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: TB7-10237
Client ID No. / N° ID client: 6363-6862

Reasons and Decision – Motifs et décision

REMOVAL ORDER

Appellant(s)	GURVINDER SINGH BRAR	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Public Safety and Emergency Preparedness Le ministre de la Sécurité publique et de la Protection civile	**Intimé(e)**
Date(s) of Hearing	September 11, 2018	**Date(s) de l'audience**
Place of Hearing	Toronto, Ontario	**Lieu de l'audience**
Date of Decision	October 31, 2018	**Date de la décision**
Panel	J. Wagner	**Tribunal**
Counsel for the Appellant(s)	Harinder S. Gahir 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	Adib Abbasi	**Conseil du ministre**

Canada

REASONS FOR DECISION

INTRODUCTION

[1] These are the reasons for the decision in the appeal made by Gurwinder Singh BRAR, (the appellant), a 29-year-old male citizen of India. The appellant, a Canadian permanent resident (PR) since March 8, 2014, is appealing an exclusion order made against him by the Immigration Division (ID) on May 16, 2017.[1]

[2] The exclusion order was issued on the basis that the appellant is inadmissible to Canada because of misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* (the *Act*).

[3] The appellant testified in person at his appeal hearing in English. The appellant had not requested an interpreter and it was confirmed at the outset of the hearing that none was required.

[4] Three witnesses were identified by the appellant in his counsel's August 2018 correspondence and summonses were issued to call the three to appear as witnesses, including the appellant's girlfriend, Husandeep DHILLON, and her brother. Only one witness was called by the appellant at the hearing, Sandalpreet BAL, a friend of the appellant and his girlfriend. Ms. BAL provided her testimony in person at the hearing in English.

ISSUE

[5] The appellant is challenging the legal validity of the exclusion order and is alternatively seeking special relief on humanitarian and compassionate (H&C) grounds. The respondent takes the position that the appeal should be dismissed on both grounds.

BACKGROUND

[6] The following is a summary of the appellant's personal and immigration history, to assist in setting out the background of this appeal.

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[1] Exhibit R-1, p. 83.

[7] The appellant entered Canada as a student on August 26, 2010 and was subsequently issued authorization to work in Canada. In approximately July 2013, the appellant applied for PR status in Canada through the Canada Experience Class.[2] The appellant was successful in his application and received his Canadian PR status on March 28, 2014.[3]

[8] The appellant had declared his marital status as single at the time of application and did not declare any change to his marital status at the time of landing. A September 17, 2013 email from a centralized intake officer regarding the PR application noted, *inter alia*, that the appellant should inform the visa office of any change, including specific mention of any common-law relationship.[4]

[9] In October 2014, within seven months of landing, the appellant filed a sponsorship application for Husandeep DHILLON, who was identified as his common-law partner.

[10] In the application, it was declared that the couple had been cohabiting in a common-law relationship since January 29, 2013.[5] As this timeline would have the applicant and appellant living in a common-law relationship for at least one year at the time of his landing in March 2014, the appellant would have been required to declare her as his common-law partner at the time of landing. His failure to do so led to the refusal of the sponsorship application in January 2015 under 117(9)(d) of the *Immigration and Refugee Protection Regulations* (the *Regulations*).[6]

[11] The file was then transferred for an investigation into possible misrepresentation for the appellant's failure to declare Ms. DHILLON as a dependent at the time of his landing.[7] The appellant was advised of the investigation by way of a letter dated December 2, 2015, and asked to provide a response to the allegations that he had been in a common-law relationship since January 29, 2013 and had not declared this relationship at the time of landing.[8]

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[2] Exhibit R-1, p. 33.
[3] Exhibit R-1, p. 16.
[4] Exhibit R-1, pp. 73-74.
[5] Exhibit R-1, p. 24
[6] Exhibit R-1, pp. 70-71.
[7] Exhibit R-1, p. 72.
[8] Exhibit R-1, pp. 78-79.

[12] The appellant provided a written response through his then-counsel, which included an affidavit from the appellant.[9]

[13] On January 6, 2016, the appellant was written up as being inadmissible for misrepresentation in a report under subsection 44(1) of the *Act* (44 report). The 44 report was based on the allegation that the appellant was in a common-law relationship with Ms. DHILLON from January 29, 2013 and did not declare the relationship to the immigration officer at the time of landing.[10] The appellant was subsequently referred to an admissibility hearing.[11]

[14] The admissibility hearing at the Immigration Division (ID) took place on May 16, 2017, with the decision rendered and an exclusion order issued against the appellant the same day.[12] The appellant was self-represented at the ID hearing, where he conceded the allegations against him.

ANALYSIS

Legal validity of the ID's decision

[15] In this appeal the appellant is challenging the legal validity of the exclusion order issued against him by the ID and is now denying that he has ever been in a common-law relationship with Ms. DHILLON.

[16] The first issue to be decided is whether the appellant is inadmissible to Canada on the grounds of misrepresentation as described in section 40(1)(a) of the *Act*. The onus is on the appellant to establish on a balance of probabilities that he is not.

[17] The allegations of misrepresentation relate to the appellant's relationship with Ms. DHILLON, whose application for permanent residence he sponsored as a common-law partner.

[18] The term "common-law partner" is defined in subsection 1(1) of the *Regulations* as follows:

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[9] Exhibit R-1, pp. 53-69.
[10] Exhibit R-1, pp. 14-15.
[11] Exhibit R-1, p. 21.
[12] Exhibit R-1, pp. 1-10.

> ***common-law partner*** means, in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year.

[19] While the term conjugal relationship is not defined in the *Act* or *Regulations*, we have case law that helps us in assessing this, providing the following non-exhaustive list of factors used to identify a conjugal relationship: shared shelter; sexual and personal behaviour; services; social activities; economic support; children; and the societal perception of the couple.[13] The applicability of these factors varies according to the circumstances of each case as does the weight assigned to them.

[20] The case law related to conjugal partnership in the immigration context has since established that courts must use a flexible approach to determine whether a conjugal relationship exists.[14] Despite the flexible approach, "the alleged conjugal relationship must have a sufficient number of features of a marriage to show that it is more than just a means of entering Canada as a member of the family class."[15]

[21] It has also been recognized that a conjugal relationship is essentially marriage-like; "one of some permanence, where individuals are interdependent – financially, socially, emotionally, and physically – where they share household and related responsibilities, and where they have made a serious commitment to one another."[16]

[22] For the appellant to have been required to declare his relationship with Ms. DHILLON at the time of landing on March 28, 2014, it must be determined that the applicant and appellant were in a common-law relationship for at least one year at that time, as required by the definition at subsection 1(1) of the *Regulations*. That is, the couple would need to have been cohabiting in a conjugal relationship since at least March 28, 2013.

[23] To do this, it is helpful to look at the genesis and development of the relationship between the appellant and Ms. DHILLON.

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[13] *M. v. H.*, [1999] 2 S.C.R. 3.
[14] *Leroux v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 403, *Mbollo v. Canada (Citizenship and Immigration)*, 2009 FC 1267.
[15] *Mbollo* at para. 27 citing *Leroux* at para. 23.
[16] *Siev v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 736 at para. 15 citing OP 2 - *Processing Members of the Family Class*, section 2.

[24] The appellant and Ms. DHILLON reportedly became familiar with each other online as Facebook friends and met in person in December 2012 when the appellant travelled to Vancouver and stayed with Ms. DHILLON, who had recently relocated to Vancouver, Canada to pursue her education. During the appellant's two-week visit in Vancouver, he reportedly proposed marriage to Ms. DHILLON and she agreed to his proposal.

[25] Ms. DHILLON subsequently relocated to Toronto on or around January 29, 2013, living at the same address as the appellant. In October 2013 the appellant and Ms. DHILLON relocated, again to a shared address, to accommodate her brother's arrival from India to pursue his own studies in Canada.

[26] In the application forms and in the supporting documents listing the addresses for the couple, no unit or other distinction (for example, basement or second floor) were provided for their addresses. While the application to sponsor the Ms. DHILLON is included in the Record from the ID,[17] the complete details of the relationship history are not included. The Record does however contain a sworn affidavit from the appellant in which he addresses the concerns of the immigration officer around the possible misrepresentation from failing to declare his relationship with Ms. DHILLON, and provide some details and background to the relationship.[18]

[27] In the December 2015 affidavit the appellant indicates that he proposed to Ms. DHILLON to be his wife on December 20, 2012 and she accepted. He further states that on January 29, 2013, Ms. DHILLON moved to Toronto to be with him and since that date they have been residing together in a committed and genuine relationship.

[28] In his response to the initial investigation into the allegations against him, the appellant did not deny being in a common-law relationship with Ms. DHILLON, but rather explained that being unfamiliar with the concept of a common-law relationship, he failed to understand that he was in one and that such a relationship had to be declared. This was the approach the appellant took at the ID as well.

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[17] Exhibit R-1, pp. 24-32.
[18] Exhibit R-1, pp. 53-54.

[29] At his appeal hearing, the appellant changed course in his response to the allegations and now states that he had only referred to his relationship with Ms. DHILLON as common-law on the basis that they shared an address since January 2013 and that he was never asked for details about the nature of their relationship. The appellant now states that he and Ms. DHILLON were not in fact living together but were only friends who were roommates. He testified that at their first shared address he had lived in the basement with his cousin while Ms. DHILLON lived upstairs in a separate room, and that at the second shared address they shared an apartment, but the appellant shared a bedroom with his cousin while Ms. DHILLON shared a bedroom with her brother.

[30] The appellant also now states that the relationship was not exclusive or marriage-like and that while the couple talked of maybe getting married down the road if things worked out, there was no definite plan for marriage. He further states that when he went into the immigration lawyer's office with Ms. DHILLON in July 2014 to discuss sponsorship options, which led to his filing a common-law partner sponsorship application for Ms. DHILLON, it was not necessarily for sponsoring *her* but to get information on the process should he want to sponsor a wife someday.

[31] The appellant did not explain clearly why he conceded in his response to the investigation in December 2015 and at ID hearing in May 2016 that it was a common-law relationship beyond his not fully understanding what common-law meant at that time. He indicated that had he understood that because they lived at the same address, this sufficed to be considered common-law and that he was not asked other detailed questions about the nature of the relationship. I do not find it credible that after being flagged for investigation the appellant would continue to declare the relationship as common-law rather than seek out further clarification on what common-law meant and whether in fact his relationship with Ms. DHILLON met this test.

[32] It could reasonably have been argued, as his previous counsel submitted,[19] that the appellant had innocently failed to declare the relationship with Ms. DHILLON as he was not aware that his relationship was a common-law relationship until that counsel made him aware of

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[19] Exhibit R-1, pp. 56-59.

this months after landing. While this would still be a misrepresentation under 40(1)(a) of the *Act,* it would be on the lower end of the seriousness spectrum.

[33] It could also have been argued that the couple were in a genuine, ongoing, committed relationship developing over time, but that they had not cohabited in a conjugal relationship for at least a year at the time of landing.[20] In such a case, Ms. DHILLON would not meet the definition at subsection 1(1) of the *Regulations* at the time of landing and so the appellant would not have been required to declare her or the relationship. As such, there would be no misrepresentation.

[34] The appellant did not put forth either of the above arguments at the appeal hearing but rather testified that he and Ms. DHILLON had *never* been in a common-law relationship. The appellant's testimony raised concerns of another, more serious, misrepresentation, that being the filing of a common-law sponsorship application for someone with whom he had no such relationship. The appellant testified that his relationship with Ms. DHILLON was little more than friends and roommates who had sexual relations and dated prior to the arrival of Ms. DHILLON's brother in Canada, but had not lived together as a couple. The appellant testified that even while Ms. DHILLON was his girlfriend, it was not an exclusive relationship as he had relations with other girls during this time. He also testified that he and Ms. DHILLON spent little to no time together as a couple and did not have a shared life together.

[35] The friend who was called as a witness indicated that during her friendship with Ms. DHILLON going back to 2013, she never knew her to have a boyfriend. She further stated that she knew the appellant and Ms. DHILLON as roommates sharing an apartment with separate bedrooms and that they did not even cook shared meals given Ms. DHILLON's strict vegetarianism, which raises questions about the compatibility of the pair as life partners. This also supports that the appellant and Ms. DHILLON did not present themselves to society as a couple and were not perceived as such.

[36] Using the initial version of the relationship, where the appellant proposed within days of their meeting in person in December 2012 and Ms. DHILLON moved to Toronto in January

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[20] Exhibit R-1, pp. 59-62.

2013 to live with him, it is reasonable to expect that the relationship would develop over time and that it would not immediately be the type of serious committed relationship to qualify as a conjugal relationship.[21] Even with the reported December 2012 proposal and Ms. DHILLON's acceptance, I note that conjugal partners are not substitutes for fiancé(e)s and the relationship did not move forward to marriage in the following years, either before or after the October 2014 sponsorship application. The appellant testified that Ms. DHILLON moved out of the shared apartment in February 2016, which would be shortly after the 44 report was written against the appellant. She later relocated to Alberta, where she presently lives with her brother.

[37] Having considered all the evidence before me, I find that the appellant and Ms. DHILLON were likely not cohabiting in a conjugal relationship for at least one year at the time the appellant landed in March 2014 and as such he was not required to declare her as a common-law partner at the time of landing. As such, the 44 report allegations underlying the exclusion order are not established on a balance of probabilities. The exclusion order issued by the ID is therefore not legally valid.

[38] As Minister's counsel rightly notes, the testimony at the appeal hearing raises serious concerns as to the appellant filing a sponsorship for Ms. DHILLON when there was no trace of a common-law relationship between them, and whether the sponsorship application filed by the appellant was primarily for the purpose of Ms. DHILLON to gain PR status in Canada. Although these new concerns arose from the appellant's own testimony at the hearing, these are not the allegations in the underlying 44 report and so cannot be considered as a basis for the removal order in the present appeal.[22]
If the Minister wishes to pursue these as grounds of admissibility for misrepresentation, a new 44 report would need to be prepared against the appellant containing these new allegations.

CONCLUSION

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[21] See *Cai v. Canada (Citizenship and Immigration),* 2007 FC 816, wherein the couple were young students who had a relationship and were living together since 2002 but the officer had not considered whether the applicant and his sponsor shared a "mutual commitment to a shared life" and "enjoyed a permanent long-term relationship" at the time of the January 2005 application for permanent residence.
[22] See for example: *Chen v. Canada (Citizenship and Immigration)* 2013 CanLII 98602 (CA IRB).

[39] As the allegations underlying the exclusion order have not been established on a balance of probabilities, I find that the exclusion order is not valid in law. This appeal is therefore allowed.

NOTICE OF DECISION

The appeal is allowed. The removal order is set aside.

J. Wagner
J. Wagner

October 31, 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.