Federal Court  Cour fédérale

Date: 20190122

Docket: IMM-2596-18

Citation: 2019 FC 91

Ottawa, Ontario, January 22, 2019

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

TARSEM SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review challenges a decision of the Immigration Appeal Division (IAD) refusing to reopen the Applicant's appeal from an earlier determination of abandonment.

[2] The underlying facts leading up to the impugned decision are not in dispute. The Applicant sought to sponsor his adopted child as a permanent resident despite having failed to declare the child as a dependent on his own application for permanent residency filed on

March 20, 2012. It was only in February 2013 that the Applicant applied to sponsor the child as a member of the family class. That application was unsurprisingly refused on December 9, 2016. That visa refusal decision was based on the Applicant's failure to declare the child as a dependant and because the validity of the Indian adoption had not been established. The visa officer's concerns about the bona fides of the adoption were set out as follows:

> As discussed at interview, I am not satisfied that your natural parents gave their free and informed consent to your adoption. Your adoptive father was your natural father's boss, and your natural father had recently moved to a new state for work when the arrangement was made, which is an unequal power dynamic. Your natural mother had custody over you after she and your natural father divorced, but I am not satisfied with any explanation provided as to why she would be willing to give custody over you to your natural father, permitting him to give you up for adoption to your natural father's boss. Based on these concerns, I am not satisfied that your natural parents gave their free and informed consent to your adoption per R117(2)(b).
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> As discussed at interview, I am not satisfied that the adoption created a genuine parent-child relationship. In such a relationship, an adoptive father should be able to provide basic details about his child's life. At interview, your adoptive father displayed a lack of knowledge regarding your schooling, friends, and daily routine. When your adoptive father stays in India, you do not stay with him during the week, staying instead with your Power of Attorney. Based on these concerns, I am not satisfied that the adoption created a genuine parent-child relationship per R117(2)(c).
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> As discussed at interview, I am also not satisfied that the adoption was in accordance with the laws of the place where the adoption took place. The *Hindu Adoptions and Maintenance Act* only applies to adoptions amongst Hindus. You and your natural father were born Muslim. On the day of the adoption, you and your natural father were converted to Hinduism / Sikhism at Arya Samaj Temple. Per an online search, this temple was investigated by police for not being legally registered and involvement in various irregularities. Your natural father also stated at interview that the only reason he converted was for the adoption. No photos of any kind of ritual or tradition during the adoption have been provided, nor was any tradition or ritual beyond following basic legal steps disclosed at interview. Based on these concerns, I am not satisfied

> that the adoption was in accordance with the laws of the place where the adoption took place per R117(2)(d).

[3] Using the services of an immigration consultant, the Applicant brought an appeal from the above decision to the IAD.

[4] On February 1, 2017, the IAD wrote to the Applicant and to his consultant (Gurpreet Khaira) requesting the following information:

> In order to assess whether there is a need to schedule your appeal for an oral hearing or whether it can be dealt with in writing, we are requesting that you provide written submissions and documents concerning 1) the legal validity of the adoption of the above named foreign national by you, the sponsor. We also request that you provide your position regarding 2) the refusal ground that the adopted child was not examined as a non-accompanying family member at the time that you immigrated to Canada. You are required to provide your submissions and documents to the IAD Registry office and to the Minister's counsel. For any document that is not in English or French, you must also provide a translation in English or French and a translator's declaration. These documents must be received by February 22, 2017.

[5] Mr. Khaira requested an extension to the IAD's deadline and the Minister consented. The IAD allowed the request by letter dated March 8, 2017 and granted an extension to March 22, 2017. This correspondence went to the Applicant and to Mr. Khaira.

[6] On March 22, 2017, Mr. Khaira wrote to the IAD seeking a further extension to allow for a delay in receiving the Record of Appeal. Again the IAD granted the extension authorizing the Applicant's submissions within three weeks of his receipt of the Appeal Record. This decision was communicated to Mr. Khaira and to the Applicant by letter dated April 18, 2017.

[7] Nothing further was received by the IAD from either Mr. Khaira or the Applicant and telephone reminders were left with Mr. Khaira on August 4, 2017 and August 17, 2017 by the

IAD staff. When no response was received, the IAD dismissed the appeal as abandoned by decision dated September 27, 2017.

[8] On October 20, 2017, Mr. Khaira applied to the IAD to reopen the Applicant's appeal. Nowhere in that request did Mr. Khaira attempt to explain why the final filing deadline imposed by the IAD was ignored. Instead, Mr. Khaira blamed the Applicant's previous consultant for giving poor advice about the need to declare the adopted child. Needless to say the IAD dismissed the motion to reopen on the following basis:

> [21] Although appellant's counsel's application is based on *IAD Rule* 51, I will give him the benefit of a board interpretation of the substance of the application and his submissions. I will infer that he is submitting that the decision to declare the appeal abandoned without submissions having been provided was breach of natural justice.
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> [22] The first two EOT applications were allowed, notwithstanding that the first EOT application contained limited justification. Once the Appeal Record was provided, the appellant's submissions became due on June 27, 2017. There was no communication from the appellant or his counsel. When more than a month passed after the deadline without communications from the appellant or his counsel, IAD staff phoned appellant's counsel to remind him that submissions were overdue. I must emphasize that the IAD is under no such obligation. The fact that IAD staff gave appellant's counsel the courtesy of telephone reminders should not be taken as a precedent in the future. Another month passed without communications from the appellant or his counsel.
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> [23] Subsection 168(1) of the *Act* exists to ensure that the IAD has the necessary authority to control its processes. There is a significant backlog of cases before IAD and a long wait for appellants to have their cases heard. The backlog and delays are exacerbated when appellants ignore directions from the IAD.
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> [24] The time lapse between the deadline for submissions and the decision to declare the appeal abandoned was not trifling. It was 2-1/2 months. The IAD did not fail to observe a principle of natural justice. The appellant and his counsel were given fair warning. There is no indication of any other breach of natural justice. That the appeal was declared abandoned was the fault of

> the appellant and his counsel, no one else. There was no breach of natural justice. The application is dismissed.

[9] It is from the above decision that this application arises.

[10] The Applicant's argument on this application is not entirely clear. He seems to suggest that the IAD acted either unreasonably or unfairly by failing to reopen his appeal in the face of his submission that his first consultant, Parvinder Sandhu, had provided poor advice concerning the need to declare his adopted child as a dependant.

[11] In his written submissions to the Court, the Applicant makes only a passing reference to the failure to respond to the IAD's deadline for submissions. No attempt is made to explain or justify that oversight beyond the incorrect assertion that Mr. Sandhu was the source of the problem[1]. According to the Applicant, he had no knowledge of the filing extensions requested by his representative and he was unaware of the need to gather more information (see the Applicant's affidavit at paragraphs 12 to 20).

[12] There are two substantive problems with the Applicant's argument. The first is that the explanation provided to the Court was not given to the IAD on the motion to reopen. All that the Applicant argued was that Mr. Sandhu had misled him about the need to declare his adopted child.

[13] The Applicant makes essentially the same argument on this application. He contends once more that, notwithstanding the failure to meet the IAD's deadline for submissions, its decision refusing to reopen the appeal ought to have been allowed based on the alleged

[1] The Applicant's representative at this point was Mr. Khaira and not Mr. Sandhu.

negligence of Mr. Sandhu. In other words, the Applicant seeks to be excused for withholding information from the immigration authorities to facilitate his own entry to Canada simply because Mr. Sandhu supposedly suggested it.

[14] It is not at all apparent to me how the above narrative is relevant to the issue before me. The question the IAD was required to address on the motion to reopen had nothing to do with the alleged negligence of Mr. Sandhu in the presentation of the Applicant's application for permanent residency. What the IAD was required to consider was the evidentiary record concerning the Applicant's failure to perfect the appeal. That failure had nothing whatsoever to do with Mr. Sandhu. As the IAD noted in its decision, the fault for failing to perfect the appeal lay with the Applicant and his later representative, Gurpreet Khaira. It was Mr. Khaira who failed to respond to the IAD's request for information after two extensions and two telephone reminders.

[15] Another fundamental problem with the Applicant's argument arises from a material conflict between his affidavit and the documentary record. The Applicant asserts that he had no knowledge of the requested extensions or that his appeal had not been perfected. This sworn evidence is completely inconsistent with the documents contained in the record. The Applicant was copied on the two letters sent by the IAD to Mr. Khaira confirming the grant of two extensions to provide the requested information. The IAD also wrote to the Applicant directly on February 1, 2017 telling him that a failure to perfect his appeal could lead to a finding of abandonment.

[16] I reject the Applicant's evidence that he was left completely unaware of the problem and that he was duped by his representatives. In the face of what he knew, it was incumbent on the

Applicant to take some action. It was not open to him to ignore what he was told and then to blame his representative for failing to respond.

[17] There is another procedural lapse that is fatal to this application arising from the Applicant's failure to follow the Federal Court protocol dealing with allegations of professional incompetence or negligence against a lawyer or consultant. That protocol required the Applicant to give notice to Mr. Sandhu and Mr. Khaira of the allegations of incompetence made in this proceeding. The purpose of notice is to permit the representative to answer the allegations.

[18] Having failed to give the required notice to either Mr. Sandhu or Mr. Khaira, the Applicant is foreclosed from using those allegations in support of his application: see *Shabuddin v Canada (Citizenship and Immigration)*, 2017 FC 428 at paragraphs 18 to 20, 280 ACWS (3d) 20.

[19] For the foregoing reasons, this application is dismissed.

[20] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT in IMM-2596-18

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

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2596-18
STYLE OF CAUSE:	TARSEM SINGH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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