Federal Court  Cour fédérale

**Date: 20200123**

**Docket: IMM-2062-19**

**Citation: 2020 FC 118**

**Ottawa, Ontario, January 23, 2020**

**PRESENT: The Honourable Mr. Justice Ahmed**

**BETWEEN:**

**BHUPINDER SINGH MAAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] This case concerns the decision of a visa officer in New Delhi, India (the "Officer") to refuse the Applicant's application for a work permit as the accompanying spouse of an Indian national who is in Canada on a study permit. Under the *Immigration and Refugee Protection*

*Act*, SC 2001, c 27 ("*IRPA*"), spouses of certain temporary residents are eligible to apply for work permits.

[2] By letter dated February 5, 2019, the Officer refused the work permit application on the basis the Applicant had failed to provide sufficient evidence or explanation to support his claim that the marital relationship to his spouse is genuine or not entered into primarily for the purpose of acquiring a status or privilege under the *IRPA*. The Officer found the Applicant inadmissible to Canada pursuant to section 40(1)(a) of the *IRPA*, which carries a five-year bar on re-entry to Canada under section 40(2)(a) of the *IRPA*.

[3] The Applicant submits that the Officer's decision is unreasonable and that the Officer made findings of fact in a perverse and/or capricious manner.

[4] For the reasons that follow, I am of the view that the Officer's decision is reasonable and this application for judicial review is dismissed.

## II. **Facts**

[5] Mr. Bhupinder Singh Maan (the "Applicant") is a 25-year-old national of India. The Applicant is recently married to Ms. Pawanpreet Kaur, a 23-year old national of India, who is currently in Canada on a study permit.

[6] The Applicant and Ms. Kaur are both residents of Punjab. Through family connections, they were set up to be in an arranged marriage. The families met on January 31, 2018, which was around the same time that Ms. Kaur submitted her application for a study permit in Canada. Ms. Kaur had drafted her application on January 29, 2018, and submitted it to her immigration consultant, who filed it on January 31, 2018. The arranged marriage proceeded quickly after the

families met, as the Applicant was the eldest of two sons and his family was keen on an early marriage for their son. On February 1, 2018, a small engagement ceremony was held. The marriage took place on February 4, 2018, with religious ceremonies and a large gathering of friends and family. After the wedding, the couple visited various relatives. Ms. Kaur states in her affidavit that she was with the Applicant's family for over two months prior to her departure to Canada.

[7] Ms. Kaur received her visa on March 15, 2018. She left for Canada on April 13, 2018. Ms. Kaur alleges that upon landing, she informed the immigration officer at the airport about her change in marital status.

[8] On or about June 29, 2018, the Applicant submitted his work permit application as an accompanying spouse to the Canadian Visa Officer in New Delhi, India. The Applicant was invited for an interview, and on November 15, 2018, the interview was conducted in New Delhi.

[9] The pre-interview entries on the Global Case Management System ("GCMS") indicate that Ms. Kaur had been single when she applied for her student permit, and married shortly before her visa was issued. Ms. Kaur arrived in Canada soon after the wedding, but did not inform the visa office or the immigration officer at the port of entry that her marital status had changed.

[10] During the interview, the Officer noted several concerns regarding the bona fides of the marriage between the Applicant and Ms. Kaur, such as the incompatibility of education; the hastily finalized marriage; the inability of the Applicant to explain how the wedding could have been arranged in 3-4 days; the Applicant's lack of knowledge on the fact that Ms. Kaur had been planning to go to Canada; the fact that the photographs did not show the stated attendance of

250-300 guests at the wedding; the Applicant's lack of holiday with Ms. Kaur and the Applicant's inability to provide an explanation when questioned; the Applicant's lack of knowledge of Ms. Kaur; and the limited evidence of contact between the Applicant and Ms. Kaur.

[11] By letter dated February 5, 2019, the Officer refused the work permit application. Based on the application, supporting documents, application notes, and interview notes, the Officer found that the Applicant provided insufficient information or explanation regarding the progression of his relationship with Ms. Kaur, the wedding, time spent together after the marriage, and their current living arrangements to support the assertion that their marriage is genuine. The Officer also found that the Applicant provided insufficient evidence or explanation as to the ongoing communication between the couple before and after the marriage.

[12] Thus, on a balance of probabilities, the Officer found that the Applicant failed to provide sufficient evidence or explanation that his marital relationship to his spouse is genuine or not entered into primarily for the purpose of acquiring a status or privilege under the *IRPA*. The Officer also found the Applicant inadmissible to Canada pursuant to section 40(1) (a) of the *IRPA*, which carries a five-year bar on re-entry to Canada.

[13] This is the decision underlying this application for judicial review.

## III. **Preliminary Issue**

[14] As the Respondent notes, the Applicant has attempted to place before the Court considerable evidence that was not before the Officer. Pages 56 to 61 of the Application Record and the supplementary affidavit provide further evidence of a trip made to India in May 2019.

> As stated by the Federal Court of Appeal in *Love v Canada (Privacy Commissioner)*, 2015 FCA 198 (CanLII) at para 17:
>
> It is trite law that, in general, a judicial review application is to be determined based on the record that was before the administrative decision-maker. The recognized exceptions to this rule are narrow and generally involve only three types of evidence: general evidence of a background nature that is of assistance to the Court; evidence that is relevant to an alleged denial of procedural fairness by the decision-maker that is not evident in the record before the decision-maker; or evidence that demonstrates the complete lack of evidence before a decision-maker for an impugned finding: *Association of Universities and Colleges of Canada v. Canadian Copyright Licencing Agency (Access Copyright)*, 2012 FCA 22 (CanLII), 428 N.R. 297 at paras. 18-20; *International Relief Fund for the Afflicted and Needy (Canada) v. Canada (National Revenue*), 2013 FCA 178 (CanLII), 2013 D.T.C. 5161 at para. 10.

[15] The evidence sought to be placed before the Court falls under none of the recognized exceptions. Thus, pages 56 to 61 of the Application Record and the supplementary affidavit are excluded from consideration before this Court.

## IV. **Issues and Standard of Review**

[16] The key issues on this application for judicial review are:

1. Did the Officer err in finding the Applicant to be inadmissible for misrepresentation?

2. Was the Officer's refusal of the Applicant's work permit application reasonable?

[17] As per the revised standard of review framework set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*], the analysis begins with the presumption of reasonableness. This presumption can be rebutted in two types of

situations: first, where the legislature has indicated that it intends a different standard to apply, i.e. where it has explicitly prescribed the applicable standard of review, or where it has provided a statutory appeal mechanism from the administrative decision maker to a court; and second, where the rule of law requires that the standard of correctness be applied, for example in certain categories of legal questions, namely constitutional questions, general questions of law of central importance to the legal system as a whole and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at para 17).

[18] In the case at bar, neither exception to the presumption of reasonableness applies. Therefore, the standard of review is reasonableness for both issues.

## V. **Relevant Provisions**

[19] Subsection 30(1) of the *IRPA* reads as follows:

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|---|---|
| **Work and study in Canada** | **Études et emploi** |
| **30 (1)** A foreign national may not work or study in Canada unless authorized to do so under this Act. | **30 (1)** L'étranger ne peut exercer un emploi au Canada ou y étudier que sous le régime de la présente loi. |

[20] Under subsections 199(c) and (e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*"), a foreign national may apply for a work permit if they are a family member of a person holding a study permit:

| | |
|---|---|
| **Application after entry** | **Demande après l'entrée au Canada** |
| **199** A foreign national may apply for a work permit after entering Canada if they | **199** L'étranger peut faire une demande de permis de travail après son entrée au Canada dans |

**(a)** hold a work permit;

**(b)** are working in Canada under the authority of section 186 and are not a business visitor within the meaning of section 187;

**(c)** hold a study permit;

**(d)** hold a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months;

**(e)** are a family member of a person described in any of paragraphs (a) to (d);

[…]

les cas suivants :

**a)** il détient un permis de travail;

**b)** il travaille au Canada au titre de l'article 186 et n'est pas un visiteur commercial au sens de l'article 187;

**c)** il détient un permis d'études;

**d)** il détient, aux termes du paragraphe 24(1) de la Loi, un permis de séjour temporaire qui est valide pour au moins six mois;

**e)** il est membre de la famille d'une personne visée à l'un des alinéas a) à d);

[…]

[21] Subsection 4(1) of the *IRPR* reads as follows:

**Bad faith**

**4 (1)** For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership

**(a)** was entered into primarily for the purpose of acquiring any status or privilege under the Act; or

**(b)** is not genuine.

**Mauvaise foi**

**4 (1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :

**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;

**b)** n'est pas authentique.

## VI. **Analysis**

[22] The Applicant sought to apply for an open work permit as the spouse—a "family member"—of Ms. Kaur, a foreign national holding a study permit. However, as the Officer determined that the Applicant was not in a genuine marriage with Ms. Kaur, he was found to be inadmissible under section 40(1)(a) of the *IRPA*. The Officer found that the Applicant's misrepresentation could have induced an error to issue the Applicant with an open work permit as the accompanying spouse of a foreign national who holds a study permit.

[23] The Applicant submits that the Officer made an unreasonable decision based on erroneous findings of fact made in a perverse and/or capricious manner. The Applicant submits that he answered every question at the interview, and did not provide any wrong information. He alleges that there were some moments of nervousness, which is why he did not answer. The Applicant submits that the Officer erred in finding that the Applicant and Ms. Kaur were "incompatible in terms of education" since the Applicant had obtained a diploma to become more employable. The Applicant submits that it was unreasonable for the Officer to have found it problematic that the photographs did not show all the guests in one photo. Moreover, the Applicant points out that he and his wife did not have the "luxury of a holiday" after incurring large expenses for the wedding. As for the Officer's finding of an incorrect course completion date, the Applicant submits that he understood the phrase "completion of the course" to mean the end of final exams, and not the end of the "official year". However, this explanation was not provided to the Officer during the interview.

[24] The Respondent submits that subsection 40(1)(a) of the *IRPA* is written broadly and may apply in situations even where there is "an innocent failure to provide material information,"

(*Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 (CanLII) at para 15). The presence of *mens rea*, premeditation, or intent is not required for a finding of inadmissibility due to misrepresentation. The Respondent submits that the Applicant provides various explanations that were not before the Officer, in support of his contention that the Officer erred.

[25] I agree with the Respondent. The GCMS interview notes indicate that the Applicant could not provide answers or explanations on several of the seemingly straightforward questions, such as how it was possible to arrange a wedding in 3-4 days, and why the Applicant and Ms. Kaur did not go on holiday together after the wedding. Although I would have been prepared to accept that some of the concerns noted by the Officer could be explained by the fact that this was an arranged marriage, the onus was nevertheless on the Applicant to provide sufficient information to address the concerns of the Officer on the genuineness of the marriage. However, a review of the record reveals that the Applicant simply failed to provide sufficient explanations or evidence to alleviate the Officer's concerns. Certainly, the Applicant could have better explained some of the questions during the interview as he is attempting to do through the affidavit on this application, but the record shows that he did not. Based on the Applicant's lack of explanation or knowledge on aspects including his spouse's intention to go abroad, details on why the marriage was prepared hastily, how it was prepared so quickly, or why they did not go on holiday, the Officer reasonably concluded that the marriage was not genuine, and that the Applicant was thus inadmissible for misrepresentation.

[26] Given that the Officer did not err in finding the Applicant to be inadmissible for misrepresentation, it was reasonable for the Officer to refuse the Applicant's work permit application, since the Applicant would no longer be eligible as a "family member" of a foreign national holding a study permit, under section 199 of the *IRPR*.

## VII. **Certified Question**

[27] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

## VIII. **Conclusion**

[28] The Officer reasonably found the Applicant to be inadmissible for misrepresentation under section 40(1)(a) of the *IRPA*. The Officer's refusal of the work permit application was also reasonable. This application for judicial review is dismissed.

**JUDGMENT in IMM-2062-19**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-2062-19 |
| **STYLE OF CAUSE:** | BHUPINDER SINGH MAAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JANUARY 9, 2020 |
| **JUDGMENT AND REASONS:** | AHMED J. |
| **DATED:** | JANUARY 23, 2020 |

**APPEARANCES:**

| | |
|---|---|
| Maninder Sidhu | FOR THE APPLICANT |
| David Joseph | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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|---|---|
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