

Federal Court



Cour fédérale

**Date: 20220118**

**Docket: IMM-6758-20**

**Citation: 2022 FC 56**

**Ottawa, Ontario, January 18, 2022**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**AVTAR SINGH SIDHU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**and**

**YAGYA DATT MALHOTRA**

**Intervener**

**JUDGMENT AND REASONS**

[1] The Applicant, Mr. Sidhu, seeks the Court's review of a December 16, 2020 decision (Decision) of the Immigration Appeal Division (IAD) confirming the refusal of his spousal sponsorship application by an officer in the Canadian High Commission in New Delhi, India.

The IAD found that the Applicant's marriage to his second wife, Ms. Kaur, is not genuine (subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*Regulations*)). As a result, Ms. Kaur does not qualify as a member of the family class.

[2] The primary focus of the Applicant's request for judicial review is his allegation of incompetence on the part of his former representative in the IAD proceedings, an immigration consultant who is the Intervener in this matter. The Applicant also alleges errors in the interpretation services provided at the IAD hearing, in part due to his representative's failure to raise concerns during the hearing, and submits that the Decision itself is unreasonable.

[3] I have carefully considered the written and oral submissions of the three parties, the application records, the transcript (Transcript) of the IAD hearing, and the relevant jurisprudence. I acknowledge that, for the Applicant and the Intervener, this application gives rise to a personal and genuinely-held disagreement which has been addressed by both parties in a professional manner.

[4] For the detailed reasons that follow, the application is dismissed. Despite his counsel's very able submissions, the Applicant has not met the high threshold for establishing incompetence on the part of the Intervener and prejudice flowing from that incompetence. In addition, the IAD's Decision demonstrates a reasoned appreciation of the considerable evidence before it and contains no reviewable error requiring the Court's intervention.

I. Background

[5] The Applicant is a Canadian citizen who came to Canada as a refugee from India in 1988. He separated from his first wife in 2015 and was divorced in 2017. The Applicant has three children from his first marriage.

[6] Ms. Kaur is a citizen of India. She too was previously married but separated from her first spouse in 2015. Ms. Kaur was divorced in 2018 and has one child from her first marriage.

[7] The Applicant and Ms. Kaur appear to have met in February 2013 while the Applicant was on holiday in India. Approximately one month later, the Applicant and Ms. Kaur began an intimate relationship. They were married in March 2018 in a small ceremony in India.

[8] In late 2018, the Applicant submitted a spousal sponsorship application to obtain permanent resident status for Ms. Kaur.

[9] The Applicant's sponsorship application was refused on September 24, 2019. The immigration officer's decision consists of a decision letter and Global Case Management System notes detailing the officer's interview with Ms. Kaur.

[10] The Applicant appealed the refusal to the IAD. The IAD hearing took place on August 25 and October 1, 2020. The Applicant's appeal was dismissed on December 16, 2020 for the reasons given in the Decision now under review.

II. Decision under review

[11] The IAD framed the question at issue as whether Ms. Kaur is excluded as a member of the family class by subsection 4(1) of the *Regulations* and emphasized the disjunctive nature of the two prongs of the test set out in the subsection. The IAD focused on the first prong of the test, concluded that there was insufficient credible evidence to establish a genuine spousal relationship between the Applicant and Ms. Kaur, and dismissed the appeal.

[12] The IAD identified significant gaps and inconsistencies in the evidence provided by the Applicant and Ms. Kaur regarding their relationship. The member noted the couple's testimony that they had maintained contact and communication with each other regularly over the years but found that there were many instances where their responses were inconsistent or internally contradictory. The IAD stated that the Applicant and Ms. Kaur lacked knowledge about important aspects of each other's lives which would not be expected in a genuine marriage with the degree of alleged communication between them. The member stated that "it would be expected that in a genuine relationship the [Applicant and Ms. Kaur] would take the necessary time to learn, share and remember important information about each other". The IAD concluded that the favourable evidence demonstrating the spouses' knowledge about each other in certain respects did not overcome the deficiencies in other areas. The IAD was particularly concerned about the lack of documentary evidence corroborating the first few years of the relationship and characterized the evidence that was provided as vague.

[13] The IAD noted in the Decision that the Applicant and Ms. Kaur provided inconsistent information about who in their respective families knows of their relationship and when any of

those family members found out about the relationship. The member highlighted the fact that the Applicant has not disclosed to his family or children that he is married to Ms. Kaur. The Applicant stated that he had not told his parents of his marriage because he was concerned they would attempt to sabotage his sponsorship application. When questioned on this point, the Applicant testified that he did not know how his parents could sabotage the application and had made no inquiries in this regard. The IAD concluded that there was no reasonable explanation why the Applicant would not introduce Ms. Kaur to his children and extended family.

### III. Complaint against the Intervener

[14] On February 2, 2021, the Applicant submitted a complaint against the Intervener to the Immigration Consultants of Canada Regulatory Council.

[15] On June 7, 2021, the Intervener submitted a notice of motion to the Court seeking leave to intervene in this application pursuant to Rule 109 of the *Federal Courts Rules*, SOR/98-106.

[16] By way of Order dated June 25, 2021, Justice Bell allowed the motion, permitting the Intervener to participate in the hearing before me. The Intervener filed materials with the Court to which the Applicant has provided a written response.

### IV. Issues

[17] The Applicant submits that his right to procedural fairness was breached by the Intervener's incompetence in the course of the IAD proceedings. He states that the Intervener failed to adduce crucial evidence or to adequately prepare the couple for their IAD hearing, and

failed to object to errors in the interpretation provided during the hearing. The Applicant also submits that the poor interpretation compromised his rights to be heard and to a fair hearing. Finally, the Applicant challenges the substance of the Decision.

## V. Analysis

### 1. *Procedural fairness*

[18] The Applicant's allegations of incompetent representation and inadequate interpretation are issues of procedural fairness and are reviewed by the Court for correctness (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-56 (*Canadian Pacific*)). The Court must consider whether the IAD's process was just and fair focusing on the Applicant's substantive rights and the consequences of the refusal of his sponsorship application (*Canadian Pacific* at para 54; *Rendon Segovia v Canada (Citizenship and Immigration)*, 2020 FC 99 at para 9 (*Rendon Segovia*); *Kaur v Canada (Citizenship and Immigration)*, 2020 FC 798 at para 28 (*Kaur*)).

### Incompetence of prior immigration consultant

[19] It is well-established that, in extraordinary circumstances, allegations of counsel incompetence may ground a breach of natural justice and require redetermination by a decision maker. The tripartite test to be applied to such an allegation is set out in *Guadron v Canada (Citizenship and Immigration)*, 2014 FC 1092 at paragraph 11 (*Guadron*) (see also, *Abuzeid v Canada (Citizenship and Immigration)*, 2018 FC 34 at para 21 (*Abuzeid*)):

1. The representative's alleged acts or omissions constituted incompetence;

2. There was a miscarriage of justice in the sense that, but for the alleged conduct, there is a reasonable probability that the result of the original hearing would have been different; and
3. The representative was given notice and a reasonable opportunity to respond.

[20] The third requirement is not in issue. The issues before me are whether the Intervener's alleged omissions constituted incompetence and, if so, whether it is reasonably likely that the outcome of the IAD's hearing would have been different but for the impugned conduct. The parties acknowledge that the Applicant must meet a very high threshold in establishing his allegations of incompetence (*Ibrahim v Canada (Citizenship and Immigration)*, 2020 FC 1148 at para 30 (*Ibrahim*)) and that he must rebut the initial presumption that the Intervener acted competently (*R v GDB*, 2000 SCC 22, [2000] 1 SCR 520 at para 27).

[21] Although the Intervener's representation at the IAD was not perfect, I find that the Applicant has not demonstrated either that the Intervener acted incompetently or that, but for the alleged omissions at the centre of his arguments, there is a reasonable probability that the result of the IAD hearing would have been different. As a result, the Applicant has not met the first two elements of the *Guadron* test.

[22] The Applicant submits that the Intervener failed in a real and fundamental way to represent him and Ms. Kaur at the IAD. More specifically, the Applicant argues that the Intervener failed to elicit evidence and to prepare the couple to testify on the most significant issues in their application: the genesis and evolution of their relationship and why they left their existing relationships in order to marry.

[23] The Applicant's allegations are twofold: the inadequate content of the written submissions prepared by the Intervener and limited scope of his questions at the IAD. He first submits that the written narrative included by the Intervener in the spousal application forms failed to reflect all essential information describing the evolution of the Applicant's relationship with Ms. Kaur. Second, the Applicant submits that the Intervener failed to prepare the couple to give evidence before the IAD and that he did not ask questions during the hearing which would have allowed the couple to describe their deep and real emotional connection. He focused instead on their physical relationship.

[24] The Intervener and Respondent disagree and submit that the Applicant has not met the high threshold for establishing incompetence. The Intervener argues that the record reflects the considerable evidence he adduced on behalf of the Applicant and that the Transcript demonstrates his attempts to lead the Applicant and Ms. Kaur through the development of their relationship, as well as his objections to interpretation errors during the hearing. The Respondent focuses on the Decision and argues that the material inconsistencies highlighted by the IAD would not have been remedied by a more fulsome explanation of the early development of the couple's relationship.

[25] The Intervener's motion record sets out the scope of the documentary evidence he was able to obtain from the Applicant and Ms. Kaur; the list of meetings between the Intervener and the Applicant during the 2018-2020 period; the successive retainer agreements the Applicant entered into with the Intervener; the Intervener's meetings with the couple prior to Ms. Kaur's



interview with the immigration officer; and, details of the subsequent meetings held by the Intervener with the couple prior to the IAD hearing.

[26] The sponsorship application filed by the Intervener after review with the Applicant and Ms. Kaur is included in the Certified Tribunal Record. As the Applicant states, it does not set out a lengthy history of the couple's relationship or how they came to feel about each other. However, the application describes the development of the relationship in general terms and contains significant evidence setting out the communications between the Applicant and Ms. Kaur through the years of separation.

[27] In addition, the Transcript reflects the Intervener's attempts to draw out testimony from the Applicant and Ms. Kaur regarding the beginning of their burgeoning relationship in India and their connection during the Applicant's visits to India. The Transcript does not suggest that the Intervener focused unduly on the physical nature of the relationship. The Intervener provided the couple reasonable opportunities to tell their own story in their own words and is reflective of his submission that he spent considerable time with the couple prior to the hearing. He led the Applicant through the history of his relationship with Ms. Kaur and, for example, asked the reason for which they fell in love and how and when their feelings for each other developed. Similarly, the Intervener posed questions to Ms. Kaur about the evolution of her relationship with the Applicant, beginning with questions about the first time they met.

[28] The Applicant argues that more and better questions should have been put to him and to Ms. Kaur but this argument is based on hindsight and a different approach advocated by current

counsel. It is not sufficient to establish incompetence on the part of the Intervener. Similarly, the Applicant's argument that the Intervener should have prepared more fulsome submissions in support of the sponsorship application is not persuasive. This is not a case where the Applicant has established that his prior representative has failed to make reasonable attempts to seek out crucial information or has omitted to address an issue that was central to the material questions before the IAD (*Abuzeid* at para 26; *Rendon Segovia* at para 25).

[29] A second and determinative factor in this matter is that the Applicant has not related his arguments regarding alleged shortcomings in the Intervener's representation to the material findings the IAD relied on to conclude that the marriage was not genuine. He has not established that the outcome of his appeal would have been different but for any incompetence of the Intervener and has not satisfied the prejudice component of the *Guadron* test.

[30] The IAD found many instances where the Applicant's and Ms. Kaur's responses were inconsistent or internally contradictory. For example, there were material inconsistencies between the documentary evidence and their testimony concerning the members of Ms. Kaur's family who were aware of her marriage before it occurred. The couple gave conflicting testimony as to why Ms. Kaur and her first husband separated and when he became aware of her affair. The IAD acknowledged that the Applicant and Ms. Kaur provided largely consistent information about each other but stated they lacked knowledge regarding important aspects of each other's lives. The IAD focused on the dearth of documentary evidence corroborating the first few years of the couple's relationship and stated that the evidence regarding the genesis of the relationship was vague. Finally, the IAD noted that the Applicant had not, at the date of the

Decision, disclosed to his family or children that he is married to Ms. Kaur. As stated above, the member did not accept the Applicant's explanation that he was worried his parents would not accept the marriage and would seek to sabotage his sponsorship application.

[31] None of the foregoing findings rest on shortcomings in the testimony of the Applicant and Ms. Kaur regarding the genesis and evolution of their emotional relationship, the central argument in the Applicant's incompetence allegations.

[32] I have reviewed the jurisprudence referred to by the Applicant involving allegations of incompetent representation but find that the circumstances of those cases are distinguishable. In *Guadron*, the Court focused on the alleged omission of key information crucial to a failed humanitarian and compassionate application, including the applicant's relationship with her son. In the present case, the omissions and failures of the Intervener highlighted by the Applicant are not supported by the record, particularly the Transcript. The Applicant's argument that the Intervener should have made more fulsome submissions and asked better questions during the IAD hearing does not establish incompetent representation.

[33] The second part of the Applicant's incompetence allegations relates to his broader concerns regarding poor interpretation. He argues that the Intervener failed to object to what was clearly inadequate interpretation but I do not find the argument persuasive. The Intervener objected or raised issues with the interpretation numerous times during the hearing to help the Applicant and Ms. Kaur provide more satisfactory answers and to clarify their answers (*Ibrahim* at para 33). The Intervener also corrected and asked the interpreter to re-interpret questions. In

light of the frequency and nature of the Intervener's interruptions to clarify interpretation points, I find no basis for allegations of incompetence on his part.

Errors of interpretation at the IAD hearing

[34] The Applicant submits that the interpretation provided to him at the hearing was of such poor quality that it affected his right to a fair hearing. He relies not only on his argument that the Intervener failed to make timely objections, he also argues that the interpreter inaccurately interpreted his testimony and that of Ms. Kaur from Punjabi into English thereby impacting their overall credibility.

[35] In *Mohammadian v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 191, at paragraph 4, the Federal Court of Appeal stated that interpretation services provided to applicants must "be continuous, precise, competent, impartial and contemporaneous". An applicant's right is to adequate and not perfect interpretation services that provide a linguistic understanding of the testimony (*Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161 at para 3; *Kaur* at para 29). The applicant does not have to establish actual prejudice but must show that the interpretation errors were material to the decision at issue (*Batres v Canada (Citizenship and Immigration)*, 2013 FC 981 at para 12; *Haggar v Canada (Citizenship and Immigration)*, 2018 FC 388 at para 22).

[36] I find that the Applicant has not demonstrated that his right to a fair hearing at the IAD was breached due to inadequate interpretation services. I also find that the Applicant has not

established any material or prejudicial impact to him as a result of the interpretation at the hearing.

[37] I have reviewed each of the sections in the Transcript identified by the Applicant as reflecting serious problems in the interpretation and/or the Intervener's failure to raise objections to those problems. I do not agree that the alleged errors resulted in the Applicant's or Ms. Kaur's overall testimony being lost. The IAD acknowledged the positive aspects of the couple's testimony in its Decision but based its conclusion that the marriage is not genuine on a series of material inconsistencies and contradictions in the documentary evidence and the couple's testimony.

[38] The alleged errors, including those highlighted in the audited interpreter's transcript filed by the Applicant, do not constitute numerous and significant errors. They are better characterized as non-material reformulations by the interpreter of the questions posed. I find no suggestion in the Transcript that the couple misunderstood the questions or, in the Decision, that the IAD inaccurately understood the substance or tone of the Applicant's and Ms. Kaur's testimony. The hearing was lengthy and the IAD was engaged throughout the two days. Any alleged errors of interpretation were either corrected or clarified during the hearing or were immaterial to the Applicant's ability to understand the questions put to him and to respond. The Transcript includes numerous discussions involving the interpreter, the IAD member, the couple and the two legal representatives that demonstrate the attention paid to nuances in the testimony.

2. *Is the Decision reasonable?*

[39] The merits of the Decision are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 (*Vavilov*); *Parmar v Canada (Citizenship and Immigration)*, 2021 FC 355 at para 39). Where the Court reviews an administrative decision for reasonableness, its role is to examine the reasons given by the decision maker and determine whether the decision “is based on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

[40] The Applicant submits that the concerns and inconsistencies in the evidence and testimony raised by the IAD were not material to the substantive issue of the genuineness of his marriage to Ms. Kaur. He states that those findings should not have been determinative to the IAD’s Decision and that a number of the inconsistencies are explained by the alleged inadequacies in the interpretation. I have addressed the Applicant’s arguments in this latter regard. The Applicant’s remaining arguments question the weight the IAD chose to assign to the evidence before it and do not identify significant errors that warrant the Court’s intervention.

[41] The Applicant challenges the IAD’s reliance on a series of discrete inconsistencies or contradictions to explain its finding that the couple did not present convincing evidence of the genuine nature of their marriage. In his opinion, the examples given by the IAD member are immaterial in light of the remaining evidence. However, the Applicant’s arguments ignore the IAD’s focus on the effect of the various inconsistencies on important information a couple would be expected to know about if they were in a genuine spousal relationship. The IAD made its

findings in light of the extensive contact and communication the couple described. The member related each adverse finding back to the core question before them and gave examples of the couple's lack of knowledge about each other and their respective lives that touch on different subjects and time periods. The IAD also accepted that the couple demonstrated knowledge about each other in other respects. I am satisfied that, when read holistically and contextually, the IAD's Decision meets the reasonableness standard set out in *Vavilov*.

VI. Conclusion

[42] The application is dismissed.

[43] No question for certification was proposed by the parties and none arises in this case.

**JUDGMENT IN IMM-6758-20**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

---

Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6758-20

**STYLE OF CAUSE:** AVTAR SINGH SIDHU v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION AND YAGYA  
DATT MALHOTRA

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JULY 12, 2021

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** JANUARY 18, 2022

**APPEARANCES:**

Prabhpreet K. Sangha Kamaljit K. Lehal	FOR THE APPLICANT
Edward Burnet	FOR THE RESPONDENT
Melanie Samuels	FOR THE INTERVENER

**SOLICITORS OF RECORD:**

Lehal Law Barristers and Solicitors Delta, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT
Singleton Urquhart Reynolds Vogel LLP Barristers and Solicitors Vancouver, British Columbia	FOR THE INTERVENER