

Federal Court



Cour fédérale

**Date: 20110126**

**Docket: IMM-808-10**

**Citation: 2011 FC 87**

**Toronto, Ontario, January 26, 2011**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**AMANDIP KAUR RANU**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] Ms. Amandip Kaur Ranu (the “Applicant”) seeks judicial review of the decision of the Immigration Appeal Division (the “IAD”) of the Immigration and Refugee Board (the “Board”). In its decision dated January 25, 2010 the Board found that the Applicant was inadmissible to Canada. The Board determined that she had gained permanent residence status in Canada under the family class on the basis of an indirect misrepresentation, that is because her marriage to Sukhdev Singh Hansra was not genuine.

[2] The Applicant is a citizen of India. In September 2001, she married Mr. Hansra. Mr. Hansra sponsored the Applicant for permanent residence status as a member of the family class, and the Applicant was landed on March 30, 2003.

[3] Mr. Hansra had previously been married to Ms. Kulwant Kaur, a first cousin of the Applicant. The Hansra-Kaur marriage ended in divorce in June 2001 although it appears that these two people continued to live in an intimate relationship, leading to the birth of a child on December 2, 2002.

[4] The Applicant and Mr. Hansra separated two months after she had arrived in Canada, that is after the Applicant discovered the existence of Mr. Hansra's child. The Applicant and Mr. Hansra were divorced effective September 16, 2004.

[5] The Applicant's friends encouraged her to consider a man named Maninderjit Singh Ranu as a potential partner. Mr. Ranu and the Applicant exchanged photographs and letters, and met one another's family. They were married on March 23, 2005. In June 2005, the Applicant sponsored Mr. Ranu as a member of the family class, for permanent residence in Canada.

[6] On June 13, 2006, an Immigration Officer (the "Officer") interviewed the Applicant and Mr. Hansra concerning alleged misrepresentations regarding the genuineness of their marriage. The Officer did not find her to be credible about her relationship with Mr. Hansra and referred the Applicant for an inadmissibility hearing pursuant to subsection 44(2) of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27 (the "Act").

[7] In a decision dated May 13, 2008, the Immigration Division found that the Applicant's marriage to Mr. Hansra to be one of convenience, constituting a misrepresentation. An Exclusion Order was made against the Applicant the same day.

[8] The Applicant appealed this decision before the Board, pursuant to subsection 63(3) of the Act. Both she and her former husband, Mr. Hansra, testified before the Board. The Board found that the Applicant may have believed that her marriage to Mr. Hansra was genuine but nonetheless, the marriage was one of convenience. It found that the marriage of convenience constituted an indirect misrepresentation by the Applicant on her application for permanent residence, so she was found inadmissible pursuant to paragraph 40(1)(a) of the Act. The Board also found that there were insufficient humanitarian and compassionate considerations to warrant relief under paragraph 67(1)(c) of the Act.

[9] Three issues arise in this application for judicial review:

What is the applicable standard of review?

Did the Board make a reasonable conclusion regarding the genuineness of the Applicant's marriage to Mr. Hansra?

Did the Board provide inadequate reasons?

[10] The first matter to be addressed is the applicable standard of review. In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R.190, the Supreme Court of Canada said that there are only two standards of review by which decisions of statutory decision-makers can be reviewed, that is correctness for

questions of law and procedural fairness and reasonableness for findings of fact and questions of mixed fact and law.

[11] In *Dunsmuir* at para. 47, the Supreme Court held that the standard of reasonableness applies to both the decision-making process and the outcome of the decision:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. 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.

[12] The key issue in this proceeding is the genuineness of the Applicant's marriage to Mr. Hansra. This is a question of mixed law and fact, having regard to paragraph 40(1)(a) and paragraph 67(1)(c) of the Act, which read as follows:

<p>40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation</p> <p>(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;</p> <p>...</p> <p>67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,</p> <p>...</p> <p>(c) other than in the case of an</p>	<p>40. (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :</p> <p>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;</p> <p>...</p> <p>67. (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :</p> <p>...</p> <p>c) sauf dans le cas de l'appel du</p>
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<p>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.</p>	<p>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.</p>
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Accordingly, the applicable standard of review is reasonableness.

[13] Turning to the second issue in this proceeding, the Board concluded that the marriage between the Applicant and Mr. Hansra was not genuine. The Board's reasons contain a number of inconsistencies in reaching that conclusion. For example, at paragraph 9, the Board finds the Applicant's testimony in regards to the arrangement of her marriage to Mr. Hansra to be "implausible and lacking in credibility", but then, at paragraph 16, finds that the Applicant is credible.

[14] The Applicant's credibility is addressed again at paragraph 24, where the Board concludes that it was plausible that she intended to stay married to Mr. Hansra after she arrived in Canada. The Board goes on to conclude at paragraph 25 that the Applicant was likely unaware of the true nature of her marriage to Mr. Hansra. In my opinion, these statements are contradictory, and render the Board's decision unintelligible. According to *Dunsmuir*, an unintelligible decision does not meet the standard of reasonableness.

[15] The next issue is whether the Board's reasons are adequate, a matter of procedural fairness that is subject to review on the standard of correctness. In *VIA Rail Canada Inc. v. National Transportation Agency*, [2001] 2 F.C. 25 (C.A.), the Federal Court of Appeal held at para. 22 that:

The obligation to provide adequate reasons is not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion. Rather, the decision maker must set out its findings of fact and the principal evidence upon which those findings were based. The reasons must address the major points in issue. The reasoning process followed by the decision maker must be set out and must reflect consideration of the main relevant factors.

[16] At paragraph 22 of its reasons, the Board made the following findings:

In the panel's view, the evidence of an intimate relationship with the witness' [Mr. Hansra's] first wife after having married the appellant is evidence that supports a finding that the marriage to the appellant was not genuine. This together with the evidence of a familial connection between the appellant and Sukhdev Singh Hansra's first wife, the appellant's family's inadequate background check of Suckdev Singh, the brief nature of the marriage and lack of evidence in regard to any attempts to reconcile support a finding of a marriage of convenience.

[17] The Board does not explain how or why the facts listed in paragraph 22 "support a finding of a marriage of convenience". In my opinion, it is not clear why those facts support the Board's conclusion, particularly in light of its other conclusion that the Applicant was believable in her evidence that she intended to remain married to Mr. Hansra. As stated in *VIA Rail*, "the reasoning process followed by the decision maker must be set out". In my opinion, the Board failed to show its reasoning process, and provided inadequate reasons.

[18] This application for judicial review is allowed. The parties did not propose a question for certification.

**ORDER**

**THIS COURT ORDERS that** the application for judicial review is allowed and the decision of January 25, 2010 is quashed. The matter is remitted to another panel for determination. There is no question for certification arising.

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-808-10

**STYLE OF CAUSE:** AMANDIP KAUR RANU v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** September 14, 2010

**REASONS FOR ORDER  
AND ORDER:** HENEGHAN J.

**DATED:** January 26, 2011

**APPEARANCES:**

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