IMM-123-97

BETWEEN:

MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

- and -

KUSHWINDER KAUR GILL

Respondent

REASONS FOR ORDER

GIBSON J.:

These reasons arise out of an application for judicial review of a decision of the Appeal Division of the Immigration and Refugee Board wherein the Appeal Division allowed the respondent's appeal from a visa officer's refusal of the sponsored application for landing in Canada of the allegedly adopted daughter of the respondent. The decision of the Appeal Division is dated the 4th of December, 1996.

The background to the appeal before the Appeal Division may be briefly summarized as follows. On 11th of March, 1992, the respondent's husband ("Kuldip") executed an Undertaking of Assistance as the sponsor for landing in Canada of his adopted daughter ("Bhawandeep"). The Undertaking of Assistance form was signed by the respondent as spouse of Kuldip. In support of his sponsorship application, Kuldip provided to the applicant a copy of his record of landing, a financial evaluation form and employment verification documents. Once again, the financial evaluation form was signed by the respondent as "Guarantor's Spouse", and included her employment and income information. The financial evaluation form was supported by a letter from the respondent's employer indicating her hourly wage and the number of hours in her normal work week. Also in support of the sponsorship application, a power of attorney form executed on January 31, 1992 and a deed of adoption of

Bhawandeep executed on March 9, 1992 were provided to the applicant.[1]

On June 22, 1992, an application for permanent residence in Canada was submitted on behalf of Bhawandeep to the Canadian High Commission in New Delhi. On August 5, 1994, Kuldip withdrew his sponsorship of Bhawandeep. In the result, the application for permanent residence submitted on behalf of Bhawandeep was refused by letter dated November 15, 1994. By letter dated January 6, 1995, Kuldip was advised that his sponsored application of Bhawandeep for permanent residence was refused.

The decision reflected in the letter of January 6, 1995 to Kuldip was appealed to the Appeal Division by Notice of Appeal dated February 8, 1995. The Notice of Appeal named both Kuldip and the respondent as appellants and was apparently signed by them both.

Kuldip did not appear at the time and place fixed for the hearing before the Appeal Division. His counsel did appear and requested permission to withdraw from the case. He was permitted to do so. A representative of the respondent appeared and argued that he should be allowed to continue the appeal on the basis that the respondent had co-sponsored the application for permanent residence of Bhawandeep. Counsel for the applicant moved to have the appeal dismissed on the ground that, since Kuldip had withdrawn his sponsorship, the Appeal Division had no jurisdiction to hear the appeal on behalf of the respondent as she was not a co-sponsor of the application for permanent residence.

The Appeal Division reviewed two earlier Appeal Division

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[1] There may be some question as to whether the adoption process had the effect of making the respondent the adoptive mother of Bhawandeep. The issue was not before the Appeal Division and I therefore refused to hear argument of the issue on this application for judicial review. The Appeal Division proceeded on the basis that the respondent is the adoptive mother of Bhawandeep. I proceeded on the same basis.

decisions on relatively similar fact situations. It concluded that the approach taken in those decisions was consistent with the approach of the Federal Court of Appeal in *Sidhu v. Canada (Minister of Employment and Immigration)*[2] which it described as:

> ...to resolve issues such as joint sponsorship or joint applications for landing as questions of fact depending on the evidence before the particular panel.

The Appeal Division concluded in the following terms:

> In the instant case, the Appeal Division decides to follow the fact-based approach referred to above. Both the appellant [Kuldip] and his wife [here the respondent] signed the power of attorney giving authority to Darshan Singh Gill to adopt the applicant [Bhawandeep] on their behalf. Darshan Singh Gill on their behalf signed the deed of adoption. Both of them signed the Undertaking of Assistance. Their signatures appear on the financial evaluation..., and they signed the Notice of Appeal together. It was only the statutory declaration withdrawing the sponsorship of the applicant which was signed by the appellant alone.
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> Based on all the facts before it, the Appeal Division finds that the appellant and his wife are joint appellants in this appeal.
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> Accordingly, the motion of the respondent Minister to dismiss the appeal for lack of jurisdiction is dismissed. The motion of Mrs. Gill to be substituted for her husband as the appellant is allowed.
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> As it was only the appellant who withdrew the sponsorship of the application of the applicant, his wife was not a party to this withdrawal. Therefore, the refusal of the sponsored application for landing made by Bhawandeep Kaur Gill is not valid in law, and the appeal is allowed.

Counsel for the applicant Minister argued that the Appeal Division exceeded its jurisdiction in proceeding with the appeal, on the basis that only a sponsor can appeal to the appeal division, and the sponsor here, Kuldip, had withdrawn his appeal. Further, counsel argued that the Appeal Division erred in law in determining that the respondent was co-sponsor, or joint sponsor of Bhawandeep.

In *Sidhu*, the Federal Court of Appeal had before it a decision of the Immigration Appeal Board determining that on the facts before it, a husband and wife were not joint applicants for landing in Canada, but rather the wife was "...simply

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[2](11 April 1983), Court File: A-1013-82 (F.C.A.) (unreported).

accepting some responsibilities with respect to release of medical information, the telling of the truth and other responsibilities that would fall on the shoulders of the person wishing to enter this country." Mr. Justice Heald, writing for the Court, stated:

> In my opinion, this conclusion was not reasonably open to the Board. On page 9 of the Appeal Book, both appellant's father and mother signed a consent to the release of particulars of their medical condition. On page 10, they both signed a statutory declaration attesting to the truth of the information given in "the foregoing application". Again, on page 9, they both signed an acknowledgement that false statements or concealment of a material fact may result in permanent exclusion from Canada. When it is kept in mind as mentioned supra that both the father and the mother of the appellant are eligible for sponsorship by him, I think that the unmistakable inference to be drawn from the documentary evidence and from tile [sic] circumstances is that subject application found on pages 7 to 10 of the Appeal Book was, actually, a joint application by both the father and the mother.

While the Appeal Board in this matter considered whether or not there was a joint sponsorship rather than whether or not there was a joint application for landing, I am satisfied that a similar approach to that adopted by the Court of Appeal in *Sidhu* is appropriate here. On the basis of a parallel analysis, the Appeal Division here found, on the facts before it, that Kuldip and the respondent were joint sponsors and joint appellants to the Appeal Division, that since they were joint sponsors, the respondent had a right of appeal to the Appeal Division in her own right, and that therefore the Appeal Division had jurisdiction to hear her appeal. I am satisfied that, on the basis of the documentation and other evidence before it, both the conclusion that Kuldip and the respondent were joint sponsors and the conclusion that they were joint appellants to the Appeal Division were reasonably open to it.

While the *Immigration Act and Regulations* do not, by express words, contemplate joint sponsorships such as that found here to have been in place, equally, the *Act* and *Regulations* do not preclude such joint sponsorships. On the facts of this matter, not only did the respondent sign all of the documentation relevant to the application to sponsor, her income was decisive in qualifying Kuldip and herself as sponsors. Put another way, without her commitment to the obligations of sponsorship and her contribution to the family income, Kuldip would not himself have been eligible to sponsor Bhawandeep.

Counsel for the applicant urged that I distinguish *Sidhu* and rely on *Bruan v. Canada (Minister of Employment and Immigration)*[3] where Mr. Justice Nadon commented:

> The Appeal Division also found that the respondent honestly believed that his sponsorship was a joint sponsorship i.e. his mother supported by his sister.

Mr. Justice Nadon himself made no finding on the issue of whether a joint sponsorship is well founded in law or on whether the facts there before the Appeal Division supported its finding of a joint sponsorship. *Bruan* was decided on entirely different grounds. Accordingly, I find it to be of no direct relevance to the determination of this application for judicial review.

Finally, although, as indicated earlier, I was referred to no provisions of the *Immigration Act and Regulations* that directly contemplate joint sponsorship, nor to any provision negativing the possibility of joint sponsorship, the applicant's *Inland Processing Policy Manual* specifically contemplates the possibility of co-sponsors which I take to be the same as joint sponsors. The reference in the Manual is somewhat ambivalent but, put at its lowest, it does not purport to negative the possibility of co-sponsors or joint sponsors.

Based on the foregoing considerations, I conclude that the decision of the Appeal Division was reasonably open to it. In the result, this application for judicial review will be dismissed.

Both counsel recommended certification of a question in substantially the following terms:

> Can a spouse, by signing an "Undertaking of Assistance" as a spouse and fulfilling the requirements of the Inland Processing Policy Manual, Chapter 4, Section 4.5, be characterized as a "joint sponsor" or "co-sponsor" with rights

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[3] [1995] 3 F.C. 231, at 239 (T.D.).

> and responsibilities of a "sponsor" within the meaning of the *Immigration Act and Regulations*?

I am satisfied that a question in the foregoing terms which, as I have earlier indicated, is modified as to form only, from the terms of the question recommended by both counsel, is a serious question of general importance that would be determinative on an appeal of my decision in this matter. A question in the foregoing terms will be certified.

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Judge

Ottawa, Ontario
September 29, 1997