

Federal Court



Cour fédérale

Date: 20161201

Docket: IMM-961-16

Citation: 2016 FC 1332

Ottawa, Ontario, December 1, 2016

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

FARHAN MAHMOOD

Applicant

And

**THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This matter concerns whether Farhan Mahmood [Mr. Mahmood] and Muhammad Irfan [Mr. Irfan] are the same people. The Immigration Appeal Division [IAD] found that they were the same people aided by facial recognition image comparison reports and expert testimony.

[2] Mr. Mahmood obtained a work permit for Canada in 2005 and had it successfully renewed from 2005 to 2013. In his initial application, he did not disclose that he had previously been denied a work permit as Mr. Irfan in 2003 and 2004. The IAD found Mr. Mahmood's failure to disclose these previous work permit applications to be a material misrepresentation. The IAD found Mr. Mahmood inadmissible pursuant to section 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001 c-27 [the Act]. Mr. Mahmood maintains that they are not the same person.

II. Issue

[3] It was agreed at the hearing that if I find the IAD's determination regarding Mr. Irfan and Mr. Mahmood was reasonable and not biased, then it constitutes a material misrepresentation and I need not consider other arguments.

III. Standard of Review

[4] The decision will be reviewed on a standard of reasonableness. Reasonableness requires that the decision must exhibit justification, transparency and intelligibility within the decision making process and also the decision must be within the range of possible, acceptable outcomes, defensible in fact and law (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12).

IV. Background

[5] Mr. Mahmood was granted admission to Canada from Pakistan in 2005 under a work permit. His permit was renewed several times between 2005 and 2013, during which time he was occasionally employed by Tariq Chaudhry [Mr. Chaudhry]. In 2014, Mr. Mahmood filed a civil suit against Mr. Chaudhry, alleging abusive labour practices, which was still ongoing at the time of this hearing. Soon after the civil suit was filed, Mr. Chaudhry provided a tip to Canada Border Services Agency [CBSA] that Mr. Mahmood's real name was Muhammad Irfan. Mr. Irfan first entered Canada as a temporary resident in 2003, but was refused work permits in both 2003 and 2004.

[6] CBSA conducted an investigation including a facial recognition image comparison report [the comparison report]. As part of the comparison report, the 2003 driver's license photo of Mr. Irfan was put into the Alberta motor vehicle system to search the database for a potential match. The system retrieved the 2007 driver's license of Mr. Mahmood as a 100% match and a 2012 photo of Mr. Mahmood as an 82.5% match. An examiner from the government of Alberta's facial recognition and document examination team, Officer Gord Bryant, then did a comparison and analysis of the 2003 Irfan image and the 2007 Mahmood images. He concluded within the comparison report that the photos of Mr. Mahmood and Mr. Irfan are "the strongest possible match."

[7] On March 20, 2015, an Immigration Division hearing [ID] was held to determine whether Mr. Mahmood and Mr. Irfan are the same person. If so, the ID had to determine whether, on a

balance of probabilities, Mr. Mahmood had misrepresented that he had been previously denied a work permit.

[8] Relying on the comparison report, the ID issued a decision on March 27, 2015 which found Mr. Mahmood and Mr. Irfan to be the same person. However, the ID went on to find that there was not sufficient, reliable evidence to prove that Mr. Mahmood had been asked if he had been refused a visa or that he had given a false answer. The inadmissibility hearing was dismissed.

[9] The IAD held a de novo hearing and new evidence was filed by the parties. The IAD's decision gave little weight to Mr. Chaudhry's testimony on the basis that his testimony to the ID was lacking in credibility in many areas. Despite this, it could not escape the fact that Mr. Chaudhry's tip caused Mr. Irfan's name and photo to surface which was assessed as the strongest possible match by a facial recognition professional. An independent peer reviewed analysis, confirmed this finding which had not been performed when the report was before the ID. On January 12, 2016, the IAD overturned the ID decision and found Mr. Mahmood inadmissible for misrepresentation. Accordingly, the IAD made an exclusion order against him.

[10] For the reasons below, I will dismiss this application.

V. Analysis

A. *Comparison Report*

[11] Mr. Mahmood argues that it is inherently difficult for him to prove that he is not another person. He submits that the reliability of the comparison report is unknown as demonstrated by the significant difference in results between two assessments. A December 10, 2015, the comparison report says there is an 82.5% chance there is a match and the April 27, 2014 report says 98.3%. Mr. Mahmood argues that this proves the comparison reports are unreliable and that the IAD should not blindly follow a report so lacking in precision. Though Mr. Mahmood agrees the comparison report should have some weight, he submits the IAD should not put considerable weight on it. In addition, Mr. Mahmood argued the database search was not completely random as the person was given a manual to use which was not made available to the IAD; it is therefore impossible to know how the search for a match was done.

[12] It was open to the IAD to place considerable weight on the comparison report. The comparison report was created after the CBSA requested the government of Alberta's facial recognition and document examination team conduct a comparison of driver's license photos. The Irfan photo was put into the system as a "probe photo" of Mr. Irfan. The system returned two images as the closest matches. One photo returned was of Mahmood in 2007 and one was of Mahmood in 2012.

[13] The comparison report dated December 10, 2015, was prepared by Officer Bryant who is a supervisor of the Alberta facial recognition team and a peace officer. The comparison report

identifies shortcomings and inconsistencies in the analysis and an empirical basis for Officer Bryant's conclusions. In the very technical report, it concluded that Mr. Irfan and Mr. Mahmood's photos are the "strongest match possible."

[14] Officer Bryant compared the pictures of Mr. Irfan taken in 2003 with the pictures of Mr. Mahmood taken in 2007 and 2012, using commonly accepted scientific methodology. This included first using the computer for comparison, then a professional assessment by Officer Bryant, and finally an independent peer review analysis.

[15] Officer Bryant used the FBI seven point scale to do an image analysis and concluded that the images were the strongest possible match. Officer Bryant's analysis did not rely solely on computer measurements and took into account differences such as lighting, pitch, yaw and roll in each photograph.

[16] Before the IAD hearing, Officer Bryant's comparison report was independently peer reviewed by senior investigator Officer Rebecca Bills. On December 10, 2015, Officer Bills completed her review of the original written report and she advised her findings were the same as Officer Bryant's. This verification was added to the December 10, 2015 report.

[17] I do note the difference alluded to by Mr. Mahmood that in the first report dated April 27, 2014, the report said the match was 98.2% whereas the second report score value – with figures noted below each photo – changed to 82.5%. The full photo comparisons are in both reports but the particular small version with the score values indicated below are missing in the 2014 report.

[18] I do not have an explanation for this and will rely on the 2015 report where the score of 82.5% is on the actual photo and not the 98.2%. I also rely on the 100% match below the second photo that is the same in both reports. We do have the explanation that the 2014 report was an urgent request and that is why the peer review was not completed at that time. This may account for the expanded product created in 2015 including the peer review and computer values below each photo.

[19] I do not see this small percentage difference of the computer comparison to be a reviewable error considering the outlying percentage was 100% and this computer generated score was followed by independent human analysis with peer review. The peer review found that Officer Bryant's numbers fell within an acceptable range of strongest match possible.

[20] In addition, the IAD did not solely and blindly follow the report and they did consider the evidence submitted by Mr. Mahmood. The onus is on the applicant to provide evidence and contrary to Mr. Mahmood's argument the ID and IAD are not prosecutorial processes where the onus shifts to Citizenship and Immigration Canada to uncover the truth.

[21] The IAD found the facial recognition analyst to be both reliable and credible in his testimony, providing reasonable explanations for both the strengths and shortcomings in his analysis. It further determined that there was no basis to believe that the computer software had been manipulated in any way to find a match between Mr. Mahmood and Mr. Irfan as alleged. The IAD determined that the conclusions of the analysts (and the independent peer review) were based on objective analysis and ultimately accepted them.

[22] No expert report was provided by Mr. Mahmood to critique the science behind the comparison report or to question the expertise of the officers. Instead Mr. Mahmood relied on other evidence to show that he could not be the same person because he and Mr. Irfan were in different places at the relevant time.

[23] I see no reviewable errors regarding the comparison report.

B. *Mr. Chaudhry's Evidence*

[24] Mr. Mahmood submits that the IAD should have considered the source and reason for the tip that led to his immigration review. Mr. Chaudhry's information was clearly related to the ongoing civil lawsuit which would suffer if Mr. Mahmood was removed from Canada. He argues that Mr. Chaudhry would have opened himself up to sanctions had he truly known about this "fraud".

[25] Mr. Mahmood disregards the little weight placed on Mr. Chaudhry's evidence by the IAD. In fact, the IAD found Mr. Chaudhry to be combative, self-serving and lacking credibility in many areas.

[26] It is not for me to reweigh the evidence and give it no weight as requested by Mr. Mahmood. The tip came in to CBSA and they started an investigation. It is difficult to fault the process when Mr. Mahmood's photo was put into the Alberta drivers' registry without any direction or guidance other than to find a match. The match it found was completely on its own

without any use of Mr. Chaudhry's tip. The IAD was reasonable in giving little weight to the evidence of Mr. Chaudhry.

C. *Visit to Pakistan and Employment*

[27] Mr. Mahmood submits that this matter is reviewable as the IAD had viva voce evidence before them that Mr. Mahmood was in Pakistan and not in Canada in 2003 so he could not be Mr. Irfan.

[28] Mr. Mahmood says he was married on February 14, 2003, to Rizwana Kausar in Pakistan. His evidence is that his daughter Meryam was born in Pakistan on December 17, 2003 and that in 2005 at age two she passed away. Mr. Mahmood's evidence was that his wife and he grew apart and he was sponsored by Mr. Chaudhry to work as a cook in Canada. Mr. Mahmood says he first entered Canada on November 23, 2005.

[29] He says he supported his wife despite her unsuccessful attempt to obtain a visitor's visa. He returned to Pakistan from January to April of 2010 and again from September to December 2011, but his wife still filed for divorce. The divorce decree was provided as evidence but no marriage certificate was filed nor birth certificate for his daughter.

[30] Nevertheless, the IAD found that if he did marry on February 14, 2003 he could have returned to Canada as Mr. Irfan later in the month. The IAD gave his testimony little weight as evidence was produced that Mr. Irfan was in Canada from February 2003 until September 23, 2003.

[31] The Global Case Management System [GCMS] notes show that Mr. Irfan was a single person who left Pakistan in 2003. Mr. Mahmood's notes show an application in 2005 as a married person. Mr. Mahmood says Mr. Irfan left Pakistan on January 28, 2003 and only returned there in September 2003. For this reason he argues since Mr. Mahmood married in February 2003 in Pakistan, it is impossible for them to be the same person.

[32] The GCMS notes indicate Mr. Irfan obtained his Canadian visa on January 23, 2003 and had a plane ticket to travel on January 28, 2003. However, we have no evidence of when he actually left Pakistan or when he entered Canada. It does not seem unreasonable that his ticket could have been changed to leave after February 14, 2003 a mere 2 weeks later.

[33] The IAD found that it was open to Mr. Mahmood to provide a marriage or birth certificate as it would have provided crucial evidence of pertinent dates and the name he used at the time. This would potentially demonstrate that he was in Pakistan and indeed was not the same person as Mr. Irfan. However, in his interview before the IAD in January 2016, he could not remember if he was married on February 14, 2003 or 2005. He also indicated his daughter passed away in 2005 yet could not remember the date. The IAD could find no persuasive evidence that he was not the same person and I see no error in this finding.

[34] Having reviewed the certified tribunal record as well as the decision, I find it reasonable that the IAD gave Mr. Mahmood's testimony little weight. Mr. Irfan's GCMS file includes a March 31, 2004 entry showing him employed by Maharaja Sweets and Restaurant (owned by Mr. Chaudhry) in Edmonton from February 2003 to September 2003. The GCMS notes for Mr.

Mahmood dated April 24, 2005, indicate he had an offer of employment at M/S AV Hospitality Sweets Restaurant, again owned by Mr. Chaudhry. Mr. Mahmood gave evidence on March 27, 2015, that he knew Mr. Chaudhry before as he met him in Pakistan in 2001 or 2002.

[35] The notes confirm that Mr. Irfan was refused a work permit in September 2001 and was again refused a work permit in 2003. The GCMS notes indicate that Mr. Irfan's final work permit application was refused on May 3, 2004, and there are no more GCMS notes after this refusal. His refused work permits were for the same restaurant. It was immediately following this final attempt that Mr. Mahmood applied and was granted a work permit at Mr. Chaudhry's restaurant.

[36] The fact both applied for work permits to work for Mr. Chaudhry at what appears to be similarly named restaurants in Edmonton (M/S Sweets Restaurant and Maharaja Sweets and Restaurant) seems more than a coincidence. Similarly it seems like more than a coincidence that both Mr. Mahmood and Mr. Irfan previously worked in Toba Tek Singh, Pakistan, and on the GCMS documents show them both with home addresses in Kamalia District, Toba Teck Singh although the actual street addresses are different.

[37] It was reasonable, based on the comparison report and GCMS notes, that the IAD gave Mr. Mahmood's evidence relatively little weight. Their conclusion that Mr. Mahmood and Mr. Irfan are the same person is therefore also reasonable.

D. *IAD Bias because of remark.*

[38] Mr. Mahmood argues that the IAD was biased based on the following statement in its decision: “Even to an untrained eye the Irfan and Mahmood images have striking similarities.” Mr. Mahmood provided little evidence to support this argument. The bar to prove bias is high and has not been met in this case. I find that in doing a de novo hearing, the IAD’s comment did not show bias but was an appropriate assessment of the evidence before them as is required. As a fact finder, the IAD must make their own observations and conclusions based on these observations.

[39] It must be remembered that both the ID and IAD looked at the evidence and found that Mr. Irfan and Mr. Mahmood were the same person. The ID only dismissed the application because it was uncertain whether Mr. Mahmood had been asked if he had been refused a visa. As agreed to by the parties, this is no longer at issue.

[40] Mr. Mahmood’s application for judicial review is refused. The IAD’s finding that Mr. Mahmood and Mr. Irfan are the same person was reasonable. The IAD’s finding that Mr. Mahmood misrepresented that he had previously been denied a work visa under a different name was also reasonable. Mr. Mahmood is therefore a person described under section 40(1)(a) of the Act and the corresponding exclusionary order by the IAD was reasonable.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Judicial Review Application is dismissed.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-961-16

STYLE OF CAUSE: FARHAN MAHMOOD v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: SEPTEMBER 19, 2016

JUDGMENT AND REASONS: MCVEIGH J.

DATED: DECEMBER 1, 2016

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