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 : VB6-02413

Client ID no. / N° ID client: 4272-6814

Reasons and Decision – Motifs et décision

REMOVAL ORDER

Appellant(s)	Jagraj Singh SANGHA a.k.a. Tek Sangha SINGH	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Public Safety and Emergency Preparedness	**Intimé(e)**
Date(s) of Hearing	January 10, 2017	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	March 2, 2017	**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	Laura Merriam	**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 Jagraj Singh SANGHA a.k.a. Tek Sangha SINGH (the "appellant") from a removal order issued against him on July 13, 2016. 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 testified he is 49 years old and he was born in India. The appellant was sponsored by his wife and was landed in Canada in 2004 as a spouse.[2]

[3] The appellant's legal name is Tek Singh and he was born in June 1968.[3] He first entered Canada in December 1994 and made a refugee claim under the name Daljit Singh with a different date of birth, he was found not to be refugee in 1995 and he did not report for removal. He made another refugee claim in 1997 under the name Nirmal Singh with a different date of birth and that claim was vacated in 1997 when immigration authorities learned of his other identity through fingerprints. The appellant made a third refugee claim in Canada in 2000 under the name Jagraj Singh with a different date of birth and withdrew that claim after he married in Canada. A sponsorship application from within Canada was refused and the appellant was removed from Canada in January 2004. The appellant's spouse made a sponsorship application from outside Canada and the appellant did not use his legal name and correct date of birth and did not declare two of his previous refugee claims under different names in that application. The appellant also made an application for authorization to return to Canada and the applications were approved in 2004.[4]

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[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[2] Record, p. 10.
[3] Exhibit A-1, p. 8.
[4] Record, p. 32.

[4] In June 2011 immigration authorities received information about the appellant and attempted to contact the appellant at his last known address but were unsuccessful. After the appellant submitted an application to renew his permanent resident card in 2015 further investigation resulted in immigration authorities locating the appellant and an interview was held in October 2015.[5]

[5] The appellant testified at the hearing and additional documentary evidence was submitted.[6]

ANALYSIS

[6] The appellant did not challenge the legal validity of the removal order. Based on the evidence before me and on a balance of probabilities, I find the removal order to be valid in law.

[7] The test to be applied in the exercise of discretionary jurisdiction is: the IAD 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.[7]

[8] In dealing with appeals pursuant to subsection 63(3), the IAD has followed the decision in *Ribic*[8] as modified by the Supreme Court of Canada in *Chieu*.[9] 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;

[5] Record, p. 5.
[6] Exhibits A-1 and A-2.
[7] Paragraph 67(1)(c) of the *Act*.
[8] *Ribic v. M.E.I.*, [1985] I.A.B.D. No.4, (T84-09623), Davey, Benedetti, Petryshyn, August 20, 1985.
[9] *Chieu v. Canada* (*Minister of Citizenship and Immigration*), [2002] S.C.J. No. 1 2002 SCC 3.

- 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.

[9] 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.

[10] The appellant testified at the IAD hearing as to the circumstances surrounding the misrepresentations. There was also documentary evidence in the Record related to the appellant's misrepresentations. At the IAD hearing, and at his earlier interview, the appellant acknowledged he did not use his legal name or date of birth and did not disclose two previous refugee claims under different names in the sponsorship application. He explained that he did this because he knew he would not be issued a visa if he told the truth.

[11] 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, that is, identity and would have had a direct bearing on the acceptance of the sponsorship application and the approval for landing of the appellant and therefore, they could have induced errors in the administration of the *Act*. This is a negative factor weighing against granting special relief to which I assign significant weight.

[12] Based on the evidence before me, I find the appellant did not acknowledge or admit to the misrepresentations or abuse of the immigration system on his own volition or at the earliest opportunities but rather over 11 years later and only after a request for an interview by immigration officials. Moreover, at the IAD hearing the appellant testified that he was feeling guilty about using a false name and his mistakes and was baptized about three years ago and he told his congregation and, although he thought about it, he did not contact immigration officials because he was counselled that he would face difficulties.

[13] Based on the evidence before me and on a balance of probabilities, I find the appellant was fully aware of his misrepresentations since 2004 when he submitted his applications for permanent residence and authorization to return to Canada and the appellant continued his misrepresentations until he was called for an interview by immigration authorities over 11 years later. I find the appellant has shown little insight into or genuine remorse for the severity and extent of the misrepresentations and in abusing the immigration system, although he did express remorse for what may be the consequences of his actions on himself, his spouse and their children 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 over the years. This is also a significant negative factor weighing against granting special relief.

[14] The appellant is well established in Canada. The appellant has lived in Canada for over 20 years. He has been gainfully employed and paid taxes in Canada over the years and he now runs a trucking business with one other driver.[10] The appellant testified he rents a home with his spouse and children. The appellant testified as to volunteer work and community contributions, and provided a letter of support.[11] Based on the evidence before me, I find there will not likely be any adverse impact on the community if the appellant is removed, however, the appellant's degree of establishment and volunteer contributions are positive factors weighing in favour of granting special relief.

[10] Exhibit A-1, pp. 22-72.
[11] Exhibit A-1, p. 73.

[15] The appellant has several family members living in Canada, his spouse and two Canadian born children and in-laws. There was limited evidence provided as to the impact on the appellant's in-laws and their families if he is removed. The appellant testified that he rents a home near his in-laws. Based on the evidence before me, I find there will likely be some emotional impact on the appellant's in-laws and potentially some financial impact if his in-laws would be required to assist his wife and children, if the appellant is removed from Canada, however, it would not likely be undue hardship. Nonetheless, the impact on these family members in Canada and their support is a positive factor weighing in favour of granting special relief.

[16] The appellant's wife is a citizen of Canada.[12] The appellant testified he told his wife his real name at the time of the marriage but the evidence was not clear as to when he told her about his previous refugee claims under other names. He testified his wife is dependent on him financially, she works two hours a day as a caregiver while the children attend school and she cares for the children. He testified they have not discussed plans if he is removed from Canada. There was limited credible evidence of country conditions in India that would create hardship to the appellant's wife. The appellant's wife has visited India a number of times since they were married without incident. She has her parents living a few minutes away from her in Canada. Her sister and her family also live in Canada. The impact of the appellant's removal from Canada will depend on where the appellant's wife and children decide to live. It will be up to the appellant and his wife to decide whether she will live in Canada with the children and visit the appellant or whether she would voluntarily accompany the appellant to India with the children if he is removed. Given the fact she was born and grew up in India, has visited India without incident since they were married, her age and their family circumstances, including their cultural and religious practices while in Canada, I am satisfied the appellant's wife would likely be able to adapt to life in India with the support of the appellant, although she will have an adjustment period to become re-acclimatized to the environment. Based on the evidence before me, I find the appellant's wife will likely suffer emotional and financial impacts if the appellant is removed

[12] Exhibit A-1, p. 10.

from Canada and she decides to live in Canada with the children and only visit the appellant until he is able to legally return to Canada. This is a positive factor weighing in favour of granting special relief.

[17] I have considered the best interests of the appellant's two children. They were born in Canada and are ten and eight years old. There was evidence regarding their activities in Canada and how the appellant and wife are involved in their lives.[13] There was also credible evidence of the appellant's son's medical condition and Attention Deficit Disorder.[14] It is generally in the best interests of the children to live together in the family unit with their parents. The appellant and his wife have made decisions for their children that have likely been in their best interests and they will likely continue to do so. As the children are Canadian citizens they are free to remain in Canada, to leave Canada and return at any time. There was limited credible evidence of country conditions in India that would create hardship to the appellant's children. There was no evidence that the children cannot attend school or participate in other activities in India, including getting assistance for the appellant's son's Attention Deficit Disorder issues. The children are able to speak their native language and have been involved in Indian cultural and religious activities in Canada. There is a family home in India where the children can live with their parents. Further, there was no evidence that the appellant would have any difficulty in obtaining the required medications or treatment in India for the eldest son's conditions. Moreover, the children are of such a young age that they would likely be able to adapt to a new environment with the support of their parents. Moreover, they have grandparents that both in Canada and in India. Based on the evidence before me, the appellant and his wife can decide to live together with the children as a family unit in India or the appellant's wife and children could visit the appellant in India and otherwise maintain regular contact through electronic means, therefore, I find there would not likely be undue adverse impact on the best interests of the appellant's children if the appellant is removed from Canada.

[13] Exhibit A-1, pp. 11-12; 18-21.
[14] Exhibit A-1, pp. 16-17; Exhibit A-2.

[18] 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 children to support them and his family 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. The appellant testified that police are still making inquiries about him in India and he is required to make payments to police officials before visiting India or he will face interrogations and false claims against him in India. While I accept the appellant may have faced some improper treatment by police in India prior to his first entry into Canada in 1994, he was not successful in his initial refugee claim in Canada or his claim in the United States and there was no credible evidence that the current country conditions in India would create hardship to the appellant except that the appellant would have to re-establish himself there.[15] The appellant lived in India without any apparent problems more than half of his life. He has acquired additional skills and experience during his time in Canada which he could use to acquire work or start a business in India. Moreover, the appellant has visited India many times since he was granted permanent resident status in Canada over 11 years ago and has also taken his wife and children to visit India without incident. In addition, the appellant has a family home where he and his wife and children could live in India and he jointly owns over nine acres of land which provides an income, although he testified it is mortgaged. Moreover, the appellant has family living in India. The appellant has his mother, his brother and his family and a sister and her family in India. Alternatively, based on the evidence before me, the appellant could choose to live and work away from his village in India, given the additional skills and experience he has acquired over the years in Canada, and would likely be able to find employment or start a business to support himself and his family.

[19] Family reunification is also an important objective of the *Act*. 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

[15] Exhibit A-1, pp. 75-80.

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 wife and children if they remain in Canada, will result in difficulties, however, it would not cause undue hardship to the appellant as it will be up to the appellant and his wife as to how much time she and the children will spend with the appellant if he is removed from Canada and there are close family members in Canada and in India that can provide some support. 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. In the event that the appellant's wife decides to leave Canada voluntarily with the children, there will be family reunification in India.

[20] In considering the evidence as a whole, I find the negative factors in this case outweigh those factors in favour of granting special relief. Given the particular circumstances in this case, specifically the egregious nature of the misrepresentations and lack of genuine remorse, I find a stay is not appropriate. The removal order is an exclusion order under subsection 225(3) of the *Immigration and Refugee Protection Regulations*[16] and subsection 40(2) of the *Act*, which will be effective for five years, after which time the appellant would have options to visit Canada or immigrate to Canada if he wishes to reside here permanently and qualifies.

CONCLUSION

[21] 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 the children 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.

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[16] *Immigration and Refugee Protection Regulations*, SOR/2002-227.

DECISION

[22] 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 the children 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.

NOTICE OF DECISION

The appeal is dismissed.

(signed) **"Kashi Mattu"**

Kashi Mattu

March 2, 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.