

Federal Court



Cour fédérale

Date: 20220426

Docket: IMM-2011-20

Citation: 2022 FC 616

Ottawa, Ontario, April 26, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JAGWINDER SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jagwinder Singh, seeks judicial review of the decision of a visa officer from the High Commission of Canada in New Delhi, India (the “Officer”), dated January 22, 2020, to refuse his work permit application on the grounds that he is inadmissible to Canada for misrepresentation pursuant to section 40(1)(a) of the *Immigration and Refugee Protection Act*,

SC 2001, c 27 (“*IRPA*”). The Officer found that the Applicant’s marriage was entered into primarily for the purpose of acquiring status or privilege under the *IRPA*.

[2] The Applicant submits that the Officer’s decision is unreasonable because the Officer failed to consider important evidence on the record in making their finding of misrepresentation.

[3] For the reasons set out below, I find the Officer’s decision is unreasonable. Accordingly, this application for judicial review is allowed.

II. Facts

A. *The Applicant*

[4] The Applicant is a 25-year-old citizen of India. He and his spouse, Jaspreet Kaur (Ms. “Kaur”), were married on October 22, 2017. Ms. Kaur began studying in Canada in May 2019.

[5] On February 20, 2018, the Applicant and Ms. Kaur were interviewed at the visa office in New Delhi as part of Ms. Kaur’s first study permit application. Ms. Kaur’s study permit application was initially refused on September 20, 2018 because her letter of acceptance had expired, but was subsequently approved once a new letter of acceptance was submitted.

[6] In July 2019, the Applicant applied for an open work permit as the spouse of a foreign national studying in Canada. On September 25, 2019, the Applicant was interviewed at the visa office in New Delhi.

[7] On October 3, 2019, the Applicant received a procedural fairness letter (“PFL”) which addressed concerns of misrepresentation based on the genuineness of his marriage. In his response to the PFL, the Applicant included: affidavits from individuals who confirmed their presence at the wedding, the wedding invitation, photographs from the wedding, and WhatsApp chat and call records from May 2019 to September 2019.

B. *Decision Under Review*

[8] By letter dated January 22, 2020, the Officer refused the Applicant’s work permit application, finding that he is inadmissible to Canada pursuant to paragraph 40(1)(a) of the *IRPA*.

[9] The Officer found that the Applicant’s marriage is not genuine and was entered into primarily for the purpose of acquiring status under the *IRPA*. In the Global Case Management System (“GCMS”) notes, which form part of the reasons for the Officer’s decision, the Officer noted several inconsistencies with the Applicant’s application, including:

- The Applicant was not knowledgeable about his spouse: He was unable to answer what his wife does when she is not attending classes or working, and did not know when she would be done her schooling in Canada. The Officer found that the Applicant and Ms. Kaur communicated with each other solely to prepare evidence in support of the Applicant’s application, rather than with the intention of developing a *bona fide* marital relationship.

- While the Applicant stated that 400 to 500 guests attended his wedding, the photographs depict a much smaller gathering.
- The Applicant indicated that at the time of the marriage, Ms. Kaur's family gifted him a gold chain, his family gifted Ms. Kaur a gold set, and he gifted her a watch. However, during his previous interview, the Applicant had stated that no gifts were given or received.
- The Applicant stated that his mother, sister and sister-in-law travelled with him and Ms. Kaur when they visited relatives after the marriage. However, during his previous interview, the Applicant had stated that only his mother and sister accompanied them.

[10] The Officer concluded that the concerns raised in the PFL regarding the Applicant's marriage had not been adequately addressed. The Officer found that the Applicant's marriage was not genuine and was entered into for the purpose of obtaining status, pursuant to subsection 4(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-228 ("IRPR"), which could have induced an error in the administration of the *IRPA* contrary to section 40 of the *IRPA*.

III. Issue and Standard of Review

[11] The sole issue in this application for judicial review is whether the Officer's decision is reasonable.

[12] Both parties agree that the applicable standard of review for the Officer's refusal of the work permit application is reasonableness. I agree (*Zhang v Canada (Citizenship and Immigration)*, 2019 FC 764 at para 12; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (“*Vavilov*”) at paras 16-17).

[13] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[14] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[15] Paragraph 40(1)(a) of the *IRPA* sets out when a foreign national is considered to be inadmissible to Canada on the grounds of misrepresentation:

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;

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;

[16] Subsection 4(1) of the *IRPR* states the following:

Bad faith

4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership

(a) was entered into primarily for the purpose of acquiring any

Mauvaise foi

4 (1) Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas:

a) visait principalement l'acquisition d'un statut ou d'un

status or privilege under the
Act; or

privilège sous le régime de la
Loi;

(b) is not genuine.

b) n'est pas authentique.

[17] Based on the finding that the Applicant's marriage is not genuine, the Officer determined that the Applicant engaged in misrepresentation under paragraph 40(1)(a) of the *IPRA*.

[18] The Applicant submits that the Officer erred by ignoring or disregarding significant evidence on the record in making their finding of misrepresentation. The Applicant also submits that the Officer failed to adequately justify their decision in light of the record and the answers provided by the Applicant in his interview.

[19] The Respondent submits that this Court has recognized that foreign nationals who apply to come to Canada pursuant to the *IRPA* have a duty of candour that requires them to disclose material facts (*Bodine v Canada (Citizenship and Immigration)*, 2008 FC 848 at paras 41-42). The Respondent contends that the Applicant omitted material facts and provided insufficient evidence to satisfy the Officer of the genuineness of his marriage. The Respondent also maintains that the Applicant's PFL failed to address the discrepancies raised by the Officer.

[20] I agree with the Respondent that the onus remains on the Applicant to provide sufficient information to address the concerns of the Officer regarding the genuineness of marriage (*Maan v Canada (Citizenship and Immigration)*, 2020 FC 118 at para 25). Nonetheless, before an officer can conclude that there is insufficient evidence to prove the genuineness of a marriage, they must first assess all of the evidence on the record and explain why it is inadequate. In this

case, I find that the Officer conducted a selective review of the evidence. The Officer's conclusion is not justified in light of the facts, leading to a decision that fails to meet the standard of reasonableness.

[21] A decision-maker is presumed to have considered all of the evidence on the record and need not comment on each piece of evidence in their decision (*Jama v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1459 at para 17). However, when contradictory evidence goes to the heart of a decision-maker's concerns, it becomes important to explicitly address it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at para 17; *Cezair v Canada (Citizenship and Immigration)*, 2018 FC 886 at para 27).

[22] I would first note that the Officer's reasons take issue with discrepancies related to the exchange of wedding gifts and the number of wedding attendees. These findings speak to the Officer's doubts about whether the wedding itself took place, yet the Officer's reasons do not consider the sworn affidavits submitted by the Applicant as part of his response to the concerns outlined in the PFL. These sworn affidavits are signed by individuals, including the elected leader of the Applicant's village, who confirm their attendance at the marriage ceremony on October 22, 2017. While the Respondent contends that these affidavits do not address the genuineness of the marriage in and of itself, they do confirm that a wedding ceremony did in fact take place.

[23] Furthermore, I agree with the Applicant's submission that in drawing a negative inference from the fact that the marriage happened in haste, the Officer failed to engage with the

Applicant's explanation that his father and Ms. Kaur's father were friends. When families know each other, it is not unusual for an Indian arranged marriage to happen quickly.

[24] A review of the Officer's decision also suggests that the Officer placed an undue focus on the marriage ceremony itself and failed to adequately assess the development of the relationship between the Applicant and Ms. Kaur following their wedding. Despite the fact that the Applicant and Ms. Kaur were together for over 18 months after their marriage and before Ms. Kaur left for Canada, there is no indication from the Officer's interview notes that the Applicant was questioned about the development of the relationship during this 18-month period, nor was any consideration given to this period in the assessment of the genuineness of the marriage.

[25] I also agree with the Applicant's submissions that this case is distinguishable from the misrepresentation findings made in *Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at para 53 ("*Bains*"). In *Bains*, it was determined that the Applicant's spouse agreed to marry him to facilitate his reunification with his family in Canada (at para 61). In this case, however, the record demonstrates that when the Applicant and Ms. Kaur were married, Ms. Kaur was not in possession of a study permit, nor was it guaranteed that her application to study in Canada would be approved. Therefore, the Officer's conclusion that the marriage was entered into for the purpose of gaining immigration status does not flow from the evidence on the record.

[26] Additionally, I am not convinced that the evidence supports the Officer's finding that the Applicant's lack of knowledge about Ms. Kaur indicates that they communicated with each other merely to prepare evidence to support the work permit application. The Officer's interview

notes simply state that the Applicant did not know what Ms. Kaur does “[...] when she is not attending classes/working”; the notes do not indicate what the Applicant was asked about Ms. Kaur. The Officer’s brief reasons do not reveal how they arrived at the conclusion that the Applicant lacks knowledge about his wife. Thus, I cannot find it reasonable to conclude that the marriage is not genuine because the Applicant is not knowledgeable about his wife solely on the basis that he did not know what she does in her free time. This is particularly so since the GCMS notes suggest that the Applicant was able to relay information about Ms. Kaur’s program of study and her GPA. The record also comprises several hundreds of pages of ongoing communication between the Applicant and Ms. Kaur over WhatsApp, including evidence of over 50 daily WhatsApp messages, as well as regular video calls.

[27] As noted by this Court in *Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38 at paragraph 1:

Findings of misrepresentation must not be taken lightly. They must be supported by compelling evidence of misrepresentation occurred by an applicant; thereby, an applicant faces important and long lasting consequences in addition to having his/her application rejected.

[28] Overall, I find that the Officer placed an undue focus on peripheral inconsistencies between the Applicant’s interviews, such as what was gifted at the time of the marriage and who accompanied the Applicant and Ms. Kaur in their post-wedding travels, rather than reviewing the totality of the evidence. Given the Officer’s disregard of evidence that goes to the heart of this decision, I cannot find that the Officer’s conclusion under paragraph 40(1)(a) of the *IRPA* was supported by compelling evidence of misrepresentation.

[29] Furthermore, my reservations about the intelligibility of the Officer's decision are heightened by the inclusion of incorrect information in the GCMS notes. The Officer's GCMS notes from July 31, 2019 request that the Applicant be interviewed and state the following:

[...] Previous refusals: Applicant refused twice earlier this year for insufficient proof of funds and lack of establishment. Applicant has training and work experience as a nurse but has been unemployed.
[...]

[30] This information is incorrect: The evidence on record demonstrates that the Applicant had never previously applied or been refused for a visa, and had submitted detailed evidence of his assets in India. The notes also indicate that the Applicant has work experience as a nurse, yet the Applicant's application clearly states that he is educated as an electrician. While the Officer's refusal appears to be based primarily on the Applicant's interview responses from September 25, 2019, these additional errors indicate a lack of intelligibility and reinforce my conclusion that the Officer did not engage in a thorough review of the evidence on record.

V. Conclusion

[31] For the reasons above, I find the Officer's decision is unreasonable. The Officer failed to adequately engage with significant evidence on the record and their reasoning does not reveal a rational chain of analysis. Accordingly, this application for judicial review is allowed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2011-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The decision is set aside and the matter is referred back for redetermination by a different decision-maker.
2. There is no question to certify.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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