Date: 20071005

Docket: IMM-625-07

Citation: 2007 FC 1028

Ottawa, Ontario, October 5, 2007

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

GURPAL SINGH BHANGO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Gurpal Singh Bhango married Ranjit Kaur in Montréal in 2002. In 2004, he sought Canadian permanent resident status from within Canada, with the sponsorship of his wife. The next year, the immigration policy changed in order to ease sponsorship of a spouse from within Canada.

[2] Mr. Bhango is an Indian citizen, whose claim for refugee status was dismissed years ago. His wife is a Canadian permanent resident. However section 4 of the *Immigration and Refugee Protection Regulations* provides that no foreign national shall be considered a spouse "…if the marriage… is not genuine or was entered into primarily for the purpose of acquiring any status or

privilege under the [Immigration Refugee Protection] Act" (IRPA). The officer who considered Mr. Bhango's case was of the view that he was in bad faith and so rejected the sponsorship application. Then, she considered humanitarian and compassionate considerations overall, including whether he would be put to undue hardship if returned to India. She found his circumstances did not warrant allowance to remain in Canada while his application for permanent residency was being processed, and so she dismissed his application. This is a judicial review of that decision.

[3] Although I have come to the conclusion that judicial review should be granted and the matter sent back to another officer for redetermination, I must emphasize that there is no evidence of bad faith on the part of the officer, and no reason to depart from the rule that these matters are dealt with on a no-cost basis.

[4] In the case of an H&C application, with spousal sponsorship, which had been filed before the new policy had come into force 18 February 2005, the application must be looked at in terms of the new policy, and if wanting is subject to a normal H&C review (*Djeukoua v. Canada (Minister of Citizenship and Immigration*, 2006 FC 1213, [2006] F.C.J. No. 1509). Having found that the marriage was not genuine or was entered into primarily for the purpose of acquiring status or privilege under IRPA, it was the officer's duty to predict his circumstances if he were returned to India. It was quite appropriate for her to seek the opinion of a pre-removal risk assessment (PRRA) officer.

[5] In my opinion, the decision was patently unreasonable because it focused on the circumstances in which the couple met, rather than the circumstances of their marriage. The Immigration and Refugee Board has published guidelines which are quite helpful in assessing the genuineness, and the intimacy of an alleged conjugal relationship. That analysis was not done. There is nothing to suggest that Mr. Bhango and Ms. Kaur are not truly husband and wife, or only became so sometime after their marriage in October 2002.

[6] Mr. Bhango had been married before in India. He produced an Indian Court certificate of divorce issued in 2000. It indicates that his former wife was the petitioner and that the matter proceeded *ex parte*. There were number of grounds, including desertion. It is an uncontested point of fact that Mr. Bhango was in Canada at that time, not India.

[7] However, the authorities here received an anonymous denunciation that the Indian divorce was fraudulent. It seems that the allegation was not that the court certificate is counterfeit, but rather that a fraud had been practiced on the Indian Court. When confronted with this allegation at an interview, Mr. Bhango said that he had heard that his wife had intended to instigate divorce proceedings, but he only learned of the divorce some time later, through his father. He was privy to nothing. It is noteworthy that the judgement indicates that service of the petition upon him had been non-personal service in India.

[8] The officer had some concerns with the fact that Mr. Bhango and Ms. Kaur entered into a non-legal Sikh religious marriage ceremony in October 2001. He had told Ms. Kaur that he was

divorced. However, she would not allow him into her bed without at least a religious ceremony. Yet, in subsequent income tax returns and in an earlier H&C application, he mentioned that he was still married to his first wife.

[9] It may well be that Mr. Bhango was once a rake and a rambling man, not above a little fiddling on his income tax returns. Accepting the officer's findings that he was not credible in this regard, there has to be a connection between credibility issues and section 4 of the Regulations. That link is missing (*Awuah v. Canada (Minister of Citizenship and Immigration*), [1999] F.C.J. No. 1873 (F.C.T.D.) and *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1195, [2006] F.C.J. No. 1488). However, the declaration he made to the Quebec authorities at the time of his civil marriage properly identifies the date of his Indian divorce. The Indian certificate is presumed valid, and there was no adequate examination which could lead to any suggestion that Mr. Bhango is a bigamist.

[10] Although as per the Regulations, Mr. Bhango's counsel stipulated French as the language of the proceedings, and although written and oral argument was in French, as Mr. Bhango personally has better knowledge of English, he requested that these reasons be first delivered in that language. The style of cause is adjusted accordingly.

[11] Consequently, the application for judicial review shall be allowed. There shall be no order as to costs.

ORDER

THIS COURT ORDERS that application is granted and the matter is referred back to a different officer for redetermination. There is no question of general importance to certify.

"Sean Harrington"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-625-07
STYLE OF CAUSE:	*Gurpal Singh Bhango v.* *The Minister of Citizenship and Immigration*
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