Date: 20090521

Docket: IMM-4877-08

Citation: 2009 FC 532

Edmonton, Alberta, May 21, 2009

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

HARJINDER SINGH GILL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Harjinder Singh Gill's appeal of an exclusion order was dismissed by the Immigration Appeal Division of the Immigration and Refugee Board. Mr. Gill now seeks judicial review of that decision, asserting that the Board erred in failing to properly consider the best interests of Mr. Gill's son.

[2] For the reasons that follow, I am satisfied that the Board did not err in its analysis of this issue. As a consequence, the application for judicial review will be dismissed.

Background

[3] Mr. Gill came to Canada in 2004 as a dependant child, sponsored by his brother. Mr. Gill represented in his application for permanent residence that he was single and had no dependants. It turns out that Mr. Gill was in fact married at the time, and had a child.

[4] Mr. Gill's misrepresentation was subsequently discovered, and an exclusion order was made against him by the Immigration Division of the Board. On appeal to the IAD, Mr. Gill did not challenge the misrepresentation finding, but argued that there were sufficient humanitarian and compassionate considerations, including the best interests of his son, to warrant special relief.

The IAD's Decision

[5] The Board recognized that in exercising its discretion on the appeal, it was required to have regard to the factors identified in *Ribic v. Canada (Minister of Employment and Immigration),* [1985] I.A.B.D. No. 4. The Board examined each of the *Ribic* factors in its decision, finding that Mr. Gill's testimony was not entirely credible, and that he had been equivocal and misleading.

[6] Insofar as the best interests of Mr. Gill's son were concerned, the Board held that it would be in the best interests of the child to have his father in India. While Mr. Gill had testified that he would not be able to pay for his son's schooling if he were returned to India, the Board observed that there was no evidence as to the superiority of the particular school that the child was attending over the school that he would otherwise have to attend. Nor was there evidence that Mr. Gill could not use the assets that he had in Canada to continue to fund his son's schooling.

Analysis

[7] The question for the Court is whether the IAD's decision was reasonable: see *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12.

[8] Mr. Gill asserts that the Board's decision was unreasonable, as the Board failed to consider the possibility of the reunification of Mr. Gill and his son in Canada in its assessment of the child's best interests.

[9] It is true that Mr. Gill did make passing reference in his testimony before the IAD to his desire to have his family join him in Canada, in the event that his appeal was successful, so that "they could have a good life here". No evidence was provided by Mr. Gill, however, as to how the interests of his son would be better served by having the son come to Canada, rather than being reunited with his father in India. Indeed, the focus of all of Mr. Gill's evidence with respect to his son's interests was on the hardship that the child would suffer if Mr. Gill was required to return to India.

[10] In assessing the best interests of a child directly affected by a decision, the burden is on the applicant to adduce the evidence on which he relies, and the IAD is only obliged to address evidence actually adduced by the applicant: *Owusu v. Canada (Minister of Citizenship and Immigration),* 2004 FCA 38.

[11] Very little information was put before the IAD with respect to the best interests of Mr. Gill’s son, and what evidence was adduced on this point was considered and weighed by the Board. I am therefore satisfied that the consideration of the best interests of Mr. Gill’s son was sufficient, in the circumstances.

Conclusion

[12] The Board’s decision was reasonable, and was one that falls within the range of possible acceptable outcomes that are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick,* 2008 SCC 9, at paragraph 47. As a consequence, the application for judicial review is dismissed.

Certification

[13] Neither party has suggested a question for certification, and none arises here.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed; and

2. No serious question of general importance is certified.

"Anne Mactavish"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4877-08
STYLE OF CAUSE:	HARJINDER SINGH GILL v. MCI
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	May 20, 2009
REASONS FOR JUDGMENT AND JUDGMENT:	Mactavish J.
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APPEARANCES:

Raj Sharma	FOR THE APPLICANT
Rick Garvin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

RAJ SHARMA Barrister and Solicitor Calgary, Alberta	FOR THE APPLICANT
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT