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: VB6-01365

Client ID no. / N° ID client: 5214-4662

Reasons and Decision – Motifs et décision

REMOVAL ORDER

Appellant(s)	Abdur Rehman KHAN	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Public Safety and Emergency Preparedness	**Intimé(e)**
Date(s) of Hearing	January 11, 2017	**Date(s) de l'audience**
Place of Hearing	**Vancouver, BC**	**Lieu de l'audience**
Date of Decision	April 3, 2017	**Date de la décision**
Panel	**Craig Costantino**	**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 for the decision in the appeal of Abdur Rahman KHAN (the "appellant") from a removal order made against him on April 13, 2016 by the Immigration Division (the "ID") of the Immigration and Refugee Board. The ID issued an Exclusion Order on the ground that the appellant was a person described in section 40(1)(a) of the *Immigration and Refugee Protection Act* (the "*Act*").[1] In particular, he is a permanent resident of Canada who by misrepresentation or omission of a material fact did or could have induced an error in the administration of the *Act*.

ISSUE

[2] There was no challenge to the legal validity of the appellant's removal order and, based on the evidence before me, I am satisfied that the removal order is valid in law. The issue before the panel is whether the appeal should be allowed on the basis that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case, taking into account the best interests of any child directly affected by the decision.

DECISION

[3] I have come to the conclusion that the removal order is valid in law and that there are not sufficient humanitarian and compassionate grounds, in light of all the circumstances of the case, taking into account the best interests of any children directly affected by the decision, for me to find in the appellant's favour. The appeal is dismissed.

---

[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

BACKGROUND

[4] The appellant is a 43-year-old national of Pakistan. He was included as a dependent of his mother when his brother Mohammad TAYYAB sponsored his mother to Canada in 1993. However, the appellant came to Canada in 1998 as a visitor under the name of Abdul REHMAN while the sponsorship application in which he was included was still outstanding. After arriving in Canada in 1998, the appellant then made a refugee claim under another name, Ibuhuraira KHAN, which was refused in October 2000. He then submitted a permanent residence application through the sponsorship of Azima Khatoon KHAN in November 2000. The appellant conceded at the hearing that this marriage – to the divorced wife of Mohammad Tayyab – was not genuine and solely for an immigration purpose. The appellant was removed from Canada under the name of Ibuhuraira Khan on September 27, 2001 on a deportation order without the sponsorship application having being determined. Interviews were scheduled for the appellant as Ibuhuraira Khan at the Canadian visa office in Sydney, Australia in August 2002 and Islamabad in October 2003 to determine the genuineness of the marriage but the appellant never showed up.

[5] The appellant was landed in Canada under his current name and date of birth as an accompanying dependent of his mother on April 18, 2003. At the time he was landed, the officers who examined him did not know that he had previously been to Canada, did not know that he had used two other names and had travel documents under each of those names, did not know that he had previously made a refugee claim and been deported from Canada, and did not know that he had married in Canada and had an outstanding application for permanent residence on a spousal sponsorship. Nor did the officer who admitted him to Canada know that the appellant had previously married in 1995 and had three children at the time he was landed.

[6] The appellant was interviewed by a CBSA enforcement officer on June 18, 2014. In the course of the interview he admitted to coming to Canada under the name Abdul REHMAN, in 1998, making a refugee claim under the name Ibuhuraira Khan in 1999, leaving Canada under a deemed deportation order, and not disclosing that he had previously been deported from Canada

when he was landed on April 18, 2003.[2] He conceded that he was inadmissible for misrepresentation at his admissibility hearing and did not dispute the legality of his inadmissibility at his appeal, but seeks special relief on humanitarian and compassionate grounds.

ANALYSIS

[7] The misrepresentation of the appellant was serious and the threshold for finding a misrepresentation is low. The misrepresentation need only have had the effect of foreclosing or averting further inquiries of the appellant, even if those inquiries would not have disclosed any independent ground to refuse the application to immigrate or for removal (for example medical inquiries for the dependent family members).[3]

[8] The appellant was under a positive duty of candour to disclose all facts related to his application, including those facts which might have changed.[4] At the time he initially applied for permanent residence the appellant was not married, had no children and had not previously entered, sought status in Canada or been removed from Canada. However, by the time he was landed in Canada in April 2003, the appellant had entered Canada through a visa he obtained under a name different than the one on his permanent resident application in 1998, then made a refugee claim under a third name in 1999, married in Canada while still legally married to his first spouse, was sponsored as a spouse to Canada, and was removed on a deemed deportation order in 2001. By the time he was landed in 2003, the appellant had three children. He did not disclose his dependents or any facts relating to his Canadian immigration history when he was examined for landing. I do not find the appellant's testimony credible that he failed to provide this information because he had never been asked directly until his 2014 interview if he had

[2] Record pp. 24-34.
[3] *Canada [M.M.I.] v. Brooks*, [1974] S.C.R. 850].
[4] *Gudino v. Canada*, [1982] 2 F.C. 40.

dependents or if he had previously been refused a visa or been removed from Canada. I find not only that the removal order finding him inadmissible for misrepresentation is legally valid but that the appellant is responsible for several direct and deliberate misrepresentations beyond the index offence that forms the basis for his inadmissibility.

[9] However, I also have the discretion to allow the appellant's appeal on humanitarian and compassionate grounds, taking into account the best interests of a child directly affected by the decision, in all the circumstances of the case. Prior decision-makers of the Immigration Appeal Division have established the following appropriate, although not exhaustive considerations:

- The seriousness of the misrepresentation
- The length of time the appellant has been in Canada and the degree to which the appellant is established;
- The impact the appellant's removal from Canada would have on members of the appellant's family;
- Family in Canada and the dislocation to that family that removal of the appellant would cause;
- The support available for the appellant within the community;
- The hardship the appellant would face in the country to which he would likely be removed.

[10] The appellant's misrepresentation was very serious. As a person who was removed from Canada on a deportation order, he was obliged to obtain an authorization to return to Canada ("ARC") before he could re-enter Canada. The appellant was never asked to obtain an ARC before being landed under his current identity because he had been removed under a different identity and had never disclosed either that he had used another identity or previously entered, sought admission or been removed from Canada. Additionally, he did not disclose his marital history or his three children when he was landed, foreclosing examination of his dependents as well as his eligibility to be included as a dependent of his mother when they were sponsored to Canada by the appellant's brother Mohammad Tayyab.

[11] Despite testifying that he was remorseful at his hearing, the appellant continued to try to minimize the severity of his misrepresentations. For example, the appellant maintained the position that he had taken in his 2014 interview at his hearing, claiming that he had never disclosed that he had been previously removed, used a different name or was married with three children because he had not been asked. The appellant claimed that he remembered being landed in 2003, that he had been asked a few basic questions without interpretation and that he was not asked if he had any dependents or if he had previously been refused status or been removed from Canada. I do not find the appellant's evidence credible. I could accept that the appellant might not remember being asked such questions but ultimately I find that the Confirmation of Permanent Residence document[5] completed when the appellant was landed on April 18, 2013 speaks for itself. I find that the form indicates that the appellant answered "no" to the question of whether he had any dependents other than those listed, that the appellant answered no to question 18 asking if he had previously been refused status or been removed from Canada,[6] and that he signed a line on the form beside the statement "I certify that the above statements are true and correct." I may have believed if the appellant claimed not to remember the landing interview clearly but I do not accept his self-serving version of events. I find on a balance of probabilities that the appellant knowingly and wilfully misrepresented himself when he was landed.

[12] Beyond the appellant's attempts to minimize the severity of his misrepresentations at his hearing, I also did not find him to be a straightforward or reliable witness. He made some admissions against his own interest but never without follow-up questions to clarify. For example, while the appellant ultimately conceded that his marriage to Mohammad Tayyab's ex-wife in 2001 was for immigration purposes, he initially indicated that the marriage ended because he left Canada. He then clarified in follow-up questions that Mohammad Tayyab had gotten back together with his ex-wife after the appellant left Canada in 2001. Mohammad Tayyab then married the mother of the appellant's three children (who he purportedly divorced in 2001) in 2006 and attempted to sponsor her and the appellant's children to Canada. The appellant testified that her brother's marriage to the mother of his children was genuine and motivated by the desire to keep his children within the family. In his ex-wife's permanent

[5] Record p. 35.
[6] Also see Record pp. 24-34 at p. 27; p. 34.

residence application, she indicated that she was widowed and the father of her children was deceased. The application was ultimately withdrawn when the applicant and Mohammad Tayyab were asked to do DNA testing.[7] The appellant claimed that he was completely separated from her when the application was made and had no idea what she and his brother had put in their application. At the same time he indicated that he was very hopeful that it would result in his children coming to Canada but he had not been lucky. The appellant then testified that his ex-wife had divorced his brother after the application was refused because 'she is a hard lady." However, the appellant also testified that his ex-wife and children live in a house that he owns and that he has been staying with them in his house for two to three months every two years, and that he might get back together with his wife if he moves back to Pakistan. In light of all of the circumstances, I find that the appellant has demonstrated that he will do and say whatever is necessary to achieve his objectives. He has shown little regard for the law in misrepresenting his identity, and in his marital history. I do not accept on a balance of probabilities that he ever divorced his ex-wife, his second marriage under the name Ibuhuraira Khan was a fraud and he continues to be legally married under this name to his brother's wife. He has since married and separated a third time in British Columbia in 2014, representing himself as single when he got his marriage certificate. Having come to a point where his past has caught up with him, the appellant's only card left to play is to show remorse, and yet he is still attempting to minimize his behaviour and refusing to take full responsibility for his misrepresentations.

[13] The appellant has attained a degree of establishment in Canada. He works as an imam and he has a good reputation in the community. He leads prayers, participates in inter-faith meetings, teaches youth, participates in charitable activities, and generally plays a positive role in the community. Although he was trained as an imam in Pakistan, the appellant has also tried his hand at a few businesses that have now failed and testified to returning to work as an imam because it has flexible time requirements that allow him to spend more time caring for his

[7] Exhibit R-1.

mother. He makes a modest income on which he pays his taxes and has little in the way of assets beyond a bank account. I find that the appellant has some establishment in Canada but I give this little weight as it has occurred subsequent to and as a result of his misrepresentation. The appellant's establishment in Canada is a slightly favourable factor in the appeal.

[14] The appellant's mother and two of his brothers are Canadian citizens. The appellant is currently living with his mother in Surrey. His daughter recently married Mohammed TAYYAB's son and was successfully sponsored and landed in Canada. She lives in Saskatchewan where Mohammad Tayyab also lives. The appellant testified that he visited his daughter and his brother in Saskatchewan recently but also that his brother is very busy running a school there. The appellant's other brother in Canada, Muhammad Sajid KHAN, lives in Surrey. He and his wife have three young children and the appellant visits them about twice a week. According to Muhammad Sajid Khan, the appellant plays an important role in the lives of his children. On the other hand, the appellant still has two sons in Pakistan, as well as their mother with whom the appellant admits there is a possibility of reunification. He also has two brothers and four sisters in Pakistan. He has been spending two to three months in Pakistan every two years. Consequently, whereas I do acknowledge that there would be some hardship to the appellant's family members in Canada if he is removed to Pakistan, particularly his mother, this is only a slightly positive factor given that the appellant also has been separated from his own children as they have grown up, and he has a significant degree of family support in Pakistan.

[15] The appellant's mother is 84-years-old and has kidney disease. I accept that the appellant is currently very active in managing her care, taking her to medical appointments, monitoring her health, and helping take care of her daily needs including cooking. I also accept that the appellant is better-positioned to provide this level of care than his two brothers because his occupation as an imam allows him to spend most of the day with his mother at home and he has no other family commitments in Canada. However, I am not satisfied that alternative arrangements could not be made for his mother's care with the assistance of one or both of the appellant's brothers in Canada. I acknowledge that this will cause some hardship to the appellant's mother, and some inconvenience and possibly some extra cost to his brothers. I also accept that the appellant will suffer some hardship being separated from his mother at a point in her life when she is so

advanced in age and in such frail health. I find this dislocation hardship to be a favourable factor in this appeal.

[16] I find the degree of community and family support that the appellant has to be a positive factor in his appeal. However, I also find that the appellant has significant family support in Pakistan. He has property in Pakistan and despite the appellant's testimony that working as an imam in Pakistan is a low-level position and that he is accustomed to life in Canada, the appellant has not adduced sufficient evidence to establish that he would suffer any hardship by being removed to Pakistan. He may receive a lower salary and he may have fewer economic opportunities in Pakistan but these are not hardships per se as the appellant would not have gained access to Canada if not for his misrepresentations.

[17] I do not find that the best interests of any children directly affected by this appeal are adversely affected by the appellant's removal. I acknowledge that the appellant's nephews and nieces may miss him but I do not have sufficient evidence before me to conclude that their best interests will not be met as a result of his removal. They live with their parents and while I accept that he plays a positive role in their lives as their uncle, he does not play a central role in their education or day-to-day lives. As for the appellant's own children, they have been separated from him throughout their lives. The appellant claims to have been supporting them from Canada but has provided no corroborative evidence to establish the degree of support he has provided. While the appellant may not be able to pay his eldest son's university tuition once he is removed from Canada, he is no longer a child. I accept that providing for the education of the appellant's third child may be more challenging but this is highly speculative without more information about his circumstances. I do not have sufficient reliable evidence to conclude that his best interests would not be met if the appellant is removed.

[18] I also find that the appellant has not provided sufficient evidence to establish that he will suffer hardship in Pakistan if he is removed there. He has maintained his connection to his country of citizenship, staying there two to three months every two years. He has a university education and was trained as an imam in Pakistan, he has property in Pakistan and he has family support from his elder brothers, as well as four sisters, an "ex-wife" with whom he has had at

least three children and has conceded he may reconcile, and two sons. The appellant's concerns about removal to Pakistan are primarily economic as he fears that he will have trouble finding work and receiving good pay for work in Pakistan. He is motivated to earn more money so that he can ensure his sons get a good education. I accept the appellant's testimony concerning his desire to create more opportunities for his children but I do not find the possibility that the appellant will make less money in Pakistan than in Canada to amount to hardship, and do not have sufficient reliable evidence to conclude that the appellant will not be able to work in Pakistan or that his family there will suffer any negative consequences as a result of his removal.

[19] Counsel for the appellant submitted that the appellant had admitted his faults and had misrepresented himself for the sake of his children. I do not find that the appellant has taken full responsibility for his misrepresentations or that his motivations were altruistic. Contrary to the appellant's belief stated in his 2014 interview that he had already been punished by being removed from Canada in 2001, the appellant has never borne any consequences for his misrepresentations. I find that the appellant has not met the burden of showing that there are sufficient humanitarian and compassionate considerations, taking into account the best interest of the children affected by my decision, which warrant special relief. In coming to this conclusion I place emphasis on the seriousness of the misrepresentation. The appellant did not commit a single innocent mistake. Rather he has engaged in a series of misrepresentations over a number of years and did not come forward until he was confronted and had no other alternative.

CONCLUSION

[20] The removal order is valid in law. Taking into account the best interests of the children directly affected by this decision, there are not sufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of the case.

[21] The appeal is dismissed.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Craig Costantino"**

Craig Costantino

April 3, 2017

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.