

**Date: 20080415**

**Docket: IMM-2007-07**

**Citation: 2008 FC 486**

**Vancouver, British Columbia, April 15, 2008**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**NEERU WALIA  
GEETA RANI RAIKHYWALIA  
VIPAN KUMAR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mrs. Neeru Walia, Mrs. Geeta Raikhywalia and Mr. Vipin Kumar seek judicial review of a decision of the High Commission of Canada, New Delhi, India, dated March 1, 2007 in respect of a decision made by an Immigration Officer (the “Officer”) who determined that Mrs. Geeta Raikhywalia and her son, Mr. Vipin Kumar (collectively the “Applicants”) are inadmissible to Canada for directly or indirectly misrepresenting or withholding material facts contrary to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). On the basis

of the alleged misrepresentation, the Applicants' application for permanent residence in Canada was denied.

[2] The Officer's decision set forth the following facts as constituting the misrepresentation:

Section 40(1)(a) of the **Immigration and Refugee Protection Act** states that a foreign national is inadmissible for misrepresentation for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter than induces or could induce an error in the administration of this Act. Section 40(2)(a) of the **Immigration and Refugee Protection Act** specifies that the foreign national continues to be inadmissible for misrepresentation for a period of two years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1).

You and your son, Vipin Kumar, misrepresented the following material facts:

You stated in your application that you were divorced and did not cohabitate anymore with Ashok Kumar Raikhywalia. On August 9, 2006, you and your son were interviewed at the Canadian High Commission in New Delhi. During the interview you re-stated that you were not anymore in cohabitation with Ashok Kumar Raikhywalia. Your son made the same statement.

On September 28, 2006, officers from the High Commission visited your village and your house and discovered that you were still in cohabitation with Ashok Kumar Raikhywalia.

On November 14, 2006, a letter was sent to you to give you the opportunity to address our concerns about your misrepresentation. Your response to this letter dated 5 December, 2006 did not provide any information to dissipate our concerns.

I reached the determination while reviewing the evidence mentioned above. The misrepresentation or withholding of this/these materials fact(s) induced or could have induced errors in the administration of the Act because it could have affected you(*sic*) medical admissibility status.

As a result, you and your son, Vipin Kumar, are inadmissible to Canada for a period of two years from the date of this letter.

[3] The consequence of this decision is that the Applicants are inadmissible to Canada for a period of two years, pursuant to paragraph 40(2)(a) of the Act.

[4] The Applicants argue that the Officer erred in reaching her conclusion as to the alleged misrepresentation because there was no evidentiary basis to support the finding that Mrs. Raikhywalia was cohabiting with Ashok Kumar Raikhywalia, her former husband. The record shows that the former husband had previously submitted an application for permanent residence in Canada that was rejected on the grounds that he was medically inadmissible.

[5] In the course of the hearing, counsel for the Minister of Citizenship and Immigration (the “Respondent”) argued that Mrs. Neeru Walia should be removed as an “Applicant” since she has no standing to bring the within application. Mrs. Walia, as a Canadian citizen, is not seeking any status under the Act and her only “interest” in this application is as a family member. I agree with the submissions of the Respondent in this regard and Mrs. Walia will be removed as a party.

[6] The heart of the matter is whether the Officer committed a reviewable error in concluding that the Applicants had made material misrepresentations with respect to the continuing cohabitation of Mrs. Raikhywalia with Mr. Raikhywalia, notwithstanding the fact that she had divorced him, as documented in the Tribunal Record. In light of the recent decision of the Supreme

Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, the appropriate standard of review in this case is reasonableness.

[7] The Officer's finding as to the making of a material misrepresentation within the scope of paragraph 40(2)(a) of the Act is grounded in the finding that Mrs. Raikhywalia continues to cohabit with her former husband. The question of "cohabitation", in my opinion, means more than simple shared residence, if that is indeed the situation here. The word "co-habit" has been interpreted as meaning a "marriage-like" relationship characterized by the features of financial interdependence, a sexual relationship, a common principal residence, mutual obligations to share the responsibility of running the home and the "expectation each day that there be continued mutual dependency"; see *Bellis v. Innes* (1980), 2 R.F.L. (2d) (B.C. Co. Ct.). The evidence in the record here falls short of establishing these facts. I am not satisfied that the decision of the Officer meets the standard of reasonableness.

[8] I note further that the Officer's concerns about future attempts by the Applicants to sponsor the former husband to Canada are, at the moment, speculative.

[9] In the result, the Application for judicial review is allowed, the decision of the officer is quashed and the matter is remitted for re-determination by a different officer. There is no question for certification arising.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The Application for judicial review is allowed, the decision of the Officer is quashed and the matter is remitted for re-determination by a different officer. There is no question for certification arising.
2. Neeru Walia is removed as a party and the style of cause will be amended accordingly as follows:

**BETWEEN:**

**GEETA RANI RAIKHYWALIA,  
VIPAN KUMAR**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-2007-07

**STYLE OF CAUSE:** GEETA RANI RAIKHYWALIA et al. v. MCI

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 18, 2008

**REASONS FOR JUDGMENT:** HENEGHAN J.

**DATED:** April 15, 2008

**APPEARANCES:**

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David Tyndale FOR THE RESPONDENT

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