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 : VB7-03349 / VB7-03350

Client ID no. / N° ID client : 5342-9509 / 5342-9512

Reasons and Decision – Motifs et décision

REMOVAL ORDER

Appellant(s)	Biswajit GHOSH Amal Chandra GHOSH	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Public Safety and Emergency Preparedness	**Intimé(e)**
Date(s) of Hearing	April 13, 2018	**Date(s) de l'audience**
Place of Hearing	**Vancouver, BC**	**Lieu de l'audience**
Date of Decision	April 18, 2018	**Date de la décision**
Panel	**George Pemberton**	**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 decisions of the Immigration Appeal Division (the "IAD") in the appeals of Biswajit GHOSH and Amal Chandra GHOSH (collectively the "appellants", individually they are identified by their given names) from Exclusions Orders issued against them on May 25, 2017. The appellants were found to be inadmissible under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* (the "*Act*")[1] for misrepresentation.

BACKGROUND

[2] The appellants are citizens of Bangladesh. They became permanent residents in 2006 as dependents of their father, who had been sponsored by their older brother Babul. Canada Border Services Agency ("CBSA") learned that they had each misrepresented their ages and that Biswajit had failed to disclose that at the time of his permanent resident application he was married and had a child. On May 25, 2017, the Immigration Division (the "ID") found that the appellants had committed misrepresentation and issued exclusion orders.

[3] The appellants testified and provided documentary evidence.[2] I have taken into consideration the contents of the Records, the witness testimony, the documentary evidence and the parties' submissions.

ISSUE

[4] There are two issues before me. The first is whether the Exclusion Orders were legally valid. The appellants did not challenge the legal validity. They brought their appeals pursuant to the IAD's discretionary jurisdiction to grant special relief. The appellants must establish that

[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[2] Exhibits A-1 and A-2.

taking into account the best interests of a child directly affected by the decisions, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the cases.

[5] These are separate appeals. They were heard together with the consent of the parties. The decisions may be different for each appellant.

DECISION

[6] I find the exclusion orders made May 25, 2017, are legally valid. Based on the evidence before me, taking into account the best interests of a child directly affected by the decision, I find there are not sufficient humanitarian and compassionate considerations to warrant special relief in light of the circumstances of the cases. The appeals are dismissed.

ANALYSIS

[7] The documentary evidence established that the appellants provided false dates of birth at the time of their applications for permanent residence. In addition, Biswajit was married and had a child at the time of his application for permanent residence. But for the misrepresentations, the appellants would not have been eligible for permanent residence as dependent children of their father. The false information induced errors in the administration of the *Act*. The appellants admitted the misrepresentations. I find that the Exclusion Orders are legally valid.

[8] The IAD may stay the execution of a removal order or allow an appeal from a removal order if the appellant is successful in establishing a case for discretionary relief. The factors to be

considered by the IAD when exercising its discretionary jurisdiction are myriad and specific to the individual but, in the context of a misrepresentation, include the following:

- the seriousness of the misrepresentation leading to the removal orders;
- the degree of remorse demonstrated by the appellants and likelihood they will commit future violations against the *Act*;
- the length of time spent in Canada and the degree to which the appellants are established here;
- the appellants' family in Canada and the impact to the family that removal would cause;
- the family and community support available to the appellants; and,
- the degree of hardship that would be caused to the appellants by removal from Canada, including the conditions in the likely country of removal.

I am also obliged to consider the best interests of any child directly affected by the decisions.

[9] The exercise of this discretion must be consistent with the objectives of the *Act*, including the need to protect the health and safety of Canadians and maintain the security of Canadian society. In the context of a misrepresentation this includes the maintenance of integrity of the immigration system and the threats arising from the potential errors in administration of the *Act* that result.

[10] The appellants' conduct from beginning to end has been egregious.

[11] At the time of the applications for permanent residence Biswajit was 28 years old; he claimed to be 22. Amal was 23 years old; he claimed to be 20. Biswajit was married and had a child. He claimed to be unmarried. But for the misrepresentations they would not have been entitled to permanent residence as dependent children. The misrepresentations were extremely serious.

[12] The appellants have not taken responsibility for their actions. At the hearing they testified that the misrepresentations had been committed by their father, without their knowledge. In 2016 they each provided sworn affidavits (the "2016 affidavits") in response to CBSA procedural fairness letters. They each stated "As I did not fulfil the criteria required to immigrate to Canada, **I decided** to misrepresent my true date of birth in order to qualify for immigration" [emphasis added].[3] The affidavits make no mention of their father's involvement. Biswajit testified that he did not learn of the false date of birth on his application until he tried to sponsor his wife in late 2007. He admitted that he knew that if he had declared his wife and child he would not have been eligible for permanent residence. Amal testified that he learned of the misrepresentation when he applied for his Social Insurance number, in other words, shortly after his arrival in Canada.

[13] Biswajit was 30 years old at the time he became a permanent resident; Amal was 25. They each signed their application forms containing the false dates of birth. It defies credibility that they were unaware of the misrepresentations at the time of their applications and at the time of landing. Their attempt at the hearing to deflect blame to their father detracts from their credibility. I give little weight to their claims of remorse.

[14] Their conduct in immigration matters since their arrival in Canada has been little better. In 2008 Biswajit applied to sponsor his wife and child. He reported that he had married his wife in 2007. In fact they had married in 1998. He reported that his wife was a widow at the time they married. A death certificate for her purported first husband was provided. It was false. He reported that his then 7 year old son was his stepson and had been fathered by the deceased "husband." The visa post required DNA testing. Biswajit refused DNA testing claiming, falsely, that his son's grandparents refused. The sponsorship application was refused.

[15] In 2011 the appellants applied for citizenship. Citizenship and Immigration Canada ("CIC") obtained information that the appellants had given false dates of birth. CIC demanded further proof of age, including school records. The appellants provided school records purporting

[3] Record, pp. 82 and 149, para. 7.

to confirm their ages. CIC did field enquiries in Bangladesh. They learned that the school records were forged.

[16] At this hearing, Amal testified under affirmation that at the time of their permanent resident applications, Biswajit was not married and did not have a child. He testified that Biswajit did not marry until 2007. His testimony was surreal. It is demonstrably false.

[17] The appellants' continuing contempt for the immigration system is indicative that if it is to their advantage, they would not hesitate to abuse the system again in the future. The appellants' lack of genuine remorse and their pattern of conduct go against them.

[18] The appellants have been in Canada for nearly 12 years. They have been continuously employed. They live with their brother Babul and his family. The 2016 affidavits include claims of volunteering in the community. Those claims were not consistent with Amal's testimony. I give the claims little weight. Nonetheless, they have been here 12 years and have set down roots. That is a positive consideration. The weight I give that establishment is mitigated by the fact that, but for the misrepresentations they would not be here at all.

[19] The appellants' parents have returned to Bangladesh. Their only remaining family in Canada are Babul and his wife and two sons. The 2016 affidavits reported that Babul's wife had been seriously injured in an accident and therefore the appellants' responsibility to support the family had "increased drastically." There was little independent evidence and little testimony to confirm the need for the appellants to support Babul and his family. I find there is little evidence that the appellants' removal from Canada would cause Babul and his wife undue hardship. The sons' interests are addressed below.

[20] The appellants have the support of Babul and his wife. That has not prevented them from making further efforts to defraud the immigration system. The appellants provided letters of support from their nephews and from the leader of a Bengali community group. The family and community support is a slightly positive factor.

[21] A key factor is the potential hardship the appellants will face if returned to Bangladesh. The appellants claimed that prior to the departure from Bangladesh they faced harassment and abuse because they are Hindu. They claim that after they left Bangladesh, their remaining brother continued to suffer harassment to the point he had to move to another city. Their wives and mother conceal the fact they are Hindu when they leave the house. They testified that their family faces additional harassment because Babul married a Muslim.

[22] The appellants provided anecdotal evidence of violence towards Hindus in Bangladesh. Counsel for the Minister of Public Safety and Emergency Preparedness (the "respondent") provided more fulsome evidence in the form of a report on country conditions prepared in March 2016 by the United Kingdom Home Office (the "Home Office report").[4]

[23] The Home Officer report verifies that "[i]nstances of societal discrimination, harassment, intimidation and occasional violence against religious minority communities persist. . . ." It confirms that "[p]ersons entering into inter-religious marriages may be subject to discrimination, social exclusion, or family and communal violence."[5] It confirms that there have been incidents of religious-based violence. It is indisputable that Hindus can face discrimination in Bangladesh.

[24] However, the Home Office report concludes, among other things:

a) Effective state protection is in general available for members of religious minority groups. (para. 2.4.3)

b) In general religious minorities are able to practice their faith freely, attend places of worship and participate in religious activities. (para. 3.1.1)

c) There are reports of incidences of societal abuse, intimidation, harassment and discrimination, attacks on sites of worship and communal violence on account of religious affiliation, sometimes resulting in deaths, injury, rape and forced displacement, and alleged forced conversion to Islam…. However, religious minorities are to be found

[4] Exhibit R-2.
[5] R-2, p. 4.

> throughout the country and the evidence does not support a finding that in general there is a real risk of persecution, serious harm, or other breach of fundamental human rights to members of the Hindu. . . . minorities. However, each case must be assessed on its individual merits. (para. 2.3.4)

[25] The Home Office advice that each case must be assessed on its individual merits is consistent with the guidance from the Federal Court and Federal Court of Appeal that appellants or claimants must demonstrate how they are personally affected. In assessing how the appellants may be affected, the teachings of the Supreme Court of Canada in *Kanthasamy*[6] must also be taken into consideration:

> [52] …. [The Officer] concluded that "the onus remains on the applicant to demonstrate that these country conditions would affect him personally."
>
> [53] This effectively resulted in the Officer concluding that, in the absence of evidence that Jeyakannan Kanthasamy would be personally targeted by discriminatory action, there was no evidence of discrimination. With respect, the Officer's approach failed to account for the fact that discrimination can be inferred where an applicant shows that he or she is a member of a group that is discriminated against.

[26] My assessment of the hardship the appellants may face if removed from Canada is influenced by the fact that their testimony was generally not credible. The appellants' actions, and those of their family members, are not consistent with the degree of risk they describe. The appellants' evidence on the issue has not been consistent over time.

[27] The appellants describe the difficult situation for Hindus in Bangladesh. Yet, Biswajit chose to leave his wife and then 5 year old son behind in Bangladesh when he immigrated to Canada. Amal testified that he married in 2007 and has two daughters, aged 10 and 4. He has never applied to sponsor them. He testified that he thought it would be easier to sponsor them once he was a citizen. However, he knew that Biswajit sponsored his own wife in 2008. He knew that as a permanent resident he could sponsor his family. If the situation for Hindus in Bangladesh is as precarious as the appellants claim, there is no reasonable explanation for Amal leaving his wife and children there for ten years without attempting to sponsor them.

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[6] *Kanthasamy v. Canada (Citizenship and Immigration*), 2015 SCC 61.

[28] Amal and Biswajit have each regularly returned to Bangladesh. Their parents voluntarily returned to Bangladesh to live in approximately 2013. Biswajit testified that the brother who remained behind in Bangladesh continued to suffer harassment, including having been beaten, resulting in him having to move to another city. That was not mentioned in the 2016 affidavits. It is reasonable to expect that, if the brother has suffered such direct harm, evidence would be provided from him. No affidavit or evidence was provided from the brother. I give the claim of harassment faced by the brother little weight.

[29] The appellants testified that their family has specific problems because Babul married a Muslim. If true, it is reasonable that the harassment would have been included in the 2016 affidavits. It was not. Biswajit's explanation for the inconsistency is that they wanted to keep the inter-faith marriage secret. That is not consistent with his testimony that the harassment dates back years. His explanation is not credible. It is more likely than not that the reason the claim of harassment arising from the inter-faith marriage was not included in the 2016 affidavits is because it is not true.

[30] Biswajit testified that because of his religion he was cursed at and harassed and as a result often stayed indoors. In the 2016 affidavits both Biswajit and Amal claimed that they were "regularly threatened with abduction and murder." Those are serious allegations. If true, it is reasonable that the allegations would have been included in their testimony. They were not. When questioned on the inconsistency Biswajit gave vague and evasive answers. I give little weight to the claims in the appellants' 2016 affidavits that they were regularly threatened with abduction and murder.

[31] The appellants testified that their wives and mother have to conceal indications that they are Hindu when they leave the house. That is not consistent with the Home Office report conclusion that religious minorities are able to practice their religion freely. Given the appellants' general lack of credibility, I accept the Home Office report assessment in preference to the appellants' testimony.

[32] The appellants testified that they would be unable to find work in Bangladesh to properly support their families. Little evidence was provided on the general employment situation in Bangladesh. The appellants' elder brother is working and supporting his family. I give little weight to the testimony that the appellants would be unable to find suitable employment in Bangladesh.

[33] The appellants' parents, wives and children live in Bangladesh. Biswajit's application to sponsor his wife and son was refused. Pursuant to section 117(9)(d) of the *Immigration and Refugee Protection Regulations,*[7] his wife and son arguably cannot be sponsored as members of the family class. If Biswajit retains status in Canada an application under section 25 of the *Act* would be required before he could re-unite with them in Canada. Amal has never tried to sponsor his wife and daughters. They have no status in Canada.

[34] It is indisputable that the appellants are members of a group that faces risk of discrimination. However, assessing the appellants' situations on the individual merits, especially in light of the lack of credible evidence from them, I find little evidence that the appellants will face undue hardship if returned to Bangladesh.

[35] There are six children affected by this decision – Biswajit's two children, Amal's two children and Babul's two children. Babul's sons are aged 11 and 14. They live at home with their parents. There is little evidence of any special circumstance necessitating the appellants' presence in Canada to care for their nephews. It is in the nephews' best interests that they enjoy the close support of their uncles, but that does not outweigh other considerations in these appeals.

[36] Biswajit has a 17 year old son and a six year old daughter. Amal has two daughters, aged 10 and 4. For most of their lives those children have been deprived of their fathers' presence.

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

The appellants testified that they need to stay in Canada to earn money to remit to their families in Bangladesh. Biswajit testified that the children are in private schools and that in Bangladesh it is often impossible to get children into government schools. Little independent evidence was provided regarding the education system in Bangladesh. I give the suggestion that the children would have trouble getting into government schools little weight. As noted above, I give little weight to the appellants' claim they would be unable to find suitable employment in Bangladesh.

[37] It is generally in a child's best interests to have the love and support of both parents. That is especially true in this case where the appellants are alleging that as Hindus their families face discrimination in Bangladesh. Many families make the difficult decision that one parent will work abroad to support the family. That has obvious benefits, but those benefits do not come without a price, including that children grow up without the emotional support of one parent. It does benefit their children that the appellants are able to send financial support. However, I find that does not outweigh other considerations in these appeals.

[38] I have taken into consideration the option of stays of the Exclusion Orders. Neither counsel addressed the possibility of stays. A stay is not generally considered an appropriate remedy in misrepresentation cases. In the particular circumstances of these cases, stays would do little to serve the objectives of the *Act*. I find that stays of the Exclusion Orders are not appropriate.

CONCLUSION

[39] I find the Exclusion Orders made May 25, 2017, are legally valid. I find that the negative factors outweigh the positive. Special relief is not warranted. Based on the evidence before me, taking into account the best interests of a child directly affected by the decisions, I find there are not sufficient humanitarian and compassionate considerations to warrant special relief in light of the circumstances of the cases.

NOTICE OF DECISION

The appeals are dismissed.

(signed) **"George Pemberton"**

George Pemberton

April 18, 2018

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.