Federal Court  Cour fédérale

Date: 20221118

Docket: IMM-4965-21

Citation: 2022 FC 1579

Ottawa, Ontario, November 18, 2022

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

LOVEDEEP SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision by a visa officer [the "Officer"] located at the High Commission of Canada of Immigration, Refugees and Citizenship Canada [IRCC] in New Delhi, India dated February 5, 2019, refusing the Applicant's application for an open work permit.

[2] The Officer was not satisfied that the Applicant's marriage was genuine. Consequently, the Officer held the Applicant inadmissible due to misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and would remain inadmissible for five years thereafter pursuant to paragraph 40(2)(a).

II. Background

[3] The Applicant, Lovedeep Singh is a 26-year-old male citizen of India. In January 2016, the Applicant met his wife, Navpreet Kaur and they married on June 1, 2017. In December 2017, the Applicant's wife obtained a study permit to study in Canada.

[4] On May 4 2018, the Applicant enlisted the services of Mr. Ravi Kumar Garg at Pioneer Immigration & Education Consultancy Pvt. Ltd., an Indian immigration consultancy firm, to submit an open work permit application as the spouse of a foreign national studying in Canada. The Applicant submitted this application later that month.

[5] On June 23, 2018, the Officer sent the Applicant a procedural fairness letter asking the Applicant to submit further documentation to demonstrate the genuineness of the Applicant's marriage. The Applicant responded, by letter dated June 30, 2018, providing photographs of him and his wife together at their engagement and marriage ceremonies, the couple's religious marriage certificate and documentation of shared bank accounts.

[6] On October 26, 2018, the IRCC summoned the Applicant for an interview and invited the Applicant to bring all relevant documentation with him. On November 14, 2018, the Applicant

attended this interview. A different officer conducted the interview [the "Interviewing Officer"] than the Officer who rendered the Decision.

[7] Notes from the Interviewing Officer indicate the following concerns with respect to the Applicant's answers during his interview:

i. The Applicant claimed that when the Applicant's wife was not working, she spent her time studying or calling the Applicant. However, documentation submitted with the permit application indicated that classes for the Applicant's wife did not begin until January 7, 2019. The Applicant further did not provide evidence of calls between himself and his wife.

ii. The Applicant did not know the places his wife had visited in Canada.

iii. The Applicant provided inconsistent information about when he met his wife; when he told his parents about her; and the period they lived together in India before she came to Canada.

iv. Photographs from the Applicant's engagement and marriage ceremonies had few guests and appeared staged.

v. There was no evidence of meetings or contact between the Applicant and his wife pre-marriage.

[8] The Interviewing Officer concluded by commenting that the Applicant's marriage was not genuine but was entered into for immigration purposes.

[9] In the Decision dated February 5, 2019, the Officer refused the Applicant's work permit application.

[10] The Applicant seeks an order setting aside the Decision and referring the matter back to a different officer for redetermination.

I. Decision Under Review

[11] The Officer refused the work permit application because the Officer found the Applicant had not established that his marriage was genuine. Echoing the Interviewing Officer's concerns, the Officer found the Applicant's evidence of a genuine relationship with his wife pre- and post-marriage to be insufficient.

[12] As a result, the Officer found the Applicant inadmissible for misrepresentation pursuant to paragraph 40(1)(a) of the *IRPA* and held he would remain inadmissible for five years thereafter pursuant to paragraph 40(2)(a).

II. Issues

A. *Has the Applicant improperly included evidence on judicial review?*

B. *Was the Decision Reasonable?*

C. *Did the Applicant receive ineffective assistance of counsel that constituted a breach of the duty of procedural fairness?*

III. Standard of Review

[13] The substantive standard of review is reasonableness [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraph 23].

[14] Issues that relate to a breach of procedural fairness are reviewed on the standard of correctness or a standard with the same import [*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraphs 34-35 and 54-55, citing *Mission Institution v. Khela*, 2014 SCC 24 at paragraph 79].

IV. Analysis

A. *Has the Applicant improperly included evidence on judicial review?*

[15] On judicial review, the Applicant has included an affidavit containing information that was not before the Officer.

[16] The Respondent argues that this has been improperly included.

[17] The Applicant argues that the affidavit is necessary to highlight procedural defects.

[18] There are some exceptions to the general rule that a reviewing court is bound to the same record as that which was before the decision-maker. One of these exceptions relates to evidence that highlights procedural defects [*Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paragraph 20].

[19] The Applicant in this case makes two arguments: that the decision was unreasonable and that he received ineffective assistance of counsel that would constitute a breach of procedural fairness. The affidavit appears to contain information that relates both of these issues.

[20] It would be improper for this Court to consider any of the evidence in the affidavit that relates to the reasonableness of the decision; however, the evidence relating to procedural fairness in this case will be considered. Ineffective assistance of counsel is inevitably an issue that will surface only when the decision making process is complete. As a result, there will be often be limited information in the Certified Tribunal Record to aid the applicant. The Applicant must have an opportunity to present evidence to substantiate their allegations of their immigration consultant's incompetence.

[21] Moreover, it has been the practice of this Court to allow counsel an opportunity to respond to allegations of ineffective assistance [see Federal Court Practice Direction Re: Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court, dated March 7, 2014]. Mr. Garg has so responded. This evidence was also not before the Officer, but is nonetheless relevant evidence that the Court will review.

B. *Was the Decision reasonable?*

[22] In arguing that the Officer's Decision was unreasonable, the Applicant focusses on the Interviewing Officer's assessment of his answers during the interview. For the most part, these amount to claims that the notes are inaccurate and incomplete and do not fairly reflect the Applicant's true answers during the interview. In essence, the Applicant takes issue with the Interviewing Officer's assessment of the Applicant's oral and supporting documentary evidence.

[23] It is not the role of a reviewing Court to reassess evidence on judicial review. Moreover, much of the Applicant's claims on this front are substantiated only by his post-decision affidavit, which, as stated above, is not relevant to an assessment of the reasonableness of the Officer's decision.

[24] The Applicant further argues the Decision is unreasonable because a misrepresentation finding pursuant to paragraph 40(1)(a) of the *IRPA* is only appropriate with the most "clear and convincing" evidence.

[25] Paragraph 40(1)(a) reads:

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	**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

an error in the administration of this Act;	risque d'entraîner une erreur dans l'application de la présente loi;

[26] The Applicant made several statements during his November 2018 interview about the nature of his relationship with his wife that were inconsistent with his supporting documentation. For example, the Applicant claimed that he and his wife cohabited for about two months post-marriage, though the supporting documents stated this was never the case.

[27] The Officer reasonably concluded that the Applicant was misrepresenting the genuineness of his marriage for immigration purposes and that, if believed, he could have induced an error in the administration of the *IRPA* [*Bains v Canada*, 2020 FC 57 at paragraphs 62 to 67; *Maan v Canada (Citizenship and Immigration)*, 2020 FC 118 at paragraphs 25 to 26].

[28] The Decision is reasonable.

C. *Did the Applicant receive ineffective assistance of counsel that constituted a breach of the duty of procedural fairness?*

[29] This Court has held that ineffective assistance of counsel will only constitute a breach of procedural fairness in "extraordinary circumstances" [*Rendon Segovia v Canada (Citizenship and Immigration)*, 2020 FC 99 at paragraph 22]. The Applicant must establish that he has met the procedural and substantive criteria:

i. the previous representative's acts or omissions constituted incompetence or negligence;

ii. but for the impugned conduct, there is a reasonable probability that the outcome would have been different (in other words, a miscarriage of justice has occurred as a result of the conduct); and

iii. the representative had a reasonable opportunity to respond to an allegation of incompetence or negligence.

[*Nik v Canada (Citizenship and Immigration)*, 2022 FC 522 at paragraph 23]

[30] The Applicant argues that Mr. Garg, his immigration consultant in India, provided ineffective assistance of counsel. The Applicant argues that Mr. Garg was incompetent in several ways:

i. Mr. Garg had two employees aid the Applicant that were not registered as immigration consultants pursuant to section 91 of the *IRPA;*

ii. Mr. Garg failed to adequately prepare the Applicant for his November 2018 interview;

iii. Mr. Garg failed to adequately submit supporting documentation provided by the Applicant in response to the June 23, 2018 procedural fairness letter; and

iv. Mr. Garg failed to advise the Applicant of the availability of judicial review of the Officer's decision.

[31] I find that the Applicant has failed to establish that Mr. Garg was incompetent.

[32] Mr. Garg disputes each of the Applicant's allegations. He disputes that his employees ever held themselves out to be immigration consultants and that they did not provide the kind of advice section 91 of the *IRPA* proscribes. He claims that he did prepare the Applicant for his November 2018 interview and that he submitted relevant supporting documentation. He further asserts that certain documents that the Applicant now includes in the Application Record, were not provided to him at the time he responded. The cover letter for the Applicant's response to the June 2018 procedural fairness letter – signed by the Applicant – does not refer to the documents that the Applicant claims were omitted.

[33] The Applicant asks the Court to speculate as to the veracity of the contradictory evidence of the Applicant and Mr. Garg. The result is that there is insufficient evidence to satisfy the first prong the tripartite test.

[34] Moreover, I am not convinced that even if the alleged failures by the consultant had occurred, that there is a reasonable probability that the outcome of the Applicant's application would have been different.

[35] The application is dismissed.

JUDGMENT in IMM-4965-21

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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