

Federal Court



Cour fédérale

Date: 20160513

Docket: IMM-4696-15

Citation: 2016 FC 542

Ottawa, Ontario, May 13, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**DARSHAN SINGH BRAR
SANDEEP KAUR BRAR
JASVEER KAUR BRAR
AJAYPAL SINGH BRAR
RAMANDEEP KAUR BRAR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] This application, brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], seeks to set aside the October 13, 2015 decision of an Immigration Officer [Officer] with the High Commission of Canada in New Delhi, India. The

Officer rejected the applicants' application for permanent residency under the family class on the ground that the applicants misrepresented material facts relating to outstanding charges and criminal proceedings relating to one of the applicants. As a result the applicants were found inadmissible to Canada under paragraph 40(1)(a) of the IRPA.

[2] The applicants, a family of five, are all citizens of India. Darshan Singh Brar is the Principal Applicant [PA]. His son Ajaypal Singh Brar, born in 1988 was included as a dependent in the application for permanent residency under the family class.

[3] On December 28, 2013 five criminal charges were laid against Ajaypal and others in India.

[4] Ajaypal and the complainant in the criminal case entered into what is characterized as a compromise or plea arrangement [the Compromise] on January 18, 2014. The Compromise was subsequently placed before the Court in India on February 22, 2014 and granted at that time. The result was Ajaypal's acquittal on four charges and his conviction on the fifth.

[5] Subsequent to the laying of the charges, but prior to the Compromise being granted by the Court, Canadian immigration authorities requested the PA update forms relating to the application for permanent residency. On January 26, 2014, despite the circumstances described above, the PA and Ajaypal answered "NO" to the following written question:

6. Have you, or, if you are the principal applicant, any of your family members listed in your application for permanent residence in Canada, ever:

[...]

b) been convicted of, or are you currently charged with, on trial for, or party to a crime or offence, or subject of any criminal proceedings in any other country?

[6] A procedural fairness letter was sent to the applicants regarding a potential misrepresentation on their application pursuant to paragraph 40(1)(a). The applicants responded. The Officer subsequently found the applicants indeed misrepresented their application and that the misrepresentation could have induced an error in the administration of the IRPA. The Officer determined the applicants inadmissible to Canada.

II. Issues

[7] The sole issue before the Court on this application is whether or not the Officer reasonably concluded that the applicants misrepresented their application within the meaning of paragraph 40(1)(a) of the IRPA in responding “NO” to the above-referenced question on January 26, 2014. In written submissions the applicants also took issue with the brevity of the Officer’s reasons but abandoned this argument in oral submissions.

III. Analysis

[8] There is no dispute as between the parties that the reasonableness standard of review applies in reviewing the Officer’s determination that a misrepresentation occurred pursuant to paragraph 40(1)(a) of the IRPA (*Goburdhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971 at para 19, 439 FTR 210 [*Goburdhun*]; *Seraj v Canada (Minister of Citizenship and Immigration)*, 2016 FC 38 at para 11).

[9] Paragraph 40(1)(a) of the IRPA states:

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(a) 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 this Act;

40. (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

[10] To find an applicant inadmissible under paragraph 40(1)(a) an Officer must be satisfied that (1) a direct or indirect misrepresentation has occurred by the applicant(s) and (2) that the misrepresentation could induce an error in the administration of the IRPA (*Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452 at para 27, 138 ACWS (3d) 728; *LBJ v Canada (Minister of Citizenship and Immigration)*, 2011 FC 942 at para 19, 205 ACWS (3d) 507).

[11] The general principles arising out of this Court's jurisprudence on paragraph 40(1)(a) are summarized by Justice Cecily Strickland in *Goburdhun* at paragraph 28:

[28] In *Oloumi*, above, Justice Tremblay-Lamar describes general principles arising from this Court's treatment of section 40 of the IRPA which are summarized below together with other such principles arising from the jurisprudence:

- Section 40 is to be given a broad interpretation in order to promote its underlying purpose (*Khan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 512 at para 25 [*Khan*]);

- Section 40 is broadly worded to encompass misrepresentations even if made by another party, including an immigration consultant, without the knowledge of the applicant (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 942 at para 35 [*Jiang*]; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 55-56 [*Wang*]);

- The exception to this rule is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control (*Medel*, above);

- The objective of section 40 is to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the applicant to ensure the completeness and accuracy of their application (*Jiang*, above, at para 35; *Wang*, above, at paras 55-56);

- An applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada (*Bodine v Canada (Minister of Citizenship and Immigration)*, 2008 FC 848 at para 41; *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 at para 15);

- As the applicant is responsible for the content of an application which they sign, the applicant's belief that he or she was not misrepresenting a material fact is not reasonable where they fail to review their application and ensure the completeness and veracity of the document before signing it (*Haque*, above, at para 16; *Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 450 at para 31 [*Cao*]);

- In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose (*Oloumi*, above, at para 22);

- A misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process (*Oloumi*, above, at para 25);

- An applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application. The materiality analysis is not limited to a particular point in time in the processing of the application. (*Haque*, above, at paras 12 and 17; *Khan*, above, at paras 25, 27 and 29; *Shahin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 423 at para 29 [*Shahin*]);

[12] The key principles that are of particular relevance in the context of this application include: (1) the broad nature of the provision; (2) that any exception to the rule is narrow and applies only to truly extraordinary circumstances; (3) an applicant has a duty of candour to provide complete, honest and truthful information when applying for entry into Canada; (4) a misrepresentation need not be decisive or determinative; and (5) an applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application.

[13] In responding to the procedural fairness letter sent to the applicants by the Canadian immigration authorities, Ajaypal states the following with respect to his negative response to the question relating to criminal convictions or proceedings:

[B]ecause both parties in the aforesaid case had arrived at a compromise in the said case and settled the dispute with mutual consent before the date of filing charge sheet by the police in the Court. I submit that I have not been convicted of any of the Courts and the said F.I.R. was lodged against me on false grounds. That is why I have ticked 'NO' while filing Form No. IMM 5669. I have not ticked 'NO' against Question No. 6(b) wilfully and deliberately, but I did so because of my ignorance.

[14] Of course the question to which Ajaypal responded “NO” on January 26, 2014 encompasses a much broader set of circumstances than simply whether or not he had been convicted of an offence. There is no doubt that charges were outstanding on that date. The record also demonstrates that the charges remained outstanding until February 22, 2014, the date the Compromise was placed before the Indian Court and granted. On February 22, 2014 charges were no longer outstanding but Ajaypal stood convicted of one offence contrary to his response to the procedural fairness letter “that I have not been convicted”.

[15] The applicants argue that police clearance certificates advising that no criminal cases were pending against Ajaypal on March 7, 2014 demonstrate there was no misrepresentation. I disagree. All these certificates demonstrate is that on those dates there were no pending proceedings. They do not establish that there were no prior criminal proceedings involving Ajaypal due to criminal charges against him at the time he signed the above-referenced form on January 26, 2014, nor do they cast any doubt on the fact that he was convicted on one charge on February 22, 2014.

[16] In the circumstances I am satisfied that there was a reasonable basis upon which the Officer could conclude that the applicants had failed to provide complete, honest and truthful information and as a result there had been a misrepresentation. I am further satisfied that it was reasonable for the Officer to conclude that the misrepresentation was material and could have induced an error in the administration of the IRPA: immigration officials could have proceeded to process Ajaypal’s application without conducting a criminal assessment.

[17] The applicants argue that any misrepresentation was cured through the applicants' subsequent response to the procedural fairness letter. This submission reflects a fundamental misunderstanding of the purpose of the procedural fairness letter. The procedural fairness letter is not an opportunity for an applicant to rehabilitate themselves where they have failed in their duty of candour under subsection 16(1) of the IRPA. Rather the procedural fairness letter is an opportunity for the applicant to demonstrate that there was no misrepresentation or withholding of material facts that could have induced an error in the administration of the IRPA. As noted in *Goburdhun* at para 28, an applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application.

IV. Conclusion

[18] The Officer's decision in this matter is justified, transparent and intelligible and falls well within the range of possible, acceptable outcomes based on the facts and law (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47). The application is therefore denied.

[19] The parties did not identify a question of general importance for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is denied. No question is certified.

"Patrick Gleeson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: DARSHAN SINGH BRAR, SANDEEP KAUR BRAR,
JASVEER KAUR BRAR, AJAYPAL SINGH BRAR,
RAMANDEEP KAUR BRAR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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