

Date: 20071001

Docket: IMM-3068-06

Citation: 2007 FC 992

Ottawa, Ontario, October 1, 2007

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

ISHATINDRA SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) for judicial review of a decision by an immigration officer dated May 3, 2006, which refused the applicant's application for permanent residence as a skilled worker.

[2] The applicant seeks an order quashing the officer's decision and remitting the matter to the Canadian Consulate General for redetermination. The applicant also seeks costs.

Background

[3] The applicant, Ishatindra Singh, is a citizen of India and currently resides in Hong Kong. On September 9, 2004, he applied for permanent residence in Canada, as a member of the skilled worker class. He submitted his application to the Canadian Consulate General in Hong Kong. The application included the applicant's spouse and two children, son Singh Charanindra Singh and daughter Jotindra Walia Singh, as accompanying family members. The applicant's wife and children are British nationals and also reside in Hong Kong.

[4] The applicant's daughter was born in Hong Kong and educated in India. In 2000, the applicant's wife signed an adoption deed which purported to authorize the adoption of her twelve year-old daughter by her sister and her sister's husband. The applicant was not in India when the adoption deed was signed and did not sign the document.

[5] On September 29, 2005, the applicant, his daughter and his spouse, were called in for an interview with an immigration officer. The officer had received information indicating that the applicant's daughter had been adopted by a third party in 2000, and the applicant was asked to respond to this allegation. During the interview, the applicant's daughter and spouse confirmed that adoption proceedings took place in 2000. The applicant indicated that he was not in India at the time

and was not involved in the adoption process. He indicated that he was advised of the adoption in 2002, but was told that nothing had been finalized yet. The officer asked the applicant to submit any adoption papers with respect to his daughter.

[6] In February 2006, the officer obtained information regarding the legality of the adoption from the High Commission of Canada in New Delhi, India. The officer was informed that the adoption papers did not require the signature of the biological father and that the document should explain the circumstances by which the mother became the sole parent. The officer noted that the adoption papers explained the circumstances of the mother and why the daughter had been given up for adoption.

[7] By decision dated May 3, 2006, the applicant's application for permanent residence was refused on the basis that he had included fraudulent family composition information in his application. This is the judicial review of the officer's decision to refuse the applicant's application for permanent residence.

Officer's Reasons

[8] By letter dated May 3, 2006, the applicant was advised that his application for permanent residence had been refused. The letter stated:

You were found to have included fraudulent family composition information in your immigration application by way of the inclusion of Jotindra Walia Singh as an accompanying family member. These concerns were discussed with you during your interview on 29

September 2006. You then admitted that Jotindra Walia Singh has been adopted by another family member in 2000. You subsequently submitted proof of this adoption.

...

Following an examination of the material that was available on file, I am not satisfied that you are not inadmissible and that you meet the requirements of the Immigration and Refugee Protection Act. I am therefore refusing your application pursuant to subsection 11(1) of this Act.

[9] The officer's notes constituted reasons for the decision:

Memorandum to Operations Manager: It would appear that the applicant included Jotindra Walia Singh in his application as an accompanying family member. However, further examination has revealed that Jotindra W. Singh was adopted by another family member in 2000. The applicant was aware of this adoption in 2002 but nevertheless submitted an application in 2004 claiming Ms Singh as an accompanying family member.

...

I am not totally satisfied that the issue of the adopted daughter who, I understand is the natural daughter of the applicant, does induce the possibility that an error would have been made in the administration of the Act. The "giving" of offsprings to other family members is not uncommon in Indian Culture. It appears the daughter has remained with the nature parents.

...

File reviewed. Application refused under A16(1)/A11(1). The legal relationship between the principal applicant Jotindra W. Singh is material. The applicant failed to disclose the fact that this relationship was legally extinguished in 2000. His attempt to include a person in his application who is not defined under the IRPA as a family member could have induced the issuance of a visa to a person not authorized to receive one.

CC: Please send refusal letter.

Issues

[10] The applicant submitted the following issues for consideration:

1. Was the adoption deed dated October 31, 2000 valid under foreign law?
2. Did the adoption deed extinguish the pre-existing parent-child relationship between the principal applicant and his daughter?
3. Did the principal applicant misrepresent the legal relationship between himself and his daughter?
4. Did the visa officer fail to apply subsections 3(2) and 117(2) and (3) of the Regulations?

[11] I would rephrase the issue as follows:

Did the officer err in refusing the applicant's application for permanent residence on the basis that he had provided fraudulent family composition information in his application?

Applicant's Submissions

[12] The applicant submitted that he had provided truthful information regarding his daughter to the immigration officer. It was submitted that he had informed the officer that the adoption deed with respect to his daughter was invalid. The officer was advised that the applicant had never authorized his wife to give up their daughter for adoption. It was submitted that the officer erred in finding that the applicant had admitted that his daughter had been adopted in 2000.

[13] The applicant noted an affidavit from Satinder Pannu, his sister-in-law, who had allegedly adopted his daughter, wherein she acknowledged that the adoption had never been acted upon. The applicant noted that during cross-examination, his daughter indicated that no adoption ceremony took place, that she always lived with her parents and been supported financially by them. She also stated that she thought the adoption was invalid.

[14] The applicant noted that his daughter lived in India during her studies, and that he had supported her financially. It was submitted that during her time in Hong Kong, the applicant's daughter lived with her parents. The applicant noted that during a visit to India, Satinder Pannu and her husband Parmjit Pannu, with the consent of his wife, created the adoption deed. It was submitted that the deed was not valid because:

1. The applicant was not a party to the deed;
2. He did not authorize his wife to give up their daughter for adoption;
3. His daughter had always lived with her parents, and not the alleged adoptive parents;
4. His wife did not have legal custody of his daughter and could not give her up for adoption on her own;
5. The adoption deed was not signed by the applicant and was void.

[15] The applicant submitted that there was no evidence that was a genuine parent-child relationship between the adoptive parents and his daughter (see subsection 117(3) of IRPA). It was submitted that there was no evidence of an intent to transfer his daughter to her adoptive parents.

The applicant noted that Sanjeev Walia, a lawyer from India, reviewed the adoption deed and found that it was void.

[16] The applicant noted that the officer sent an email to the Canadian High Commission in New Delhi, India, in order to inquire about the validity of the adoption under Indian law. During cross-examination, the officer indicated that the legality of the adoption was not within his jurisdiction. The applicant submitted that the officer was not familiar with foreign law and acted upon erroneous advice obtained from the Canadian High Commission in New Delhi. It was submitted that the officer was confused on the adoption issue and provided contradictory evidence in his CAIPS notes, emails and upon cross-examination.

[17] The applicant submitted that the officer had the legal duty to assure himself that a foreign adoption had taken place in accordance with the foreign law. Further, it was submitted that the officer had a duty to consider the best interests of the child when determining whether a parent-child relationship had been created or severed. The applicant submitted that the officer erred in law by refusing his application for permanent residence because he had included fraudulent family composition information in his application.

Respondent's Submissions

[18] The respondent noted that the applicant had submitted certain documents into the record that were not before the officer, including:

1. The affidavit of lawyer Sanjeev Walia;
2. The Hindu Adoptions and Maintenance Act 1956
3. The affidavit of Satindar Jawanda (the adoptive mother); and
4. School papers from Jotindra Singh.

[19] The respondent submitted that the documents should not be considered by the Court, since barring exceptional circumstances, evidence that was not before the decision-maker is inadmissible in a judicial review proceeding (see *Bekker v. Canada*, 2004 FCA 186). It was submitted that there were no circumstances in this case warranting the consideration of this evidence by the Court.

[20] The respondent submitted that the standard of review applicable to a visa officer's decision with respect to a skilled worker application was patent unreasonableness (see *Kniazeva v. Canada (Minister of Citizenship and Immigration)* (2006), 288 F.T.R. 282, 2006 FC 268).

[21] The respondent submitted that the record showed that the applicant had never asserted that the adoption of his daughter was invalid. The CAIPS notes revealed that during the interview, the applicant never stated that the adoption deed was invalid or ineffective. During the interview, the applicant's daughter and wife both admitted that there had been an adoption. The applicant

indicated that the adoption was something his wife and her sister had “cooked up”, and that he did not find out about it until 2002. The respondent noted that although the applicant knew that his daughter had been adopted in 2002, he submitted an application for permanent residence in 2004 which included her as a dependent.

[22] The respondent noted that in response to the officer’s request for information about the adoption, the applicant submitted two letters and the adoption deed. It was submitted that the letters did not assert that the adoption was invalid. The respondent noted that while the applicant’s daughter admitted that she was adopted during the interview, her affidavit indicated that she was never informed that she was adopted. During cross-examination, she again indicated that she had been adopted. As a result, it was submitted that her evidence was not reliable.

[23] The respondent noted that the applicant was also inconsistent with respect to evidence regarding the adoption. He admitted that he had knowledge of the adoption during the interview, but swore an affidavit that no party had adopted his daughter. It was submitted that his evidence under cross-examination was also unreliable. The respondent submitted that the applicant was given the opportunity to present his case, but misrepresented the facts.

[24] The respondent submitted that the applicant incorrectly argued that it was the officer’s responsibility to conduct research into whether the adoption was valid under Indian law. The respondent reiterated that the applicant had never told the officer that the adoption was invalid. It was submitted that under the circumstances, the officer was not required to research the law of

India. It was submitted that the applicant had the onus to establish his claim, and that he had omitted pertinent information at his own peril (see *Owusu v. Canada (Minister of Citizenship and Immigration)*, [2004] 2 F.C.R. 635, 2004 FCA 38).

[25] The respondent noted the applicant's admission that he was not of the opinion that the adoption was invalid until after his application was refused. Further, it was submitted that the adoption deed did not appear to be invalid under the *Hindu Adoptions and Maintenance Act*, since the Act did not require that both parents sign the papers, or that the father be in India at the time of the adoption.

[26] Pursuant to subsection 16(1) of IRPA, a person who makes an application must answer truthfully all questions put to them for the purpose of examination. The respondent noted that the applicant did not reveal that his biological daughter had been adopted until he was confronted with this fact. As a result, pursuant to subsection 11(1) of IRPA, the applicant did not meet all of the requirements of IRPA. It was submitted that the officer was therefore entitled to refuse the application. The respondent submitted that the officer's conduct did not warrant costs being awarded to the applicant.

Analysis and Decision

Standard of Review

[27] The standard of review applicable to the officer's finding with respect to an application for permanent residence within the skilled worker category is patent unreasonableness (see *Kniazeva* above). I would note that the officer's decision turned upon a factual finding, namely, whether the applicant was aware that his daughter was subject to adoption proceedings when he included her as a dependent on his application.

[28] **Issue**

Did the officer err in refusing the applicant's application for permanent residence on the basis that he had provided fraudulent family composition information in his application?

When the officer was considering the applicant's application for permanent residence, the officer became concerned that the applicant's daughter may have been adopted by others. The officer believed that the applicant may have included fraudulent information about the composition of his family as he included his daughter as a family member. The officer held an interview with the applicant to provide him with an opportunity to address the officer's concerns about an adoption.

[29] The following is a more or less verbatim record of the interview and is taken from the officer's notes:

I have received information that your daughter has been adopted by a third party. Is this correct?

(Spouse intervenes: Yes, she was adopted by my sister in Canada.)

PI: I was not in India at that time. The adoption papers are in Canada.

When did the adoption take place?

PI: Hesitation.

(Daughter intervenes: I think in 2000 or 2001. Yes, 2001.)

PI: I didn't know; I was in India at the time. It's something my wife cooked up with my sister.

Why was your daughter included in your application as your dependent?

PI: I didn't have the information at the time it happened.

(Spouse intervenes: It was me who did this.)

Sir, when did you find out your daughter had been adopted by your sister-in-law in Canada?

PI: In 2002; I returned to India and they told me. But they told me nothing was finalized yet. I didn't take it very seriously because I was still bearing all the expenses.

(Spouse intervenes: My sister never gave anything to my daughter. They never called her after that. I can send you the adoption papers. I have a copy myself. I will send you the adoption papers. Can we just exclude our daughter from the application?

No.

...

I am also requesting the adoption papers to which you made reference at this interview. Do you understand?

PI: Yes.

...

Note that PI was handed a standard document request form at interview requesting CGC from India and documents related to the adoption his daughter, Jotindra Walia, by her aunt in Canada.

[30] In response to the request for documentation regarding the adoption, the applicant provided the officer with a copy of the adoption deed signed by his wife, and a letter which stated:

Regarding adoption of my daughter, I was not in India and I was not aware of this development. I am present the photocopy of the adoption papers, duly attested by the issuing authority and I have asked her adopting parents to, either arrange her upkeep or cancel her adoption. Having adopted her five years back on 3rd 11, 2000, they never bothered about her upbringing in any way, I will submit the information soon, as they agreed to comply with my request and requirement and they have informed us that they are active in this direction.

[31] I have reviewed all of the evidence on the file and I cannot conclude that the officer's decision was patently unreasonable. There is information that the applicant knew in 2002 that adoption proceedings were taking place but were not yet finalized. The officer was not advised that the adoption was invalid and the applicant included his daughter in his application. The officer had a sufficient basis to deny the application because of incorrect information on the composition of the applicant's family. I have not considered information that was not before the officer.

[32] The application for judicial review is therefore dismissed.

[33] Neither party wished to submit a proposed serious question of general importance for my consideration for certification.

JUDGMENT

[34] **IT IS ORDERED that** the application for judicial review is dismissed.

“John A. O’Keefe”

Judge

ANNEX

Relevant Statutory Provisions

The relevant statutory provisions are set out in this section.

The *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.:

<p>11.(1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.</p> <p>...</p> <p>16.(1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.</p> <p>(2) In the case of a foreign national,</p> <p>(a) the relevant evidence referred to in subsection (1) includes photographic and fingerprint evidence; and</p>	<p>11.(1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement, lesquels sont délivrés sur preuve, à la suite d'un contrôle, qu'il n'est pas interdit de territoire et se conforme à la présente loi.</p> <p>...</p> <p>16.(1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.</p> <p>(2) S'agissant de l'étranger, les éléments de preuve pertinents visent notamment la photographie et la dactyloscopie et il est tenu de se soumettre, sur demande, à une visite médicale.</p>
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(b) the foreign national must submit to a medical examination on request.

(3) An officer may require or obtain from a permanent resident or a foreign national who is arrested, detained or subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.

(3) L'agent peut exiger ou obtenir du résident permanent ou de l'étranger qui fait l'objet d'une arrestation, d'une mise en détention, d'un contrôle ou d'une mesure de renvoi tous éléments, dont la photographie et la dactyloscopie, en vue d'établir son identité et vérifier s'il se conforme à la présente loi.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3068-06

STYLE OF CAUSE: ISHATINDRA SINGH

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 27, 2007

**REASONS FOR JUDGMENT
AND JUDGMENT OF:** O'KEEFE J.

DATED: October 1, 2007

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