

Federal Court



Cour fédérale

Date: 20180129

Docket: IMM-3011-17

Citation: 2018 FC 86

Ottawa, Ontario, January 29, 2018

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

NAVPREET KAUR AND MANJIT KAUR

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Manjit Kaur and Navpreet Kaur are mother and daughter. They seek judicial review of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board. The IAD dismissed their appeal of a visa officer's refusal of Navpreet's application to sponsor her mother, Manjit, as a permanent resident of Canada. The IAD affirmed the visa officer's decision

to refuse the sponsorship application for misrepresentation, contrary to s 16 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] For the reasons that follow, I find that many aspects of the IAD's decision were unsupported by the evidence. More generally, the underlying premise that Manjit and her former husband were divorced only "on paper" is fundamentally implausible. In light of this conclusion, it is also necessary for humanitarian and compassionate [H&C] considerations to be reassessed. The application for judicial review is allowed.

II. Background

[3] Manjit is a citizen of India, where she currently resides. She married in 1982. The couple had two children, one of whom is Navpreet. Shortly after the marriage, Manjit's husband left India to work in Greece, where he remained until 1985.

[4] It is unclear exactly when Manjit and her husband separated. Manjit testified before the IAD that this occurred in 1989, when her husband left India for the United States.

[5] In 1999, Manjit's husband applied for permanent residence in Canada as an entrepreneur. He did not include Manjit or either of the children in the application, but acknowledged that he held a joint bank account with Manjit. Manjit's sister provided financial information in support of the application. The application was denied.

[6] In 2002, Manjit obtained a decree of divorce. The decree stated that the couple had separated in 1999, but Manjit testified that this was an error. She said that the lawyer who prepared the document mistakenly gave the date of separation as 1999 rather than 1989, the year her husband left India for the United States.

[7] Shortly after the divorce, Manjit's former husband married a Canadian citizen. He was sponsored by his second wife in 2004, and became a permanent resident of Canada in 2007. The children, including Navpreet, were included as dependents in the application, and also became permanent residents of Canada.

[8] Shortly after he obtained permanent residence, Manjit's former husband and his second wife divorced. His immigration file was flagged for a possible marriage of convenience.

[9] The same year, Navpreet applied to sponsor Manjit for permanent residence.

[10] In 2014, a visa officer conducted a field investigation in the Indian village where Manjit's former husband used to reside, and discovered that people there, including a cousin and a nephew, believed he was still married to Manjit.

[11] Manjit's and Navpreet's parental sponsorship application was refused on May 31, 2014. The visa officer found that Manjit had filed for divorce to enable her former husband to obtain permanent residence in Canada. The visa officer identified three concerns to support the

conclusion that Manjit continued to be in a relationship with her former husband, even though they were divorced “on paper”:

- (a) it made no sense for Manjit’s former husband to live with Manjit’s sister in Canada if the couple were truly separated;
- (b) Manjit said she was reluctant to talk about the divorce because she found it embarrassing, yet she had initiated it; and
- (c) people in the village in India where the former husband used to live were unaware of the divorce.

[12] Manjit and Navpreet appealed the visa officer’s decision to the IAD.

III. Decision under Review

[13] The IAD dismissed the appeal of the visa officer’s decision on June 7, 2017. The IAD agreed that the parental sponsorship application should be denied for misrepresentation, and emphasized discrepancies in the evidence regarding:

- (a) whether the former husband had abandoned the marriage in 1989, 1996 or 1999;

- (b) the reasons why Manjit's former husband lived with Manjit's sister in Canada;
and
- (c) when and why Manjit's mother-in-law had cast her out of the family home in
India.

[14] The IAD therefore held that the visa officer's refusal of the parental sponsorship application was legally valid. The IAD also concluded that there were insufficient H&C considerations to justify special relief. The IAD noted Navpreet's and Manjit's lack of credibility and lack of remorse for their untruthful statements. The IAD acknowledged that Manjit had no remaining family in India, but found that she was "quite well off" given her income from property and financial support from her children in Canada. The IAD noted that Navpreet was living a comfortable life in Canada, and found that the best interests of her children were a neutral consideration.

IV. Issues

[15] This application for judicial review raises the following issues:

- A. Were the IAD's adverse findings of credibility reasonable?
- B. Was the IAD's assessment of H&C considerations reasonable?

V. Analysis

[16] The IAD's determinations of credibility and its assessment of H&C considerations are subject to review against the standard of reasonableness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 58). The Court will intervene only if the decision falls outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

A. *Were the IAD's adverse findings of credibility reasonable?*

[17] Counsel for the Applicants acknowledges that there were discrepancies in the evidence regarding Manjit's marriage to her former husband. However, it appears that the IAD did not consider important evidence that tended to corroborate Manjit's testimony that her former husband abandoned the marriage in 1989. This was the year in which he left India for the United States, returning only briefly in 1996 to visit his children. His application for permanent residence in 1999 did not include Manjit or the children as dependents. The visa officer who rejected the application noted that he had lived in the United States for more than 10 years. The decree of divorce was issued in December 2002 and gave the date of separation as 1999. However, it also noted that Manjit's former husband had left India "three years prior", which was clearly an error. There is no dispute that he was smuggled into the United States in 1989.

[18] Nor did the IAD consider Navpreet's explanation for why her father remained close with Manjit's sister. Navpreet testified that her father, while still married to Manjit, would drop her

aunt off at school. Her aunt and her father respected one another, and the divorce did not adversely affect their relationship. The IAD did not acknowledge or provide reasons for rejecting this explanation. Instead, it assumed, without evidence, that a couple's relatives cannot remain on good terms after the couple separates.

[19] Counsel for the Respondent was unable to direct the Court to anything in the record that might support the IAD's conclusion that Manjit gave conflicting accounts of when her mother-in-law cast her out of the family home in India. She appears to have testified consistently that this occurred in 1989, after her husband left the country.

[20] More generally, both the visa officer and the IAD found that Manjit and her former husband continued to be in a relationship, despite being divorced "on paper". This conclusion does not accord with the evidence and is fundamentally implausible. According to Manjit, her former husband abandoned the marriage in 1989, almost 30 years ago. Even if one assumes that he abandoned the marriage in 1999, this is now almost 20 years in the past. The IAD did not address why the couple would maintain such an elaborate ruse in order to be reunited in Canada after decades of separation.

[21] Given the many aspects of the IAD's decision that are unsupported by the evidence, and the fundamental implausibility of its underlying premise, I conclude that the decision as a whole was unreasonable.

B. *Was the IAD's assessment of H&C considerations reasonable?*

[22] The IAD observed that the duty of candour and the provision of truthful information are of fundamental importance to the integrity of Canada's immigration system. It then described the unresolved discrepancies in the evidence surrounding Manjit's marriage to her former husband as a "highly unfavourable consideration". The IAD found the Applicants' lack of remorse to be another "highly unfavourable consideration".

[23] In light of my conclusion regarding the IAD's unreasonable finding that Manjit and her former husband were divorced only "on paper", it is necessary for the H&C considerations to be reassessed.

VI. Conclusion

[24] The application for judicial review is allowed, and the matter is remitted to a differently-constituted panel of the IAD for reconsideration. Neither party identified a question to be certified for appeal, and none arises in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed, and the matter is remitted to a differently-constituted panel of the IAD for reconsideration.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3011-17

STYLE OF CAUSE: NAVPREET KAUR AND MANJIT KAUR v THE
MINISTER OF IMMIGRATION, REFUGEES AND
CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 15, 2018

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JANUARY 29, 2018

APPEARANCES:

Jeremiah A. Eastman FOR THE APPLICANT

Asha Gafar FOR THE RESPONDENT

SOLICITORS OF RECORD:

Eastman Law Office Professional Corporation FOR THE APPLICANT
Barristers and Solicitors
Brampton, Ontario

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario