

Federal Court



Cour fédérale

**Date: 20250221**

**Docket: IMM-1367-24**

**Citation: 2025 FC 351**

**Ottawa, Ontario, February 21, 2025**

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

**BETWEEN:**

**JAGDEEP KAUR  
BAHADUR SINGH  
GURTEJ SINGH OTAL  
DASMEET KAUR OTAL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] Jagdeep Kaur, her husband Bahadur Singh, their daughter Dasmeet Kaur Otal, and their son Gurtej Singh Otal [Applicants] are citizens of India. They seek judicial review of a decision

of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board [IRB]. The IAD dismissed their appeal of exclusion orders made against them by the Immigration Division [ID] of the IRB, following a finding that the Applicants were inadmissible to Canada for misrepresentation pursuant to s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The IAD failed to meaningfully grapple with the Applicants' argument that the severity of the misrepresentation was not the same for all family members, and misapprehended the best interests of the daughter Dasmeet. The IAD's decision was therefore unreasonable. The application for judicial review is allowed.

## II. Background

[3] In July 2015, Ms. Kaur travelled to Canada with her two children on a visitor's visa to attend a relative's wedding. On September 28, 2015, she obtained a work permit and a job at OBF Farms.

[4] In April 2016, Ms. Kaur obtained a work permit and employment at Trout Creek Fruit stand and Nursery/Singla Brothers Holdings [Singla Brothers] with the assistance of Rupinder Bath, the owner of Can-Asia Immigration Consultants Canada Inc [Can-Asia]. Ms. Kaur was not in fact employed by Singla Brothers. She performed no work, and submitted all of the wages she received to Can-Asia.

[5] In August 2017, Ms. Kaur applied for permanent residence, declaring that she had been employed by Singla Brothers. The other Applicants were listed in the application as her accompanying dependents.

[6] The Applicants became permanent residents on February 6, 2018. Ms. Kaur acquired permanent residence as a skilled professional based on her declared work experience, and the remaining Applicants acquired permanent residence as her dependents.

[7] Following an investigation by the Canada Border Services Agency into Can-Asia, Ms. Kaur was reported for misrepresentation under the IRPA.

[8] On February 27, 2023, the ID found the Applicants inadmissible for misrepresentation, and issued exclusion orders against them under s 40(1)(a) of the IRPA and s 229(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[9] On February 27, 2023, the Applicants filed a Notice of Appeal. They did not contest the finding of admissibility, but instead asked to remain in Canada on humanitarian and compassionate [H&C] grounds.

### III. Decision under Review

[10] The IAD dismissed the Applicants' appeal. The IAD found there were insufficient H&C grounds to warrant special or discretionary relief, holding that:

- (a) The Applicants' misrepresentation was very serious, Ms. Kaur was a knowing participant, and her collaboration with Can-Asia undermined public support for the administration of the IRPA. While the other Applicants had committed only indirect misrepresentation, the broad wording of IRPA s 40 rendered them equally liable.
- (b) Ms. Kaur's testimony indicated little remorse, as she tended to describe herself as a victim of fraud by Can-Asia. The IAD found remorse to be a neutral factor for the remaining Applicants.
- (c) Less weight should be given to the Applicants' eight years of establishment in Canada, as the establishment could be attributed to the misrepresentation (citing *Canada (Citizenship and Immigration) v Liu*, 2016 FC 460). The IAD nevertheless gave this factor some positive weight.
- (d) The Applicants' family and support in Canada was a positive factor.
- (e) The impact on the Applicants' family and community members was a neutral factor. The IAD noted statements from Mr. Singh's niece and his son Gurtej's girlfriend confirming the Applicants' degree of connection to members of the family and community, but also found there was little evidence to suggest that anyone in Canada would suffer hardship if the Applicants were removed.

- (f) The hardship caused to the Applicants by their removal from Canada was a neutral factor. While Ms. Kaur, Mr. Singh, and their son had all established themselves in Canada and were gainfully employed, the IAD found their work experience in Canada and abroad would allow them to transition well to life in India. The IAD also noted that the evidence of restrictions on religious freedoms and adverse conditions for women did not demonstrate hardship for the Applicants personally. The availability of university programs in English should help to offset any language barrier.
- (g) The best interests of Ms. Kaur's daughter, Dasmeet, and her niece's children were a neutral factor. The IAD found that the best interests of the children were to remain with their respective parents. It also noted that, while Dasmeet did not speak English and country condition reports mentioned a risk of corporal punishment in schools, it was speculative to assert that Dasmeet would be particularly susceptible to this risk. She could be enrolled in an English language education program to ease her transition. The IAD also noted that she had seamlessly transitioned from the United Arab Emirates [UAE] to Canada, and she could make a similar successful transition to India.

#### IV. Issues

[11] The Applicants challenge the IAD's decision on numerous grounds. Two of these are decisive. The application for judicial review must be allowed because the IAD failed to

meaningfully grapple with the Applicants' argument that the severity of the misrepresentation was not the same for all family members, and misapprehended the best of interests of the daughter Dasmeet.

## V. Analysis

[12] The IAD's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[13] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[14] The objective of s 40(1)(a) of the IRPA is to deter misrepresentation and maintain the integrity of the immigration process (*Hosseini Sedeh v Canada (Citizenship and Immigration)*, 2012 FC 424 at para 24).

[15] In exercising its discretion under s 67(1)(c) of the IRPA, the IAD must consider the factors articulated in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD

No 4 (QL) [*Ribic* factors], adapted to the misrepresentation context (*Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at para 11). The factors are:

- (a) the seriousness of the offence (*i.e.*, misrepresentation) leading to the removal order;
- (b) the degree of remorse demonstrated;
- (c) the length of time spent in Canada and the degree to which the appellant is established here;
- (d) the family in Canada and community support available to the appellant in Canada;
- (e) the appellant's family in Canada and the impact to the family that removal would cause;
- (f) the best interests of a child directly affected by the decision; and
- (g) the degree of hardship that would be caused to the appellant by removal from Canada, including the conditions in the likely country of removal.

A. *The Seriousness of the Misrepresentation*

[16] The IAD found as follows (at para 18):

[...] The misrepresentation at hand involves a misstatement of material fact and weighs heavily against granting special relief in [Ms. Kaur's] case. While I note that the other three Appellants indirectly misrepresented, and that two were minors at the time this egregious misrepresentation was made, given that paragraph 40 of IRPA is broadly worded to encompasses [*sic*] misrepresentations even if made by another party, I find that this factor is also not of assistance to the three other Appellants in my assessment.

[17] There is authority in the IAD's jurisprudence for the proposition that a misrepresentation may be considered less serious where appellants were unaware of the misrepresentation at the time they were landed in Canada, or were minors and had little to do with a principal appellant's misrepresentation (see, for example, *Zhang v Canada (Minister of Public Safety and Emergency Preparedness)*, [2019] IADD No 172 at para 24; *Abeid v Canada (Citizenship and Immigration)*, 2022 FC 413 at paras 13-15). In this case, the two children were minors at the time of the misrepresentation. The IAD acknowledged this, but nevertheless found the indirect nature of their misrepresentation to be of no assistance to them.

[18] The Applicants argued before the IAD that the two children were innocent of any deliberate misrepresentation, and the *Ribic* factors should be applied differently in light of their personal circumstances. The IAD did not meaningfully grapple with this submission. As the Supreme Court of Canada held in *Vavilov*, this calls into question whether the RAD was actually alert and sensitive to the matter under consideration (at para 128).



B. *The Best Interests of Dasmeet*

[19] The IAD concluded that Dasmeet's best interests were to remain with her parents when they are removed to India, and failed to consider whether her best interests were to remain with her family in Canada.

[20] It was open to the IAD to find that it was in Dasmeet's best interests to remain with her parents (*Maradani v Canada (Citizenship and Immigration)*, 2022 FC 839 at para 36; *Mebrahtom v Canada (Citizenship and Immigration)*, 2020 FC 821 [*Mebrahtom*] at para 16). However, it was also incumbent upon the IAD to consider the situation she will face in India, and how this compares to the family remaining in Canada (*Mebrahtom* at para 16; *Kaur v Canada (Citizenship and Immigration)*, 2023 FC 412 at para 22).

[21] Counsel for the Respondent suggested in oral argument that the IAD did not need to consider the possibility of Dasmeet remaining with her parents in Canada, because it had already concluded that the parents could not stay in this country. This is not an acceptable mode of analysis.

[22] There is no specific formula or rigid test prescribed for an analysis of the best interests of a child [BIOC], or to demonstrate that the IAD has been "alert, alive and sensitive" to the BIOC. Form should not be elevated over substance. But in order to demonstrate that the IAD is alert, alive, and sensitive to the BIOC, its analysis must address the "unique and personal

consequences” that removal from Canada would have for the children affected by the decision (*Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 [*Semana*] at paras 24-27).

[23] As Justice Denis Gascon explained in *Semana* (at para 28):

The law is also settled that a decision-maker conducting an H&C analysis must properly identify and define the BIOC factor and then balance it against the countervailing factors that might mitigate the adverse consequences of removal. The BIOC factor does not necessarily trump other factors for consideration in an H&C application. However, in order to fall within the range of reasonableness, the decision maker must consider the children’s best interests as “an important factor, give them substantial weight and be alert, alive and sensitive to them”. Stated differently, the presence of children does not call for a certain result. The BIOC is but one factor to be weighed along with the others in assessing the merits of H&C exemptions [citations omitted].

[24] Here, the IAD did not consider whether Dasmeet’s best interests would be served by remaining with her parents in Canada, and then balance this consideration against countervailing factors. Rather, the IAD appears to have approached the BIOC analysis with the assumption that Dasmeet could not remain in Canada with her family.

[25] The IAD’s observation that Dasmeet had “seamlessly” transitioned from the UAE to Canada previously, and could therefore do the same when returning to India, is difficult to comprehend. Dasmeet was just six years old when she left the UAE with her family. She is now 16 years old. She speaks only English.

[26] The IAD also committed a factual error in holding that Mr. Singh is wealthy, with an annual income exceeding \$500,000, suggesting the family would continue to thrive financially in

India. The income tax form relied upon by the IAD showed gross revenues of Mr. Singh's business, not his net salary.

VI. Conclusion

[27] The application for judicial review is allowed. None of the parties proposed that a question be certified for appeal.

[28] The Respondent asks to be identified as the Minister of Citizenship and Immigration, rather than the Minister of Public Safety and Emergency Preparedness. The style of cause will be amended accordingly.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is allowed, and the matter is remitted to a differently-constituted panel of the IAD for redetermination.
2. The style of cause is amended to name the Minister of Citizenship and Immigration as the sole Respondent, with immediate effect.

\_\_\_\_\_  
“Simon Fothergill”

Judge

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

**DOCKET:** IMM-1367-24

**STYLE OF CAUSE:** JAGDEEP KAUR, BAHADUR SINGH, GURTEJ  
SINGH OTAL AND DASMEET KAUR OTAL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JANUARY 15, 2025

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** FEBRUARY 21, 2025

**APPEARANCES:**

|                          |                    |
|--------------------------|--------------------|
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| Ely-Anna Hidalgo-Simpson | FOR THE RESPONDENT |

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