Federal Court Cour fédérale

Date: 20171218

Docket: IMM-1660-17

Citation: 2017 FC 1158

Ottawa, Ontario, December 18, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

AMANDEEP KAUR GILL

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], for judicial review of the decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada [IAD or the Board], dated March 16, 2017 [Decision], which found the Applicant inadmissible to Canada for misrepresentation and found that there were insufficient grounds to warrant humanitarian and compassionate [H&C] relief.

II. BACKGROUND

[2] The Applicant is a citizen of India and a permanent resident of Canada. She arrived in Canada on January 27, 2009, after being sponsored for permanent residence by her first husband. She and her first husband were married in India in an arranged marriage on April 8, 2008. The Applicant's first husband was a permanent resident of Canada and returned to Canada on May 14, 2008.

[3] The Applicant claims that problems in her first marriage began in November of 2008 when her first husband returned to India. The Applicant says that, even though her family had already paid a dowry of 10 lakhs, her first husband's parents demanded an additional 30 lakhs which the Applicant's family could not afford. At some point before leaving for Canada, the Applicant returned to living with her parents.

[4] The Applicant received her permanent resident visa in January of 2009. After arrival in Canada, she lived with a friend of her father. The Applicant and her first husband filed for divorce on March 5, 2009. The divorce was finalized on September 4, 2010.

[5] In 2011, the Applicant remarried in India. She then sponsored her second husband for permanent residence in Canada. As a result of the Applicant's sponsorship application, Citizenship and Immigration Canada [CIC] began an investigation of the Applicant in 2012 for possible misrepresentation. CIC was concerned that the Applicant's first marriage was entered into for immigration purposes.

[6] In 2013, the Applicant was referred to the Immigration Division [ID] under s 44(2) of the Act for an admissibility hearing. The ID found that the Applicant was inadmissible to Canada for misrepresentation and issued an exclusion order on July 18, 2014.

[7] The Applicant appealed the exclusion order issued by the ID to the IAD.

III. DECISION UNDER REVIEW

[8] The IAD found that the exclusion order issued by the ID for misrepresentation is valid and that there are insufficient H&C grounds to allow the Applicant's appeal or to stay the exclusion order.

[9] The Decision explains that in evaluating an exclusion order for misrepresentation made because of an allegedly non-genuine marriage, the first determination to be addressed is whether the marriage is genuine. See *Canada (Citizenship and Immigration) v Peirovdinnabi*, 2010 FCA 267 at para 31. Factors to consider when establishing the genuineness of an arranged marriage were identified in *Khera v Canada (Citizenship and Immigration)*, 2007 FC 632 at para 10.

[10] The IAD proceeds to recount the Applicant's testimony at the IAD hearing. The Applicant testified that her marriage to her first husband broke down before she arrived in Canada because his family demanded an additional dowry payment that the Applicant's family could not afford. The Applicant acknowledged that, upon arrival in Canada, she was met by her father's friend at the airport and that she lived with that individual.

[11] The IAD contrasts the Applicant's testimony with information she gave during an investigation by CIC into her first husband's alleged misrepresentation when sponsoring the Applicant for permanent residence. A statutory declaration filed by the Applicant stated that, upon arrival in Canada, she had lived with her first husband's family. The declaration also stated that the Applicant's family discovered that the Applicant's first husband was having an extramarital affair in India and was abusing drugs and alcohol. During an interview with a CIC officer, the Applicant alleged that she had lived with her first husband's sister after arriving in Canada. She said that her first husband's parents had returned to Canada shortly after her arrival and lived in the same house. In the interview, the Applicant said that she began living with her father's friend after she left her sister-in-law's house in early March 2009, because she was being treated like a servant by her first husband's family. The Decision notes that the timeline provided by the Applicant in the interview is contradicted by passport evidence which indicated that her first husband's parents did not return to Canada until May 2009.

[12] The Decision lists a series of inconsistencies the IAD considers material and finds that the Applicant lacks credibility because of them. The inconsistencies include: making a false statutory declaration; telling the immigration officer that she lived with her sister-in-law upon landing in Canada; listing her sister-in-law's address as her residence on a document; admitting that the statutory declaration contained untrue statements about her first husband; not mentioning demands for additional dowry during her interview with the CIC officer; elaborating on her father's due diligence in arranging her marriage only in testimony at the IAD hearing; and signing a joint divorce application that contained false information. The IAD finds that the

materiality of these inconsistencies impugns the Applicant's credibility to such an extent that a lack of credibility extends to all of the Applicant's evidence.

[13] This lack of credibility includes third-party affidavits submitted by the Applicant. The Decision notes that these affidavits contain virtually the same statements, and the Applicant did not know whether the affiants spoke English, how the affidavits were prepared, and whether they were translated before they were signed. As a result, the IAD places little weight on the affidavits.

[14] The Decision finds that the evidence about the core elements of a genuine arranged marriage is deficient in this case. The IAD rejects the Applicant's testimony about investigations conducted by her father before her marriage because this information was not offered at the ID hearing. The Decision notes the lack of evidence of cohabitation between the Applicant and her first husband. Even if the Applicant's testimony were accepted, the cohabitation ended before the Applicant departed for Canada.

[15] The IAD also points to an affidavit sworn by the Applicant's first husband as part of the investigation into his alleged misrepresentation when sponsoring the Applicant. The IAD notes that if the Applicant's first husband is believed, then the Applicant abandoned her marriage as soon as she received permanent resident status. On the other hand, if the Applicant's testimony is believed, her marriage was based on an agreement that her first husband would sponsor her for permanent residence in Canada in exchange for money. The Applicant's assertion that her

first husband's family demanded extra money does not assist the Applicant because it indicates a lack of due diligence expected in a genuine arranged marriage.

[16] The Decision concludes that the Applicant's actions show that she prioritized securing immigration status in Canada above working out her marriage.

[17] The Decision then considers whether H&C grounds justify allowing the Applicant's appeal or granting a stay of the exclusion order by analyzing each of the *Ribic* factors. See *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 at para 14 (QL) [*Ribic*]. See also *Canada (Citizenship and Immigration) v Deol*, 2009 FC 990 at paras 7 and 20.

[18] The IAD finds that the Applicant's misrepresentations were "deliberate and intentional." Since the integrity of the immigration system relies on applicants providing complete and truthful information, the Applicant's misrepresentations would hinder the administration of the Act. Therefore, the Decision states that "a high level of H&C grounds needs to be met in order for special relief to be granted."

[19] The IAD finds that the Applicant's attempt to place accountability for her false declaration on her former counsel indicates a lack of remorse. Further, the lack of credibility the IAD attributes to the Applicant prevents reliance on her statements of remorse.

[20] The Decision notes that the documentary evidence provided by the Applicant fails to corroborate her testimony about her present income. However, the IAD still finds that the

Applicant has achieved a modest level of establishment because of the length of time that she has lived in Canada. This counts favourably towards the Applicant.

[21] The Applicant does not have any family in Canada and does not require relief based on that factor.

[22] When considering hardship that removal to India would cause the Applicant, the IAD finds that the Applicant's actions demonstrate that the social stigma of her failed marriage would not be as great as she asserts. The Decision points out that the Applicant has returned to India for extended periods. She also remarried in India in 2011 and sponsored her second husband for immigration to Canada. While the IAD accepts that the Applicant has not seen her second husband since 2012, it notes that her divorce did not prevent remarriage.

[23] Weighed together, the IAD finds that Applicant's modest establishment and potential stigma if returned to India do not outweigh the seriousness of her misrepresentation or justify relief on H&C grounds.

IV. ISSUES

[24] The following are at issue in this application:

1. Is the IAD's determination that the Applicant is inadmissible for misrepresentation unreasonable?
2. Is the IAD's determination that there are insufficient grounds to justify granting H&C relief unreasonable?

V. STANDARD OF REVIEW

[25] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[26] The IAD's determination that the Applicant is inadmissible for misrepresentation is reviewable under a reasonableness standard. See *Jiang v Canada (Citizenship and Immigration)*, 2011 FC 942 at para 19; *Dhaliwal v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 157 at paras 27-29.

[27] The standard of review applicable to the IAD's determination of whether there are sufficient grounds to justify H&C relief is reasonableness. See *Uddin v Canada (Citizenship and Immigration)*, 2016 FC 314 at para 19; *Cortez v Canada (Citizenship and Immigration)*, 2016 FC 800 at para 17.

[28] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59 [*Khosa*]. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[29] The following provisions of the Act are relevant in this application:

Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
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;	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;
…	…
Appeal allowed	**Fondement de l'appel**
67 (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the	67 (1) Il est fait droit à l'appel sur preuve qu'au moment où il

time that the appeal is disposed of,	en est disposé :
…	…
(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.
…	…
Removal order stayed	**Sursis**
68 (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	68 (1) Il est sursis à la mesure de renvoi sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

VII. ARGUMENT

A. *Applicant*

(1) Misrepresentation

[30] The Applicant submits that the IAD failed to conduct a proper *de novo* evaluation of the evidence. She points to documentary evidence that was presented about dowry practices for arranged marriages in India and argues that her credibility must be evaluated through the lens of

that evidence. The status associated with marriage to a "non-resident Indian" leaves young Indian women subject to deception and manipulation. The documentary evidence also describes the prevalence of unreasonable dowry demands.

[31] The Applicant says that the IAD fixated on credibility issues and ignored the plausibility of a dowry dispute causing the breakdown of her marriage. She submits that the documentary evidence was capable of supporting a positive disposition regardless of her credibility. In the context of a claim for refugee protection under s 97 of the Act, the Federal Court of Appeal has held that a credibility "determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim": *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381 at para 3 [*Sellan*]. The Applicant submits that the IAD's failure to assess the documentary evidence amounts to ignoring relevant evidence. She points to the principle that "the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact 'without regard to the evidence'": *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 157 FTR 35 at para 17 (TD).

[32] The Applicant says that despite her warnings to the IAD against the dangers of applying western cultural expectations, the Decision lacks understanding of dowry practices on the Indian sub-continent and does not engage with the country condition evidence.

[33] The Applicant also submits that the Decision focuses inappropriately on the inconsistencies in her evidence when compared to her response to the s 44 report. She asserts that there is little discussion of her testimony before the IAD. The result is that the Decision places undue weight on the evidence that led to an inadmissibility finding before the ID rather than freshly assessing the Applicant's appeal.

[34] The Applicant also says that the IAD misinterpreted her testimony before the ID regarding investigations by her family as part of arranging her marriage, and erred when basing a credibility finding on this point. A full reading of the transcript shows that the Applicant testified that her family investigated her first husband in his village in India but that the Applicant did not know of the investigations conducted in Canada. The Applicant submits that any lack of knowledge about investigations is trivial and plausible in a culture of arranged marriages where parents take responsibility for such inquiries.

(2) H&C Grounds

[35] The Applicant further submits that the IAD erred in law by placing a higher burden on the Applicant to establish H&C grounds because the IAD was fixated on its credibility determination and this outweighed the H&C factors. The Applicant says that if Parliament had intended there to be a higher burden for claimants found to have misrepresented it would have stated that in the Act. Instead, s 67 of the Act provides the IAD with authority to permit an appeal where there are sufficient H&C grounds to warrant relief.

[36] The Applicant submits that the IAD's fixation on misrepresentation prevented a full consideration of establishment and the hardship she would face if removed to India. She points to the employment letters and tax assessments she provided to support her establishment in Canada. The IAD also ignored the documentary evidence when considering the hardship the Applicant would face upon removal. In *Cobham v Canada (Citizenship and Immigration)*, 2009 FC 585 at paras 27-28, inadequacy of reasons evaluating the establishment factor resulted in the decision being referred for redetermination.

[37] The Applicant therefore requests that judicial review be granted.

B. *Respondent*

(1) Misrepresentation

[38] The Respondent submits that the IAD's misrepresentation finding is based on its credibility assessment and that the Applicant is asking the Court to reweigh the evidence before the IAD and substitute its own determination.

[39] When making a credibility assessment, the IAD has the advantage of hearing live testimony: *Singh v Canada (Citizenship and Immigration)*, 2011 FC 1370 at para 18. The Court should not interfere unless a credibility finding is based on irrelevant considerations or ignores evidence. Similarly, where the inferences and conclusions drawn are reasonably open to the Board the Court should not interfere. See *Singh v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 347 at para 18. The IAD "is entitled to determine the plausibility and

credibility of the testimony and other evidence before it" and the weight assigned to that evidence: *Grewal v Canada (Minister of Citizenship and Immigration)*, 2003 FC 960 at para 9.

[40] The Respondent points out that whether a marriage is genuine is a question of fact and, therefore, subject to a high level of deference. See *Rosa v Canada (Citizenship and Immigration)*, 2007 FC 117 at para 23.

[41] The Respondent says that the Applicant's argument that the IAD failed to conduct a *de novo* hearing is without merit. Notwithstanding that a tribunal is presumed to have considered all the evidence before it, the Decision does expressly refer to the country condition evidence. But the IAD finds that the Applicant's lack of credibility prevents it from being able to believe the Applicant's claim that her family was subject to additional dowry demands. Even if the Applicant's evidence regarding additional demands were accepted, the Board concludes that this supports a finding that the Applicant's marriage was based on an agreement that her first husband would sponsor her in exchange for money.

[42] The Respondent rejects the Applicant's suggestion that the IAD adopted the ID's findings without conducting its own analysis. References to the ID's findings occur when the IAD is noting inconsistencies in the Applicant's testimony in the different tribunals.

(2) H&C Grounds

[43] The Respondent submits that the Decision considers each of the *Ribic* factors and that the Applicant's disagreement with the IAD's conclusion is another invitation for the Court to

improperly reweigh the evidence. The weight given to the *Ribic* factors is a matter within the IAD's jurisdiction and requires "assessment of [the] evidence in light of all the circumstances of the case": *Khosa*, above, at para 66. The Respondent says that the Applicant takes issue with the Board's analysis of the seriousness of the misrepresentation. But the issue before the Board was how to weigh the seriousness of the misrepresentation against the other factors. That a different conclusion is possible does not render the Decision unreasonable. See e.g. *Gittens v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 373 at paras 13-14.

[44] The Respondent says that no elevated standard was used to assess the seriousness of the Applicant's misrepresentation other than the balance of probabilities standard. In *Shah v Canada (Citizenship and Immigration)*, 2008 FC 708 at para 20, this Court held that the Board has greater expertise than the Court in weighing the *Ribic* factors. The Respondent says that the Decision does not ignore evidence and considers the Applicant's circumstances. Therefore, the IAD's fact-based assessment of how to weigh the factors should not be interfered with.

[45] The Respondent therefore requests that the application for judicial review be dismissed.

VIII. ANALYSIS

[46] The Applicant has raised two grounds for review.

A. *Failure to engage in* de novo *assessment*

[47] The Applicant says that the IAD had before it evidence capable of supporting a determination in the Applicant's favour which it ignored.

[48] On appeal to the IAD, the Applicant says she adduced a significant amount of documentary evidence on country conditions in India which established cultural norms for arranged marriages and the unrelenting demands of dowry for arranged marriages, as well as oral evidence.

[49] Her complaint is that the IAD had before it evidence to support the plausibility of the dowry dispute as a reason for the breakdown of her marriage with her first husband, but the IAD failed to consider any of this evidence and simply fixated on the issue of credibility.

[50] The Applicant relies upon the Federal Court of Appeal decision in *Sellan*, above, and points out that, in the present case:

> 50. Here, while the IAD refers to this evidence at paragraph 20 of its decision, this was only within the context of summarizing the Applicant's arguments. The IAD did not at all engage or assess the evidence. The IAD had before it independent evidence supporting the Applicant's account regarding the issue of cultural norms for arranged marriages in India and the unrelenting demands for dowry by her ex-husband.
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> 51. While at paragraph 10 the IAD indicates that it was aware of the principle against applying the expectations of a western marriage in assessing whether an arranged marriage is *bona fide*, the analysis that follows does exactly that. The IAD's judgment was clouded by its lack of understanding of the Indian sub-cultural continent. The abundant number of country conditions evidence adduced in support of the appeal may have affected the IAD's

> decision but instead nowhere in the decision does the IAD actually engage with this evidence. This was a *de novo* hearing and the IAD's failure to assess this evidence is particularly concerning and constitutes a reviewable error.
>
> …
>
> 53. Despite the fact that the role of the IAD on a de novo hearing was to independently assess the evidence, it simply relies upon the inconsistencies and untruths in the Applicant's evidence as a result of her response to the section 44 report. At paragraphs 36, 37 and 38 the IAD reiterates the credibility concerns in the Applicant's evidence before the ID instead of meaningfully engaging in the appeal based upon the materials presented before it. Aside from a brief mention of her testimony at the IAD at paragraph 36, there is scarcely any discussion of her evidence before the IAD including her testimony and the country conditions in India. Instead, the IAD continues to place undue weight on all the evidence that led to the finding of inadmissibility against her before the ID without a meaningful assessment of the appeal before it.

[51] The Applicant says that the IAD only mentions this evidence within the context of summarizing the Applicant's argument but it does not "engage or assess the evidence." The IAD does not dispute this evidence, but it is clear from the Decision as a whole that the IAD does not feel it overcomes the credibility concerns. This is because those concerns are based upon inconsistencies in the Applicant's evidence that are not related to the country condition documentation. At paras 30-32 of the Decision, the IAD has the following to say on point:

> 30. She contends that the evidence of country conditions which describes the practice of dowry in India supports the plausibility of the dowry dispute as a reason for the marriage breakdown. She submitted that the documentary evidence of the promissory notes, the sale of truck, and the affidavit of his village's head corroborates her testimony.
>
> [Footnotes omitted.]

[52] Having noted this evidence that supports the Applicant's position, the IAD then goes on to identify and assess material inconsistencies that "go to the core issues of genuineness and whether immigration is the primary purpose of the marriage." The IAD then comes to the following conclusions:

> [37] The Appellant lacks credibility as a consequence of the foregoing material inconsistencies, including her admission that she signed a false statutory declaration on the advice of her former counsel to avoid removal. The materiality of the inconsistencies impugns the Appellant's credibility to the extent that a lack of credibility extends to all the evidence emanating from her. As a consequence of the Appellant's admission of untruthfulness in her declaration, at the section 44 interview, the ID hearing and IAD hearing, it is not possible to ascertain with any degree of certainty "where the truth begins and ends."
>
> [Emphasis added.]

[53] This conclusion includes and takes into account "all the evidence emanating from her," which must include the evidence referred to in paras 30-32 of the Decision.

[54] The IAD's conclusion that the Applicant simply cannot be believed on anything she says is reasonably explained and is not out of line with the jurisprudence of this Court. See e.g. *Kaur Barm v Canada (Citizenship and Immigration)*, 2008 FC 893 at para 21.

[55] Just because the Applicant adduces new evidence on appeal that could explain her misrepresentations does not mean that she has necessarily redeemed herself. The IAD is obliged to consider this new evidence in the context of the whole file. As the Decision makes clear, this is what happened in this case. However, it is also clear that the country condition documents did

not, and could not, explain the inconsistencies relied upon by the IAD to find that the Applicant simply could not be believed.

[56] The IAD goes even further in addressing the Applicant's new evidence when it has the following to say about her oral testimony:

> [42] If the Appellant's testimony about the post-marriage demand for additional money is accepted as a version of the truth, which is not the Panel's finding, the families have arranged the marriage based on a payment of money for the Appellant's immigration to Canada. The thrust of the Appellant's testimony at the ID and IAD hearings revolves around the dowry paid to the groom's family, and the subsequent demand for more money to support her immigration and life in Canada:
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> - the demand for more money was contiguous with the sponsorship of the Appellant;
> - her husband's continuation with the marriage was contingent on her family's payment of an additional 30 lakhs (three times the original dowry); and
> - her sister-in-law demanded more money as a condition of allowing the Appellant to stay with her.
>
> [43] The foregoing monetary ultimatums suggest that the marriage was based on an agreement for the husband to sponsor the Appellant and to settle her in Canada, in exchange for money.
>
> [44] The Appellant's testimony that her sponsor demanded the additional money after realizing he is short of funds to start of [*sic*] his business does not help the Appellant's case, because her testimony is that her sponsor's family was unaware her father borrowed money and sold property to fund the first dowry, and her family did to have the ability to pay the additional demands. This is an indication that no meaningful investigation was conducted to understand the Appellant's family background, including their financial circumstances, which would have been expected in a genuine arranged marriage.
>
> [Footnotes omitted.]

[57] A reading of the Decision as a whole makes it clear that the IAD did not, as the Applicant alleges, simply adopt the ID's findings without conducting its own *de novo* analysis.

[58] In para 36 of the Decision, the IAD lists as one of the grounds of inconsistency that:

> The Appellant testified at the IAD hearing about her father's due diligence in the arranged marriage. However, at the ID hearing, the Appellant did not know what investigations her father's friend conducted on her sponsor's family.

[59] The Applicant's testimony before the ID on this point was as follows:

> Q: Do you know what if any investigations your family did into your husband's family?
>
> A: Yes.
>
> Q: And what investigation did they do?
>
> A: They had asked in their village how this boy was, would he be good for our daughter, if he was good.
>
> Q: They asked in his village?
>
> A: Yes. My dad knew people in his village and my uncle's son also knew my husband.
>
> Q: Did anyone conduct an investigation into his life in Canada?
>
> A: Yes.
>
> Q: Who did that?
>
> A: My dad's friend.
>
> Q: Do you know what type of investigation he conducted?
>
> A: No.

[60] I agree with the Applicant that this is not much of a contradiction and is not really supportive of a negative credibility finding. However, it is mentioned in a fairly extensive list of other, more telling, inconsistencies and does not, in my view, render the negative credibility finding unreasonable.

B. *Assessment of H&C grounds*

[61] The Applicant says that the IAD applied too high a threshold in assessing the H&C grounds and placed undue weight on the misrepresentation.

[62] Pointing to para 49 of the Decision, the Applicant argues as follows:

> 58. It is submitted that this is an error in law. There either is unusual and undeserved hardship or there is not. If Parliament intended for a different and higher burden for claimant's [*sic*] that have misrepresented, it could have been clear in the IRPA. Instead, it is submitted that section 67 of the IRPA provides the IAD with the power to permit an appeal where there are sufficient humanitarian and compassionate considerations that warrant special relief.
>
> 59. In the present case, the Applicant recognizes that the jurisprudence is clear – Section 40 is broadly worded to encompass misrepresentations even if made by another party, without the knowledge of the applicant. The Applicant submits however, that the IAD failed to meaningfully consider the grounds upon which to offer equitable relief on humanitarian and compassionate grounds.
>
> …
>
> 61. It is trite law that establishment [is] an important factor in an H&C request for an exemption. However, here the IAD fixates on the misrepresentation to the exclusion of each of the positive factors, which included establishment and hardship on removal to India. This can be easily discerned from the decision given that the IAD devotes eleven pages to assessing the misrepresentation and only one paragraph for her establishment in Canada, and three and a half pages to the H&C considerations in this case.

[Citations omitted.]

[63] It is difficult to see what the Applicant means here. As para 47 of the Decision makes clear, the IAD applies and considers all of the *Ribic* factors, one of which is the "seriousness of the misrepresentation" and acknowledges that these "factors are not exhaustive and the weight given to the factors can vary depending on the circumstances."

[64] The IAD then goes on to identify and assess the factors that are important to this case and why a favourable H&C consideration is not warranted in this case. No elevated standard is referred to or apparent, and the IAD does not ignore any relevant evidence. This was a straightforward exercise of the IAD's discretion to weigh the evidence and reach a conclusion. The Applicant may disagree with that conclusion, but that does not establish a reviewable error. The weight to be given to each factor and the evidence adduced is for the IAD to decide, not the Applicant or the Court. See *Wang v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 705 at para 19. There is no reviewable error in this case.

IX. Certification

[65] The parties agree there is no question for certification and the Court concurs.

JUDGMENT IN IMM-1660-17

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1660-17
STYLE OF CAUSE:	AMANDEEP KAUR GILL v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
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