

Federal Court



Cour fédérale

**Date: 20150617**

**Docket: IMM-854-14**

**Citation: 2015 FC 762**

**Ottawa, Ontario, June 17, 2015**

**PRESENT: THE CHIEF JUSTICE**

**BETWEEN:**

**IQBAL SINGH DHALIWAL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] In this application for judicial review, Mr. Dhaliwal challenges a decision by Citizenship and Immigration Canada [CIC], dated January 28, 2014, to reject his application for a temporary resident permit [TRP].

[2] Mr. Dhaliwal submits that the decision to deny his application was made in bad faith. His position is based on three grounds. First, he asserts that there was no change in circumstances

that would reasonably warrant a sudden decision to deny his application, after he was granted a series of TRPs between 1993 and 2012. Second, he states that CIC ignored the fact that he received a pardon in respect of a criminal conviction in 1996 for impaired driving. Third, he maintains that he was never informed of evidence, relied upon by CIC, that he was working without authorization at the time he submitted his application.

[3] For the reasons that follow, this application is denied.

#### I. Background

[4] Mr. Dhaliwal has a long and complicated immigration history in Canada.

[5] In brief, according to a document entitled “Immigration Background,” which was appended to the recommendation [**Recommendation**] that was accepted by the senior official who made the ultimate decision to deny Mr. Dhaliwal’s application, he arrived in Canada in 1992. He apparently intentionally eluded examination when he entered the country.

[6] Mr. Dhaliwal then made a refugee claim, which he abandoned when the woman he married shortly after his arrival to Canada submitted a spousal sponsorship application.

[7] In 1993, he was issued his first TRP and Work Permit.

[8] The following year, he was divorced from his first wife, who subsequently withdrew her sponsorship application.

[9] In 1998, he married his current wife. However, her application to sponsor him was rejected the following year based on his 1996 conviction for impaired driving.

[10] He then received additional TRPs, or extensions of previously issued TRPs, in 1999, 2007, 2008, 2010 and 2011.

[11] In 2000, he was granted a pardon in respect of his 1996 conviction.

[12] In 2006, he was found to be inadmissible to Canada pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], based on his membership in the All India Sikh Student Federation [AISSF]. In his written submissions in support of his most recent application for a TRP, Mr. Dhaliwal noted that the AISSF was banned by authorities in India from March 1984 to January 1985 due to its involvement in terrorism.

[13] Mr. Dhaliwal based his abandoned refugee claim on his membership in the AISSF. However, after reasserting his membership in the AISSF when he first applied for permanent residence in 1993 and then again in subsequent interviews with CIC and the Canadian Security Intelligence Service [CSIS], he disavowed that position.

[14] In 2006, Mr. Dhaliwal applied for Ministerial relief pursuant to subsection 34(2) of the IRPA. After that application was rejected in October 2012, Mr. Dhaliwal sought and was granted leave for judicial review of that decision. In October 2013, the matter was referred back on consent to the Minister of Public Safety and Emergency Preparedness. At the time of the

decision that is the subject of the application before me, the Minister's decision was still pending. Two days before the hearing of this application, the Minister refused Mr. Dhaliwal's request for relief. On June 10, 2015, Justice Diner rejected Mr. Dhaliwal's application for leave to seek Judicial Review in respect of that decision.

[15] In the meantime, in September 2012, a few months before his last TRP expired, Mr. Dhaliwal applied for another TRP. That application was refused in May 2013.

[16] Mr. Dhaliwal then made another application for a TRP in June 2013, which was refused in January 2014. That is the decision that is the subject of this Application.

## II. Relevant Legislation

[17] Mr. Dhaliwal applied for a TRP pursuant to subsection 24(1) of the IRPA. That provision enables a foreign national who is inadmissible or does not otherwise meet the requirements of the IRPA to become a temporary resident if an immigration officer is of the opinion that the issuance of such a permit is justified in the circumstances.

[18] Pursuant to paragraph 34(1)(f) of the IRPA, a permanent resident or a foreign national is inadmissible to Canada on security grounds for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in certain acts, including terrorism.

[19] Pursuant to paragraph 36(2)(a), a foreign national is inadmissible on grounds of criminality for having been convicted in Canada of, among other things, an offence under an Act of Parliament punishable by way of indictment.

### III. Standard of Review

[20] The parties submit that the applicable standard of review on this application is reasonableness.

[21] Ordinarily, allegations of bad faith are subject to review on a standard of correctness. (*Dunsmuir v New Brunswick*, 2008 SCC 9, at paras. 55 and 79 [*Dunsmuir*]; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 43; *Ugro v Minister of National Revenue*, 2009 FC 826, at paras 33-35; *Bageerathan v Canada (Minister of Citizenship and Immigration)*, 2009 FC 513, at paras 22, 25.)

[22] However, given the nature of the reasons offered regarding the first two grounds advanced by Mr. Dhaliwal in support of his allegation of bad faith, I am satisfied that he is essentially alleging that CIC's rejection of his application for another TRP was unreasonable.

[23] On its face, the first of those grounds, namely, whether there was a change in circumstances that would reasonably warrant a sudden decision to deny Mr. Dhaliwal's application, raises a question of mixed fact and law. Such questions are reviewable on a standard of reasonableness (*Dunsmuir*, above, at paras 51-53). Upon closer examination, this ground may also be seen to have a purely legal component, specifically, whether it is necessary that there be a

change in circumstances before CIC may deny an application for an extension of a TRP, or for another TRP, to someone who has already been granted one. This legal component does not fall within one of the four categories of decisions to which the correctness standard applies, namely, “constitutional questions, questions of law that are of central importance to the legal system as a whole and that are outside of the adjudicator’s expertise, questions regarding the jurisdictional lines between two or more competing specialized tribunals, and the exceptional category of true questions of jurisdiction” (*Canadian National Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 SCR 135, at para 55). Accordingly, it too is subject to review on a standard of reasonableness.

[24] The second ground advanced by Mr. Dhaliwal concerns whether CIC ignored the fact that he received a pardon in respect of a criminal conviction in 1996 for impaired driving. That is an issue of fact that is reviewable on a standard of reasonableness.

[25] The third ground stated by Mr. Dhaliwal is in essence an assertion that, in rejecting his application, CIC relied upon extrinsic evidence, namely, that he was working in Canada without authorization. That issue is reviewable on a standard of correctness (*Level (Litigation Guardian of) v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 227, at paras 8-9; *Amri v Canada (Minister of Citizenship and Immigration)*, 2012 FC 713, at para 7). The same is true of the additional submission made by Mr. Dhaliwal’s counsel during the hearing of this application, to the effect that CIC relied upon information in the files of the Canada Border Services Agency [CBSA] in making its decision, without informing him of this fact. In the

analysis below, that submission will be dealt with in connection with the second ground advanced by Mr. Dhaliwal, concerning his pardon.

IV. Analysis

A. *Was there a change of circumstances that would warrant rejecting Mr. Dhaliwal's application?*

[26] Mr. Dhaliwal submits that he received TRPs for approximately 20 years, despite his inadmissibility and his applications for Ministerial relief, and that there was no change in circumstances that would reasonably warrant a sudden decision to deny his application for another TRP. I disagree.

[27] After being granted a series of TRPs between 1993 and 2011, Mr. Dhaliwal was denied a TRP in May 2013. That denial was in respect of the application he made for a TRP in September 2012.

[28] In the subsequent application for a TRP that Mr. Dhaliwal made in June 2013, he indicated that he was currently employed as a taxi driver with Associated Cab Alta. Ltd. and that he had worked with that employer since July 2001 (Certified Tribunal Record [CTR], pp. 40 and 49). He also included a letter from that employer confirming that fact (CTR, p. 57). However, his last work permit expired in December 2012, a fact that was recognized in the submissions made by his counsel to CIC in a letter dated June 10, 2013 (CTR, p. 31).

[29] In my view, the fact that Mr. Dhaliwal's immediately prior request for a TRP had been denied, as well as the fact that he had been working in Canada without authorization since his last work permit expired, each constituted a significant change in circumstances, relative to those which prevailed at the time he applied for his prior TRPs. In my view, it was reasonably open to CIC to rely, in part, on the latter fact in refusing Mr. Dhaliwal's application. Indeed, given that working without authorization is a serious matter, it would have been reasonably open for CIC to have relied upon that fact alone.

[30] As it turned out, CIC identified four principal reasons for refusing Mr. Dhaliwal's application. These were: (i) there was evidence on the file indicating that he had been working in Canada without authorization since his work permit expired in December 2012; (ii) he has been in Canada for over 20 years without an apparent fear of returning to India; (iii) there was no evidence that he had applied for or been granted a pardon in respect of his conviction for impaired driving; and (iv) he had been determined to be inadmissible under paragraph 34(1)(f) of the IRPA, although CIC recognized that he was seeking Ministerial relief in respect of that determination.

[31] Having regard to Mr. Dhaliwal's stated reasons for seeking another TRP in June 2013, it was reasonably open to CIC to reject his application. Those reasons were that he wished to remain in Canada with his spouse and their Canadian born children, and to pursue his outstanding legal proceedings concerning his status in this country (CTR, p. 33).



[32] The authority to grant a TRP pursuant to subsection 24(1) of the IRPA is highly discretionary and exceptional in nature (*Farhat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1275, at paras 22-24; *Nasso v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1003, at paras 12 and 15; *Vaguedano Alvarez v Canada (Minister of Citizenship and Immigration)*, 2011 FC 667, at paras 18 and 39; *Afridi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 193, at paras 16-18).

[33] In exercising this discretion in respect of either an application to extend a TRP, or an application for a subsequent TRP after one or more TRPs have already been granted, CIC is not prevented from refusing the application where there is no change in circumstances, relative to those that existed when the prior TRPs were granted. If that were so, a person who receives a TRP would be able to stay in Canada indefinitely, so long as there was no change in circumstances, as Mr. Dhaliwal claims he should be permitted to do. This would be entirely inconsistent with the “temporary” nature of the discretionary and exceptional authority provided under subsection 24(1). It would also seriously undermine the government’s ability to manage the TRP program from year to year.

[34] Mr. Dhaliwal’s reliance, in support of this ground of challenge, on this Court’s decision in *Beyer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 823, at paras 72-81 is misplaced. There, the CIC’s decision to refuse a TRP was set aside primarily because the letter communicating that decision did not provide adequate reasons. Moreover, that decision did not take account of the fact that the decision would have “grave consequences” for the applicants, primarily because the trip from Canada to their home country “could result in serious

complications and pose risks for the health of Ms. Beyer, who suffers from morbid obesity, is bedridden all day and does not leave home.”

[35] CIC explicitly considered the reasons advanced by Mr. Dhaliwal in support of his request for a TRP and concluded that they were not sufficiently exceptional or compelling to warrant the exercise of its discretion to issue the TRP, particularly having regard to the four factors identified at paragraph 30 above. That decision was well “within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.” (*Dunsmuir*, above, at paras 47). It was also appropriately justified, transparent and intelligible.

B. *Did CIC err by ignoring Mr. Dhaliwal’s pardon?*

[36] Mr. Dhaliwal asserts that CIC erred when it stated that there was no evidence on the file that he had ever applied for or received a pardon in respect of his conviction for impaired driving. In support of this position, he notes that the Recommendation recognized that he was granted a TRP in 1999 so that he could remain in Canada to apply for a pardon. He also asserts that he received his pardon in 2000, and that this information has been in CIC’s file since that time. In addition, he maintains that the Recommendation refers to consultations with the CBSA regarding his inadmissibility that the CBSA is fully aware of his pardon, and that representatives of CIC would have obtained confirmation of this fact through communications with their CBSA counterparts. He adds that the CBSA’s 2009 and 2012 recommendations to deny Ministerial relief each refer to his pardon.

[37] During the hearing, counsel added that some of the information in CIC's decision to refuse his TRP contained information that could only have come from CBSA's file.

[38] I do not accept these submissions by Mr. Dhaliwal.

[39] It was Mr. Dhaliwal's responsibility to provide evidence of his pardon to CIC when he applied for his TRP. It is implicit in his submissions to this Court that he did not do so.

Moreover, there is no evidence in the CTR to corroborate his assertions that CIC had become aware through its contacts at the CBSA or otherwise, and prior to the time it made its decision to deny his most recent application for a TRP, that he had received that pardon. It appears that the only information concerning the pardon that was before the decision-maker, and the person who made the Recommendation, was that there was no indication in CIC's records that Mr. Dhaliwal had actually ever sought and received his pardon.

[40] It is trite law that, on judicial review, this Court may only consider the record that was before the administrative decision-maker who made the decision under review, except in limited circumstances that include assessing claims of procedural fairness (*Rafieyan v Canada (Citizenship and Immigration)*, 2007 FC 727, at para 20; *Quiroa v Canada (Citizenship and Immigration)*, 2007 FC 495, at paras 26-27; *Spring v Canada (Minister of Citizenship and Immigration)*, 2014 FC 41, at paras 17-18; *Christie v Canada (Attorney General)*, 2015 FC 210, at para 20). Accordingly, I cannot consider the "new" evidence of Mr. Dhaliwal's pardon, which was attached as Exhibit "A" to the affidavit he filed in this proceeding.

[41] I do not accept Mr. Dhaliwal's assertion that CIC must have known that he had received his pardon. During the hearing of this application, his counsel supported this assertion by arguing that the Recommendation included information that came from the decision denying his first application for Ministerial relief. He added that the Recommendation also closely tracked the text of the latter decision.

[42] A careful reading of the Recommendation, other documentation in the CTR and the first negative Ministerial decision, which I have admitted in evidence for the purpose of assessing counsel's submissions, reveals that this is not so.

[43] The Recommendation was three pages in length and largely consists of a concise review of the two grounds for Mr. Dhaliwal's inadmissibility, his immigration history with CIC and the basis for the Recommendation. The basis for the Recommendation consisted of four paragraphs. The first of those paragraphs essentially provided the "bottom line" recommendation to reject the application. The second paragraph then set forth the four reasons supporting that recommendation, as reproduced at paragraph 30 above. Those reasons were all based on information that pertained to Mr. Dhaliwal's immigration history with CIC. The third paragraph then provided the information that is apparently relied upon in support of his counsel's submissions that CIC had access to the first negative decision for Ministerial relief. The fourth paragraph concluded by noting the discretionary and exceptional nature of TRPs, and stating that a careful review of the application did not lead to the conclusion that there were compelling and sufficient reasons to warrant the issuance of a TRP.

[44] Returning to the third paragraph, the facts to which it refers simply concern Mr. Dhaliwal's membership in the AISSF from May 1982 to May 1988, the fact that the AISSF was associated with terrorism and was involved in advocating greater independence for Indian states from the central Indian government, the fact that it was banned by the central government of India between 1984 and 1985 as a result of increased use of violence, strikes and protest in Punjab, the fact that Mr. Dhaliwal has had three applications for permanent residence that were refused by CIC, and the reasons for those refusals.

[45] The key facts described immediately above with respect to the AISSF and Mr. Dhaliwal's membership in it were included in the cover letter that accompanied Mr. Dhaliwal's June 10, 2013 application for the TRP that is the subject of this judicial review (CTR, pp 31-32). Specifically, it was acknowledged in that letter that Mr. Dhaliwal was a member of the AISSF from July 1984 to June 1990, and that the AISSF was banned between March 1984 and January 1985 by Indian authorities due to its involvement in terrorism.

[46] That letter also referred to interviews that Mr. Dhaliwal had with CIC and with CSIS regarding his involvement in the AISSF, and referred to CSIS's assessment the AISSF had become "fractionalized", and that only one group (known as the Bittoo faction) was consistently linked to extremist activity.

[47] Mr. Dhaliwal's interviews with CIC concerning his involvement in the AISSF are also discussed in the first decision denying him Ministerial relief. That decision refers to interviews

between Mr. Dhaliwal and CIC regarding his admissibility, and related submissions, in 1996, 2005, 2006 and 2009.

[48] From the foregoing, it is clear that CIC has extensive information in its records concerning the AISSF, including from Mr. Dhaliwal himself and from CSIS.

[49] In the absence of any evidence to suggest that CIC obtained information concerning the AISSF from the CBSA, it is reasonable to infer that the source of the limited information in the Recommendation regarding the AISSF and Mr. Dhaliwal's involvement in it that was not disclosed in his letter to CIC dated June 10, 2013 was CIC's own files.

[50] Based on the foregoing, and considering that counsel to the Respondent affirmed during the hearing of this application that CIC was not aware that Mr. Dhaliwal had in fact obtained his pardon, I am satisfied that CIC was not informed of this by the CBSA or through access to the CBSA's files.

[51] It follows that CIC did not err, as Mr. Dhaliwal suggests, by ignoring the existence of his pardon. At the time it issued the decision that is the subject of this judicial review, CIC does not appear to have had evidence of the existence of that pardon. Therefore, the statement in the Recommendation that there was no indication that he had been granted a pardon was entirely reasonable.

C. *Did CIC err by failing to inform Mr. Dhaliwal of its concern that he had been working in Canada without authorization?*

[52] Mr. Dhaliwal submits that CIC erred by failing to inform him of the existence of evidence in CIC's file that he had worked in Canada without authorization, and by failing to provide him with an opportunity to respond to that evidence. I disagree.

[53] As discussed at paragraph 28 above, the evidence that Mr. Dhaliwal had worked in Canada without authorization was provided by Mr. Dhaliwal himself, in his applications for a TRP and a permanent residence permit, as well as in the letter from his employer that he included with his application. It is therefore not open to him to argue that he was unaware of the existence of this information in CIC's file, and that CIC erred by failing to provide him with an opportunity to respond to that evidence.

V. **Conclusion**

[54] For the reasons set forth above, this application is rejected.

[55] The parties did not submit a question for certification and I am satisfied that none arises on the particular facts of this case.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. This Application is rejected.
2. There is no question for certification.

"Paul S. Crampton"

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Chief Justice



**APPENDIX “1”****Legislation**

*Immigration and Refugee Protection Act, SC 2001, c 27.*

Temporary resident permit	Permis de séjour temporaire
24. (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.	24. (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire — titre révocable en tout temps.
Security	Sécurité
34. (1) A permanent resident or a foreign national is inadmissible on security grounds for	34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).	f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).
Criminality	Criminalité
36. (2) A foreign national is inadmissible on grounds of criminality for	36. (2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of	a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions à toute loi fédérale

Parliament not arising out of a single occurrence;      qui ne découlent pas des mêmes faits;

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**SOLICITORS OF RECORD**

**DOCKET:** IMM-854-14

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**PLACE OF HEARING:** CALGARY, AB

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**DATED:** JUNE 17, 2015

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