

Federal Court



Cour fédérale

**Date: 20100617**

**Docket: IMM-2315-09**

**Citation: 2010 FC 658**

**Ottawa, Ontario, June 17, 2010**

**PRESENT: The Honourable Mr. Justice Boivin**

**BETWEEN:**

**JASWANT SINGH RANDHAWA**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) to seek judicial review of a decision of the Immigration Appeal Division of the Immigration and Refugee Board (the Board), dated April 24, 2009, dismissing the applicant's appeal of the removal order made against him on April 26, 2007.

[2] The applicant was ordered to be removed from Canada for misrepresentation according to subsection 40(1)(a) of the Act 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 Act.

### Factual Background

[3] The applicant is a citizen of India who was born on June 24, 1974. He is a permanent resident of Canada since February 6, 2000, after having been sponsored by his wife, Mohinder Kaur Cheema, whom he married on November 24, 1998.

[4] Following a workplace accident, the applicant returned to India in April 2000 and remained there until he returned to Canada on October 10, 2000. In July of that year, his wife filed for divorce and it became effective on April 6, 2001.

[5] On December 21, 2003, the applicant returned to India and married his second wife, Harpreet Kaur Randhawa. On or about March 23, 2004, the applicant filed an application to sponsor his second wife. This led to a preliminary decision dated October 5, 2005 which found that the applicant was inadmissible on the grounds of misrepresentation due to his first marriage.

[6] On April 5, 2006, an officer reviewed the file and formally requested an admissibility hearing that was conducted between January and April 2007. Following the hearing, the exclusion order was made against the applicant.

Impugned Decision

[7] The determinative issue in this case is whether the exclusion order was valid in law. In order to determine this issue, the Immigration Appeal Division had to determine the applicant's credibility as to whether or not he had contracted a marriage for the sole purpose of acquiring any status or privilege under the Act and if there were sufficient humanitarian and compassionate considerations that warranted special relief in light of all the circumstances in this case.

[8] Regarding the applicant's first marriage, the Board was unable, after reviewing the evidence provided at the hearing, to determine if the applicant had ever spent any time living with his ex-wife. The Board found that while the applicant's place of residence was critically important, the testimony provided in that regard was inconsistent.

[9] The Board also found that the applicant lacked credibility on most of the issues raised concerning his first marriage. The Board also added that the explanations provided by the applicant – why his spouse was asking for a divorce after two years of marriage and after having been separated for inordinate periods of time during the immigration process – were unreasonable.

[10] The Board expressed the credibility issues of the applicant in the following manner at para. 36 of the decision:

[...] The appellant can offer no credible reason why his short lived marriage would break down to the point where his ex-wife would file for divorce without telling him while he languished in India recovering from his injury.

[11] The Board thus concluded that the applicant's first marriage was not genuine and was contracted for the sole purpose of facilitating the immigration process and was inadmissible for purposes of misrepresentation. The Board also added that there were no humanitarian or compassionate considerations for the applicant to remain in Canada because the applicant misrepresented his way into Canada and there is no evidence that he cannot achieve the same degree of establishment in India.

[12] The Board finally noted that his present wife and child live in India and hence, it inferred that the best interest of his child would be to see the applicant reunited with them in India.

### Legislation

[13] Subsections 40(1), 67 and 68 of the *Immigration and Refugee Protection Act* read as follows :

#### Misrepresentation

**40.** (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(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;

(b) for being or having been sponsored by a person who is

#### Faussees déclarations

**40.** (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

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;

b) être ou avoir été parrainé par un répondant dont il a été statué

determined to be inadmissible for misrepresentation;

qu'il est interdit de territoire pour fausses déclarations;

(c) on a final determination to vacate a decision to allow the claim for refugee protection by the permanent resident or the foreign national; or

c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile;

(d) on ceasing to be a citizen under paragraph 10(1)(a) of the *Citizenship Act*, in the circumstances set out in subsection 10(2) of that Act.

d) la perte de la citoyenneté au titre de l'alinéa 10(1)a) de la *Loi sur la citoyenneté* dans le cas visé au paragraphe 10(2) de cette loi.

...

[...]

#### 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 :

(a) the decision appealed is wrong in law or fact or mixed law and fact;

a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;

(b) a principle of natural justice has not been observed; or

b) il y a eu manquement à un principe de justice naturelle;

(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.

...

[...]

Removal order stayed

**68.** (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

...

Sursis

**68.** (1) Il est sursis à la mesure de renvoi sur preuve qu'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.

[...]

Issues

[14] This application raises the following issue: Did the Board err in ignoring two pieces of the applicant's evidence?

Standard of Review

[15] The Court agrees with the respondent that, in the present case, the standard of review is reasonableness. The issue is a question of mixed facts and law and, accordingly, the Court must look "...into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. [...] But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).

Analysis

[16] The applicant submits that the findings of credibility completely ignored two important pieces of evidence before the Board:

- i. A report from the York Regional Police that shows that the applicant's witness accompanied him to his alleged apartment located at 111 Lamp Crescent (as opposed to 2626 Islington Avenue) in May 2001, and;
- ii. a letter dated August 19, 2005 written and signed by the applicant's lawyer explaining why his first wife sent him to India when he suffered a workplace injury.

[17] The Court agrees with the respondent that the police report is of no significant importance. Indeed, the fact that the applicant's witness accompanied him to the apartment located on 111 Lamp Crescent to retrieve some of his belonging was never put into question. The Court is of the view that this document regarding the applicant's residence is not conclusive and therefore not helpful for the applicant. Further, the record contains an important number of conflicting pieces of evidence regarding the applicant's residence which the Board had to consider. A review of the documentary evidence does not convince this Court that this sole piece of isolated evidence can by itself impugn the entire and overwhelming evidence considered by the Board in its sixteen (16) pages decision.

[18] Turning to the second piece of evidence – the lawyer's letter – this Court finds that the letter merely amounts to the lawyer stating his position. This Court is therefore not convinced by the applicant's argument that this letter bears any significant weight.

[19] It is trite law that there is no obligation for the Board to expressly cite every piece of evidence. In the decision *Hassan v. Canada (Minister of Employment and Immigration)* (F.C.A.),

[1992] F.C.J. No. 946, 147 N.R. 317, at para. 3, the Federal Court of Appeal addressed the issue in the following way:

[3] [T]he fact that some of the documentary evidence was not mentioned in the Board's reasons is not fatal to its decision. The passages from the documentary evidence that are relied on by the appellant are part of the total evidence which the Board is entitled to weigh as to reliability and cogency. My examination of the record before the Board persuades me that it did, in fact, consider and weigh the total evidence in a proper fashion. ...

[20] In the present case, this Court is of the opinion that the Board conducted a full assessment of the evidence, including the applicant's testimony and the totality of the documentary evidence on file. The Board's decision is clear in explaining why some of the evidence was not credible and this demonstrates in and of itself that the Board did, in fact, consider the evidence reasonably.

[21] This Court finds that the Board's decision was reasonable in light of all the circumstances of the case. The decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law (*Dunsmuir*). Therefore, this judicial review application will be dismissed. No question was proposed for certification and there is none in this case.



**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed. No question for certification.

“Richard Boivin”

---

Judge

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

**DOCKET:** IMM-2315-09

**STYLE OF CAUSE:** JASWANT SINGH RANDHAWA v. MPSEP

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** June 8, 2010

**REASONS FOR JUDGMENT:** BOIVIN J.

**DATED:** June 17, 2010

**APPEARANCES:**

Lakhwinder Sandhu FOR THE APPLICANT

Brad Gotkin FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Office of Lakhwinder Sandhu FOR THE APPLICANT  
Mississauga, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada