Federal Court  Cour fédérale

Date: 20120215

Docket: IMM-3198-11

Citation: 2012 FC 217

Vancouver, British Columbia, February 15, 2012

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

KULWANT KAUR SANDHU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Ms. Kulwant Kaur Sandhu, a citizen of India, applies for judicial review of the March 8, 2011 decision by Immigration Counsellor, Bruce Grundison (the Visa Officer), at the Canadian High Commission in New Delhi (the Visa Office), rejecting her application for permanent residence. The Applicant seeks an order setting aside the decision and that the application for permanent residence be approved. Alternatively, she asks that the matter be submitted for re-determination by a different visa officer. Her application is brought under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

I. Facts

[2] The Applicant is a widow with three children. One of her sons, Avtar Sandhu, lives in Canada as a permanent resident. On July 31, 2006, Avtar Sandhu applied to sponsor the Applicant and his sister, Jaspreet Kaur, for immigration to Canada.

[3] On November 13, 2008, the Applicant submitted an application for permanent residence under the Family Class with Jaspreet Kaur as her dependent child. A certified copy of Jaspreet Kaur's passport listed the Applicant as her mother.

[4] On June 28, 2010, the immigration registry at the Visa Office received a letter from a third party alleging that Jaspreet Kaur is not the real daughter of the Applicant but rather her niece living with her family in order to establish her "false identity" for immigration purposes. In light of this letter, the First Secretary for Immigration at the Visa Office wrote to the Applicant on October 20, 2010, stating that he "was not satisfied that there is sufficient evidence to prove the parent-child relationship between you and Jaspreet Kaur Sandhu" and that the Visa Office would accept DNA test results as proof of the relationship. Excerpts of the letter are reproduced below:

> …
>
> After reviewing the information provided in support of your application, I am not satisfied that there is sufficient evidence to prove the parent-child relationship between you and Jaspreet Kaur Sandhu.
>
> Since the documentary evidence you have provided does not enable us to establish parentage between you and the child, and you are unable to obtain other documentary evidence, in place of documentary evidence we will accept the results of a DNA analysis
>
> …

> If we are not advised within 90 days by a laboratory that you will be proceeding with the DNA testing, we will assume that you are no longer interested in providing a DNA test result and will render a decision on the information available to us at that time.

[5] On November 22, 2010, the Visa Office received a letter from the Applicant wherein she admitted that Jaspreet Kaur Sandhu was not her natural daughter but was her adopted daughter who had been in her custody since 1989. She went on to explain that she and her late husband took custody of Jaspreet Kaur from her sister-in-law in 1989 and "vowed" never to disclose this fact to her.

[6] On February 24, 2011, the Visa Office received a letter from the Applicant advising that Jaspreet Kaur had married on January 15, 2011, and requested that she be removed from the application. A certified copy of the marriage certificate was attached.

[7] On March 8, 2011, the Visa Officer found the Applicant inadmissible to Canada by reason of misrepresentation pursuant to paragraph 40(1)(*a*) of the IRPA and rejected her application for permanent residence.

[8] On May 9, 2011, the Visa Office received a translated and certified copy of an adoption deed naming the Applicant and her late husband as the adoptive parents of Jaspreet Kaur, which was executed on November 18, 1989.

[9] On May 13, 2011, the Applicant filed this application for judicial review of the March 8, 2011 decision.

II. Impugned Decision

[10] I reproduce below the relevant passages of the Visa Officer's refusal letter sent to the Applicant:

> In our letter dated October 20, 2010, you were requested to undergo DNA testing along with your putative daughter Jaspreet Kaur Sandhu. In response to that request, you wrote us a letter stating that in fact Jaspreet Kaur is not your biological daughter and that you had "inadvertently" not disclosed this fact on your application form because, supposedly, she does not know the truth and you wanted to spare her feelings. I am not convinced by this explanation. You stated that you adopted Jaspreet, who is the second daughter of your sister-in-law, in 1989. However, you were unable to provide evidence that an adoption took place at that time.
>
> I am of the opinion that you have engaged in misrepresentation in submitting your application. You concealed the fact that your accompanying dependant, Jaspreet Kaur is not your biological child. The omission was deliberate and in fact only came to light when you and your accompanying dependant, Jaspreet Kaur, were requested to undergo DNA testing. Further, you have not demonstrated that an adoption took place, despite stating that she was adopted. The misrepresentation or withholding of this material fact(s) could have induced errors in the administration of the Act because you and Jaspreet Kaur might have been issued Permanent Resident Visas.
>
> As a result, you are inadmissible to Canada for a period of two years from the date of this letter.

[11] The Applicant raises the following two issues:

a. Did the Visa Officer err in finding that the Applicant was inadmissible pursuant to paragraph 40(1)(*a*) of the IRPA for misrepresenting that Jaspreet Kaur was her biological daughter?

b. Once advised that Jaspreet Kaur had been adopted, did the Visa Officer breach his duty of procedural fairness by not requesting evidence of the adoption before rendering his final decision?

III. Standard of Review

[12] The first issue is a fact-based inquiry reviewable on the reasonableness standard. See: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 51, [2008] 1 SCR 190.

[13] The second issue is a question of procedural fairness. Such questions are reviewable on a correctness standard. See *Dunsmuir* at paragraph 129.

IV. Analysis

Did the Visa Officer err in finding that the Applicant was inadmissible pursuant to paragraph 40(1)(a) of the IRPA for misrepresenting that Jaspreet Kaur was her biological daughter?

[14] The Applicant argues that she did not misrepresent her relationship with Jaspreet Kaur. She further submits that a person should not be found inadmissible for a misrepresentation unless it consists of a material fact relating to a relevant matter that induces or could induce an error in the administration of the IRPA. The Applicant contends that since Jaspreet Kaur was legally adopted, her misrepresentation could not have led to an error in the administration of the IRPA.

[15] The Respondent argues that the Applicant failed to provide any relevant information showing a legal adoption within 90 days of notification of a request for DNA testing. The Respondent contends that the Applicant admitted that she misrepresented a fact in her application, and that this fact could have induced an error in the administration of the IRPA. According to the Respondent, by claiming that Jaspreet Kaur was her biological daughter, the Applicant "sought to avoid the scrutiny of the adoption."

[16] The Visa Officer found the Applicant had concealed the fact that her accompanying dependant, Jaspreet Kaur, was not her biological child and consequently found that she engaged in misrepresentation in her application. This finding is not supported in the evidence. In her application for permanent residence, the Applicant did not state that Jaspreet Kaur was her biological daughter. She simply indicated that she was her daughter. In response to the Visa Officer's October 20, 2010 letter she truthfully acknowledged that Jaspreet Kaur was her adopted daughter and went on to explain the circumstance of the adoption. No evidence was adduced to indicate that the Applicant was required to distinguish on her application whether her daughter was either her birth daughter or her adopted daughter. On the evidence before the Visa Officer there was no basis to find that the Applicant concealed her relationship with Jaspreet Kaur. The fact that the Applicant failed to provide the adoption papers at that time does not lead to a conclusion that she was concealing or misrepresenting the relationship. Further, the school records and travel documents provided by the Applicant, including Jaspreet Kaur's passport, all indicate that the Applicant was her mother at all relevant times. There is no evidence to indicate that the Applicant at any time indicated that she was the birth mother of Jaspreet Kaur. In these particular circumstances, the Officer needed to satisfy himself that there was a misrepresentation. A simple inquiry into the legality of the adoption would have sufficed. I agree with counsel for the Minister that it would have been far better had the Applicant provided the adoption papers before the decision was rendered. Had that been the case, it is unlikely the within application would have ever been filed. However, such an error cannot be fatal to an application for permanent residence in circumstances where there is no evidentiary basis for a finding of misrepresentation.

V. Conclusion

[17] There being no evidence of a misrepresentation pursuant to paragraph 40(1)(*a*) of the IRPA, the Officer committed a reviewable error in deciding that the Applicant was inadmissible to Canada on that basis. In the result, the Application for Judicial Review will be allowed. The matter is to be returned for reconsideration before a different Visa Officer.

[18] Given my above determination, there is no need to consider the second issue raised.

[19] No question was proposed and none will be certified as a serious question of general importance pursuant to paragraph 74(*d*) of the *Immigration and Refugee Protection Act*, [SC 2001, c 27].

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is allowed;

2. The matter is to be returned for reconsideration before a different Visa Officer; and

3. No question of general importance is certified.

"Edmond P. Blanchard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	**IMM-3198-11**
STYLE OF CAUSE:	**KULWANT KAUR SANDHU v MCI**
PLACE OF HEARING:	**Vancouver, BC**
DATE OF HEARING:	**February 9, 2012**
REASONS FOR JUDGMENT AND JUDGMENT:	**BLANCHARD J.**
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