Federal Court  Cour fédérale

Date: 20220503

Docket: IMM-7058-19

Citation: 2022 FC 648

Ottawa, Ontario, May 3, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

HARPREET SINGH GILL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Harpreet Singh Gill, seeks judicial review of the decision of a visa officer of the High Commission of Canada in New Delhi, India (the "Officer"), dated October 31, 2019, refusing the Applicant's work permit application on the grounds that he is inadmissible to Canada pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*").

[2] The Applicant submits that the Officer made unreasonable findings with respect to the genuineness of the Applicant's marriage, and that the Officer erred by equating subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*") with paragraph 40(1)(a) of the *IRPA*.

[3] For the reasons set out below, I find the Officer's decision is reasonable. Accordingly, this application for judicial review is dismissed.

II. **Facts**

A. *The Applicant*

[4] The Applicant is a 29-year-old citizen of India. He and his wife, Amandeep Kaur (Ms. "Kaur"), were married in a small ceremony on August 18, 2018. The Applicant states that the couple met and were engaged at a ring ceremony (engagement) held on June 30, 2018 and that his marriage was arranged by his father's brother-in-law.

[5] On June 25, 2018, Ms. Kaur submitted an application for a study permit in Canada. Her application was approved, and she left for Canada in late August 2018, following the wedding.

[6] In January 2019, the Applicant was interviewed with respect to a work permit application to join his wife in Canada (the "January 2019 Interview"). This first application was denied. In March 2019, the Applicant submitted a second application for a work permit.

[7] On May 21, 2019, the Applicant was again interviewed at the visa office in New Delhi (the "May 2019 Interview"). The interviewing visa officer noted discrepancies between the May 2019 Interview and the January 2019 Interview and was not satisfied that "the applicant and [his] spouse have entered into a genuine marriage other than [for] the primary purpose of transferring TR status to the applicant."

[8] On May 24, 2019, the Applicant received a procedural fairness letter ("PFL") which addressed concerns regarding the genuineness of his marriage and possible misrepresentation based on discrepancies in the information he had previously provided.

[9] On June 4, 2019, the Applicant responded to the PFL and noted that the discrepancies had occurred because of miscommunications between the January 2019 Interview and the May 2019 Interview. The Applicant's response to the PFL also included five affidavits signed by family members attesting that the ring ceremony marking the couple's engagement did in fact take place on June 30, 2018.

B. *Decision Under Review*

[10] By letter dated October 31, 2019, the Officer refused the Applicant's work permit application on the grounds that he is inadmissible to Canada pursuant to paragraph 40(1)(a) of the *IRPA.*

[11] The Global Case Management System ("GCMS") notes, which form part of the reasons for the Officer's decision, show that two officers reviewed the Applicant's application, the visa

officer who conducted the May 2019 Interview and the Officer who made the decision under review. The interviewing visa officer was not satisfied that the relationship between the Applicant and his spouse was genuine and recommended that the Applicant be found inadmissible to Canada pursuant to section 40 of the *IRPA*. In agreeing with the interviewing visa officer, the Officer's GCMS notes from October 31, 2019 state:

> Case and PFL response reviewed. On the balance of probabilities, the interviewing officer found this marriage to have been entered into for the purpose of acquiring a benefit under *IRPA*. The applicant provided photos and chat logs as a means to misrepresent the non-genuineness of this relationship. Additionally, the applicant provided discrepant information in his earlier interview compared to the interview for the current application: specifically, he first indicated that he had no engagement ceremony, and now states that he did have one. As such, I am of the opinion, on the balance of probabilities, that the applicant misrepresented himself under A40(1)(a) to induce an error in the administration of *IRPA* and obtain a visa as a spouse of a SP holder in Canada. Refused under A40(1)(a). 5-year ban applies.

III. **Preliminary Issue: Improper Affidavit**

[12] The Respondent requests that the affidavit of Nidhi Sharma (Ms. "Sharma") be struck from the Applicant's record as it is improper and irrelevant. The Respondent contends that none of the information contained in Ms. Sharma's affidavit pertains to the current matter. The Respondent further notes that the exhibits attached to Ms. Sharma's affidavit include settlement documents from other matters which are privileged, should not form part of any public record, and consist of a breach of the Respondent's settlement privilege.

[13] The Applicant contends that the facts contained in Ms. Sharma's affidavit are not contentious and provide context for a pattern of the problematic conflation of information regarding genuineness of a marriage with misrepresentation at the Visa Office in New Delhi, India. The Applicant submits that the documents attached as exhibits to Ms. Sharma's affidavit already form part of the public record, as they were previously submitted in their own respective matters and that there is thus nothing improper about allowing this affidavit.

[14] As was stated by the Applicant's counsel during the hearing, the provision of Ms. Sharma's affidavit is unusual. The exhibits attached to the affidavit concern separate decisions rendered by the Visa Office in New Delhi, India. As counsel for the Respondent rightly noted, each litigation matter stands on its own and is to be carefully evaluated on its merit. This includes reviewing the evidence that was before the decision-maker and the reasons for the Officer's decision in *this* matter, not others. I therefore agree with the Respondent that Ms. Sharma's affidavit and accompanying exhibits will be disregarded in this judicial review.

IV. **Issues and Standard of Review**

[15] The issue in this application for judicial review is whether the Officer's decision is reasonable, and in particular:

A. *Whether the Officer made unreasonable findings regarding the genuineness of the Applicant's marriage.*

B. *Whether the Officer erred by conflating an analysis of genuineness of marriage under section 4 of the IRPR with misrepresentation under paragraph 40(1)(a) of the IRPA.*

[16] Both parties submit that the standard of reasonableness applies to the Officer's decision. I agree that the applicable standard of review for the Officer's refusal of the work permit application is reasonableness (*Zhang v Canada (Citizenship and Immigration)*, 2019 FC 764 at para 12; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at paras 16-17).

[17] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[18] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

V. **Analysis**

A. *Whether the Officer made unreasonable findings regarding the genuineness of the Applicant's marriage.*

[19] The GCMS notes accompanying the Officer's decision discuss discrepancies in the information provided by the Applicant in his application and interviews. For instance, the GCMS notes state that during the January 2019 Interview, the Applicant told the interviewing visa officer that he and Ms. Kaur had not had an engagement ceremony when they first met, but in the May 2019 Interview, the Applicant told the interviewer that an engagement ceremony had taken place on June 30, 2018. Concerns about these discrepancies were outlined in the PFL sent to the Applicant:

> Upon review of your application, previous interview and current interview, I have noted discrepancies in the information you have provided (ex: whether an engagement occurred or not, the dates of your first meeting and when you declared your spouse applied for her study permit). Because the truthfulness of this information forms a key part of your reason for entering Canada on a spousal open work permit, I am concerned that this misrepresentation was liable to induce an error in the administration of the Immigration and Refugee Protection Act and that you are therefore inadmissible to Canada for misrepresentation.

[20] In his response to the PFL, the Applicant stated that there had been a miscommunication of the information he provided during the interviews, and clarified that he and his wife were in fact engaged on June 30, 2018 through a ring ceremony. As evidence, the Applicant submitted a certificate confirming that the ring ceremony occurred on June 30, 2018 and the affidavits of family and friends who attended. The Applicant also wrote that during the May 2019 Interview,

he had forgotten the date when his wife had submitted her study permit application (June 25, 2018). The Officer's refusal letter dated October 31, 2019 states:

> You have been found inadmissible to Canada in accordance with paragraph 40(l)(a) of the Immigration and Refugee Protection Act (*IRPA*) 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 the IRPA.

[21] The Applicant submits that the Officer's rejection of his work permit application was grounded in unreasonable findings regarding the genuineness of his marriage. The Applicant argues that he explained in his interview that the wedding was kept small and only attended by the couple's families in order to keep costs low. Given this, it was reasonable that the ring ceremony was also kept small, and that the Applicant initially said there was no engagement. Additionally, the fact that the ring ceremony had indeed occurred was supported by photographs and numerous affidavits from family members confirming their attendance. The Applicant maintains that a finding of misrepresentation cannot reasonably be made when there is this amount of evidence which shows that a ring ceremony did in fact take place.

[22] The Applicant further submits that he provided a sufficient explanation for why he did not meet Ms. Kaur before the engagement. The GCMS notes of the May 2019 Interview state that the Applicant was asked whether it was normal for a couple to meet in person for the first time on the day of their engagement. In his response, the Applicant explained that his marriage was arranged, and that it is customary for arranged couples not to meet on their own prior to finalizing the marriage.

[23] The Respondent relies on *Maan v Canada (Citizenship and Immigration)*, 2020 FC 118 to submit that the Applicant in this case failed to meet his onus of providing sufficient information to address and alleviate the Officer's concerns regarding the genuineness of the marriage (at paras 25-26). Specifically, the Respondent argues that the Applicant failed to provide answers to straightforward questions, including when Ms. Kaur had applied for her study permit, whether there had been an engagement ceremony, and what he had learned about Ms. Kaur since their marriage. I agree.

[24] In their GCMS notes, the Officer considered the Applicant's explanation that there had been a miscommunication between the January 2019 Interview and the May 2019 Interview. In rejecting the Applicant's explanation, the Officer reasonably found that an engagement ceremony is a significant event that the Applicant would have remembered, particularly if it had occurred on the same day he met his spouse. As noted by counsel for the Respondent during the hearing, the Applicant also failed to adequately explain why he changed his response from one interview to the next; simply stating that 'some miscommunication' had occurred does not address where the miscommunication happened.

[25] The Respondent also maintains that the Applicant's evidence of a chat history with Ms. Kaur following their wedding does not disclose that the couple exchanged substantive communication about their daily activities, their future plans, their career aspirations, or any other elements of an anticipated shared life together. When asked about what he knew about his spouse, the Applicant could only reply that she likes ice cream and "to go around places". The Respondent submits that these responses do not disclose that the Applicant has learned anything

of substance about his wife. I agree. Given the information provided, it was reasonable of the Officer to find that the Applicant did not appear knowledgeable about his spouse.

[26] Furthermore, the Respondent submits that the Officer did in fact carefully consider the Applicant's answer that only he and Ms. Kaur's family attended their wedding on August 18, 2018 in order to keep the ceremony small and that the wedding had been delayed due to a death in the family. The Respondent argues that it was reasonable of the Officer to find that the Applicant failed to provide a cogent explanation for why the death of a relative was relevant to the delay of the wedding, since the deceased relative was not even scheduled to attend the event. In my view, if there has been a death in the family, it strikes me as reasonable to delay a celebratory event out of respect, even if the deceased relative was not scheduled to attend the wedding. Nonetheless, I see this as only a minor shortcoming in the Officer's decision.

[27] The standard of reasonableness requires a reviewing court to show deference to an administrative decision-maker's expertise. In this case, while the Officer's decision is not void of flaws, I do not find that the Applicant has demonstrated significant shortcomings in the decision that render it unreasonable. I am satisfied that the Officer engaged in a global assessment of the record and articulated their reasons for finding that the Applicant's marriage was not genuine. I therefore find that the Officer's decision bears the hallmarks of reasonableness and was justified based on the information provided (*Vavilov* at paras 85, 102).

B. *Whether the Officer erred by conflating an analysis of genuineness of marriage under section 4 of the IRPR with misrepresentation under paragraph 40(1)(a) of the IRPA.*

[28] Based on the Officer's finding that the Applicant's marriage is not genuine, the Officer determined that the Applicant engaged in misrepresentation under paragraph 40(1)(a) of the *IPRA*. Paragraph 40(1)(a) of the *IRPA* states:

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;

[29] Subsection 4(1) of the *IRPR* states the following:

Bad faith	**Mauvaise foi**
4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership	**4 (1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(a) was entered into primarily for the purpose of acquiring any	a) visait principalement l'acquisition d'un statut ou d'un

status or privilege under the Act; or	privilège sous le régime de la Loi;
(b) is not genuine.	b) n'est pas authentique

[30] The Applicant argues that subtle discrepancies in non-essential information or having insufficient knowledge of one's spouse does not equate to misrepresentation under paragraph 40(1)(a) of the *IRPA.* The Applicant submits that he was asked to provide answers to questions regarding concerns about the *bona fides* of his marriage, and that he did exactly that and relayed the information he believed to be true when he was asked. The Applicant maintains that the Officer made an unreasonable jump from the fact that the Applicant was unaware of the exact date his spouse applied for a study permit and the Applicant's initial statement that no engagement had occurred, to finding that the Applicant is being untruthful.

[31] The Applicant relies on this Court's decision in *Toki v Canada (Immigration, Refugees and Citizenship),* 2017 FC 606 at paragraph 38 to submit that given the serious consequences of findings of misrepresentation, "[…] the evidence supporting such a finding must be clear and the Officer's reasons must reflect this. This includes explaining why evidence which counters such a conclusion is, at minimum, acknowledged." In *Seraj v Canada (Citizenship and Immigration),* 2016 FC 38 this Court also noted that findings of misrepresentation must not be taken lightly, and they must be supported by compelling evidence (at para 1).

[32] Furthermore, the Applicant submits that the legal tests to determine whether someone is caught within the ambit of section 4 of the *IRPR* and paragraph 40(l)(a) of the *IRPA* are distinct – and that it is unreasonable to use a possible finding made under section 4 of the *IRPR* as the sole

basis to conclude that a person committed misrepresentation. The Applicant notes that if this were true, then applicants whose spousal sponsorship applications are refused under section 4 of the *IRPR* would routinely also be found inadmissible for misrepresentation. Yet this is not the case. The Applicant maintains that the Officer's decision-making process is worrisome as it departs from the intentions of the *IRPA* and *IRPR,* and has serious consequences for applicants that leads to a five-year ban without the option to appeal to the Immigration Appeal Division.

[33] The Respondent submits that this Court has recognized that foreign nationals who make applications to come to Canada pursuant to the *IRPA* have a duty of candour that requires them to disclose material facts (*Bodine v Canada (Citizenship and Immigration),* 2008 FC 848 at paras 41-42). This is integrated into section 16(1) of the *IRPA,* which provides:

Obligation — answer truthfully	**Obligation du demandeur**
16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[34] To support this position, the Respondent relies on this Court's recent decision in *Bains v Canada (Citizenship and Immigration*), 2020 FC 57 ("*Bains*"). In *Bains,* this Court explains that misrepresentation under paragraph 40(1)(a) of the *IRPA* refers to a direct or indirect misrepresentation that could have induced an error in the application of the *IRPA,* and that there is no requirement that the misrepresentation be intentional, deliberate or negligent (at paras 62-

63). The exception to a finding of misrepresentation is narrow and only applies "where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control" (*Bains* at para 62, citing *Goburdhun v Canada (Citizenship and Immigration),* 2013 FC 971 at para 28).

[35] With respect to how paragraph 40(1)(a) of the *IRPA* interacts with paragraphs 4(1)(a) and 4(1)(b) of the *IRPR,* this Court goes on to note at paragraph 64 of *Bains*:

> […] An immigration officer must determine under subsection 4(1) of the [*IRPR*] that a marriage was entered into in bad faith before finding there was a material misrepresentation under paragraph 40(1)(a) of the *IRPA* (*Kaur v Canada (Citizenship and Immigration),* 2012 FC 273 at para 17).

[36] The Respondent maintains that the Officer's finding that the Applicant's marriage was not genuine was grounded in the record, and that the Officer thus did not err in relying on this finding to determine that there had been a material misrepresentation in the Applicant's case.

[37] In my view, this Court's decision in *Bains* suggests that a review of the genuineness of a marriage pursuant to subsection 4(1) of the *IRPR* can help inform an officer's finding that there was a material misrepresentation under paragraph 40(1)(a) of the *IRPA.* Pursuant to paragraph 199(e) of the *IRPR,* a foreign national may apply for a work permit if they are a family member of a person holding a study permit. As such, if an applicant's marriage is found to not be genuine, and if that applicant was issued a work permit on the grounds that they are a family

member of a foreign national studying in Canada, then it could be said that there was an error in the administration of the *IRPA* pursuant to paragraph 40(1)(a) of the *IPRA.*

[38] I therefore do not find that the Officer in this case conflated the tests for subsection 4(1) of the *IRPR* and paragraph 40(1)(a) of the *IRPA.* Rather, the Officer first analyzed the Applicant's interview responses and the information provided to determine the genuineness of the marriage. In making a reasonable finding that the marriage was not genuine, the Officer determined that the Applicant was not a "family member" under paragraph 199(e) of the *IRPR,* and therefore not eligible to obtain a work permit as the spouse of a foreign national studying in Canada. The Officer then proceeded to use this finding to support the conclusion that there was a material misrepresentation under paragraph 40(1)(a) of the *IRPA,* as the fact that the marriage was not genuine could have led to an error in the administration of the *IRPA.*

VI. **Conclusion**

[39] For the reasons above, I find the Officer's decision is reasonable. Accordingly, this application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-7058-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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