

Federal Court



Cour fédérale

Date: 20191009

Docket: IMM-5458-19

Citation: 2019 FC 1273

Vancouver, British Columbia, October 9, 2019

PRESENT: Madam Justice McDonald

BETWEEN:

KULDEEP BANSAL

Applicant

and

**IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL AND
THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondents

ORDER AND REASONS

[1] The Applicant, Kuldeep Bansal, seeks an Order staying the interim suspension of his membership with the Immigration Consultants of Canada Regulatory Council (ICCRC), in which Mr. Bansal was licensed to work as an immigration consultant.

[2] The Respondent ICCRC is the national body with the mandate and the responsibility for the licensing and the regulation of those providing immigration consulting services.

[3] An interim suspension of Mr. Bansal's license was imposed effective August 28, 2019 following a proceeding before the ICCRC Discipline Committee during which Mr. Bansal filed materials and made submissions in writing. It is the decision of the Discipline Committee which forms the basis of Mr. Bansal's underlying judicial review application.

[4] The Order of August 28, 2019 by the ICCRC Disciplinary Committee for which Mr. Bansal seeks an injunction states:

The Respondent's membership in the ICCRC is suspended until the following complaints launched in 2015 and 2016 before the Disciplinary Committee; namely...have been adjudicated

[5] On this Motion, the Respondent Minister of Citizenship and Immigration did not file evidence and took no position.

I. Applicant's Evidence

[6] In support of this Motion, Mr. Bansal relies upon the Affidavit evidence of an articulated student, Ms. Tam, who is employed by his legal counsel. This Affidavit is largely made up of "information and belief" statements. Paragraphs 2 to 10 of the Affidavit address the procedural matters with ICCRC Motion for Interim Suspension.

[7] Paragraph 11 of the Tam Affidavit attaches the 2018 Notice of Assessment for Mr. Bansal indicating that in 2018 he earned \$234,680. There is no evidence of his current income.

[8] Paragraph 12 of the Tam Affidavit attaches a series of medical bills relating to Mr. Bansal's wife's pregnancy.

[9] At paragraphs 13 and 14 of the Tam Affidavit there are invoices and payroll records for Mr. Bansal's businesses, Sterling Immigration Services and Overseas Career Consulting Services.

[10] On this Motion for a stay of the interim suspension of his ability to practice as a registered immigration consultant, there is no Affidavit evidence from Mr. Bansal himself.

II. ICCRC Evidence

[11] The ICCRC relies upon the Affidavit of Leslie Ibouily, who is employed as a law clerk with ICCRC. She states at paragraph 4 that Mr. Bansal has been the subject of 40 complaints since 2012 and that currently 10 of the complaints are active with 8 having been referred to the Discipline Committee.

[12] The Discipline Committee suspended Ms. Bansal's license in a decision dated August 28, 2019 finding that there were reasonable grounds to believe that such action is necessary to protect the public from Mr. Bansal.

[13] The evidence considered by the Discipline Committee included the Affidavit evidence of ICCRC investigator Natalie Wruck sworn on June 4, 2019. Paragraph 2 of the Wruck Affidavit indicates that Mr. Bansal provided immigration services through four companies registered in Alberta and British Columbia as follows: Overseas Career and Consulting Services Ltd. (Alberta

corporation); Overseas Immigration Services Inc. (BC corporation); Overseas Career and Consulting Services Ltd. (BC Corporation), and Trident Immigration Services Ltd. (BC Corporation).

[14] Paragraph 7 of the Wruck Affidavit states:

Since 2012, ICRCC has received 40 complaints against Bansal, as well as information from the Government of Alberta, showing that Bansal has engaged in professional misconduct as an RCIC – specifically, he actively recruited foreign workers abroad, charged them significant fees to obtain employment in Canada and promised that they would obtain permanent residency and could then bring their families to Canada. In many cases, they paid Bansal thousands of dollars for jobs only to discover upon their arrival in Canada that the promised jobs specified on their work permits were not available, leaving them without any source of income or access to social services and legally unable to work other jobs as they were tied to their work permits.

III. Relevant Legislation

[15] The ICCRC By laws 2017-1 provide as follows:

31.7 Urgent Interim Orders

At any time, the Discipline Committee may order suspension of membership or registration, or may order any restrictions or conditions of continued practise that the Committee finds necessary to protect the public, pending the outcome of a hearing on the merits of the complaint, provided that:

- (a) the Discipline Committee has heard an urgent application by legal counsel for the Council, during which the person complained of is given a fair opportunity to present its reasons for opposing the application, and the Committee has decided the application in favor of the Council, and
- (b) the Discipline Committee is satisfied that to deny the order applied for may result in harm to any member of the public

IV. Analysis

[16] The issue on this Motion is if the Applicant can meet the three part test from *RJR-MacDonald Inc. v Canada (Attorney General)* [1994] 1 SCR 311, at paras 87-90, for a stay as follows:

1. Is there a serious issue to be tried;
2. Will Ms. Bansal face irreparable harm if the stay is not granted; and
3. Does the balance of convenience favour granting the stay.

[17] This test is conjunctive meaning all three parts of the test must be satisfied in order to obtain injunctive relief (*Abbvie Corp. v Janssen Inc.* 2014 FCA 112 at para. 14).

Serious Issue

[18] The threshold to determine if there is a serious issue in the underlying judicial review application is low. Generally if a claim is not frivolous or vexatious it can meet the test (*R v Canadian Broadcasting Corp.*, 2018 SCC 5, at para 12).

[19] In his underlying judicial review application, Mr. Bansal claims that the ICCRC Discipline Committee erred in law by applying the wrong legal test in its analysis and therefore was wrong to have suspended his membership.

[20] In the circumstances and considering the low bar, I am prepared to accept that Mr. Bansal can meet the serious issue branch of the three part test.

Irreparable Harm

[21] Irreparable harm is about the nature of the harm, rather than its magnitude (*RJR MacDonald* at para 64). “It is harm that either cannot be quantified in monetary terms, or which cannot be cured, typically because one party cannot collect damages from the other party.” (*Shoan v Canada (Attorney General)*, 2016 FC 1031 at para 33).

[22] The Applicant must present clear and non-speculative evidence on irreparable harm (*United States Steel Corporation v Canada (Attorney General)* 2010 FCA 200 at para 7).

[23] Mr. Bansal claims he will face irreparable harm in the form of loss of income and damage to his professional and business reputation if the stay is not granted. As noted, Mr. Bansal did not file an Affidavit on this Stay Motion and there is limited financial information on the record regarding the loss of income which is alleged.

[24] The Ibouily Affidavit states at paragraph 33 and 34 (Exhibits P and Q) that Mr. Bansal has delegated to his sister, who operates Trident Immigration Services Ltd., the authority to operate his practice pending his suspension. This is not referenced in the evidence filed on behalf of Mr. Bansal, and he did not provide information regarding any financial arrangements with his sister. Furthermore, I would note that notwithstanding the stay, Mr. Bansal is not prevented from engaging in other employment beyond immigration consulting. The evidence on the record suggests that he is involved in other business ventures.

[25] Overall, there is a lack of clear or non-speculative evidence on financial irreparable harm to Mr. Bansal. I am not satisfied that any loss of income that may be suffered by Mr. Bansal rises to the level of irreparable harm that cannot otherwise be satisfied with an award of damages in the event the suspension is found to be unlawful (*Watto v Immigration Consultants of Canada Regulatory Council*, 2018 ONSC 4825 at para 21).

[26] Mr. Bansal also claims he will suffer irreparable damage to his professional and business reputation if the stay is not granted.

[27] In some circumstances harm to one's professional reputation may amount to irreparable harm. However harm which has already occurred at the time of the consideration of the stay does not justify a stay (*Douglas v Canada (Attorney General)* 2014 FC 1115, 2014 FC 1115 at para 26 and 28).

[28] Mr. Bansal's membership in the ICCRC has been suspended since August 28, 2019. Accordingly, any harm to his professional reputation has likely already occurred. Further, I note in the Ibouily Affidavit at paragraph 37 the references to the extensive media coverage regarding Mr. Bansal's immigration activities which pre-date the suspension of his membership in ICCRC.

[29] In support of his claim that the stay will cause irreparable harm to his professional and business reputation, Mr. Bansal relies upon a number of cases dealing with the suspension or practice restrictions placed on medical doctors, namely, *Kumar v College of Physicians and Surgeons of Alberta* (2019) ABQB 514 and *Visconti v College of Physicians and Surgeons of Alberta* (2009) ABQB 742.

[30] Although these cases involve self-regulating professional bodies, they are factually different from Mr. Bansal's circumstances. Work in the medical field is often specialized and relationship-based often extending over a period of years. The Doctor-patient relationship is highly personal. By contrast, Mr. Bansal's consulting work with potential immigrants to Canada is long-distance and transactional based. There is no evidence that Mr. Bansal has long term arrangements or relationships with clients who have depended upon his skill and expertise over a lengthy period of time, as was the case in *Kumar* and *Visconti*.

[31] The evidence presented by Mr. Bansal in support of his irreparable harms arguments is limited and selective. It is not clear and convincing. Accordingly I conclude that Mr. Bansal has not met the irreparable harm portion of the test.

Balance of Convenience

[32] The balance of conveniences does not favour Mr. Bansal. There are multiple and serious complaints against him regarding his immigration consulting practices. In the circumstances and considering its mandate to protect the public, the balance weighs in favor of ICCRC and its responsibility to fulfill its mandate (*Dr. Collett v College of Physicians & Surgeons of Alberta et al.* 2019 ABCA 86 at para 15).

[33] The Motion is denied.

ORDER in IMM-5458-19

THIS COURT ORDERS that the motion is denied.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5458-19

STYLE OF CAUSE: KULDEEP BANSAL v IMMIGRATION
CONSULTANTS OF CANADA REGULATORY
COUNCIL AND THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: OCTOBER 8, 2019

ORDER AND REASONS: MCDONALD J.

DATED: OCTOBER 9, 2019

APPEARANCES:

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Robert Gibson

FOR THE APPLICANT

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