

Federal Court



Cour fédérale

Date: 20240131

Docket: IMM-10012-22

Citation: 2024 FC 158

Ottawa, Ontario, January 31, 2024

PRESENT: Madam Justice Pallotta

BETWEEN:

KARANJEET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant, Mr. Karanjeet Singh, is a citizen of India who applied for an open work permit on the basis that his spouse was in Canada on a work permit. He seeks judicial review of a visa officer's decision that refused his application, and found him inadmissible to Canada for a period of five years.

[2] The August 7, 2022 refusal letter Mr. Singh received from the visa office in New Delhi states the officer was not satisfied Mr. Singh had truthfully answered all questions asked of him. It states Mr. Singh was found inadmissible to Canada in accordance with paragraphs 40(1)(a) and 40(2)(a) of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]* for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that could induce an error in the administration of the *IRPA*, and that a foreign national shall not be considered a spouse if the marriage was entered into primarily for the purpose of acquiring any status or privilege under the *IRPA*.

[3] Mr. Singh asks that the decision be set aside because it is unreasonable and he was denied procedural fairness. For the reasons below, I find Mr. Singh has not established that the decision should be set aside on either ground.

II. **Background**

[4] Prior to the refusal, Mr. Singh attended an interview for the purpose of assessing his eligibility for an open work permit. The letter convoking the interview stated there were concerns about the genuineness of Mr. Singh's relationship with his spouse. The letter also stated the interview would include an assessment of this element, and put Mr. Singh on notice that if he engaged in misrepresentation in submitting his application, or during the interview, he could be found inadmissible to Canada for a period of five years.

[5] An officer (First Officer) interviewed Mr. Singh on June 15, 2022. During the interview, the First Officer asked about the spousal relationship and Mr. Singh's employment history. The

First Officer asked what Mr. Singh did while he was in the UK from June 10, 2015 to November 17, 2019. Mr. Singh said he lived with his brother and was not authorized to work. The First Officer asked him to explain how he went to the UK and whether he had a UK visa. Mr. Singh stated he had a Schengen visa and paid someone to facilitate his entry from France. He hid himself in a truck that crossed the border into the UK, was discovered, arrested, and spent 8 or 9 days in jail. Mr. Singh stated he was not deported and left the UK on his own.

[6] The First Officer's June 15, 2022 GCMS notes set out the officer's concerns as follows (as written):

Concerns: The circumstances the beginning of their relationship are not reasonable. He said that she sent her a Snapchat friend request by mistake while in her letter dated 15 Mar 2021 she states that they he was introduced to her by her brother. Marriage was arranged in haste. They decided to get married even without meeting each other. The marriage was done with a week of her arrival in India and she left after just 13-14 days. I do note another visit by the inviter but it appears she came to attend her brother's wedding. PA was not much knowledgeable about the inviter. He did not know in which country she lived before going to Canada. He said that she went as a restaurant worker to Canada which is not correct. He said that she has been working at Saffron Restaurant since 2013 while her employment letter states that she has been working there since Mar 2019. I don't find him to be a credible person. He went to the UK illegally. He has little respect for immigration rules. He was not truthful about his arrest on the appl form. He did not disclose what he did prior to 2019. This info is important for an admissibility review. I gave him a chance to respond. He said, "We talked to on the phone and did video chats. She came to India to meet me and the brother's marriage was just fixed after that". Concerns persist. I am not satisfied that this is a genuine marriage.

[7] Due to the concerns about misrepresentation, the First Officer wrote:

Case to C9580 for decision on misrepresentation. Married in haste and inviter left soon after. Applicant had limited knowledge about

the inviter. Provisions of A40 were explained to him at the interview and he was given an opportunity to respond. He has nothing substantive to say. Applicant has possibly misrepresented by submitting false information about his relationship with the host. This could have led to an error in the administration of the Act because it could have led an officer to be satisfied that the marriage was genuine and that he met the requirements for a spousal open work permit. On the appl form he did not disclose that he was arrested. He also did not disclose what he did prior to 2019. This could have led to an error in the administration of the Act because it could have led an officer to be satisfied that the applicant met the requirements of the Act with respect to background information including admissibility.

[8] Another officer (Second Officer) considered the matter on August 7, 2022. The Second Officer's GCMS notes state (as written):

I have reviewed the submissions and notes from the interviewing officer. I am satisfied that based on the submissions and the officers notes of the interview the marriage was entered upon for the benefit of the applicant obtaining status in Canada. There is a significant difference in their versions of how they met. She returned to attend the marriage of her brother and there is no indication that he attended as well - married couple? He did not know of her past travels and working outside of India - she has a history in Israel that he didn't know of. His lack of truthfulness concerning his attempted illegal entry to the UK is concerning. This illustrates a disregard of legalities of foreign countries and his intent on leaving India. It could be believed he would stop at nothing to leave India. On balance of probabilities, I am therefore of the opinion that the applicant has committed misrep under A40(1)(a) by submitting this information; this act could have induced an error in the administration of IRPA. Note that A40(1)(a) includes both direct and indirect misrep. Ultimately, only the applicant is responsible for their application. Refused under A40(1)(a) and A16(1)(a). 5 year inadmissibility applies. 4(1) of IRPR states that for the purposes of these Regulations, a foreign national shall not be considered a spouse, of a person if the marriage (a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or (b) is not genuine.

III. Issues and Standard of Review

[9] As noted above, Mr. Singh alleges that the decision is both unreasonable and procedurally unfair. The merits of the decision are reviewed on the reasonableness standard. This is a deferential but robust form of review that considers whether the decision, including the reasoning process and the outcome, is transparent, intelligible, and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 13, 99 [Vavilov]. Allegations of procedural unfairness are reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

[10] The respondent raises issues with two affidavits included in Mr. Singh's application record—one from Mr. Singh and one from his spouse. The respondent contends Mr. Singh's affidavit should be given little weight and the spouse's affidavit is inadmissible.

IV. Analysis

A. *Affidavits*

[11] The general rule is that a reviewing court assesses the reasonableness of a decision in light of the record that was before the decision maker: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20 [Access Copyright]. The affidavits provide evidence that was not before the officers.

[12] The respondent contends Mr. Singh's affidavit should be given little weight as Mr. Singh makes assertions of inaccuracies in the GCMS notes, six months after the date of his interview.

While Mr. Singh states he maintained his own notes at the interview, he did not attach the notes to his affidavit.

[13] Mr. Singh states the First Officer's interview notes contain incorrect information and his affidavit provides corrections to the questions asked and the answers given. Mr. Singh states the First Officer did not provide an affidavit attesting to the accuracy of the interview notes, the questions and answers at the interview are recorded in summary form, and the First Officer's summary was based on the officer's translation from Punjabi to English. In the circumstances, Mr. Singh states the GCMS notes have no status as evidence and his sworn evidence should be preferred: *Divya v Canada (Citizenship and Immigration)*, 2022 FC 620 at para 19; *Fsahaye v Canada (Citizenship and Immigration)*, 2019 FC 1657 at para 15; *Tekle v Canada (Citizenship and Immigration)*, 2022 FC 845 at para 20. Mr. Singh states his affidavit also includes evidence that is relevant to the allegations of procedural unfairness and therefore falls within a recognized exception. Mr. Singh states a finding of misrepresentation carries serious consequences (*Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38 at para 1), he was owed a higher degree of procedural fairness in light of those consequences, and his evidence is important. Mr. Singh states there is no merit to the respondent's argument that his evidence should be afforded little weight because he did not attach his interview notes. The respondent could have cross-examined him, but did not do so.

[14] In my view, Mr. Singh's evidence of what was said at the interview is admissible. I agree with Mr. Singh that the respondent had the opportunity to cross-examine him, and the affidavit evidence should not be afforded little weight because the interview notes were not attached as an

exhibit. I also find that Mr. Singh's evidence on the procedural fairness issue is admissible as an exception to the general rule: *Access Copyright* at para 20.

[15] The respondent contends the spouse's affidavit does not fall within an exception to the general rule that the evidence on judicial review is limited to the evidence that was before the decision maker: *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 42 [*Delios*]. Mr. Singh argues his spouse's affidavit falls within the general background exception and corroborates his own evidence that certain assertions in the First Officer's GCMS notes are not true.

[16] I agree with the respondent that the spouse's affidavit is inadmissible. The spouse's affidavit provides new evidence that does not fall within an exception to the general rule. It does not fall within the general background exception, which applies to non-argumentative orienting statements that assist the Court in understanding the history and nature of the case that was before the administrative decision maker: *Delios* at para 45. The spouse cannot attest to what was said at the interview and the affidavit attempts to supplement the record with evidence related to findings about the relationship.

B. *Was the decision unreasonable?*

[17] The parties' arguments must be understood in view of their respective positions about whose decision is under review and the basis for the misrepresentation finding.

[18] In his written argument, Mr. Singh states that the First Officer made the decision, and the Second Officer “reviewed and confirmed” the decision. In oral argument, Mr. Singh stated the First Officer formed an opinion and forwarded it to the Second Officer, who refused the application and found Mr. Singh to be inadmissible. Regardless of who made the decision, Mr. Singh contends it is unreasonable because the officers relied on erroneous findings of fact, erred in law, and gave inadequate reasons with respect to the misrepresentation finding. Mr. Singh submits the misrepresentation finding was based on his stay in the UK—specifically, that he had been untruthful about his illegal entry into the UK, and failed to disclose the arrest and what he did in the UK prior to 2019 on his application form. He states the finding is unreasonable, as he was not required to provide more information on his application form and he truthfully answered questions about the illegal entry into the UK during the interview. In any event, Mr. Singh states both officers’ findings regarding the genuineness of his marriage are also unreasonable and do not support a finding of misrepresentation. He contends the Second Officer relied on the First Officer’s interview notes, and errors in the First Officer’s notes taint the Second Officer’s findings.

[19] The respondent’s position is that the Second Officer is the only decision maker and the Second Officer’s misrepresentation finding was based on a misrepresentation about the *bona fides* of Mr. Singh’s marriage. The respondent states the Second Officer reasonably concluded that Mr. Singh’s marriage was not genuine and that it was entered for the primary purpose of facilitating his immigration to Canada. The Second Officer reasonably found that this constituted a misrepresentation of a material fact that could have induced an error in the administration of the *IRPA*.

[20] With these positions in mind, the specific reviewable errors Mr. Singh raises are as follows.

[21] With respect to misrepresentation, Mr. Singh states the finding was based on a flawed factual foundation. Mr. Singh states his application form disclosed England as a previous country of residence from June 10, 2015 to November 17, 2019, and listed his status there as “Visitor and out of status”. While the application form asks for employment history, he was not employed in the UK. The form includes a question asking, “Have you ever committed, been arrested for, been charged with or convicted of any criminal offence in any country or territory?”, but it does not ask a question that would have required him to declare immigration detention. Mr. Singh states he answered the questions on the application form truthfully, and he was not required to disclose any additional information about the UK. At the interview, he answered the First Officer’s questions about the UK truthfully.

[22] Mr. Singh argues the officers were required to determine whether: (a) there was a misrepresentation; (b) the misrepresentation concerned material facts relating to a relevant matter; and (c) the misrepresentation induced or could have induced an error in the administration of the *IRPA: Geng v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1155 at paras 22-23. Mr. Singh states the officers’ failure to do so with respect to his stay and detention in the UK constituted an error in law. Furthermore, he states the reasons are inadequate because the GCMS notes do not explain why the officers believed he misrepresented information on the application form. The notes do not explain why he was required to disclose

the UK arrest and detention, or the fact that he was not employed in the UK, in view of how the questions on the form were worded.

[23] With respect to the genuineness of the marriage, Mr. Singh argues the First Officer erred by relying on unreasonable findings to support the conclusion that his marriage is not genuine. Mr. Singh acknowledges that he did not know details about his spouse's travel or employment history, but states he did not know these things because his spouse did not tell him. A failure to know some things about his spouse does not mean the relationship is not genuine and, as a matter of procedural fairness, the First Officer should have put these concerns to him and provided an opportunity to respond. Also, Mr. Singh contends the First Officer: (i) misconstrued his spouse's description of how they met, finding an inconsistency when her description was not materially different from his own; (ii) relied on subjective views that failed to account for cultural customs and traditions in deciding whether the development of the relationship and their activities together were consistent with a genuine marriage; and (iii) found his spouse visited India in 2022 to attend her brother's wedding rather than to spend time with him. Mr. Singh contends these findings are contrary to the evidence and they are not supported with reasons that would allow him to understand why his application was refused.

[24] As noted above, the respondent submits the Second Officer was the only decision maker. While the First Officer noted two possible grounds of misrepresentation, the respondent contends the Second Officer's decision to refuse Mr. Singh's open work permit application was based solely on the fact that he had misrepresented the genuineness of his marriage, and Mr. Singh's illegal entry into the UK did not constitute a standalone misrepresentation finding.

[25] The respondent submits the Second Officer reasonably concluded that Mr. Singh's marriage was not genuine and he entered into it for the primary purpose of facilitating his immigration to Canada. The Second Officer considered the attempt to enter the UK illegally in assessing Mr. Singh's credibility in relation to the purpose of the marriage, and it was open to the officer to do so. It was reasonable for the Second Officer to conclude that Mr. Singh misrepresented a material fact that could have induced an error in the administration of the *IRPA* because he was not a *bona fide* spouse. Mr. Singh therefore made a misrepresentation by declaring himself a family member who was eligible for an open work permit on the basis that he was married to the inviter.

[26] I find Mr. Singh has not met his burden to establish that the decision is unreasonable.

[27] I agree with the respondent that the Second Officer made the decision that is under review.

[28] I also agree that the Second Officer's misrepresentation finding was based on the genuineness of Mr. Singh's marriage.

[29] The First Officer flagged two possible grounds for a finding of misrepresentation: (i) that Mr. Singh had possibly misrepresented by submitting false information about his relationship with the host, which could have led to an error in the administration of the *IRPA* because it could have led an officer to be satisfied that the marriage was genuine and he met the requirements of an open work permit; and (ii) Mr. Singh's application form did not disclose that he was arrested and did not disclose what he did prior to 2019, which could have led to an error in the

administration of the *IRPA* because it could have led an officer to be satisfied that Mr. Singh met background requirements including admissibility.

[30] In my view, the Second Officer's misrepresentation finding was based on the first ground, that the marriage was entered in bad faith contrary to paragraph 4(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. I am not persuaded that the misrepresentation finding was based on the second ground, namely, a failure to disclose information on the application form that could have led to an error in assessing background admissibility requirements.

[31] Turning to the alleged errors in assessing the genuineness of the marriage, I am not persuaded of a reviewable error that renders the conclusion on the purpose of the marriage unreasonable.

[32] The Second Officer relied on subsection 4(1) of the *IRPR*, which provides:

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

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) is not genuine

b) n'est pas authentique.

[33] As the respondent points out, an applicant bears the onus of establishing the *bona fide* nature of the marriage on a balance of probabilities: *Kaur Nahal v Canada (Citizenship and Immigration)*, 2016 FC 81 at paras 4-5. Subsection 4(1) of the *IRPR* is disjunctive, there is no specific test for assessing the purpose of entering into a marriage or whether it is genuine, and it is for the visa officer to determine the weight assigned to the evidence: *Canada (Public Safety and Emergency Preparedness) v Chen*, 2013 FC 215 at para 43; *Seraphin v Canada (Citizenship and Immigration)*, 2015 FC 779 at paras 9-10.

[34] While Mr. Singh acknowledges that he did not know his spouse lived in Israel for five years before moving to Canada, and he did not know her employment history in Canada, he states this was only because she did not tell him these things. Mr. Singh states it was unreasonable for the officers to rely on his lack of knowledge, which does not establish a non-genuine relationship. I disagree. As noted above, there is no set test for determining whether a marriage is genuine. Officers are entitled to weigh various factors and I see no error in relying on Mr. Singh's lack of knowledge about his spouse's past. Mr. Singh states the First Officer should have put these points to him and afforded an opportunity to explain. I am not persuaded that the officer was required to do so, and in any event, it would not change the fact that Mr. Singh was unaware of his spouse's travel and employment history. The Second Officer was correct that Mr. Singh did not know his spouse's history in Israel.

[35] The officers also reasonably relied on a significant difference between Mr. Singh's and his spouse's accounts of how they met. The officers did not err in finding that Mr. Singh's

account (that they started chatting on Snapchat after the spouse accidentally sent a friend request intended for someone else with the same name, and later Mr. Singh discovered that he knew her brother) was materially different from the spouse's account (that she was introduced to Mr. Singh by her brother in February 2019 while the men were residing in the UK, she and Mr. Singh initially started chatting with each other on Snapchat, and later they started talking and video calling daily). Mr. Singh's argument that the two accounts are not materially different relies on a strained interpretation of what his spouse intended to convey by her letter.

[36] I am not persuaded that the officers relied on subjective views that failed to account for cultural customs and traditions in deciding whether the development of the relationship and their activities together were consistent with a genuine marriage. Mr. Singh does not rely on any factually inaccurate findings in support of this argument.

[37] On the points above, the evidence in Mr. Singh's affidavit is generally consistent with the First Officer's interview notes. However, the affidavit provides a slightly different account of what Mr. Singh told the officer about his spouse's second visit to India in 2022. The interview notes say, "She then came to India on 7 Feb 2022 for 1.5 months to meet him. I asked if she came to [attend] some wedding. He said that her brother got married on 27 March 2022 and she attended that wedding" [emphasis added]. The interview notes also indicate the First Officer gave Mr. Singh a chance to respond to the officer's concerns and Mr. Singh said, "We talked on the phone and did video chats. She came to India to meet me and the brother's marriage was just fixed after that." According to Mr. Singh's affidavit, the First Officer asked if his spouse visited him after their wedding, and he responded that she came to India on February 7, 2022 and left on

March 29, 2022. Mr. Singh says he told the First Officer he and his spouse attended her brother's wedding, which was fixed after she arrived in India, and she extended her stay.

[38] The Second Officer's GCMS notes state that Mr. Singh's spouse returned to India to attend the marriage of her brother, and there was "no indication that he attended as well". While this was consistent with the First Officer's interview notes, Mr. Singh's evidence is that he told the First Officer he attended the wedding too.

[39] I accept that the Second Officer's statement was an error; however, I find the error does not constitute a sufficiently serious shortcoming to render the decision unreasonable and justify setting it aside: *Vavilov* at para 100. The inconsistent accounts of how the couple met and Mr. Singh's lack of knowledge about his spouse's past were significant findings that justified the conclusion, particularly in view of the Second Officer's credibility findings. The Second Officer found that Mr. Singh's lack of truthfulness concerning his attempted illegal entry to the UK illustrated a disregard of the legalities of foreign countries and the lengths to which he will go to leave India.

[40] Mr. Singh argues that the credibility finding was itself unreasonable because he was not untruthful about his attempted illegal entry. I disagree. Mr. Singh indicated on his application form that he previously resided in England as a "Visitor and out of status". In fact, Mr. Singh did not enter the UK on a visitor visa. He paid someone to cross the border illegally from France while he hid in a truck, stayed in the UK for four years, and left two weeks before getting married in India. Mr. Singh's description of his UK status as "Visitor and out of status" was

deceptive and the Second Officer did not err in finding a “lack of truthfulness concerning his attempted illegal entry to the UK”. The Second Officer reasonably assessed Mr. Singh’s credibility, and reasonably considered credibility as a factor in deciding whether he had entered a marriage primarily for the purpose of acquiring any status or privilege under the *IRPA*.

[41] I would add that I agree with the respondent’s point that the interview letter told Mr. Singh to bring documentary proof of the genuineness of the relationship, including post-marriage photographs and proof of ongoing communication. Mr. Singh provided no photographs from the brother’s wedding, and no communications with his spouse or other evidence to demonstrate that she went to India in 2022 to visit him.

[42] In summary, Mr. Singh has not established that the decision to refuse his application and find him inadmissible for misrepresentation was unreasonable.

C. *Was the decision procedurally unfair?*

[43] Mr. Singh submits the First Officer breached procedural fairness by failing to put him on notice of concerns about the genuineness of the marriage. He states that, toward the end of the interview, the First Officer notified him of concerns related to the stay and detention in the UK, but did not notify him of concerns about the genuineness of the relationship. Mr. Singh states the Second Officer also did not provide an opportunity to address concerns about the genuineness of the relationship and he only learned about those concerns upon receiving the GCMS notes.

[44] The respondent submits the decision to refuse Mr. Singh's application was procedurally fair. Mr. Singh was put on notice of concerns about the genuineness of his marriage in the letter convoking the interview: *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 35 [*Likhi*]. The letter specifically noted that Mr. Singh should bring corroborative evidence to the interview. Mr. Singh was given ample opportunity to address concerns regarding the genuineness of the marriage.

[45] I find Mr. Singh has not established a breach of procedural fairness. Mr. Singh had advance notice that the purpose of the interview was to assess the genuineness of the marriage: *Likhi* at para 35. As the respondent correctly points out, the letter convoking the interview specifically raised a concern with the genuineness of the marriage and directed Mr. Singh to bring documents to the interview, including photographs of the marriage ceremony, post-marriage photographs, proof of ongoing communications, and "any other information you feel demonstrates the genuineness of your relationship to your spouse". Mr. Singh states it was unnecessary to bring additional documentation because he had already provided documentary proof when he submitted his application. Even accepting this to be the case, Mr. Singh was warned of concerns about the genuineness of his marriage based on that application. He was granted an interview for the purpose of addressing the concerns and he was given an opportunity to bring additional proof. Mr. Singh decided that additional proof was unnecessary, but that does not impugn the fairness of the process.

V. **Conclusion**

[46] Mr. Singh has not established that the decision to refuse his open work permit application and find him inadmissible due to misrepresentation was unreasonable or procedurally unfair.

Accordingly, this application for judicial review is dismissed.

[47] The parties did not propose a question for certification. I find no question for certification arises on the facts of this case.

JUDGMENT in IMM-10012-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10012-22

STYLE OF CAUSE: KARANJEET SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

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DATED: JANUARY 31, 2024

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