

Federal Court



Cour fédérale

Date: 20141128

Docket: IMM-3146-14

Citation: 2014 FC 1147

Ottawa, Ontario, November 28, 2014

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

YOGRAJ SINGH BUNDHEL

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

Let the attached edited version of my Reasons delivered orally from the bench at Vancouver, British Columbia, on November 17, 2014, be filed to comply with section 51 of the *Federal Courts Act*.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

REASONS

[1] The Applicant, Yograj Singh Bundhel, challenges a decision made on April 3, 2014, denying his application for a temporary work permit. Mr. Bundhel is an actor who sought to enter Canada to work on the set of a movie production. The basis of the decision was a finding that Mr. Bundhel had misrepresented his background, pertaining specifically to two serious criminal charges in India.

[2] Mr. Bundhel's visa application included the following question: "Have you ever committed, been arrested for, been charged with or convicted of any criminal offence in any country?"

[3] If the applicant provides an affirmative response to this question he is required to provide details. Mr. Bundhel answered in the negative. This was inaccurate. Mr. Bundhel had faced charges in India in connection with a reckless driving case and for harbouring a fugitive accused of murder. Although his convictions were later overturned on appeal, it is beyond doubt that Mr. Bundhel had been arrested and charged in connection with both matters.

[4] The Officer provided Mr. Bundhel with an opportunity to explain the discrepancy. The excuse he offered was that his answer was merely a "clerical mistake"; because he was ultimately acquitted of the criminal charges, he did not believe the details needed to be mentioned.

[5] The Officer was not satisfied with Mr. Bundhel's explanation and found that a misrepresentation had occurred. Her reasons were stated as follows:

I have considered this response in the spirit of the way we have phrased our question on the application form. Clearly we wish to know about prior arrests and charges even if they do not eventually result in conviction or we would not ask the question. By concealing his prior arrest and conviction even if it did end in acquittal the applicant could have induced an error in the administration of the Immigration and Refugee Protection Act. Specifically: the applicant is applying for a work permit and temporary resident visa to visit Canada. By not providing truthful information regarding his background the officer would not have had the information necessary to determine whether or not he would fall into A36(1)(c) having committed an offence outside of Canada causing arrest and charged with an offence which would equate to Section 221 of the Criminal Code of Canada. I do not accept that this was a clerical error as the way the question is worded makes it abundantly clear we are concerned with charges and arrests as well as convictions. Applicant has failed in his requirement to answer all questions truthfully as per A16(1). As such the applicant is inadmissible under A40(1) of the IRPA. Refused on bonafides and for misrepresentation.

[6] Mr. Bundhel argues that this decision was unreasonable because his explanation was "at least plausible on its face" and it therefore demanded that the Officer explain why it was not accepted. He also argues that he corrected the factual record at the first opportunity and some consideration of that mitigating factor ought to have been applied. Finally, he points to the serious consequences that the misrepresentation finding will have for his future overseas travel.

[7] None of these arguments has merit. The Officer reasonably concluded that Mr. Bundhel had deliberately concealed the facts of his criminal arrests and prosecutions. The question that he was asked does not allow for ambiguity. Mr. Bundhel knew full well that he had been arrested and charged in connection with two serious criminal matters and the Officer found that he

deliberately withheld that information on his application. His response to the Officer failed to explain how he could have plausibly misunderstood those parts of the criminality question.

There was, accordingly, no basis for the Officer to make a finding other than the obvious one – that is, Mr. Bundhel was being dishonest when he withheld the true facts, knowing that a truthful answer could create admissibility problems.

[8] Mr. Bundhel's complaint that the Officer should have considered the fact that he owned-up to the problem at the first available opportunity is also unjustified. Mr. Bundhel only acknowledged the true facts when he was confronted with them. This is not equivalent to a situation where an applicant owns-up to a mistake before it is brought to light or where the file already contains the correct information. In such a case, a favourable inference is more likely to be drawn because it is suggestive of an innocent mistake and not a wilful omission. The same point is made in *Uppal v Canada (Minister of Citizenship and Immigration)*, 2009 FC 445, where Justice Anne Mactavish stated the following:

30 The misrepresentations in this case were made in the context of the applications for permanent residence that were under consideration by the officer. In such circumstances, the fact that the misrepresentations were disclosed by the applicants prior to a final decision having actually been taken in relation to their applications does not assist them. Indeed, this Court specifically rejected this argument in *Khan v. Canada (Minister of Citizenship & Immigration)*, 2008 FC 512 at paras. 27-29.

31 That is, the Court held in *Khan* that such an interpretation would lead to situations where individuals could knowingly misrepresent their circumstances, but nevertheless escape an inadmissibility finding, as long as they disclosed the misrepresentation right before a decision was made. Not only would such an interpretation encourage the abuse of the Act, it also ignores the requirement to provide truthful information in applications under the Act.

32 The Court's concerns in *Khan* are amply illustrated by the facts of this case, where the applicants only came forward with their "clarification" once they knew that their lies were about to be uncovered through genetic testing.

33 As a consequence, I am satisfied that the officer's conclusion that the applicants had misrepresented material facts relating to a relevant matter that could have induced an error in the administration of the Act was one that was reasonably open to him on the record before him.

[9] The fact is, our system of immigration control relies heavily on the truthfulness of those who apply to come here. Those who misrepresent their histories or withhold material information with a view to enhancing their chances for entry are undeserving of special consideration. The consequences for Mr. Bundhel are undoubtedly serious but they result from his failure to disclose material information. The integrity of Canada's control over its borders demands nothing less than scrupulous honesty from applicants and the rigid enforcement of that obligation. The Officer's decision fulfills this principle and is in all respects reasonable.

[10] This application is accordingly dismissed. Neither party proposed a certified question and no issue of general importance arises on this record.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3146-14

STYLE OF CAUSE: YOGRAJ SINGH BUNDHEL v MINISTER OF
CITIZENSHIP AND IMMIGRATION CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

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DATED: NOVEMBER 28, 2014

APPEARANCES:

Katrina Sriranpong

FOR THE APPLICANT

Mary E. Murray

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Overseas Immigration
Surrey, British Columbia

FOR THE APPLICANT

William F. Pentney
Deputy Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT