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 : VB5-03503

Client ID no. / N° ID client: 5746-3846

Reasons and Decision – Motifs et décision

REMOVAL ORDER

Appellant(s)	Gurjit Singh BILLING	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Public Safety and Emergency Preparedness	**Intimé(e)**
Date(s) of Hearing	June 7, 2016	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	August 17, 2016	**Date de la décision**
Panel	Kashi Mattu	**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	Ivy Scott	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (the "IAD") in the appeal by Gurjit Singh BILLING (the "appellant") from a removal order issued against him on November 2, 2015. The removal order was issued on the basis that the appellant was found to be inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* (the "*Act*").[1]

BACKGROUND

[2] The appellant is 34 years old and was born in India. The appellant was landed in Canada in December 2006.[2]

[3] The appellant was married to his first wife in February 2006 and they were divorced in August 2009.[3] The appellant married his current wife in May 2014.[4]

[4] An investigation related to the appellant's first spouse was initiated in 2013 and the appellant provided an affidavit dated July 22, 2014.[5] Based on the investigation, it was discovered that the appellant's first wife was married to another person at the time of the marriage to the appellant and she made a number of misrepresentations in the application to sponsor the appellant to Canada.[6]

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[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[2] Record, p.46.
[3] Record, p.47.
[4] Exhibit A-2, p.16.
[5] Record, pp.47-51, 88-93.
[6] Record, p.44.

ANALYSIS

Legal Validity

[5] The appellant did not challenge the legal validity of the removal order.

[6] The test to be applied in relation to inadmissibility for misrepresentation pursuant to paragraph 41(1)(a) of the *Act*:

> **40(1)** A permanent resident or a foreign national is inadmissible for misrepresentation
>
> **(a)** for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act.

[7] Misrepresentations or withholding material facts can undermine the integrity of the immigration system. In the circumstances of this case, inducing potential errors in the administration of the *Act* relate to the potential to have a direct or indirect influence on whether or not the appellant would be granted landing in Canada.

[8] I have heard the testimony of the appellant and based on the evidence before me, I agree with and adopt the analysis and conclusions of Member Tessler of Immigration Division, that is, the appellant is inadmissible on the basis of indirect misrepresentations. The following excerpts set out the analysis and conclusions:[7]

> In my opinion this case does not fit into the innocent misrepresentation exception. In fact it should be characterized as a classic indirect misrepresentation. I do not want to overly criticize Mr. Billing but in the context of an arranged marriage he may not have done his due diligence. Applications for permanent residence under a spousal sponsorship require representations by two parties, one of whom, in this case, is a

[7] Record, pp.8-9.

> Canadian citizen and not subject to removal proceedings.[8] But the Application for Permanent Residence and the Application to Sponsor and Undertaking are inextricably linked, that is, both parties make representations to Immigration officials and if accepted both parties benefit.
>
> Mr. Billing benefited significantly by the misrepresentations of his sponsor, Ms. Bajwa; he was landed in Canada as a permanent resident. To allow Mr. Billing to benefit from his assertion that he knew nothing of his sponsor's lies would lead to the absurd result that a person, who could not have been sponsored to Canada if the truth were known, would be able to remain in Canada as a permanent resident. The only way to ensure the integrity of the sponsorship program under IRPA is to characterize this kind of misrepresentation as indirect, where representations by a third party to an application are attributable to the person in the s.44 Report.[9]

CONCLUSION

[9] Based on the evidence before me and on a balance of probabilities, I find the removal order to be valid in law.

DISCRETIONARY RELIEF

[10] The test to be applied in the exercise of discretionary jurisdiction is: "the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of […] 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."[10]

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[8] CBSA's only recourse against Ms. Bajwa would be a prosecution under the general offences sections of the IRPA, for example Misrepresentation under 127(a) of the IRPA.
[9] Record, pp.8-9.
[10] Paragraph 67(1)(c) of the *Act*.

[11] In dealing with appeals pursuant to subsection 63(3), the IAD has followed the decision in *Ribic*[11] as modified by the Supreme Court of Canada in *Chieu*.[12] I regard the following factors to be the appropriate considerations in the exercise of discretionary jurisdiction in the context of an appeal based on misrepresentation. These factors are not exhaustive and the weight assigned to each factor will vary depending on the circumstances of each case. The factors are:

- the seriousness of the misrepresentation leading to the removal order and the circumstances surrounding it;
- the remorsefulness of the appellant;
- the length of time spent in Canada and the degree to which the appellant is established in Canada;
- the appellant's family in Canada and the impact on the family that removal would cause;
- the best interests of a child directly affected by the decision;
- the support available to the appellant in the family and the community; and
- the degree of hardship that would be caused to the appellant by removal from Canada, including the conditions in the likely country of removal.

[12] The exercise of discretion must also be consistent with the objectives of the *Act*, one of which is set out in paragraph 3(1)(h) of the *Act*, which recognizes the need to protect the health and safety of Canadians and to maintain the security of Canadian society. This objective includes the maintenance of the integrity of the immigration system in the face of misrepresentations made by potential immigrants.

[13] The appellant testified at the hearing and additional documentary evidence was submitted.[13] The appellant's current wife and his parents attended the hearing for support.

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[11] *Ribic, Marida v. M.E.I.* (I.A.B. 84-9623), Davey, Benedetti, Petryshyn, August 20, 1985.
[12] *Chieu v. Canada (Minister of Citizenship and Immigration)* [2002] S.C.J. No. 1 2002 SCC 3.
[13] Exhibits A-1 to A-3.

[14] The appellant testified as to the circumstances surrounding the misrepresentations and claimed he was not aware of any of the misrepresentations until after he arrived in Canada. He testified he was introduced to his first wife through his maternal uncle who was living in Canada at the time. He explained his uncle came to Canada on a visitor's visa but he had no idea of his uncle's status in Canada because he never asked. He further explained his uncle lived in Canada for a couple of years and has moved back to India three years ago because his family could not get visas. The appellant testified his uncle advised him and his parents he had a potential match for the appellant who he had met through friends at work and she was travelling to India to attend a wedding. The appellant testified he met his first wife in India in October 2005 a few times on that visit and they maintained contact through frequent phone calls when she returned to Canada and then they met again at the wedding. He testified his first wife and her parents stayed in a hotel at the time of the wedding because his first wife had told him her parents had moved a long time ago and they had no place in their home village in Ludhiana. He testified her parents and extended family, including aunts and uncles, from Ludhiana attended the wedding but her parents returned to Canada soon after the wedding. However, I note the appellant's Spouse Questionnaire, which the appellant signed, contains a different account of the genesis and development of the relationship. In that document it states: they were in contact by phone in November 2005; it does not mention the appellant's uncle was the introducer; they talked for more than three months by phone; they met for the first time in February 2006 at her village which was near the appellant's village; and the appellant's parents and brother and sister met his first wife's parents in her home in her village.[14]

[15] The appellant testified that when he landed in Canada they lived at his uncle's home for the first few days and his wife told him she had lied to him as she wanted to start a new life and forget her past. He testified she told him that the parents at the wedding were not her real parents, she got pregnant as a teenager, her parents forced her to get married before and it did not work

[14] Record, pp.67-74.

out and her parents did not want her to marry in India and she had changed her name. He further testified that he did not know what to do as he was shocked but her parents forgave her and his parents agreed so he lived with her and her family for a few months but then her behavior started to change. He testified that they moved away from her parents and then he separated from his first wife around the end of 2007 or beginning of 2008. The appellant testified he was quite stressed and he thought he might return to India so he went to India but he returned to Canada after about three months after discussion with his parents that he would have a better life in Canada as the income from the farm was not enough for a better life.

[16] Moreover, the appellant testified as to unauthorized use of his credit cards by his first wife and his efforts to settle and pay off those debts. However, although the appellant reported unauthorized use of his credit cards to the RCMP, the appellant did not advise the RCMP when he confirmed that it was his first wife that used the credit cards.

[17] The appellant did not provide any credible or satisfactory explanations as to why his first wife went to such lengths and took all the actions that he alleged she did against him. I also note that the appellant testified he met his first wife in India in October 2005, however, the appellant's wife did not have her name change registered until November 2005.[15] The appellant was not able to provide any credible explanation as to why his first wife would not get divorced when she decided she wanted to forget her past and to move on with her life and before she married him.

[18] In the context of an arranged marriage, even with an introducer who is a family member, it is not credible that neither the appellant nor his family in India would not have done any other due diligence such as background checks of the appellant's first wife and her family in India, especially given her village was allegedly nearby the appellant's ancestral village. Based on the evidence before me, I find it is more likely the appellant was aware of at least some of the

[15] Record, p.58.

circumstances of his first wife or he and his family were willfully blind as to her circumstances because this was not intended to be a lasting relationship but rather was entered into for immigration purposes.

[19] To gain entry into Canada as a result of misrepresentations undermines the integrity of the immigration system. I find these particular misrepresentations to be very egregious, at the higher end of the spectrum of seriousness, as they related to the fundamental basis of the sponsorship of a member of the family class as they related to marital status and had a direct bearing on the acceptance of the application and the approval for landing in Canada and therefore, they induced errors in the administration of the *Act*. Even though the appellant himself did not make the misrepresentations, he would not have qualified to be landed in Canada as the spouse of his first wife. This is a negative factor weighing against granting special relief to which I assign significant weight.

[20] Based on the evidence, I find the appellant did not acknowledge or admit to knowledge of the misrepresentations on his own volition or at the earliest opportunities when he allegedly learned of them but rather years later and only after an investigation by immigration officials. I find the appellant has shown little insight into or genuine remorse for the severity and extent of the misrepresentations in abusing the immigration system, although he did express remorse for what may be the consequences of his actions on himself and his current wife if he is removed from Canada. Based on the evidence, I find the appellant has not shown that he is genuinely remorseful for his actions. This is also a significant negative factor weighing against granting special relief.

[21] The appellant has become well established since he was landed in Canada. The appellant has lived in Canada for approximately nine and one-half years. He has been gainfully employed and paid taxes in Canada over the years.[16] The appellant has remarried and bought a home jointly with his current wife and has developed friendships. There was evidence of community support through letters of support.[17] While these factors are generally positive factors weighing in support of special relief, the appellant's degree of establishment and community support were achieved as a result of the appellant's landing in Canada based on the egregious misrepresentations. Accordingly, in the circumstances of this case, I place limited positive weight on the appellant's establishment and community support in Canada. Moreover, based on the evidence before me, I find there will not likely be any adverse impact on the community if the appellant is removed.

[22] The appellant has some family members living in Canada, a cousin and his wife. He has a cousin from his father's side. There was limited evidence regarding this family member. Based on the evidence before me, I find there will not likely be any impact on this family member in Canada if the appellant is removed from Canada.

[23] The appellant's current wife is a Canadian citizen and with that status she is free to remain in Canada or leave Canada and return at any time. She is a registered nurse and works at Vancouver General Hospital. She has visited India a number of times and recently with the appellant for his sister's wedding. The appellant testified that she lived at his parents' new home that is closer to amenities than their previous home. The appellant testified they are attempting to have a child and she is receiving treatment and she cannot live alone or afford to pay the mortgage to their home and they would lose everything if he is removed.

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[16] Exhibit A-1, pp.13-16; Exhibit A-2, pp.10-11.
[17] Exhibit A-1, pp.3-10.

[24] Clearly the removal of the appellant from Canada will have a significant impact on the appellant's wife. However, there was no credible evidence that the appellant's wife could not receive fertility treatment in India or obtain work in India given her profession. Further, there was no credible evidence that the appellant's wife cannot afford to pay the mortgage on her own salary or that they would suffer financial losses if they sold their home and car. It will be up to the appellant's wife to decide whether she will live in Canada and visit the appellant or whether she would accompany the appellant to India if he were removed. Given her age and capabilities and their family circumstances, I am satisfied the appellant's wife would likely be able to adapt to life in India with the support of the appellant and his family, although she will have an adjustment period to become acclimatized to her new environment. Based on the evidence before me, I find the appellant's wife, will suffer some emotional and financial impacts, but will not likely suffer undue hardship if the appellant is removed from Canada. This is a positive factor weighing in favour of granting special relief.

[25] The appellant testified that he would suffer significant hardship if he were removed from Canada. He explained that he has a strong desire to live and work in Canada with his wife and he will not be able to find suitable work in India because of the limited opportunities in India. While it is inevitable that anyone who is removed from Canada suffers some hardship, I find that the appellant will not likely suffer undue hardship from removal. There was no credible evidence that the country conditions in India that create hardship to the appellant except that the appellant would have to re-establish himself there. The appellant lived in India without any apparent problems most of his life. The appellant was educated in India and was self-employed as a farmer since 2000[18] until he left India. He has acquired additional skills and experience during

[18] Record, p.63.

his time in Canada. In addition, the appellant has a family home where he and his wife could live in India and his father still has 10 acres of land after he sold 10 acres to pay off debts and buy equipment for the farm. Moreover, the appellant has close and extended family living in India. Specifically, the appellant's parents live in India. His father is a retired inspector from the health department in India. They have been granted visitors' visas to visit Canada three times since the appellant was landed. This is a credible indication that immigration officials have been satisfied that they have strong establishment and ties to India. The appellant also has a younger sister in India who recently married someone from India and he testified he has a younger brother but he left the family a long time ago, in 2006, and never came back.

[26] Counsel submitted that the panel should consider the *Act*'s objective of family reunification and allow the appellant to remain in Canada. While I agree family reunification is an important objective, I have considered the specific circumstances of this case and I find it is not an overriding consideration. The consequences of the removal order are that the appellant will not likely be able to return to Canada for a five-year period. Parliament increased this time period from two years which is a clear demonstration of Parliament's intentions related consequences of misrepresentations and therefore, in my view, this time period in itself does not constitute hardship. In the circumstances of this case, I find potential separation of the appellant from his current wife if she remains in Canada, will result in some difficulties, however, would not cause undue hardship to the appellant and it will be up to the appellant's wife as to how much time she will spend with the appellant if he is removed from Canada. If this relationship is in fact a committed relationship, and intended to be a lasting relationship, the appellant and his wife can continue to financially and emotionally support each other and the appellant's wife will be able to sponsor the appellant back to Canada after the expiration of the removal order if she wishes to do so and, in my view, the time to process such an application is not undue hardship.

[27] In considering the evidence as a whole, I find the negative factors in this case outweigh those factors in favour of the appellant. I find the circumstances of this case do not warrant a stay. The removal order is an exclusion order under subsection 225(3) of the *Immigration and Refugee Protection Regulations*[19] and subsection 40(2) of the *Act*, which will be effective for five years, after which time the appellant would have options to immigrate to Canada if he wishes to reside here permanently through sponsorship by his wife, as well as options for visits to Canada.

CONCLUSION

[28] The appellant has not met the onus of proof. Based on the evidence before me and on a balance of probabilities, taking into account the best interests of a child directly affected by the decision, there are not sufficient humanitarian and compassionate considerations that warrant special relief in light of all the circumstances of the case.

DECISION

[29] Based on the evidence before me and on a balance of probabilities, the removal order is valid in law and taking into account the best interests of a child directly affected by the decision, there are not sufficient humanitarian and compassionate considerations that warrant special relief in light of all the circumstances of the case. Therefore, the appeal is dismissed.

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[19] *Immigration and Refugee Protection Regulations*, SOR/2002–227.

IAD File No. / N^{o} de dossier de la SAI : VB5-03503

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Kashi Mattu"**

Kashi Mattu

August 17, 2016

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.