

Federal Court



Cour fédérale

Date: 20200731

Docket: IMM-6500-19

Citation: 2020 FC 801

Ottawa, Ontario, July 31, 2020

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

GURPREET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Singh's application for a work permit was rejected under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 for misrepresentation. As a consequence, pursuant to paragraph 40(2)(a) of the Act, he is inadmissible to Canada for a period of five years. Mr. Singh submits that the officer who made the decision failed to consider all of the material he submitted and rendered an unreasonable decision.

[2] I agree that the decision cannot stand.

[3] Mr. Singh and his wife (Ms. Kaur) are both citizens of India. Ms. Kaur is a student at Coquitlam College and has been since the summer of 2018. Mr. Singh and Ms. Kaur married on January 3, 2019 at the Arya Samaj Mandir Hindu temple in Kavi Nagar, Ghaziabad, Uttar Pradesh, India. A few weeks after the wedding, Mr. Singh applied for a work permit under the Temporary Foreign Worker Program so that he could join his wife in Canada.

[4] Kavi Nagar, the town where the marriage took place, is 250 kms from Mr. Singh's home, and neither he nor Ms. Kaur are from the area. Both are Sikh, but they were married in a Hindu ceremony. There was one guest at the ceremony, Mr. Singh's cousin.

[5] The officer interviewed Mr. Singh and told him at the end of the interview that he would receive a procedural fairness letter. The letter dated April 11, 2019, set out the concerns Mr. Singh was asked to address:

In support of your application you provided a marriage certificate from a Hindu temple - Arya Samaj Mandir (ARYA SAMAJ VIVAH MANDIR TRUST), Kavi Nagar, Ghaziabad Uttar Pradesh. You and your sponsor both belong to Sikh religion and you could not explain why you choose to marry in an Arya Samara temple. You could not describe any rituals for the marriage or the purification ceremony (SHQEEHIKARAN) which Arya Samaj temples conduct before marrying couples who do not belong to Hindu religion. You stated that the marriage was not publicised and attended by one of your cousins. The marriage registration was made around 250 Kms away from your usual residence and the registration was also done the same day in the province of Uttar Pradesh despite the fact that neither you nor sponsor belonged to the province. Open source information indicates that the institute from which the certificate was obtained was engaged in issuing fake marriage certificates. It appears that you have provided a

fraudulent marriage certificate to support the claim of marriage with the sponsor.

[6] In his response to the procedural fairness letter, Mr. Singh responded to these concerns and provided a copy of his marriage certificate. In his letter, he explained that his wife's family repeatedly threatened to kill them. He explained that they "...had no choice but to find any legal place where we can register our marriage." He further explained that they went to the temple and registered their marriage immediately to prevent his wife's parents from interfering. He explained that the purification ceremony was not necessary because they are Sikh, and that it is only necessary for Christians and Muslims. The letter states that he contacted the temple about the validity of the documents and he was told there were complaints against Arya Samaj Mandir, but no action had been taken against that particular temple. He provided a reference number for the database on which the Government of India had the marriage registered. He attached an affidavit from his cousin stating he witnessed their wedding.

[7] The record indicates that this was received in New Delhi on May 3, 2019. The record contains the officer's notes of his decision, as follows:

Application reviewed. PA was sent a PFL to address the concerns of fraudulent information provided in support of the application. Based on the application, I am satisfied that the applicant uttered a false document in support of the application. This information is material to the assessment of the application; therefore, it could have led to an error in the administration of the act. The PA was provided with an opportunity to address this concern and has failed to provide any information which overcomes said concern. Therefore, based on the information on file, I am satisfied that the PA is inadmissible under A40, misrepresentation and is inadmissible to Canada for a period of 5 years as a result. [emphasis added]

[8] Mr. Singh says that his right to procedural fairness was breached when the officer disregarded the letter he submitted in response to the procedural fairness letter, as it responded to all of the concerns that had been raised. He further submits that the officer's finding that there was a misrepresentation is actually a finding of insufficient evidence of the genuineness of the marriage, and that the officer has conflated the two ideas. Within the sufficiency of evidence argument, it is posited that the officer relied on "cultural stereotypes and assumptions" in determining that the evidence of the genuineness of the marriage was insufficient.

[9] It is also submitted that the finding that the marriage documents are fraudulent is not based on the documents themselves, but on the history of fraud within the Arya Samaj religious sect in Ghaziabad. He says that the officer could not show that the specific temple at which he was married was involved and says that this lack of connection between suspicion and the finding that the documents are fraudulent renders the decision unreasonable, because the line of reasoning is not intelligible, transparent, or justifiable.

[10] In the Minister's original memo, he submitted that the officer's finding that the documents were fraudulent was based on a number of factors including: (1) fraudulent documents being issued by the particular temple and registry Mr. Singh used, (2) his inability to explain why he got married far away from his residence, (3) why he was married at a Hindu temple despite being Sikh, (4) his lack of knowledge about the purification ceremony, and (5) only one guest attending the wedding. In his further memorandum of argument, the Minister says that the officer's findings regarding these five issues are not related to the validity of the marriage certificate and they are separate concerns. The Minister now submits that the issue was

the inability to provide explanations in the interview, not whether he was able to provide explanations afterwards in his response to the procedural fairness letter.

[11] In his first memorandum, the Minister submits that the officer did not make a finding about the genuineness of the marriage; rather the finding that the marriage documents were fraudulent was strictly a finding that Mr. Singh made a misrepresentation under section 40 of the Act.

[12] The Minister now submits that it was reasonable for the officer to disregard Mr. Singh's response to the procedural fairness letter because he would have been able to "conceive answers" to the officer's outstanding questions after the interview was over. It is submitted that his inability to answer the questions in the interview is enough to ground the finding of misrepresentation, as it was open to the officer to prefer the interview responses and base the decision on them.

[13] The minister objected to the inclusion in the Applicant's Record of the affidavit of legal counsel's assistance, Ms. Sharma. I agreed with that objection and struck it from the record.

[14] Mr. Singh raised two issues:

1. Did the officer breach Mr. Singh's right to procedural fairness by ignoring evidence, and
2. Was the finding that there was a misrepresentation reasonable?

[15] In my view, the sole issue is whether the decision is reasonable, based on the record before the decision-maker.

[16] There is a presumption reasonableness is the standard of review for judicial review of administrative decisions: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]. Although this presumption is rebuttable, none of the exceptions outlined in *Vavilov* apply to these facts. In my view, the relevant advice from *Vavilov*, and its companion decision *Canada Post Corp v Canada Union of Postal Workers*, 2019 SCC 67 [*Canada Post*], when assessing the issue here are the following.

[17] “[J]udicial review considers not only the outcome, but also the justification for the result (where reasons are required):” *Canada Post* at para 29. To determine whether a decision is reasonable, the Court must “ask whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision:” *Vavilov* at para 99. “[W]here reasons are provided but they fail to provide a transparent and intelligible justification...the decision will be unreasonable:” *Vavilov* at para 136.

[18] Justice Diner in *Toki v Canada (Immigration, Refugee and Citizenship)*, 2017 FC 606 at para 38, noted, as have I, that the consequences of misrepresentation are serious as the person is inadmissible to Canada for five years. Here, that entails that Mr. Singh will be unable to join his spouse in Canada for many years. Justice Diner held that “because of these serious consequences, the evidence supporting such a finding must be clear and the Officer’s reasons must reflect this” [emphasis added].

[19] Here the only indication from the officer as to why the response to the procedural fairness letter was not sufficient is the officer's cursory statement that Mr. Singh "failed to provide any information which overcomes said concern." The officer never engaged with any of the evidence that was presented. On its face, the evidence offered by Mr. Singh addressed each concern raised in the procedural fairness letter. Specifically, it evidenced that (1) the marriage was genuine (as supported by an affidavit of the sole family member who attended the ceremony), (2) the marriage was one of "love" entered into after a four year relationship (access to the couple's Facebook pages offered as support), (3) the marriage was not attended by others as her family threatened to kill Mr. Singh, (4) no purification ceremony was required as they were both Sikh, (5) the marriage certificate and registration was stamped by a Subdivision Magistrate and subsequently on April 15, 2019, certified by the Section Officer of the Ministry of External Affairs, and (6) his Adhaar card was issued using the marriage certificate and registration.

[20] The Minister rightly acknowledged that the officer offered no assessment of this evidence other than his cursory dismissal of it. Counsel submitted that the adequacy of reasons is not a stand-alone basis for quashing the decision, no doubt in reference to the judgment of the Supreme Court in *Newfoundland Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62. However, that passage cannot be taken out of its context. The full passage of Justice Abella at para 14 reads:

Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §§12:5330 and 12:5510). It is a more organic exercise — the reasons must be read together with the outcome and serve the

purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at “the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes” (para. 47). [emphasis added]

[21] There is no explanation by this decision-maker why Mr. Singh’s response was insufficient to overcome the concerns about the genuineness of the marriage certificate. On its face, the response addresses every concern raised. It cannot be said that the result falls within the range of possible outcomes. Indeed, the outcome appears to be contrary to the evidence before the decision-maker.

[22] The officer’s reasons, such as they are, “fail to provide a transparent and intelligible justification” for the decision and thus the decision is unreasonable: *Vavilov* at para 136.

[23] The decision will be set aside. Neither party proposed a question to be certified.

JUDGMENT IN IMM-6500-19

THIS COURT'S JUDGMENT is that the affidavit of Ms. Sharma in the Applicant's Record is struck, the October 21, 2019 decision refusing Mr. Singh's application for a work permit, and finding him inadmissible to Canada pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, is set aside, his application is to be considered afresh by a different officer, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6500-19

STYLE OF CAUSE: GURPREET SINGH v THE MINITER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
OTTAWA, ONTARIO AND CALGARY, ALB ERTA

DATE OF HEARING: JULY 28, 2020

JUDGMENT AND REASONS: ZINN J.

DATED: JULY 31, 2020

APPEARANCES:

| | |
|---------------|--------------------|
| Raj Sharma | FOR THE APPLICANT |
| Galina Bining | FOR THE RESPONDENT |

SOLICITORS OF RECORD:

| | |
|--------------------------------------------------------------------------|--------------------|
| Stewart Sharma Hrsanyi Barristers& Solicitors Calgary, Alberta | FOR THE APPLICANT |
| Attorney General of Canada Department of Justice Edmonton, Alberta | FOR THE RESPONDENT |