

Federal Court



Cour fédérale

Date: 20190313

Docket: IMM-3531-18

Citation: 2019 FC 302

Ottawa, Ontario, March 13, 2019

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

SHARANDEEP KAUR TOOR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Sharandeep Kaur Toor, applied to sponsor her father, Darbara Singh Toor [Mr. Toor], for the purpose of obtaining a permanent resident visa to enter Canada. The visa was refused by an Immigration Officer [the Officer] at the High Commission of Canada in New Delhi, India on July 14, 2015. The Immigration Appeal Division [IAD] of the Immigration and Refugee Board dismissed the Applicant's appeal on June 14, 2018. The Applicant now seeks

judicial review of the IAD's decision pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the Application is allowed.

I. The Background

[3] The Applicant recounts that she came to Canada on a student visa in 2006 at the age of 22. Her sister came to Canada on a student visa in 2007. They both claimed and were granted refugee status. The Applicant and her sister were granted permanent resident status in 2009 and 2010, respectively.

[4] Following the death of their mother in India in November 2007, the Applicant and her sister sought to find a second wife for their father, Mr. Toor. They advertised within Canada and found a woman who agreed to marry her father, care for their younger brother in India and sponsor her father and brother to come to Canada. The second wife married Mr. Toor in January 2008 in India. The spousal sponsorship application was filed in April 2008 and refused in May 2009 following an interview with Mr. Toor. Mr. Toor's second wife did not attend the interview. Mr. Toor and his second wife divorced later in 2009.

[5] Mr. Toor married his third wife in March 2010.

[6] In May 2010, the Applicant applied to sponsor her father, step mother and brother for permanent residence in Canada. Mr. Toor was interviewed in July 2015.

II. The Decision of the Immigration Officer

[7] In the decision dated July 14, 2015, the Officer advised the Applicant that the sponsorship application was refused because Mr. Toor did not meet the requirements of the Act. In the accompanying letter to Mr. Toor, the Officer noted that section 16 of the Act requires that all questions be answered truthfully. The Officer focused on Mr. Toor's responses regarding his second marriage, the basis for his daughters' immigration status in Canada, criminal charges he faced in 2008-2009, and his place of residence. The Officer noted contradictions in Mr. Toor's responses, particularly in the previous interviews, and noted that the forms did not reflect what Mr. Toor stated at the current interview. The Officer was not satisfied that Mr. Toor had answered truthfully.

III. The Decision of the IAD

[8] The IAD confirmed the decision of the Officer.

[9] The IAD assessed the evidence Mr. Toor provided at his April 15, 2015 interview and also at his previous interview in 2009.

[10] The IAD considered Mr. Toor's responses at his 2009 interview regarding his belief that his second marriage was genuine and his answer at the 2015 interview that he believed that his second wife's sponsorship was "fake". The IAD found that Mr. Toor's answers strained credulity; the marriage could not be genuine and the sponsorship, "fake". The IAD also found

that Mr. Toor's failure to disclose at his 2009 interview that he had filed for divorce was highly relevant.

[11] The IAD considered Mr. Toor's responses regarding the basis of his daughters' claims for immigration status in Canada. At his 2009 interview, Mr. Toor stated that his daughters sought refugee status but that he was not aware of the basis of their claims. At his 2015 interview, he stated that in 2009 he had not wanted to reveal why his daughters left India in case it jeopardized their claims. In 2015, he stated that his daughters left India because of police harassment. The IAD noted that the two accounts raise concerns of questionable immigration procedures.

[12] The IAD also considered that at his 2009 interview for his spousal sponsorship application Mr. Toor had failed to disclose that he had been charged with a criminal offence after the 2008 application was filed and that the charge had been dropped before his 2009 interview.

[13] The IAD then considered Mr. Toor's response on the family sponsorship application form regarding his place of residence in the last 10 years. Mr. Toor provided two addresses in Moga. However, other evidence indicated that he had also lived in Ludhiana for periods of time due to his employment as a police officer and that he had lived there with his family for 7-8 months. When this discrepancy was pointed out, Mr. Toor responded that he listed his permanent residences, as asked. The IAD noted that the question was clear and that the answer provided by Mr. Toor on the form was also clear—that he had always lived in Moga. The IAD concluded that the Officer reasonably found that Mr. Toor lacked credibility regarding his place of residence.

[14] The IAD noted that the fact that Mr. Toor had been previously denied visas is not a reason to deny subsequent applications. The IAD stated that “the officer must not be content to look in the rear view mirror and base his or her current assessment on past applications or decisions.” The IAD concluded that the Officer had not done so. Rather, the Officer’s assessment of Mr. Toor’s truthfulness related to relevant and significant matters in the current application affecting Mr. Toor’s duty of candour and not to minor contradictions. The IAD added that the Officer could not overlook the information previously provided or omitted.

[15] The IAD further concluded that the Applicant had failed to establish that there were sufficient humanitarian and compassionate [H&C] grounds to grant an exemption from the requirements of the Act.

IV. The Issues

[16] The primary issue is whether the IAD reasonably found that the Officer’s decision, which found that Mr. Toor was not truthful, was based on relevant evidence regarding the current family sponsorship application.

V. Standard of review

[17] The standard of review for this decision of the IAD, which is based on mixed fact and law, is reasonableness. The reasonableness standard focuses on “the existence of justification, transparency and intelligibility within the decision-making process” and considers “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of

the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

VI. The Applicant’s Submissions

[18] The Applicant submits that the IAD erred in focusing on Mr. Toor’s past applications and inconsistencies in his past interview, rather than on his answers and testimony with respect to the current application. The Applicant adds that these inconsistencies had little bearing on the current application.

[19] With respect to the finding that Mr. Toor had been untruthful regarding his second marriage, the Applicant argues that Mr. Toor’s testimony at the 2009 interview and the 2015 interview is not inconsistent. Mr. Toor stated in 2009 that he believed his marriage was genuine and in 2015 that he also believed that his second wife never intended to sponsor him, which led him to say that the sponsorship was fake. The Applicant submits that both beliefs can co-exist.

[20] With respect to Mr. Toor’s failure to advise the Officer in 2009 that he had already petitioned for divorce, the Applicant submits that Mr. Toor acknowledged in 2015 that he should have disclosed this in 2009. The Applicant submits that the IAD is punishing Mr. Toor in his current application for not being forthcoming in his past spousal sponsorship application, which was refused.

[21] With respect to the IAD’s finding that Mr. Toor failed to disclose a criminal charge, the Applicant submits that this also arose in the context of his past spousal sponsorship application.

In his written application in 2008, Mr. Toor truthfully responded that he had never been convicted and was not facing any criminal charges. However, he was later charged with a criminal offence involving fake currency. The Applicant notes that these charges were dropped before Mr. Toor was interviewed in 2009. Mr. Toor's response at the 2009 interview was also truthful.

[22] With respect to the IAD's finding that Mr. Toor was not truthful in his responses regarding his daughters' immigration status, the Applicant argues that the IAD erred by comparing answers given at different times in the context of different applications. The Applicant further submits that the IAD did not make any clear credibility finding. Rather the IAD concluded that, due to his previous answers, Mr. Toor either knew the basis for his daughters' refugee claim or he did not. The Applicant submits that the IAD was required to assess his truthfulness in the current application and did not do so.

[23] With respect to the IAD's findings regarding Mr. Toor's place of residence, the Applicant notes that many documents disclosed that Mr. Toor had also briefly lived in Ludhiana. The Officer was aware of this. The Applicant also notes that the IAD acknowledged that Mr. Toor's failure to indicate the time he lived in Ludhiana on his form was not a material omission. The Applicant submits that the omission of periods of time spent in Ludhiana has no bearing on his admission to Canada and should not have had any bearing on the IAD's decision.

[24] The Applicant also submits that the IAD erred in its assessment of the H&C grounds by failing to be sensitive to the importance of family reunification and ignoring that the family was separated due to refugee claims, not by choice.

VII. The Respondent's Submissions

[25] The Respondent submits that the IAD did not err in confirming the Officer's decision. The Respondent argues that it is nonsensical to interpret section 16 as requiring an applicant to be truthful only in the current application and to suggest that the IAD should ignore all past applications. Although each application must be assessed separately, an Officer is not precluded from considering the previous applications and the information provided therein. The Respondent submits that the duty to be truthful and the duty to disclose relevant information continue throughout the application.

[26] With respect to the IAD's findings regarding Mr. Toor's responses about his second marriage, the Respondent notes that Mr. Toor's answers to questions at the 2015 interview differed from those provided at the 2009 interview, particularly about whether his second wife would sponsor Mr. Toor.

[27] The Respondent submits that the IAD's findings regarding Mr. Toor's failure to disclose his criminal charges were reasonable. Although the charges were dropped, his failure to disclose such relevant information is a failure to uphold the duty of candour.

[28] The Respondent disputes the Applicant's argument that the IAD did not make a clear credibility finding regarding Mr. Toor's responses about the reason his daughters immigrated to Canada.

[29] With respect to Mr. Toor's inconsistent answers about his residence, the Respondent notes that even though other documents noted that he had spent time in Ludhiana, his response on his current application was that he had only lived in Moga.

VIII. The Application is Allowed

[30] All applicants for any type of immigration status are required to be truthful at all times.

Section 16 is a clear and fundamental requirement of the Act. Section 16 provides:

16(1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

16(1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[Emphasis added]

[31] Nothing in this decision should be regarded as diminishing the requirement for an applicant to be truthful and candid.

[32] In *Mescallado v Canada (Citizenship and Immigration)*, 2011 FC 462, [2012] 4 FCR 446, the Court explained the distinction between the requirements of section 16 and section 40 at para 16-17:

[16] While both s. 16 and s. 40 have the purpose of ensuring truthfulness, they approach that issue in much different ways and with significantly different consequences.

[17] Section 16 speaks to truthfulness in the sense of accuracy and completeness. It does not address or impose a materiality threshold although relevance is always a requirement.

[33] In *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105, 237 ACWS (3d) 741, the Court confirmed that omissions and untruths need not be material to base a refusal pursuant to section 16, noting at paras 31, 33:

[31] There is jurisprudence, however, that has held that the duty of candour is a requirement of the IRPA, and that its violation justifies refusing an application under subsection 11(1) (*Mescallado*, above; *Porfirio v Canada (Minister of Citizenship and Immigration)*, 2011 FC 794 at para 39, 45, 99 Imm LR (3d) 320 [*Porfirio*]; *Lan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 770 at para 10, 42 Imm LR (3d) 280 [*Lan*]). Accordingly, the omissions and misrepresentations made by the Applicant could ground the refusal, whether or not they were material, as could the failure to provide reasonably requested and relevant documents.

[...]

[33] The burden is on an applicant to satisfy a visa officer that he or she has met the requirements for immigration to Canada. If an applicant is untruthful this can affect the reliability of the whole of their testimony and an officer may not be left with enough information to conclude that the applicant is not inadmissible and meets the requirements of the IRPA. As stated by Justice Scott in *Ramalingam v Canada (Minister of Citizenship and Immigration)*, 2011 FC 278 at para 37, [2012] 4 FCR 457, following a review of the jurisprudence on point, an officer can reject an applicant based on subsection 11(1) without a specific finding of inadmissibility on the ground that the failure of the application to provide “a

complete picture” of his background has the result that the officer cannot determine if the applicant is “not inadmissible”. Indeed, based on the officer’s GCMS notes, that is what happened here.

[34] In the present case, the IAD focused on inconsistencies in Mr. Toor’s responses on his previous application in 2009, which was a spousal sponsorship application. That application was refused due to concerns regarding the marriage. In the current application, the IAD found, as had the Officer, that Mr. Toor’s responses in 2009 about the genuineness of his second marriage were inconsistent with his responses in 2015 about his second wife’s sincerity in sponsoring him. The IAD found that Mr. Toor’s responses regarding his daughters’ basis for immigration to Canada, again in the context of the 2009 spousal sponsorship application, to be inconsistent. The IAD also found that in 2009, Mr. Toor was not forthcoming in disclosing that he had been charged with a criminal offence, even though the charges were laid after he made his spousal sponsorship application and dropped before he was interviewed by the Officer. These inconsistencies and omissions all arose in the context of the 2008-2009 spousal sponsorship application and were relied on to find that he was not truthful in the current application.

[35] The IAD stated that the Officer should not look in the rear view mirror and base current findings on past findings and that each application should be assessed on its own. However, although the IAD found that the Officer did not do so, it appears that both the IAD and the Officer indeed looked in the rear view mirror. The IAD erred in finding that Officer’s findings, which were primarily based on the 2008-2009 application, were reasonable.

[36] I acknowledge that a decision-maker is entitled to consider past applications and past inconsistent testimony to assess truthfulness in a current application. However, in the present

case, the key inconsistencies and omissions relied on were not in the current application but in the previous spousal sponsorship application.

[37] The IAD did not clearly indicate whether Mr. Toor's responses regarding his current application were truthful, except with respect to his place of residence.

[38] The only concern noted by the IAD with respect to the responses Mr. Toor provided for the current family sponsorship application was about Mr. Toor's list of past residences, which omitted a 7-8 month period when he and his family lived in Ludhiana. Although Mr. Toor's response was not complete, he explained that he was asked to list his permanent residence and did so. Moreover, the IAD found that "in and of itself" the omission of his time spent in Ludhiana may not be material, noting that other documents indicated that he had spent time in Ludhiana.

[39] As noted above, the duty to be truthful cannot be downplayed. The outcome of this judicial review should not suggest that an applicant can change their story in a subsequent application and argue that each application must be assessed on its own or offer different versions of the truth. There is only one version of the truth. Contradictions and inconsistencies with past testimony can and do provide a basis for adverse credibility findings. However, in the specific circumstances of this case, it is not clear whether the Officer focused on the current application and in this context found that Mr. Toor was untruthful or focused on the past application and imported the credibility findings into the current application to find him

untruthful. It appears to be the latter. As a result, the IAD's decision, which upheld the Officer's decision, is not reasonable.

[40] The Applicant's appeal must be redetermined by the IAD.

JUDGMENT in IMM-3531-18

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is allowed.
2. The matter is referred to the Immigration Appeal Division for redetermination.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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