

Federal Court



Cour fédérale

**Date: 20141008**

**Docket: IMM-6142-13**

**Citation: 2014 FC 954**

**Ottawa, Ontario, October 8, 2014**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**PARMJIT SINGH**

**Applicant**

**and**

**MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for leave and judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of the Immigration Appeal Division's [IAD] refusal to grant the Applicant special relief based on humanitarian and compassionate [H&C] grounds. The IAD found that the Applicant's circumstances and H&C

considerations did not outweigh the gravity of his misrepresentations and overall lack of credibility.

## II. Background

[2] The Applicant, a citizen of India, arrived at the Toronto airport around January 6, 2002, where he claimed refugee protection. The Applicant's refugee claim was rejected.

[3] In October 2004, the Applicant applied for permanent residence on the basis of H&C grounds, which was refused.

[4] On January 13, 2008, the Applicant married a Canadian citizen. On April 8, 2008, sponsored by his spouse, the Applicant submitted a second application for permanent residence on H&C considerations.

[5] In August 2008, the Applicant attended the High Commission of India to renew his passport but was turned away on multiple occasions. On one of these occasions, the Applicant was allegedly approached outside the High Commission by a person who offered to extend his passport for a sum of approximately 500 dollars. The Applicant accepted, and as a result, a few days later, he received his passport with a stamp that seemingly extended its validity.

[6] On February 9, 2009, the Applicant's sponsorship application was allowed and the Applicant was granted permanent residence.

[7] In May 2009, the Applicant allegedly having lost his passport, made an application for a new passport at the High Commission. In October 2009, the High Commission communicated with Citizenship and Immigration Canada [CIC] to raise its concern in respect of the passport information appearing in the Applicant's permanent residence documents. Following an investigation, the High Commission confirmed with CIC that the stamp extending the Applicant's passport, the accompanying signature and the date of validity were all fraudulent.

[8] As a result, an admissibility hearing was held on grounds of misrepresentation. The Immigration Division [ID] found the Applicant to be inadmissible under paragraph 40(1)(a) of the IRPA for submitting a fraudulent passport in support of a permanent residence application. A removal order was issued against the Applicant, who launched an appeal to the IAD on the same day.

### III. Decision under Review

[9] On August 26, 2013, the IAD dismissed the Applicant's appeal on the basis of insufficient H&C considerations. The IAD also found the Applicant to lack overall credibility and found the circumstances surrounding the Applicant's misrepresentation to constitute "a very negative element in this case".

### IV. Issue

[10] Was the IAD's decision not to grant special relief reasonable?

V. Relevant Legislative Provisions

[11] The following provisions of the IRPA are relevant:

**Appeal allowed**

67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

[...]

(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

**Fondement de l'appel**

67. (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé:

[...]

c) sauf dans le cas de l'appel du ministre, il y a – compte tenu de l'intérêt supérieur de l'enfant directement touché – des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

VI. Position of the parties

*Applicant's Position:*

[12] The Applicant does not challenge the finding of misrepresentation or the legal validity of the removal order against him. Rather, the Applicant claims that special relief should be granted on the basis of H&C considerations.

[13] The Applicant argues that the IAD failed to appreciate the specific circumstances of the misrepresentation, such as the fact that he unknowingly acquired the fraudulent stamp for his passport. The Applicant further submits that the IAD erred in attributing disproportionate weight

to his criminal conviction and to problems he may have experienced with his spouse at the time of the hearing.

*Respondent's Position:*

[14] In the Respondent's view, the IAD considered the Applicant's circumstances in light of the specific factors adopted in *Ribic v Canada (Minister of Employment and Immigration)*, [1985] IABD No 4 (QL) [*Ribic*]. The IAD's decision was therefore reasonable.

[15] The Respondent submits that the IAD's reasons are thorough and attest to the IAD's weighing of the factors pertaining to the Applicant's circumstances and credibility. The Respondent submits that the IAD rightfully found the Applicant to lack credibility.

VII. Standard of Review

[16] The standard of review applicable to the IAD's decision is that of reasonableness. As a result, this Court owes the IAD considerable deference. In *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 RCS 339 [*Khosa*], as to the IAD's direction in granting special relief, the Supreme Court stated:

[58] [...] The IAD decision to withhold relief was based on an assessment of the facts of the file. The IAD had the advantage of conducting the hearings and assessing the evidence presented, including the evidence of the respondent himself. IAD members have considerable expertise in determining appeals under the *IRPA*. Those factors, considered altogether, clearly point to the application of a reasonableness standard of review. There are no considerations that might lead to a different result. Nor is there anything in s. 18.1(4) that would conflict with the adoption of a "reasonableness" standard of review in s. 67(1)(c) cases. I

conclude, accordingly, that "reasonableness" is the appropriate standard of review.

[17] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, the Supreme Court found that “[i]n judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process”.

[18] Furthermore, this Court owes considerable deference towards the IAD’s credibility findings. As stated by Justice Beaudry in *Sanichara v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1015:

[20] The IAD, in a hearing de novo, is entitled to determine the plausibility and credibility of the testimony and other evidence before it. The weight to be assigned to that evidence is also a matter for the IAD to determine. As long as the conclusions and inferences drawn by the IAD are reasonably open to it on the record, there is no basis for interfering with its decision. Where an oral hearing has been held, more deference is accorded to the credibility findings.

#### VIII. Analysis

[19] Pursuant to paragraph 67(1)(c) of the IRPA, the IAD’s discretionary jurisdiction to grant special relief based on H&C grounds is to be exercised following the factors established in *Ribic*, above (see *Khosa*, above at para 7; *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at paras 40, 41 and 90).

[20] These factors include:

- (1) the seriousness of the offence leading to removal order;

- (2) the possibility of rehabilitation;
- (3) the length of time spent, and the degree to which the individual facing removal is established in Canada;
- (4) the family and community support available to the individual facing removal;
- (5) the family in Canada and the dislocation to the family that removal would cause; and
- (6) the degree of hardship that would be caused to the individual facing removal to his country of nationality.

[21] It is clear that the IAD considered and carefully weighed the *Ribic* factors in its analysis and dismissal of the Applicant's appeal. The IAD found that the Applicant's circumstances did not justify granting of special relief. Rather, the IAD found that the Applicant lacked overall credibility, both in his demeanour and in his testimony, and that he failed to provide sufficient evidence in support of a H&C finding.

[22] More precisely, the IAD raised the following concerns:

- a) The IAD found the Applicant to lack credibility in respect of his encounter at the High Commission, where he allegedly paid a stranger a sum twice as high as the fees normally paid to renew a passport, in order to obtain a fraudulent stamp extending his passport's validity. The IAD found that the Applicant was aware that this was not a legitimate procedure and did not find him credible in his explanations. The IAD also made a negative inference from the Applicant's failure to seek alternate ways to obtain a valid passport;

- b) The IAD gave considerable weight to the Applicant's failure to mention that he and his spouse had been separated for over one year. This omission is significant, considering that proof of family ties and relationships are key elements in the assessment of H&C considerations. It was only upon cross-examination of the Applicant's spouse that the uncertain nature of their relationship was revealed;
- c) Also, the Applicant did not provide convincing evidence of hardship for himself, his spouse, or his family members living in Canada, should he be returned to India. Since his arrival to Canada, the Applicant has returned to India and has stayed with his parents, who are still living there. The Applicant did not provide the IAD with any evidence of risk he may face upon return to India;
- d) The IAD considered the length of time the Applicant has lived in Canada, to which it gave positive weight; however, the Court notes that from the 11 years that the Applicant spent in Canada, four of those years, in fact, were spent through a status which had been obtained through misrepresentation;
- e) The IAD found that although the Applicant had been employed as a truck driver, having successfully completed a course for that purpose, nevertheless, the Applicant's recent criminal conviction of impaired driving seriously mitigates this factor. This conviction resulted in the loss of the Applicant's driver's license, therefore, limiting his variability to earn a living as a truck driver.

[23] It is this Court's view that the IAD carefully weighed the factors relevant to the Applicant's case, including both domestic circumstances and potential foreign hardship. The



IAD found the Applicant's testimony misleading and lacking credibility. The Applicant did not provide evidence by which special relief could be granted.

[24] This Court finds that the IAD rightfully found the Applicant to lack any basis for his claim for special relief on the basis of the evidence itself.

IX. Conclusion

[25] For all of the above reasons, this Court finds the IAD's decision to be reasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed;
2. No serious question of general importance is certified.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6142-13

**STYLE OF CAUSE:** PARMJIT SINGH v MINISTER OF PUBLIC SAFETY  
AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** SEPTEMBER 23, 2014

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** OCTOBER 8, 2014

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