Federal Court		Cour fédérale

Date: 20100504

Docket: IMM-1567-10

Citation: 2010 FC 492

Toronto, Ontario, May 4, 2010

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

DALVIR KAUR GILL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] The Immigration Division (ID) of the Immigration and Refugee Board (IRB) found Ms. Dalvir Kaur Gill inadmissible to Canada due to a direct or indirect inducement of a misrepresentation of material facts (section 40 (1)(a) of the *Immigration and Refugee Protection Act (IRPA)*, S.C. 2001, c.27). The decision of the ID was upheld by the Immigration Appeal Division (IAD). Ms. Dalvir Kaur Gill has filed an application for leave and judicial review of the decision of the IAD; and subsequently, brought this motion for a stay of removal scheduled for May 10, 2010.

BACKGROUND

[2] Ms. Kaur Gill, a citizen of India, was born in 1979.

[3] She married Jagras Singh Gill ("Mr. Gill") in India in 2002. Ms. Kaur Gill and Mr. Gill spent two and a half weeks together before Mr. Gill returned to Canada.

[4] Granted permanent resident status in December of 2002 after being sponsored by Mr. Gill, she moved to Canada. Mr. Gill left India in late 2002 and Ms. Kaur Gill never saw him again.

[5] Ms. Kaur Gill signed a petition for divorce from Mr. Gill in 2003, and a divorce was granted in November of 2004.

[6] Ms. Kaur Gill married Preetpal Singh Virk ("Mr. Virk") in 2004; and she applied to sponsor him to Canada as her spouse. Ms. Kaur Gill and Mr. Virk have a son who is a Canadian citizen.

[7] The Immigration Division of the IRB made an exclusion order against Ms. Kaur Gill for material misrepresentations in the process of gaining her permanent residence status. Ms. Kaur Gill appealed this decision to the IAD. The IAD dismissed the Applicant's appeal on November 2, 2009.

ISSUE

[8] Has Ms. Kaur Gill satisfied the conjunctive tripartite *Toth* test for a stay (*Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 F.C.A.)?

a. Serious Issue

[9] Section 40(1)(a) of the *IRPA* requires a material misrepresentation for a determination of inadmissibility.

[10] No requirement to assess the genuineness of a marriage exists. In *Ramkisson*, a case virtually identical to this one on its facts, this Court held that

> In addition, the test that the IAD applied, and was required to apply, was not the *Horbas* test. The IAD was not addressing the *bona fides* of a spousal sponsorship application. The question the IAD had to answer was whether the applicant made a material misrepresentation, when applying for landing as Mr. Pasad's spouse.
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> *Ramkissoon v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 971 at para. 8

[11] In addition, as stated in the jurisprudence below:

> Subsection 40(1)(a) of the Act provides that a misrepresentation need not be direct. A person may also be inadmissible for indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the Act.
>
> …..

> Even if it were true that the Applicant relied on her father to provide accurate information with respect to her age and that, contrary to her knowledge, the information provided by her father was incorrect, this would not preclude the application of section 40 of the Act. The misrepresentation remains a direct or indirect misrepresentation that, in this case, induced an error in the administration of the Act. Thus, I do not find that the IAD erred in this regard.
>
> *Kaur Barm v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 893 at para. 20

[12] Cases related to the withholding of material information are different from this case. This case involves the making of direct or indirect misrepresentations. It clearly falls under the *Kaur Barm* reasoning cited above (It is important to recognize that in the case at bar of the sponsored spouse, who now becomes a sponsor herself, she would have to explain to the authorities her personal situation under which she originally received status and what she is attempting to do in requesting to sponsor a spouse, subsequent to her previous situation. This was never done).

[13] The best interests of the child were also duly considered. The IAD specified that no evidence demonstrated that the child would suffer unduly if he accompanied his mother to India. The IAD properly considered that the best interests of a child represent one of the factors to be considered, but, it is not necessarily a determinative factor.

> *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125
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> *Caesar v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 215

[14] Ms. Kaur Gill has failed to establish a serious issue and the motion could be dismissed on this basis alone.

B. Irreparable Harm

[15] Irreparable harm must not be speculative or based on a series of possibilities. This Court has held that the fact that Canada is a better place to live for a child than the country to which removal is to take place does not amount to irreparable harm, even with respect to Canadian-born children.

> *Simoes v. Canada (Minister of Citizenship and Immigration)* [2000] F.C.J. No. 936 at para. 19

[16] Furthermore, the jurisprudence is clear that the fact that a Canadian-born child is leaving Canada with his parent and might not be able to return until his parent regularizes her status in Canada or until he becomes an adult is not an impediment to the removal of the parent. The execution of a valid removal order is not to be avoided because one is the parent of a Canadian-born child.

> *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at para. 57

[17] Ms. Kaur Gill has failed to satisfy the test for irreparable harm and this motion can also be dismissed on that basis alone.

C. Balance of Convenience

[18] The balance of convenience favours the Respondent. Section 48 of the *IRPA* provides that an enforceable removal order must be enforced as soon as is reasonably practicable.

[19] The Federal Court of Appeal has held that deferring a removal order amounts to more than mere inconvenience. As Justice Evans wrote:

> In my view, the balance of convenience does not favour delaying further the discharge of either their duty, as persons subject to an enforceable removal order, to leave Canada immediately, or the Minister's duty to remove them as soon as reasonably practicable: *IRPA*, subsection 48(2). This is not simply a question of administrative convenience, but implicates the integrity and fairness of, and public confidence in, Canada's system of immigration control.
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> *Selliah v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 at para.22

[20] Ms. Kaur Gill is seeking extraordinary equitable relief. She has failed to demonstrate that a public interest exists not to remove her as scheduled from the perspective of the intention of the legislation and as per the jurisprudence above. It may be that she was a vulnerable victim, unaware of what her first husband would do in her regard. Thus, only ministerial authorization would allow her on the basis of an exception on humanitarian and compassionate grounds, the possibility of status; however, that would be for ministerial discretion not judicial interpretation to decide.

ORDER

THIS COURT ORDERS that the motion for a stay of removal from Canada be dismissed.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	DALVIR KAUR GILL v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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