Date: 20080201

Docket: IMM-2978-07

Citation: 2008 FC 123

Ottawa, Ontario, February 1, 2008

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

JASVIR KAUR SAHOTA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicant, Ms. Jasvir Kaur Sahota, is a citizen of India who came to Canada in 1997. Since arriving in Canada, she has pursued a number of different processes to allow her to remain in this country. Thus far, all of her initiatives have been for naught. Most recently, Ms. Sahota has brought an application for permanent resident status under the Spouse or Common-Law Partner in Canada Class (Inland Spousal Application), pursuant to the provisions of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (IRPA). Her Inland Spousal Application was based on her

alleged common-law relationship with Mr. Pritpal Narwal with whom she claims to have had a daughter.

[2] In a decision dated July 4, 2007, an immigration officer (the Officer) refused the Inland Spousal Application on the grounds that she was not satisfied that the alleged common-law partnership was genuine and that it was not entered into primarily for the purpose of acquiring status under IRPA. Ms. Sahota seeks to overturn the Officer's decision.

II. Issues

[3] Ms. Sahota raises a number of issues in this application:

1. Did the Officer err by failing to address the best interests of Ms. Sahota's child or by failing to assess the parent-child relationship between Mr. Narwal and Ms. Sahota's daughter?

2. Did the Officer err by relying on Ms. Sahota's credibility in refusing the Inland Spousal Application?

3. Did the Officer err in failing to notify Ms. Sahota of the Officer's concerns regarding demeanour and failing to provide Ms. Sahota with a chance to address those concerns?

4. Did the Officer err by failing to consider the evidence provided by Mr. Narwal's son?

[4] The Respondent also raises a preliminary issue of whether, given Ms. Sahota's failure to come to the Court with "clean hands", this Court should exercise its discretion not to hear the case on its merits.

III. Background

[5] As noted above, Ms. Sahota has unsuccessfully pursued a number of different processes in an attempt to remain in Canada. Her history with Canada's immigration officials is relevant to this judicial review and I summarize the key points here:

- In a decision dated January 21, 1999, Ms. Sahota was found not to be a Convention refugee by a panel of the Immigration and Refugee Board, Refugee Division (RPD). The basis of the decision was a lack of credibility.

- In spite of the RPD's decision, Ms. Sahota continued to live in Canada without status. She allegedly began working for Mr. Narwal and his wife in November 2000 as a live-in caregiver.

- On December 17, 2004, Ms. Sahota's life underground came to an abrupt end when she was apprehended by Canada Border Services Agency (CBSA) officers. She subsequently applied to reopen her refugee claim and was released from

immigration custody on terms and conditions that included residing at her bondsperson’s residence. During her detention, Ms. Sahota swore a statutory declaration, in which she declared that her earlier refugee claim had been abandoned and that her relationship with Mr. Narwal "has always been simply one of a companion in the house and has not had any intimate aspects".

- Upon her discharge from immigration custody, Ms. Sahota immediately violated the terms and conditions of her release by returning to live with Mr. Narwal.

- In a decision dated January 24, 2005, a panel of the Immigration and Refugee Board rejected Ms. Sahota’s application to reopen her claim for refugee protection. The panel found that it had “absolutely no credible evidence” before it and that, contrary to Ms. Sahota’s submission and sworn affidavit, her earlier claim had not been abandoned. Rather, the panel noted, she had had a full hearing which had rejected her claim on the basis that it was fabricated.

- On August 5, 2005, Ms. Sahota submitted a pre-removal risk assessment (PRRA) application. This was followed by a humanitarian and compassionate (H&C) application in October 2005. After both applications were dismissed in March 2007, Ms. Sahota filed an application for judicial review of the H&C decision, which was later discontinued.

- On April 25, 2007 - one month after her PRRA and H&C applications were denied - Ms. Sahota filed the Inland Spousal Application.

[6] I pause to note some important details of Ms. Sahota's Inland Spousal Application. First, Ms. Sahota included in her application an affidavit of Mr. Narwal in which he claimed to be the father of her child and stated that he was prepared to undergo DNA testing. However, for reasons unbeknownst to the Officer, this offer was later withdrawn. Second, in her application, Ms. Sahota stated that she had been in a common-law relationship with Mr. Narwal since November 2004.

[7] In May 2007, Ms. Sahota and Mr. Narwal were interviewed together and separately by the Officer in the presence of their counsel.

[8] Finally, on July 4, 2007, the decision which is the subject of this judicial review was rendered: the Officer refused Ms. Sahota's Inland Spousal Application. In approximately eight pages of single-spaced, typed notes, which constitute the reasons for her decision, the Officer noted:

- Ms. Sahota's previous non-compliance with the provisions of IRPA;

- Ms. Sahota's history of misrepresentation;

- the lack of interaction between Ms. Sahota and Mr. Narwal at the May 2007 interview;

- various discrepancies and inconsistencies that arose during the May 2007 interview; and

- the fact that Ms. Sahota and Mr. Narwal refused to undergo DNA testing despite having offered to do so.

[9] In sum, the Officer was not satisfied that Ms. Sahota and Mr. Narwal shared a relationship of a conjugal nature. Accordingly, the Officer found that, on a balance of probabilities, Ms. Sahota's relationship was not genuine and was entered into primarily for the purpose of acquiring a status or privilege under IRPA.

IV. Preliminary Issue

[10] Before I turn to the merits of the issues raised by Ms. Sahota, I must address whether, as the Respondent submits, this Court should exercise its discretion not to hear Ms. Sahota's judicial review application on account of her long history of violating Canada's immigration laws and lying to immigration authorities.

[11] It is not in dispute that Ms. Sahota has repeatedly lied and violated Canadian immigration law when it has suited her interests. To recap, in 1999 the RPD concluded that Ms. Sahota's claim for refugee status was fabricated. Rather than leaving Canada or pursuing other legal means to remain in this country, she remained in Canada illegally. Only after her detention in late 2004 did she pursue other remedies under IRPA. However, even then, instead of making an honest attempt to

normalize her status in Canada, her first response to her detention was to invent a story that she had never had the benefit of a full refugee hearing. Furthermore, while she now claims that her relationship with Mr. Narwal began in November 2004, at the time of her detention in December 2004 she swore that she had no intimate relationship with Mr. Narwal. Lastly, she wilfully ignored a condition of her release by failing to live with her bondsperson.

[12] Whether Ms. Sahota has been honest in pursuing her Inland Spousal Application is also questionable. In particular, I note that a key submission before the Officer was her claim that Mr. Narwal was the father of her child. However, in an affidavit submitted to this Court, Ms. Sahota now confesses to an affair with another man who could be the father of the child. While this affidavit will not be considered with respect to the merits of this judicial review, it is certainly relevant to the preliminary issue of whether Ms. Sahota comes to this judicial review with clean hands.

[13] The Federal Court of Appeal noted in *Thanabalasingham v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 14 at paras. 9-10:

> … the case law suggests that, if satisfied that an applicant has lied, or is otherwise guilty of misconduct, a reviewing court may dismiss the application without proceeding to determine the merits or, even though having found reviewable error, decline to grant relief.
>
> In exercising its discretion, the Court should attempt to strike a balance between, on the one hand, maintaining the integrity of and preventing the abuse of judicial and administrative processes, and, on the other, the public interest in ensuring the lawful conduct of government and the protection of fundamental human rights. The factors to be taken into account in this exercise include: the seriousness of the applicant's misconduct and the extent to which it undermines the proceeding in question, the need to deter others from similar conduct, the nature of the alleged administrative unlawfulness and the apparent strength of the case, the importance of the individual

> rights affected and the likely impact upon the applicant if the administrative action impugned is allowed to stand.

[14] In this case, Ms. Sahota's misconduct is very serious, has been ongoing for several years and should be discouraged. Nevertheless, there are factors that favour hearing this judicial review application. I am prepared to consider this case on its merits.

V. Analysis

[15] Pursuant to IRPA, its associated regulations and various policy documents of Citizenship and Immigration Canada (CIC), a common-law partner of a Canadian citizen may become eligible for permanent resident status in Canada as a member of the Spouse or Common-Law Partner in Canada Class. However, a foreign national shall not be considered to be a common-law partner if the partnership "is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under [IRPA]" (*Immigration and Refugee Protection Regulations*, S.O.R./2002-227, s. 4).

[16] In general, a decision of an immigration officer that a marriage is not genuine attracts a high standard of review. Ms. Sahota submits that the standard of review is that of reasonableness *simpliciter*. There is no need to make a final determination of the applicable standard of review since, in this case and for the reasons that follow, I am satisfied that the Officer's decision withstands a somewhat probing examination. I note in passing, however, that an allegation that the Officer failed to observe the principles of fairness by ignoring evidence or failing to put concerns to Ms. Sahota will be reviewed on a correctness standard.

[17] With these principles in mind, I turn to the specific allegations raised by Ms. Sahota.

A. *Best Interests of the Child*

[18] Ms. Sahota's first and most serious argument is that the Officer failed to assess the best interests of her child as required under international instruments regarding the rights of the child. Her submissions on this point can be summarized as follows:

- Ms. Sahota specifically referred to and asked the Officer to consider the best interests of her child by attaching a copy of her H&C application to her Inland Spousal Application.

- The operational manuals of CIC required the Officer to assess the best interest of Ms. Sahota's child.

- The best interests of her child are directly related to the genuineness of her marriage.

- The decision of the Federal Court of Appeal in *De Guzman v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 should be interpreted to apply only to a PRRA application.

[19] I do not find merit in any of these arguments. I first note that simply appending an earlier application to the Inland Spousal Application does not incorporate all of the earlier submissions into the Inland Spousal Application. The earlier submissions were made to a different decision maker in the context of an H&C application. The Officer cannot be expected to assume they were also addressed to her, or that Ms. Sahota intended them to be considered, without further elaboration, within the context of an entirely different process. Further, there was no specific request by Ms. Sahota to undertake a separate analysis of the best interests of her child.

[20] However, even more significantly, there was no obligation on the Officer to carry out a separate review of the best interests of Ms. Sahota's child. While they may be relevant (*Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475 at para. 30), the CIC operational manuals referred to by Ms. Sahota are not law and do not create any substantive rights or expectations (*Mpula v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 456 at para. 25). Furthermore, and contrary to Ms. Sahota's submissions, neither of the manuals referred to state that the best interests of children must be considered when processing an Inland Spousal Application. Ms. Sahota has cited no case law to support such a proposition, which, I note, would dramatically shift the focus away from Ms. Sahota's relationship with her sponsor, Mr. Narwal.

[21] I am also satisfied that Canada's international obligations do not require that the best interests of Ms. Sahota's child be considered at this stage. As Justice Evans succinctly summarized in the case of *Varga v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 394 at para. 13:

> Neither the Charter nor the *Convention on the Rights of the Child* [November 20, 1989, [1992] Can. T.S. No. 3] requires that the interests of affected children be

> considered under every provision of IRPA: *de Guzman v. Canada (Minister of Citizenship and Immigration)*, [2006] 3 F.C.R. 655 (F.C.A.), at paragraph 105. If a statutory scheme provides an effective opportunity for considering the interests of any affected children, including those born Canada, such as is provided by subsection 25(1), they do not also have to be considered before the making of every decision which may adversely affect them.

[22] In the case before me, the interests of Ms. Sahota's child have been considered in the context of her earlier H&C application. To require that those interests be reconsidered as part of her Inland Spousal Application would be duplicative and potentially lead to inconsistent findings.

B. *Parent-child Relationship*

[23] Ms. Sahota submits that, even if the Officer was not required to consider the best interests of her child, the Officer was required to take into account the evidence of a parent-child relationship between Mr. Narwal and Ms. Sahota's child. I agree that the relationship between an alleged partner and a child is relevant to the determination of whether a common-law partnership is genuine. Indeed, this is indicated in the CIC operational manuals. However, as the manuals clearly state, this is but one factor to consider. A positive relationship with a child is not necessarily determinative of the genuineness of a common-law partnership and must be weighed with other relevant factors.

[24] Ms. Sahota argues that the Officer did not take the parent-child relationship into consideration. I do not agree. Having reviewed the reasons of the Officer, I am satisfied that she did so. Quite simply, the Officer did not weigh the evidence of the relationship between Mr. Narwal and Ms. Sahota's child as the Applicant would have done.

C. *Demeanour*

[25] Ms. Sahota's next argument is that procedural fairness required the Officer to inform Ms. Sahota about the Officer's concerns regarding Ms. Sahota's and Mr. Narwal's demeanour during the May 2007 interview. In support of her argument, Ms. Sahota presents several alternative explanations for their demeanour.

[26] It is well established that an immigration officer is entitled to examine an applicant's demeanour, reactions, and responses to questions. Indeed, the Court has held that an immigration officer is in the best position to examine such factors (*Ho v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1250 at para. 7). Furthermore, the Court has held that the existence of alternative explanations for an applicant's demeanour does not make an officer's findings unreasonable (*Sinan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 87 at para. 11). In sum, therefore, the jurisprudence indicates that the Court will not lightly interfere with the findings of an officer on the basis of demeanour.

[27] In the case at bar, the Officer found the "lack of interaction between the sponsor and the applicant…to be noteworthy".

[28] In my view, the Officer was entitled to record her observations about the lack of interaction between Ms. Sahota and her sponsor. Further, given that the Officer's sole remark concerning their demeanour was that it was "noteworthy", an observation which is neither positive nor negative, I do not find that the Officer was obligated to put the observation to Ms. Sahota.

D. *Credibility Concerns*

[29] The Officer made a number of references to Ms. Sahota's immigration history and to issues of credibility which had arisen. Although Ms. Sahota does not dispute the accuracy of the Officer's summary of her history in Canada, she asserts that all of her actions are consistent with there being a genuine relationship between her and Mr. Narwal. In other words, Ms. Sahota submits the Officer should have interpreted her actions as supportive of a genuine partnership.

[30] First, I find the proposed interpretation of Ms. Sahota's actions to be farfetched indeed. However, even if one could "spin" some parts of the evidence in this manner, Ms. Sahota ignores the other credibility problems arising from her immigration history that are unrelated to an alleged partnership with Mr. Narwal. Further, just because Ms. Sahota proposes an alternative way of looking at the evidence does not mean that the Officer's interpretation was unreasonable. As noted in *Sinan*, above at para. 11, the existence of alternative interpretations of the evidence does not make the Officer's decision unreasonable.

[31] Looking at the decision as a whole, I find the Officer relied on Ms. Sahota's many documented credibility problems to doubt the genuineness of her alleged relationship with Mr. Narwal. A connection between a long pattern of credibility concerns and the genuineness of a partnership is not unreasonable - for if an applicant is not generally credible, anything he or she alleges concerning her relationship is cast in doubt.

E. Affidavit of Son

[32] Ms. Sahota's final argument is that the Officer ignored relevant evidence. In particular, she refers to a statement by Joven Narwal, Mr. Narwal's son, where Joven describes his belief that Ms. Sahota and his father are living as husband and wife. While I agree that the Officer did not explicitly refer to the statement from Joven, I do not find the failure to refer to this evidence constitutes a reviewable error.

[33] The statement by Joven is not sworn and, on the key element of the existence of a conjugal relationship, is based on what he was told by his father. I therefore consider the credibility and reliability of the statement to be questionable. While it would have been preferable for the Officer to make specific reference to the statement, her failure to do so, on these facts, is not a reviewable error.

VI. Conclusion

[34] Generally speaking, the Officer's reasons and decision indicates that she conducted a detailed and careful analysis of the evidence. Having reviewed the Officer's reasons, the record before me and the arguments presented by the parties, I am satisfied that the reasons stand up to a somewhat probing examination. The application will be dismissed. The parties did not propose a question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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