

Federal Court



Cour fédérale

**Date: 20150605**

**Docket: IMM-518-14**

**Citation: 2015 FC 713**

**Ottawa, Ontario, June 5, 2015**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**GURMAIL SINGH  
BALJINDER KAUR**

**Applicants**

**And**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Gurmail Singh and his wife, Baljinder Kaur, seek judicial review of a decision refusing their application for permanent residence from within Canada on humanitarian and compassionate grounds. An immigration officer determined that Mr. Singh was inadmissible to Canada for being a member of a terrorist organization, and that Ms. Kaur was inadmissible as the spouse of someone who was himself inadmissible. The officer further decided that the

humanitarian and compassionate factors relied upon by the couple did not outweigh the seriousness of Mr. Singh's inadmissibility.

[2] For the reasons that follow, I have concluded that the immigration officer's decision was reasonable, particularly in light of the applicants' concession that Mr. Singh was indeed inadmissible to Canada. The application for judicial review will therefore be dismissed.

### **I. Background**

[3] Mr. Singh admits that while he was working on his father's farm in Punjab, he joined the All India Sikh Student Federation (AISSF). Mr. Singh has further admitted that he distributed pamphlets on behalf of the AISSF, and that he collected donations for the organization and recruited people to join the AISSF. On at least on occasion, Mr. Singh participated in an anti-government demonstration organized by the AISSF where, he says, he "shouted anti-government slogans and was carrying posters" for peace and equality for Sikhs.

[4] Mr. Singh asserts that that he was arrested and beaten by the police during this demonstration, and that his father was ultimately able to secure his release by paying a bribe. The police allegedly arrested and detained Mr. Singh on a second occasion, questioning him regarding his relationship with an alleged terrorist. Once again, Mr. Singh's father was able to secure his son's release by paying a bribe. Fearing for his life, Mr. Singh then went into hiding.

[5] The police subsequently raided Mr. Singh's house and arrested his wife, detaining her for two days. After her release, Mr. Singh's father arranged for Ms. Kaur to leave India on July 24, 1991. Mr. Singh also fled India, arriving in Toronto on October 7, 1991. The couple then filed refugee claims wherein they claimed to be at risk in India as a result of Mr. Singh's activities

with the AISSF. While the Board accepted that Mr. Singh had been at least peripherally involved with the AISSF in Punjab, it rejected the couple's claims on the basis that they had an internal flight alternative elsewhere within India.

[6] The applicants then filed an application for permanent residence from within Canada on humanitarian and compassionate grounds, citing their establishment in Canada and the best interests of their Canadian-born son in support of their application. Importantly, in a letter from their counsel dated April 29, 2010, the applicants conceded that Mr. Singh was inadmissible to Canada under subsection 34(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*). The letter further advised that an application for Ministerial Relief would be filed in accordance with subsection 34(2) of *IRPA*.

[7] The relevant provision of subsection 34(1) is paragraph 34(1)(f), which provides that:

<p>34. (1) A permanent resident or a foreign national is inadmissible on security grounds for</p> <p>...</p> <p>(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)(b1) or (c).</p>	<p>34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :</p> <p>...</p> <p>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) b1) ou c).</p>
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[8] Presumably because the point had been conceded, the applicants did not make any substantive submissions in relation to the inadmissibility issue in their H&C submissions, focusing instead on the positive factors that they say favoured granting H&C relief.

[9] The immigration officer concluded that the family had provided only limited evidence of their establishment in Canada, and that insufficient information had been provided to demonstrate that the separation of the son (who was 20 years old by this point) from his parents would result in unusual, undeserved or disproportionate hardship. The applicants have not challenged either of these findings.

[10] The officer also found that Mr. Singh was inadmissible to Canada as a result of his membership in the AISSF, and that his inadmissibility was “of a serious nature implicating Canada’s commitment to international justice”. The officer concluded that the humanitarian and compassionate factors did not outweigh Mr. Singh’s inadmissibility.

## **II. Analysis**

[11] The applicants do not dispute that the AISSF is an organization described in paragraph 34(1)(f) of *IRPA*, that is, that there are reasonable grounds to believe that it engages in, has engaged in or will engage in acts of terrorism.

[12] The applicants also do not dispute that Mr. Singh took out formal membership in the AISSF, or that he engaged in activities on the organization’s behalf. The applicants submit, however, that the immigration officer’s finding that Mr. Singh was inadmissible to Canada as a result of his membership in the AISSF was unreasonable, as the officer failed to adequately address relevant considerations, specifically those identified by this Court in *B074 v. Canada (Citizenship and Immigration)*, 2013 FC 1146, 442 F.T.R. 250.

[13] That is, the applicants say that the officer erred by failing to assess the nature of Mr. Singh’s involvement in the AISSF, the length of time he was involved with the organization,

and the degree of his commitment to the organization's goals and objectives. I cannot accept this submission. As will be explained below, the officer provided lucid and logical reasons for concluding that there were reasonable grounds to believe that Mr. Singh's involvement with the AISSF rendered him inadmissible to Canada.

[14] The standard for establishing inadmissibility for the purposes of paragraph 34(1)(f) is not an onerous one. As the Supreme Court of Canada noted in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100, the "reasonable grounds to believe" evidentiary standard requires "something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities". The Supreme Court went on to hold that reasonable grounds will exist "where there is an objective basis for the belief which is based on compelling and credible information": at para. 114.

[15] In her reasons, the immigration officer specifically referred to the length of time that Mr. Singh was involved with the AISSF, noting that he joined the organization in 1988, and that he remained a member until his departure for Canada in 1991. The officer also expressly considered the nature of Mr. Singh's involvement with the organization. What seems to be of particular concern to the applicants is the officer's consideration of the third factor identified in *B074*, that is, the degree of Mr. Singh's commitment to the organization's goals and objectives.

[16] According to the applicants, the immigration officer failed to consider the context of Mr. Singh's involvement with the AISSF, including his motives for joining the organization. They also say the officer failed to properly consider the fact that Mr. Singh did not engage in, encourage or contribute to violent activities or terrorist agendas, but rather joined the

organization to raise attention about the concerns of local farmers and equality for Sikhs in a non-violent manner.

[17] The officer expressly noted in her reasons that there was no evidence linking Mr. Singh to violent or terroristic acts that had been committed by the AISSF. The officer nevertheless concluded that Mr. Singh's participation in the organization was "active and substantial", based upon Mr. Singh's own description of his activities.

[18] In coming to this conclusion, the officer noted that Mr. Singh had recruited new members for the AISSF. In addition, he collected donations for the organization, distributed AISSF pamphlets, and participated in AISSF demonstrations. The officer found that these activities "served to advance and further the AISSF's goals and the violent means that it took to pursue its goals and ideologies". This finding is entirely reasonable.

[19] Moreover, contrary to the submissions of the applicants' counsel, it is evident that Mr. Singh was not merely an unsophisticated farmer who was concerned about local issues such as the availability of water for the irrigation of crops. In both his Personal Information Form and his interview with the immigration officer, Mr. Singh repeatedly expressed strongly-held political views on issues related to the oppression of Punjab's Sikh population by the Indian Government – issues that were of central concern to the AISSF. These issues went well beyond matters of concern to Sikh farmers.

[20] Mr. Singh also claimed to be well-versed in Punjabi affairs, claiming to read the Punjab Tribune newspaper on a daily basis. In addition, he displayed knowledge of contentious events involving the Sikhs, such as the Indian military's assault on the Golden Temple in Amritsar and

the subsequent assassination of Indira Gandhi. At his interview with the immigration officer, Mr. Singh also said that he knew that the AISSF wanted to establish a Sikh homeland called Khalistan, although he professed to disagree with that goal.

[21] The applicants submit that there was no evidence that the monies paid by Mr. Singh for his membership in the AISSF were used to facilitate or carry out a terrorist activity. They note that in *Toronto Coalition to Stop the War v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 957 at para. 110, [2012] 1 F.C.R. 413, this Court held that a financial contribution to a terrorist entity which was provided for humanitarian purposes did not, by itself, make an individual a party to any terrorist crimes committed by the organization.

[22] While this may be true, nothing in the evidence before the immigration officer suggested that Mr. Singh thought his membership fee would be used for a humanitarian purpose. Nor was there any evidence to suggest that Mr. Singh thought that the donations that he solicited on AISSF's behalf would be used for humanitarian purposes. Indeed, during his interview with the immigration officer, Mr. Singh professed not to know what was being done with the money that he was raising for AISSF.

[23] I also do not accept Mr. Singh's argument that the immigration officer had a duty to specifically refer to earlier reports from Citizenship and Immigration Canada and the Canada Border Services Agency (CBSA), which indicated that there was insufficient evidence available *at that time* to support a finding that Mr. Singh was inadmissible to Canada under subsection 34(1) of *IRPA*.

[24] Not only did the CBSA report strongly recommend further investigation of Mr. Singh's case in light of the documented activities of the AISSF, a subsequent interview with Mr. Singh raised additional concerns regarding his activities with the AISSF. Even more importantly, Mr. Singh himself subsequently admitted that he was inadmissible to Canada as a result of his membership in the AISSF. Consequently, the applicants have not demonstrated any error on the part of the immigration officer in this regard.

### **III. Conclusion**

[25] For these reasons, the application for judicial review is dismissed. I agree with the parties that the case is fact-specific, and does not raise a question for certification.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Anne L. Mactavish"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-518-14

**STYLE OF CAUSE:** GURMAIL SINGH BALJINDER KAUR v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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**DATED:** JUNE 5, 2015

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