Immigration and
Refugee Board of Canada

Immigration Appeal Division

Commission de l'immigration
et du statut de réfugié du Canada

Section d'appel de l'immigration

IAD File No. / N° de dossier de la SAI : VB4-00331

Client ID no. / N° ID client : 2298-1314

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Jasminder Kaur BHANDOL	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration	**Intimé(e)**
Date(s) of Hearing	N/A	**Date(s) de l'audience**
Place of Hearing	**In Chambers**	**Lieu de l'audience**
Date of Decision	December 30, 2015	**Date de la décision**
Panel	**Larry Campbell**	**Tribunal**
Counsel for the Appellant(s)	Massood Joomratty **Barrister and Solicitor**	**Conseil(s) de l'appelant(e) / des appelant(e)(s)**
Designated Representative(s)	N/A	**Représentant(e)(s) Désigné(e)(s)**
Counsel for the Minister	Stephanie Naqvi	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons for the decision in the appeal of Jasminder Kaur BHANDOL (the "appellant"), who appeals the refusal to approve the permanent resident application made by her spouse, Malkiat Singh BHANDOL (the "applicant"). The sponsored application for a visa was refused because the visa officer found the applicant to be inadmissible to pursuant to section 16(1) of the *Immigration and Refugee Protection Act* (the "*Act*")[1] as he had not provided satisfactory documents or replied truthfully relating to questions about the applicant's criminal conviction in India. The application was also refused because the officer found that the provisions of section 4(1) of the *Immigration and Refugee Protection Regulations* (the "*Regulations*")[2] applied.

Preliminary Matter

[2] At the time of the scheduled hearing, the parties were requested to provide submissions with respect to the criminal inadmissibility of the applicant pursuant to section 36(1)(b) of the *Act.* On January 25, 2015, the respondent made an application to add section 36(1)(b) of the *Act* as a ground of refusal. Counsel for the appellant provided a reply to the respondent's application. On June 2, 2015 the respondent's application was allowed and section 36(1)(b) of the *Act* was added as a ground of refusal.

[3] The parties were requested to provide written submissions with respect to the jurisdiction of the Immigration Appeal Division (the "IAD") pursuant to sections 64(1) and 64(2) of the *Act* relating to the added ground of refusal.

[4] Counsel for the appellant submitted that there was an issue of retroactivity with respect to the application of the revision in sections 64(1) and 64(2) of the *Act* relating to the definition of

[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[2] *Immigration and Refugee Protection Regulations,* SOR/2010–208, s. 1.

serious criminality. I find that retroactivity is not a factor in this matter. The visa office refusal was issued on December 11, 2013, which was after the revision to section 64(2) came into force. The applicant had no vested interest of an appeal to the IAD prior to the coming into force of the changes to section 64(2) of the *Act.*

[5] Counsel for the appellant has argued that, pursuant to the Federal Court (the "Court") decision in *Alfred*,[3] the Computer Assisted Immigration Processing System (CAIPS) notes should not be used as a basis for determining the ground of refusal and only the refusal letter should be considered. I find that this case is distinguishable both on the facts and the nature of the proceeding. The requirements at a judicial review are not the same as those at a de novo hearing at the IAD. The Court has found on numerous occasions that the notes form part of the decision: *Ziaei, Veryamani, Toma*.[4] In the present case the appellant and applicant were well aware that the applicant's criminal record was an area of concern and it was the applicant's failure to provide sufficient information that led to the refusal under section 16(1).

[6] Counsel for the appellant argued that the requirement in section 64(1) of the *Act* that the person ". . . has been found inadmissible. . . " required that the decision had to be made by the visa officer and this precluded the IAD from considering the matter. Counsel advanced decisions of the IRB in *Kang*[5]and *Gao*[6] as support for this proposition. Counsel for the respondent advanced that the IAD decision in *Mozafari*[7] should be preferred. I note that determinations by other panels at the IAD are not binding on other panels, although the reasoning may be persuasive. In the present appeal I find that *Kang* and *Gao* and *Mozafari* are all distinguishable

[3] *Alfred* v. *Canada* (Minister of Citizenship and Immigration), 2005 FC 1134.
[4] *Ziaei v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1169 (CanLII), *Veryamani v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1268 (CanLII); *Toma v Canada (Minister of Citizenship and Immigration)*, 2006 FC 779 (CanLII).
[5] *Kang v. Canada* (*Minister of Citizenship and Immigration*) [2004] CanLII 56697(CA IRB), para 18 and para 22.
[6] *Gao* v. *Canada* (Public Safety and Emergency Preparedness), 2010 CanLII 55004 (CA IRB), para 27.
[7] *Mozafari* v *Canada (Citizenship and Immigration)*, 2015 CanLII 38787 (CA IRB), TB4-00211.

on the facts. However, with respect to *Mozafari*, while distinguishable on the facts, I concur with the reasoning of the panel in that case with respect to the ability of the IAD to add a ground of refusal and make a determination with respect to the added ground.

[7] Section 57 and 58(a) of the *IAD Rules*[8] provide, in part, that a panel may act on its own initiative, without a party having to make an application or request to the Division. In the present appeal the panel requested that the parties address the issue relating to section 36(1)(b) of the *Act*. Having considered the submissions of the parties, the ground of refusal was added and it is thus incumbent of the panel to determine the issue consistent with its obligation pursuant to section 162(2) of the *Act* to deal with proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

[8] In the present appeal, the applicant's Canadian Citizenship was revoked on the basis that he had obtained it by false representation or fraud or by knowingly concealing material circumstances.[9] The evidence in the Record and in disclosure provided by the appellant dated December 16, 2014[10] sets out that the applicant had been convicted in India in 1975 of a number of offences including murder. The applicant was sentenced, among other things, to life imprisonment.

Decision

[9] For the reasons that follow, I find that the appellant does not have a right of appeal to the IAD pursuant to sections 64(1) and 64(2) of the *Act*. The appeal is therefore dismissed.

[8] *Immigration Appeal Division Rules* (SOR/2002-230).
[9] *Canada* (Minister of Citizenship and Immigration *) v. Singh* 2004 FC 940.
[10] Exhibit A2.

Analysis

[10] In this appeal, the initial refusal pursuant to section 16(1) of the *Act* and section 4(1) of the *Regulations* was appealable to the IAD. The added ground of refusal is pursuant to section 36(1)(b) of the *Act* and appeal on that ground is not possible as it is caught by section 64(1). Where there are one or more grounds for refusal, an appeal is filed against a refusal to issue a permanent resident visa to the applicant as a member of the family class and not against a reason for the refusal. Hence, if the panel declines jurisdiction on the basis of section 64(1) of the *Act*, the entire appeal must be dismissed, regardless of the number of other reasons found in the refusal decision or decisions. The refusal of the permanent resident visa can be based on one or several grounds set out in the *Act* and the *Regulations*, as is the case here. Section 64(1) reads as follows:

> **64. (1) No appeal for inadmissibility** – No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

[11] I find that Parliament was clear in its intention to limit the IAD's jurisdiction to hear appeals with respect to individuals who fall within section 36(1)(b) of the *Act*. The IAD has no jurisdiction to hear the appeal and therefore has no ability to consider the question of equivalency.

[12] As the applicant is inadmissible pursuant to section 36(1)(b) of the *Act*, consideration of the remaining grounds of refusal is moot as even a favourable determination would not render the applicant admissible and result in the granting of a permanent resident visa.

Conclusion

[13] I find that the appellant does not have a right of appeal to the IAD pursuant to sections 64(1) and 64(2) of the *Act*. The appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Larry Campbell"**

Larry Campbell

December 30, 2015

Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.