

Federal Court



Cour fédérale

Date: 20091001

Docket: IMM-1799-09

Citation: 2009 FC 990

Ottawa, Ontario, October 1, 2009

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

**HARPREET KAUR DEOL
(aka: KULWINDER KAUR DEOL)**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] A removal order was issued against the respondent on September 19, 2007 by a Member of the Immigration Division, who determined that she was inadmissible under section 40(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (“*IRPA*”) for misrepresenting or withholding material facts resulting in an error in the administration of the *IRPA*. The respondent’s appeal to the Immigration Appeal Division (“*IAD*”) was allowed and the removal order was set aside in a decision dated March 24, 2009. The applicant Minister now seeks judicial review of the *IAD* decision.

[2] After having carefully reviewed the records and the submissions filed by both parties, I have come to the conclusion that this Court ought not to intervene in the IAD decision. While Ms. Deol's misrepresentations were egregious, the IAD thoroughly went through all the appropriate factors before determining there are sufficient humanitarian and compassionate grounds to grant special relief. These are my reasons for concluding that this application for judicial review must be dismissed.

I. FACTS

[3] The respondent is a 40-year-old citizen of India. In 2002, using a false identity, she was granted permanent resident status in Canada as a member of the family class after being sponsored as a spouse by the respondent's biological brother. The deception was facilitated by a fraudulent birth certificate, an Indian passport and a fabricated date of birth. She divorced her brother in September of 2003, and in April of 2004 was re-married to her current spouse in India. She then filed a sponsorship application for her spouse, which was refused.

[4] In 2005, Citizenship and Immigration Canada became aware of the respondent's misrepresentation. In July of 2005 a report was prepared under subsection 44(1) of the *IRPA* to determine if the respondent was inadmissible due to being a person described in subsection 40(1)(a) of the *IRPA*. The respondent was found inadmissible for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the *IRPA*, and a removal order was issued against the respondent.

[5] Ms. Deol then filed a refugee claim which was heard in November of 2006. She explained at the hearing that she had been sexually assaulted by a powerful man in India in 1999, who had continued to threaten her, and whom she still feared. She also alleged that since the attack was widely known in the community, the only way to save her life and honour was to marry her brother. The Refugee Protection Division (“RPD”) did not find the respondent’s story credible, wondered whether the attack ever occurred, and in any event did not accept that the only solution was to marry her brother. In the result, Ms. Deol was found not to be a Convention refugee or a person in need of protection.

[6] The respondent appealed the removal order before the IAD pursuant to subsection 63(3) of the *IRPA*. She did not challenge the validity of the removal order, but instead requested that the IAD exercise its discretion to allow special relief, on the basis of section 67(1)(c) of the *IRPA*.

II. THE IMPUGNED DECISION

[7] The IAD relied on the factors enumerated in *Ribic v. Canada (Minister of Employment and Immigration)* (I.A.B. T84-9623) as the appropriate considerations in the exercise of its discretionary jurisdiction. These factors, listed below, are not exhaustive and the weight assigned to each of them will vary depending on the circumstances of each case:

- The seriousness of the misrepresentation leading to the removal orders and the circumstances surrounding it;
- The remorsefulness of the applicant;
- The length of time spent in Canada and the impact on the family that removal would cause;

- The appellant's family in Canada and the impact on the family that removal would cause;
- The support available to the applicant in the family and the community;
- The best interests of a child directly affected by the decision; and
- The degree of hardship that would be caused to the applicant by removal from Canada, including the conditions in the likely country of removal.

[8] The IAD found that the respondent's degree of misrepresentation was "on the extreme end of the spectrum" and potentially had a direct or indirect influence on whether or not the applicant would be granted landing in Canada. The IAD also noted that no credible evidence was adduced at the hearing to warrant disturbing the findings of the RPD, according to which the respondent was not credible with respect to her story and to the fear of her alleged assailant. Similarly, the IAD found the witnesses' claim that the only way to save the respondent's life and honour was through marrying her brother because no other matches would be available in India was not credible.

[9] The IAD also found that the respondent's expressions of remorse lacked credibility. More specifically, the IAD Member wrote: "[She] has not articulated genuine understanding as to the nature and consequences of misrepresentation to the immigration process in Canada and that she was concerned with the impact of the discovery of her misrepresentation had on her life".

[10] The IAD also determined that the respondent had a degree of establishment in Canada given the length of her residence in this country, her full-time job, her owning of a car, her savings, and her close relationship with those members of her family established in Canada.

[11] The crucial factor in the decision of the IAD was undoubtedly the very significant degree of hardship the respondent would suffer as a result of her removal from Canada. First, the IAD found that the respondent has never lived independently or without support of her family in India; she was always dependent on her immediate family's decisions with respect to her life. Given the respondent's immediate family's efforts to bring her to Canada, her removal to India would cause a significant impact both on the respondent and her family because of their strong emotional ties. The IAD noted that by making misrepresentations her parents and brother risked their own status in Canada.

[12] Moreover, the IAD accepted the respondent's testimony that her husband in India, upon learning the details of her previous marriage, does not want her to return to India. The IAD felt that on a balance of probabilities, her husband would seek to discontinue the marriage. This led the IAD to consider the difficult plight in India of a divorced woman, without family support. It also accepted the respondent's evidence that neither her sister nor her aunt in India would invite her to move in. The IAD opined that even with housing and financial support from her family, the respondent would be unlikely to secure employment in India. Finally, the IAD took note of the respondent's fear of returning to India, and found that the members of her family living in Canada were unlikely to return to India for the sake of living with her there.

[13] After having balanced these factors with public policy considerations, the IAD held that the factors militating towards removal were outweighed by the evidence of significant hardship for the

respondent. It therefore allowed the appeal and concluded that there are sufficient humanitarian and compassionate considerations that warrant special relief.

III. ISSUES

[14] The only question to be determined in this case is whether the decision of the IAD was reasonable, in light of all the circumstances.

IV. ANALYSIS

[15] There is no issue as to the standard of review, as both parties agree that the applicable standard is that of reasonableness. As was the case in *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, the impugned decision calls for discretionary relief based on humanitarian and compassionate reasons; as such, a reviewing court ought not to reweigh the evidence or substitute its own appreciation of the appropriate solution, but must rather determine if the outcome falls within a range of reasonable outcomes.

[16] Counsel for the applicant argued that the IAD made two credibility findings that are irreconcilable without providing adequate reasons for the discrepancy. In her view, the IAD could not accept as true the respondent's evidence with respect to the hardship she would face if returned to India, after having previously rejected her story that she had to marry her brother in the first place to preserve her life and honour. Since the whole premise for the marriage of the respondent with her brother was disbelieved, the IAD had to explain why it accepted her evidence of hardship.

[17] I do not find unreasonable or contradictory these two conclusions of the IAD. Even if the reason given by the respondent for marrying her brother is not believed, it may nevertheless be accepted that she would face hardship as a result of this marriage. The premise to the existence of hardship is not the reason why she married her brother, but instead, it is because her current husband did not know that she married her brother in a religious ceremony. There is nothing incompatible in these findings.

[18] The applicant also contended that the IAD did not refer to any objective evidence supporting the allegation that the respondent's husband would divorce her, and was mistaken in applying the decision of this Court in *Warna v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1283. In that case, an expert provided testimony with respect to the position of a single, divorced woman who was living alone without the support of her family in India. According to the applicant, Ms. Deol is not currently divorced, and whether or not she will be divorced upon return to India is pure speculation.

[19] This is obviously a credibility finding and the IAD based its assessment on the testimony of the respondent and her brother. Unlike this Court, the IAD had the opportunity to face the witnesses and to evaluate their non-verbal language and their reactions. From a Canadian perspective, the respondent's relationship with her current husband and his family and the hostile social reaction to the "misuse" of the religious ceremony might seem disproportionate and implausible. But cultural differences must be taken into account in an immigration context. Seen from that angle, it is not unreasonable to believe that the respondent concealed the details of her first marriage to her current

husband, or that he will seek divorce if she ever goes back to India. Accordingly, I do not think that the decision of the IAD falls outside the range of reasonable outcomes.

[20] Although the respondent abused the immigration system and is not entirely credible, this application for judicial review should nevertheless be dismissed. This Court may well have reached a different conclusion, but that is not the standard against which the decision of the IAD must be assessed. Its conclusion to grant the respondent special relief was based on a thorough assessment of the appropriate factors as developed in *Ribic*. The IAD was clearly troubled by the seriousness of the respondent's misrepresentations, but nevertheless concluded that this factor was outweighed by the severe hardship the respondent would experience as a single woman if removed to India. This finding was not unreasonable, in light of the evidence that was before the IAD Member.

[21] For all of the above reasons, this application for judicial review must therefore be dismissed. No question of general importance was raised by counsel, and no such question will be certified by the Court.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed. No question of general importance is certified.

"Yves de Montigny"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1799-09

STYLE OF CAUSE: The Minister of Citizenship and Immigration
and
Harpreet Kaur Deol (aka: Kulwinder Kaur Deol)

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 24, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** de Montigny J.

DATED: October 1, 2009

APPEARANCES:

Ms. Kimberly Shane

FOR THE APPLICANT

Mr. Baldev S. Sandhu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

MR. JOHN H. SIMS, Q.C.
Deputy Attorney General of Canada
Vancouver, British Columbia

FOR THE APPLICANT

SANDHU LAW OFFICE
Barristers & Solicitors
Surrey, British Columbia

FOR THE RESPONDENT