN AS THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] I have before me a proceeding, the Applicant, Manpreet Singh [Mr. Singh], considers to be an application for judicial review pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*] of a decision made by the Visa Section of the High Commission of Canada in New Delhi, India (the "Visa Office"). Mr. Singh applied for a work permit based upon his marriage to Navjot Kaur ["Ms. Kaur" or, alternatively, "spouse"], who is

studying in Canada. The Officer found Mr. Singh to be inadmissible to Canada under para. 40(1)(a) of the *IRPA* because he directly or indirectly misrepresented or withheld material facts relating to a relevant matter; namely, the genuineness of his marriage, that could have induced an error in the administration of the *IRPA*.

[2] At the time Mr. Singh sought leave to bring an application for judicial review, he also applied for an extension of time to file and serve the application pursuant to para. 72(2)(c) of the *IRPA*. The justice who heard the application for leave addressed his mind to the issue of the request for an extension of time and the leave application. However, he refused to decide the question regarding an extension of time, instead deferring that question to the justice who would eventually hear the merits of the application for judicial review.

[3] For the reasons set out below, I refuse to grant the extension of time. The issues underpinning the application for judicial review are therefore moot. That said, presuming they are not moot, I would nevertheless dismiss the application.

II. **Facts Relevant to the Issue of the Request for an Extension of time within which to seek leave to bring an application for judicial review**

[4] Mr. Singh is a citizen of India and a farmer by occupation. There is no evidence he suffers from any disabilities. The record demonstrates he is able to read and write. The record also demonstrates he was represented by an immigration consultant or a lawyer, throughout.

[5] Mr. Singh first met Ms. Kaur on November 29, 2017 at a family gathering. They exchanged phone numbers, became friends on Facebook, and began communicating. On or about December 30, 2017, Mr. Singh proposed marriage to Ms. Kaur.

[6] On or about March 26, 2018, Ms. Kaur departed India to pursue an Associate Degree Program at Columbia College in Vancouver, British Columbia. Ms. Kaur returned to India on August 14, 2018 for the wedding, which took place on August 19, 2018. The couple lived together for about two weeks before Ms. Kaur returned to Canada to resume her studies.

[7] In or about October 2018, Mr. Singh applied for an open work permit as the accompanying spouse of Ms. Kaur. In November 2018, the Applicant received a letter convoking him for an interview at the visa office in New Delhi. The interview took place on December 12, 2018. Mr. Singh acknowledges that he received notice on or about February 15, 2019 that the visa officer rejected his application.

[8] The Officer was not satisfied, on a balance of probabilities, that Mr. Singh had provided sufficient evidence to support his assertion that the marital relationship was genuine or that it was not entered into primarily for the purpose of acquiring status or privilege under the *IRPA.* In the refusal letter dated February 6, 2019, the Officer informed the Applicant that, under para. 40(2)(a) of the *IRPA*, he would be inadmissible to Canada for a period of five years from the date of the refusal letter.

[9] The Global Case Management Notes (the "GCMS Notes") indicate the Officer's reasons for refusing Mr. Singh's application. Those reasons included, among others, the fact that the Mr. Singh was unable to: 1. talk about his spouse's life in India prior to moving to Canada; 2. talk about his spouse's studies in Canada, including why she chose that field of study and what she found difficult or easy in her studies; 3. discuss his spouse's daily routine in Canada; and 4. discuss her finances, although he provided her with approximately $22,000 in early 2018, prior to their marriage. In addition, he did not know the name of his spouse's roommate.

[10] As noted above, Mr. Singh acknowledges having received notice of the rejection of his application on or about February 15, 2019. Although his spouse spoke to a Member of Parliament and he sought reconsideration of the decision, he did not move for an extension of time to file and serve the application for leave and judicial review until September 3, 2019, approximately four and a half months after the period prescribed by the *IRPA.*

III. **Relevant Statutory Provisions**

[11] The relevant statutory provisions are ss. 40(1)(a), 40(2)(a) and 72(1) and (2) of the *IRPA*, s. 4(1) of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s. 3 of the *Federal Court Rules*, S.O.R./ 98-106 and s. 6(2) of the *Citizenship, Immigration and Refugee Protection Rules*, S.O.R./93-22 (the *"Immigration Rules"*), as set out in the attached Schedule.

[12] For ease of reference I set out below Rule 6(2) of the *Immigration Rules*:

6(2) A request for an extension of time shall be determined at the same time, and on the same	6(2) Il est statué sur la demande de prorogation de délai en même temps que la demande

materials, as the application for leave.	d'autorisation et à la lumière des mêmes documents versés au dossier.

IV. **Issues**

[13] The determinative issue is whether the motion for an extension of time should be granted.

V. **Submissions of the Parties and Analysis**

[14] The Respondent seeks this Court's guidance and clarification on a preliminary issue concerning the motion for an extension of time to file and serve the application for leave. Put squarely, the Respondent asks whether a justice can intentionally ignore the clear language of the *Immigration Rules* and grant leave to commence an application for judicial review without first deciding whether to grant a motion for an extension of time to file and serve the same application for leave. The Respondent contends that the language of s. 72 of the *IRPA* and Rule 6(2) of the *Immigration Rules*, when read in conjunction with s. 3 of the *Federal Court Rules*, directs that a motion for an extension of time to file and serve the application for leave to commence an application for judicial review must be decided at the same time as the Court decides the leave application. The Respondent distinguishes *Deng Estate v. Canada (MCI)*, 2009 FCA 59, [2009] F.C.J. No. 243 (QL) [*Deng*] where the application judge considered the motion for an extension of time to bring the application for leave. In that case, the motion judge had inadvertently overlooked the motion for an extension of time. It was clearly in the interests of justice, based upon the slip rule, or otherwise, that the application judge considering the judicial review also consider the extension request. For an unknown reason, the motion judge in the present case, fully aware and cognizant of the extension motion, made the decision not to address it. Such an

approach, in my respectful view, runs counter to the clear language of Rule 6(2) of the *Immigration Rules*.

[15] The Federal Court of Appeal has very recently opined upon the requirement that judges apply legislative policy, which is constitutional. In *Canada (Attorney-General) v. Utah*, 2020 FCA 224, Justice Stratas, writing for the Court regarding legislative policy in a matter unrelated to this case, stated:

> [*14*] Some might dislike the legislative policy. It can be harsh. A claimant might plan to bring a suit that, on the merits, is a cinch, with enormous recovery to boot. But if the claimant starts it after the limitation period has run out, the Court must dismiss it, regardless of its merit.
>
> [*15*] Harsh the policy might be. But judges – even the most experienced ones we have – cannot meddle with it or refuse to enforce it unless the legislation enacting it is unconstitutional. Nor can judges go through the back door and skew their reasons to get the outcomes they want or cite non-biding sources promoting policies they prefer: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 at para. 121 (in the context of administrative decision-makers but equally applicable to judges); *Canada (Attorney-General) v. Kattenburg*, 2020 FCA 164 at paras. 24-26. Judges are only unelected lawyers who happen to hold a judicial commission. They have no right to smuggle into the task of statutory interpretation their personal views of what is best and then boost their views to the level of law that binds all. Under our constitutional arrangements, that is alone for our legislators, the people for whom we vote.

[16] I am satisfied that a justice who has before him or her a motion for an extension of time and an application for leave to commence an application for judicial review must decide them at the same time, as clearly directed by the legislator. It is inconsistent with Parliament's intention that a justice grant the leave application but defer the decision on the extension request to the justice who hears the application on its merits.

[17] Having expressed my opinion regarding the approach to be employed, I will, nonetheless, decide the question of the extension of time. Time limits have a purpose. One of their clear purposes is to ensure evidence does not go stale. Another is undoubtedly, to ensure defendants or respondents can know with some degree of certainty the extent of potential claims outstanding against them. Given these and other considerations, the Courts have developed an objective and balanced approach to when motions for extensions of time will be granted. Generally, the moving party must demonstrate: a) a continuing intention to pursue the application; b) that the application has some merit; c) that no prejudice arises from the delay; and d) that a reasonable explanation for the delay exists. The underlying principle is that justice, according to law, must be done: *Grewal v. Canada (Minister of Employment and Immigration)*, [1985] 2 FC 263 (FCA), 63 N.R. 106; *Patel v. Canada (MCI)*, 2011 FC 670, [2011] F.C.J. No. 860 at para.12; *Semenduev v. Canada*, [1997] F.C.J. No. 70, 68 A.C.W.S. (3d) 916; *Canada (AG) v Hennelly*, [1999] F.C.J. No. 846, 244 N.R. 399 (FCA); *Canada (MHRD) v Hogervost*, 2007 FCA 41, [2007] F.C.J. No. 37; and *Kiflom v Canada (Citizenship and Immigration)*, 2020 FC 205, 315 A.C.W.S. (3d) 138.

[18] Mr. Singh contends that he actively pursued the application for leave and judicial review and provides the following timeline:

> February 20, 2019: he made a request to Immigration, Refugees and Citizenship Canada for a copy of the transcript of the interview from the Visa Office;
>
> May 10, 2019: he received a copy of the GCMS Notes from the Visa Office;
>
> June 5, 2019: he made a request to the Visa Office to reconsider the Decision;

> June 2019: his spouse attended the office of Ms. Carla Qualtrogh, Member of Parliament and sought assistance with respect to the application; and
>
> August 8, 2019: after receiving no response with respect to the Reconsideration Request, he and his spouse sought legal advice.

[19] Mr. Singh contends that he sought less costly means of obtaining a remedy before pursuing the application for leave and judicial review. He quite appropriately notes that the prejudice he would endure, should the extension not be granted is serious in that he would be inadmissible to Canada for a period of five years. Moreover, given the conclusion of the visa officer with respect to misrepresentation, his spouse would be ineligible to become a permanent resident of Canada pursuant to s. 42 of the *IRPA.* In my respectful view, these latter two points have no bearing on why he failed to respect the limitation period. In fact, they speak strongly to the issue of why he should have respected the time limits set out in the legislative policy.

[20] The Respondent says Mr. Singh has not demonstrated any “special reasons” as to why the extension should be granted; accepts the four criteria outlined in the jurisprudence; and acknowledges that the overarching concern is that justice must be served.

[21] The Respondent submits that filing an application in a timely manner is a mandatory requirement, subject to limited exceptions, and extensions of time should not be granted, as a matter of routine. I agree. The Respondent also asserts that the party seeking an extension of time must justify the entire period of the delay. I agree. Furthermore, the Respondent contends that unanticipated and unexpected events that are beyond the control of the applicant justify the

granting of an extension of time: *Kiflom v. Canada (Citizenship and Immigration)*, 2020 FC 205, 315 A.C.W.S. (3d) 138. I agree.

[22] Mr. Singh has produced an affidavit setting out a version of events that transpired during the interview, which differs from the visa officer's notes. The Respondent contends it would be prejudiced if this matter proceeds given that the visa officer who handled this case deals with hundreds of such requests in a year and must rely upon his or her notes. The delay limits the ability of the visa officer to remember with any degree of clarity the specific case.

[23] I am of the opinion Mr. Singh has not satisfied any of the four criteria used to determine whether an extension of time ought to be granted. Furthermore, I am not satisfied an extension of time within which to file and serve his application for leave to commence an application for judicial review, would serve the interests of justice. The record discloses no continuing intention to bring an application for leave to commence an application for judicial review. There is no evidence of a special reason as required pursuant to paragraph 72(2)(c) of the *IRPA* which prevented Mr. Singh from bringing his application for leave within the time limits. Mr. Singh has provided no explanation for the delay other than the fact he was pursuing alternative remedies. That cannot be a valid explanation. If it were, the time limits set out in the legislative policy would be in constant chaos. The courts would be providing no coherency or stability to the legislative regime in place.

[24] Finally, the test for prejudice is measured against the prejudice to the responding party on such a motion. The question to ask is not whether the moving party has disadvantaged

himself by the delay, but whether the granting of an extension would prejudice the responding party. In the circumstances, I am satisfied the Respondent would be prejudiced by the delay in bringing the application because of the new evidence Mr. Singh wishes to offer on the hearing on the merits. The Respondent cannot realistically respond to such material.

[25] Given all of the above, I am not satisfied the extension of time would serve the interests of justice. In fact, an extension would have the opposite effect. It would hamper coherency in the development of the jurisprudence, run counter to clear legislative policy and create a jurisprudential "no man's land" wherein any judge could grant extensions for virtually any reason.

VI. **Conclusion**

[26] The motion for an extension of time within which to file and serve an application for leave to commence an application for judicial review is dismissed. It follows that the application for judicial review is moot. Nonetheless, for the sake of clarity, and in the event I am wrong and the application is properly before me, I dismiss the application. There is no merit to the claim of a breach of the principles of procedural fairness and the decision meets the test of reasonableness as set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1 and *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190. The decision of the visa officer falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law.

[27] Neither party proposed a question to be certified for consideration by the Federal Court of Appeal, and none is certified.

JUDGMENT in IMM-5390-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified for consideration by the Federal Court of Appeal; and

3. There is no order of costs.

« B. Richard Bell »

Judge

SCHEDULE

Immigration and Refugee Protection Act, SC 2001, c 27	*Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27*
Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
Application	**Application**
(2) The following provisions govern subsection (1):	**(2)** Les dispositions suivantes s'appliquent au paragraphe (1) :
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and	a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;
Application for judicial review	**Demande d'autorisation**
72 (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is, subject to section 86.1, commenced by making an application for leave to the Court.	**72 (1)** Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est, sous réserve de l'article 86.1, subordonné au dépôt d'une demande d'autorisation.

Application

(2) The following provisions govern an application under subsection (1):

(a) the application may not be made until any right of appeal that may be provided by this Act is exhausted;

(b) subject to paragraph 169(f), notice of the application shall be served on the other party and the application shall be filed in the Registry of the Federal Court ("the Court") within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;

(c) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;

(d) a judge of the Court shall dispose of the application without delay and in a summary way and, unless a judge of the Court directs otherwise, without personal appearance; and

(e) no appeal lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment.

Immigration and Refugee Protection Regulations, SOR/2002-227

Bad faith

4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a

Application

(2) Les dispositions suivantes s'appliquent à la demande d'autorisation :

a) elle ne peut être présentée tant que les voies d'appel ne sont pas épuisées;

b) elle doit être signifiée à l'autre partie puis déposée au greffe de la Cour fédérale — la Cour — dans les quinze ou soixante jours, selon que la mesure attaquée a été rendue au Canada ou non, suivant, sous réserve de l'alinéa 169f), la date où le demandeur en est avisé ou en a eu connaissance;

c) le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;

d) il est statué sur la demande à bref délai et selon la procédure sommaire et, sauf autorisation d'un juge de la Cour, sans comparution en personne;

e) le jugement sur la demande et toute décision interlocutoire ne sont pas susceptibles d'appel.

Règlement sur l'immigration et la protection des réfugiés, DORS/2002-227

Mauvaise foi

4 (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou

common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership

(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

(b) is not genuine.

le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :

a) visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

b) n'est pas authentique.

Federal Court Rules, SOR/98-106

General principle

3 These Rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits.

Règles des Cours fédérales, DORS/98-106

Principe général

3 Les présentes règles sont interprétées et appliquées de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible.

Federal Courts Citizenship, Immigration and Refugee Protection Rules, SOR/93-22

Extension of Time to File and Serve Application for Leave

6 (1) A request to extend the time for filing and serving an application for leave shall be made in the application for leave.

(2) A request for an extension of time shall be determined at the same time, and on the same materials, as the application for leave.

Règles des cours fédérales en matière de citoyenneté, d'immigration et de protection des réfugiés, DORS/93-22

Prorogation du délai de dépôt et de signification de la demande d'autorisation

6 (1) Toute demande visant la prorogation du délai pour déposer et signifier une demande d'autorisation se fait dans la demande d'autorisation.

(2) Il est statué sur la demande de prorogation de délai en même temps que la demande d'autorisation et à la lumière des mêmes documents versés au dossier.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5390-19
STYLE OF CAUSE:	MANPREET SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION ALSO KNOWN AS THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	SEPTEMBER 30, 2020
REASONS FOR JUDGMENT AND JUDGMENT:	BELL J.
DATED:	JANUARY 27, 2021

APPEARANCES:

Harry Virk	FOR THE APPLICANT
Nima Omidi	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Liberty Law Corporation Abbotsford, British Columbia	FOR THE APPLICANT
Attorney General for Canada Vancouver, British Columbia	FOR THE RESPONDENT