

Federal Court



Cour fédérale

Date: 20230824

Docket: IMM-9171-22

Citation: 2023 FC 1146

Ottawa, Ontario, August 24, 2023

PRESENT: Mr. Justice O'Reilly

BETWEEN:

SARBJEET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Sarbeet Singh arrived in Canada in 2012 on a study permit obtained through misrepresentation; he supported his application with a fraudulent letter of acceptance from the University of Waterloo. Mr Singh then obtained successive Canadian work permits and ultimately started his own business.

[2] In 2018, after the Canada Border Services Agency (CBSA) investigated his immigration history, Mr Singh was convicted and sentenced to 4 months' imprisonment for misrepresentation under the *Immigration and Refugee Protection Act*, SC 2001, c 27, s 127(a) [IRPA] (provisions cited are set out in an Annex).

[3] In 2020, the CBSA referred a report to the Immigration Division, which held a hearing into Mr Singh's inadmissibility to Canada. The ID found Mr Singh inadmissible for misrepresentation and issued a removal order against him. Mr Singh appealed the ID's decision to the Immigration Appeal Division. The IAD concluded that there were insufficient humanitarian and compassionate (H&C) grounds to justify granting him special relief from the removal order.

[4] Mr Singh argues that the IAD arrived at an unreasonable conclusion after failing to consider evidence in his favour. In particular, he contends that the IAD discounted his degree of establishment in Canada, the negative impact that removal would have on him, his substantial support, and the best interests of the affected children. He asks me to quash the IAD's decision and order another panel to reconsider his request for relief.

[5] I can find no basis for overturning the IAD's decision. After considering the applicable factors and the relevant evidence, the IAD arrived at a reasonable conclusion that Mr Singh had not established H&C grounds for reversing the removal order.

[6] The sole issue is whether the IAD's decision was unreasonable.

II. The IAD's Decision

[7] The IAD proceeded on the uncontested premise that the order requiring Mr Singh's removal from Canada was lawful. The question was whether Mr Singh merited special relief based on H&C factors.

[8] The IAD found that Mr Singh's misrepresentation was significant. While his parents had paid an agent to prepare a study permit application for him, Mr Singh had always intended to work in Canada, not attend school. He reviewed cursorily his study permit application, which included the fraudulent acceptance letter, and signed it.

[9] Mr Singh claimed that he had not read the fraudulent letter until after the CBSA began its investigation. He knew that he did not have the required credentials for a study permit, but his agent told him not to mention his lack of qualifications when he got to Canada. Once he received his study permit, he thought his immigration status had been secured.

[10] The IAD found this misrepresentation to be serious because it was intentional and deceitful, and resulted in an error in the administration of the IRPA. Accordingly, to obtain special relief, Mr Singh had to show that H&C factors outweighed the severity of his misrepresentation.

[11] On the issue of establishment, the IAD found that Mr Singh had done well in Canada, both as an employee and a small-business owner. He also volunteers in the community and helps out with his business partner's work and family responsibilities. However, the IAD concluded that these positive indications were offset by the misrepresentation. But for the fraudulently-obtained study permit, Mr Singh would not have been allowed into Canada in the first place. He would not have been allowed to work or start a business.

[12] In terms of support, the IAD found that Mr Singh was supported by his business partner, friends, girlfriend, employees, and community members.

[13] The IAD accepted that removal from Canada would impose a hardship on Mr Singh. He would have to return to India and re-establish himself there. He would also have to close his Canadian business. On the other hand, he still has family in India, and is familiar with the culture and language there. The hardship would be relatively minor.

[14] Regarding the best interests of the children, the IAD considered Mr Singh's involvement in the lives of his business partner's young children, with whom he resides. It found that while Mr Singh sometimes helps out, the children are cared for mainly by their parents and would not experience any significant negative impact if Mr Singh returned to India.

[15] Overall, the IAD concluded that there were insufficient positive H&C factors in Mr Singh's favour to warrant special relief.

III. Was the IAD's Decision Unreasonable?

[16] Mr Singh submits that the IAD's decision was unreasonable because it failed to include a fair assessment of the evidence favouring his request for special relief.

[17] Regarding establishment, Mr Singh argues that the IAD did not take proper account of the evidence. In particular, he says the IAD failed to note the contribution he had made during the COVID-19 pandemic to assist people in need. He also suggests that the IAD did not properly recognize the significance of his successful business. In addition, he contends that the IAD did not appreciate the fact that he and his long-time girlfriend intended to be married. Finally, he submits that the IAD should have noted that he had already been punished for misrepresentation, having been convicted and sentenced for it. There was no need to punish him further. As the IAD was obliged to consider all the circumstances, it should have taken account of Mr Singh's conviction (s 67(1)(c) of IRPA).

[18] I disagree. The IAD considered Mr Singh's degree of establishment in Canada as a positive factor. However, it went on to conclude that the seriousness of Mr Singh's misrepresentation negated it. That approach was consistent with the applicable case law and, accordingly, was not unreasonable (see *Canada (Citizenship and Immigration v Liu*, 2016 FC 460 at paras 24-29).

[19] Regarding support, Mr Singh asserts that the IAD failed to engage with the strong evidence he provided; the IAD simply mentioned the evidence and found it to be "moderately positive." I cannot see any error on the IAD's part. Mr Singh may have wished for a more

generous assessment, but that desire, in itself, does not suggest that the IAD's evaluation of the supporting evidence was unreasonable.

[20] Regarding hardship, Mr Singh submits that the IAD failed to realize that his removal from Canada would result in the collapse of his business in Canada. Wrongly, he says, the IAD found that hiring a replacement for him could ensure that the business survived. In addition, he claims that the IAD erred in finding that his family could assist him in re-integrating into life in India – his father lives in Portugal, not India, and plans to sponsor Mr Singh's mother to move there as well.

[21] I disagree with Mr Singh's submissions on this issue. The IAD did not conclude that his business could continue if a new manager were hired. It simply observed that Mr Singh had not explained why a replacement manager could not run the business in his absence. On the question of family support in India, the IAD was aware that one or both of Mr Singh's parents may no longer reside in India, but noted that Mr Singh still has other relatives there. I see nothing unreasonable in the IAD's treatment of the evidence on this point.

[22] On the best interests of children, Mr Singh maintains that the IAD merely considered whether his business partner's children would experience hardship if he returned to India. Instead, the IAD should have assessed whether the children's best interests would have been negatively affected. Had it done so, says Mr Singh, it would have found the children would be denied his significant contributions to the household and his role as a caregiver.

[23] Again, I disagree. The IAD considered the children's circumstances and Mr Singh's role in their lives. The evidence fell short of showing that the best interests of the children would be seriously impinged by Mr Singh's removal from Canada.

[24] Looking at the various elements of the IAD's decision and considering Mr Singh's submissions, I cannot conclude that the IAD's decision was unreasonable. The IAD's findings were responsive to the evidence, as well as justifiable, intelligible, and transparent.

IV. Conclusion and Disposition

[25] The IAD considered the relevant factors and evidence. Its conclusion that Mr Singh did not merit special relief based on H&C factors was not unreasonable. Accordingly, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-9171-22

THIS COURT'S JUDGMENT is that:

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

"James W. O'Reilly"

Judge

ANNEX

Immigration and Refugee Protection Act (S.C. 2001, c. 27)	<i>Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)</i>
Appeal allowed	Fondement de l'appel
67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,	67 (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :
[...]	[...]
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.
Misrepresentation	Faussees présentations
127 No person shall knowingly	127 Commet une infraction quiconque sciemment :
(a) directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	a) fait, directement ou indirectement, des présentations erronées sur un fait important quant à un objet pertinent ou une réticence sur ce fait, et de ce fait entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
[...]	[...]

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9171-22

STYLE OF CAUSE: SARBJEET SINGH v. MCI

PLACE OF HEARING: CALGARY, AB

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JUDGMENT AND REASONS: O'REILLY J

DATED: AUGUST 24, 2023

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