Chapter Five

Misrepresentation

Introduction

The misrepresentation provisions under the old *Immigration Act* provide that a permanent resident, where granted landing by reason of a false or improperly obtained passport, visa or other document pertaining to the person's admission, or by reason of any fraudulent or improper means or misrepresentation of any material fact, whether exercised or made by that person or any other person, may be subject to the initiation of removal proceedings under s.27(1)(e) of the *Immigration Act*.

The materiality of misrepresentations under the *Immigration Act* has been the subject of numerous court decisions including the decision of the Supreme Court of Canada in *Canada (Minister of Manpower and Immigration) v. Brooks*, [1974] S.C.R. 850. *Brooks* held, among other things, that *mens rea*, or intention, was not an essential element for the misrepresentation. *Brooks* is discussed below.

The purpose of the misrepresentation provisions is to ensure that applicants provide complete, honest and truthful information in every manner when applying for entry into Canada.[1]

The misrepresentation provisions under s.40 of the *Immigration and Refugee Protection Act* (*IRPA)* can lead to a finding of **inadmissibility** whether the person is inside Canada or abroad. An inadmissibility report prepared with respect to a permanent resident, may lead to an inadmissibility hearing before the Immigration Division where a removal order may be made. (s. 44(1) & s.44(2)).

Inadmissibility for Misrepresentation

The misrepresentation provisions under *IRPA* can lead to a finding of inadmissibility of a permanent resident (leading to a removal order) or a foreign national being refused sponsorship. Section 40 reads, in part, as follows:

> 40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation
>
> (a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

[1] Immigration Manuals, ENF 2, Evaluating Inadmissibility, section 9.

> (b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;

If a person is found to be inadmissible pursuant to section 40, that permanent resident or foreign national continues to be inadmissible for misrepresentation for a period of two years following a final determination of inadmissibility in a refused sponsorship, or the date the removal order is enforced for a determination in Canada.[2] A person who pursues their appeal rights following a determination in Canada will, in effect, extend the two-year period because the removal order would not be enforced until a later date.

A foreign national subject to the two-year period of continued inadmissibility must obtain the written authorization of an officer under Regulation 225(3)[3] in order to return to Canada within the two-year period.

A further qualification to section 40(1)(b) is found in section 40(2)(b). It provides that "paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case **justify** the inadmissibility" (emphasis added). It is not known at present how the Minister will exercise this "justification".

Possible Legal and Evidentiary Issues

"materiality"

Brooks[4] sets the stage for determining what is "material". Under the *Immigration Act* the untruth or the misleading information in an answer to a question does not have to be such as to have concealed an independent ground of deportation. The untruth or misleading information may fall short of this. What is relevant is whether the untruth or misleading answer or answers had the effect of foreclosing or averting further inquiries, even if those inquiries might not have turned up any independent ground of deportation.

Brooks has been followed in numerous cases. Information withheld from immigration officials which had the effect of foreclosing or averting further inquiries had included the fact of a religious marriage and two children born of that marriage[5], failure

---

[2] Section 40(2)(a) reads as follows:

> the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of two years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced.

[3] Reg. 225(3) reads as follows:

> A foreign national who is issued an exclusion order as a result of the application of paragraph 40(2)(a) of the Act must obtain a written authorization in order to return to Canada within the two-year period after the exclusion order was enforced.

[4] *Canada (Minister of Manpower and Immigration*) v. *Brooks*, [1974] S.C.R. 850.

[5] *Hilario v. Canada (Minister of Employment and Immigration),* [1978] 1 F.C. 697 (C.A.).

to list children born out of wedlock[6], failure to provide details of previous applications for a visa to come to Canada[7], and loss of employment subsequent to the issuance of the visa[8].

While misrepresentations relating to marital status[9] and dependants[10] are common, the Appeal Division has considered a wide range of misrepresentations to be material, including:

- financial circumstances;[11]
- citizenship;[12]
- marriage of convenience;[13]
- false claim to be an orphan;[14]
- misrepresentation of identity;[15]
- criminal offences outside of Canada;[16]
- crimes against humanity;[17]
- as a deportee, failure to obtain the consent of the Minister to come into Canada;[18]
- failure to disclose that their sponsor had died before the visa was issued[19] or before they came to Canada;[20]

---

6 *Okwe v. Canada (Minister of Employment and Immigration)* (1991), 16 Imm.L.R. (2d) 126 (F.C.A.).

7 *Khamsei v. Canada (Minister of Employment and Immigration)*, [1981} 1 F.C. 222 (C.A.).

8 *Gudino v. Canada (Minister of Employment and Immigration)*, [1982] 2 F.C. 40.

9 *Villareal v. M.C.I* (F.C.T.D., no. IMM-1338-98), Evans, April 30, 1999.

10 *Singh, Ahmar v. M.C.I.* (F.C.A., no. A-1014-96), Isaac, Strayer, Linden, November 6, 1998.

11 *Hussain, Kamram et al v. M.C.I.* (IAD T98-00701 *et al.*), Townshend, March 22, 1999.

12 *Johnson (Legros), Wendy Alexis et al v. M.C.I.* (IAD M97-01393), Ohrt, January 27, 1999; *Rivanshokooh, Gholam Abbas v. M.C.I.* (IAD T96-06109), Muzzi, October 1, 1997.

13 *Kaler, Sukhvinder Kaur v. M.C.I.* (IAD T97-06160), Boire, September 28, 1998; *Baki, Khaled Abdul v. M.C.I.* (IAD V97-02040), Major, December 9, 1998.

14 *Linganathan, Rajeshkandan v. M.C.I.* (IAD T97-06408), Kalvin, December 31, 1998.

15 *Pownall, Lascelles Noel v. M.C.I.* (IAD T97-03257), MacAdam, Kalvin, Buchanan, December 3, 1998.

16 *Huang, Jie Hua v. M.C.I.* (IAD T98-00650), Townshend, November 18, 1998.

17 *Mugesara, Leon at al v. M.C.I.* (IAD M96-10465 et al), Duquette, Bourbonnais, Champoux-Ohrt, November 6, 1998. This finding was ultimately upheld by the Supreme Court of Canada : *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100.

18 *Kaur, Manjit v. M.C.I.* (IAD T96-01365), Hoare, February 5, 1998.

19 *Grewal, Ramandeep Kaur v. M.C.I.* (IAD VA0-02149), Clark, November 2, 2000.

20 *Birdi, Gian Chand et al v. M.C.I.* (IAD T98-07278 et al.), Hoare, January 26, 2000.

- misrepresentation as to the date she last left Canada and the length of stay outside Canada;[21]
- the material fact that he had made an earlier fraudulent and unsuccessful refugee claim.[22]

Specific wording contained in s.40 of *IRPA* will likely give rise to legal and evidentiary issues. For example, what is the meaning in s. 40(1)(a) of *IRPA* of the phrase "*… directly or indirectly misrepresenting or withholding material facts…"*? Does it matter whether the person made the misrepresentation as opposed to someone else making the misrepresentation? (Under the former *Immigration Act*, the jurisprudence shows it did not matter.) Does this include giving untruthful or partial answers, or omitting reference to material facts (even if the person does not know what is material or was not asked)?

"directly or indirectly"

In *Wang*[23] the IAD adopted the Immigration Division member's analysis and conclusion on indirect misrepresentation. He noted that under *IRPA* there was no longer a reference to a misrepresentation "by any other person". The new language is "directly or indirectly". The member held that "it is not immediately apparent by this language that "indirectly" means a misrepresentation by another person. Nonetheless I can find no other logical interpretation." The Federal Court approved this approach. The word "indirectly" can be interpreted to cover the situation such as the present one where the applicant relied on being included in her husband's application, even though she did not know of his previous marriage.

In a case where the applicant had prior experience in completing immigration documents he was at least reckless or willfully blind by using a rogue agent who filed fraudulent documents on his behalf.[24]

"indirect misrepresentation"

An agent for the appellant obtained for him and submitted to CIC false or fraudulent documents relating to high school education. This constitutes an indirect misrepresentation.[25]

---

21 *Sivagnanasundari, Sivasubramaniam v. M.C.I.* (IAD T98-043110, Sangmuah, December 20, 2000.

22 *Sidhu, Pal Singh (*a.k.a. *Sidhu, Harcharan Singh v. M.C.I.* (IAD VA0-03999), Workun, December 13, 2001; *Gakhal, Parupkar Singh v. M.C.I.* (IAD MA1-01362), Fortin, January 15, 2002.

23 *Wang, Xiao Qiang v. M.C.I.* (F.C., no. IMM-5815-04), O'Keefe, August 3, 2005; 2005 FC 1059 . A question was certified but not answered on appeal: (F.C.A., no. A-420-05), Noel, Evans, Malone, October 24, 2006; 2006 FCA 345.

24 *M.P.S.E.P. v. Yang, Guang* (IAD VA7-00495), Ostrowski, August 28, 2007.

25 *M.P.S.E.P. v. Zhai, Ning* (IAD VA02206), Ostrowski, March 6, 2007; application for leave and judicial review dismissed: (F.C., no. IMM-2035-07), Harrington, August 13, 2007.

Similarly, what is the meaning in s. 40(1)(a) of *IRPA* of the phrase "… *material facts relating to a relevant matter that induces or could induce an error in the administration of this Act"*? How might we interpret "*an error in the administration of this Act*"? [Note: There is a difference in the wording in the French version which could influence interpretation – rather than saying *that induces* it says, *as this induces*.] Is there a timing element in this provision – does it catch persons who misrepresent any immigration related circumstances at any time? What might be included in this provision? For example, does this include an applicant or sponsor making misrepresentations, partial answers, omissions, etc.; applicants on humanitarian and compassionate considerations who became permanent residents; or applicants withholding information from the examining designated physician?

Under s. 40(1)(a) of *IRPA* a person is inadmissible to Canada if he or she "withholds material facts relating to a relevant matter that induces or could induce an error in the administration" of the Act. In general terms, an applicant for permanent residence has a "duty of candour" which requires disclosure of material facts such as variations in personal circumstances such as marital status, and names of all children. An exception arises when applicants can show that they honestly and reasonably believed that they were not withholding material information.[26]

"Of course, applicants cannot be expected to anticipate the kinds of information that immigration officials might be interested in receiving. As the IAD noted in *Baro,*[27] "there is no onus on the person to disclose all information that might possibly be relevant. One must look at the surrounding circumstances to decide whether the applicant has failed to comply with s. 40(1)(a)."[28] In *Baro,* a spousal sponsorship, the applicant was asked for a "marriage check" which would have alerted him to the fact that they wanted to know if he had been married before. He provided one, but it did not disclose and he failed to mention a previous marriage and the steps he took to have his first wife presumed dead, thus foreclosing further lines of inquiry.

"could induce an error"

The IAD found the words "could induce an error" as referring to the potential of causing an error at any time, not the actual causing of the error. It was meant to catch those who caused an error or misrepresented or withheld material (an attempt to deceive) that had a potential of causing an error. It does not speak from the time of the "catching" of the misdeed, but at the time of the misdeed itself.[29]

Two factors must be present for a finding of inadmissibility under s. 40(1). There must be misrepresentations by the applicant and those misrepresentations must be material in that they could have induced an error in the administration of the *IRPA.* There

---

26 *Medel v. Canada (Minister of Employment and Immigration),* [1990] 2 F.C. 345.

27 *Baro, Robert Tabaniag v. M.C.I.* (IAD VA5-02315), Nest, December 21, 2006.

28 *Baro, Robert Tabaniag v. M.C.I.* (F.C., no. IMM-309-07), O'Reilly, December 11, 2007.

29 *Zhai, ibid.*

is no requirement in s. 40(1)(a) that the misrepresentation must be intentional, deliberate or negligent.[30]

In *Pierre-Louis*[31] the applicant married the appellant in 2001. He applied for a visitor's visa in Haiti and was refused. On that application he disclosed a child born in 1996. In 2002 he applied for permanent residence in Canada. At that time he said he had no dependent children. The visa officer rejected this application because of misrepresentations during the interview. The applicant was inadmissible because of the misrepresentation about the child he had previously declared.

Finally, what is the meaning in s. 40(1)(b) of *IRPA* of the phrase "*…for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation."*? Does this put the sponsor at risk of an inquiry for making misrepresentations? If yes, how far back may it go? Will the Minister "justify" the inadmissibility under s. 40(2)(b)?

Asuncion[32] partly answers the first question. The appellant was sponsored to Canada by his mother as a dependent in 1998. Prior to leaving the Philippines he married his spouse in a civil ceremony, and knew that there would be some sort of reprimand if he failed to declare his new status. After he was landed in Canada he returned to the Philippines and he and his wife had a church wedding. In 2001 he applied to sponsor his wife and two children. The application was refused since the applicants had not been examined at the time the sponsor became a permanent resident. An admissibility hearing led to a removal order and a subsequent appeal of that was dismissed. The misrepresentation made it impossible for him to sponsor his loved ones and also prohibited him from seeking to come back to Canada for a period of two years following the enforcement of the removal order.

Legislative Framework

Section 44 of *IRPA*, reproduced in part below, sets out the procedure to be followed under section 40:

> 44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.
>
> (2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a

[30] *Bellido, Patricia Zevallous v. M.C.I.* (F.C., no. IMM-2380-04), Snider, April 6, 2005; 2005 FC 452.

[31] *Pierre-Louis, Cynthia v. M.C.I.* (F.C., no. IMM-7627-04), Beaudry, March 17, 2005; 2005 FC 377.

[32] *Asuncion, Aristar Mallare v. M.C.I.* (F.C., no. IMM-10231-04), Rouleau, July 20, 2005; 2005 FC 1002.

> foreign national. In those cases, the Minister may make a removal order.

An inadmissibility report prepared with respect to a permanent resident may lead to an inadmissibility hearing before the Immigration Division where a removal order may be made. The effect of s.44(2) of *IRPA* is that a removal order made against a permanent resident for misrepresentation must be made by the Immigration Division, not by the Minister. Therefore, the Immigration Appeal Division (IAD) will have a full record for an appeal against a removal order for misrepresentation.

Jurisdiction – Legislative appeal rights to the Immigration Appeal Division

Parts of sections 63 to 65 of *IRPA* are set out below:

> 63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.
>
> 63. (2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision at an examination or inadmissibility hearing to make a removal order against them.
>
> 63. (3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision at an examination or inadmissibility hearing to make a removal order against them.
>
> 63. (4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28.
>
> 63. (5) The Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing.
>
> 64. (3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.
>
> 65. In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.

Note that the effect of s.64(3) of *IRPA* is that a spouse, common-law partner or child **does** have an appeal to the IAD, but other members of the family class, such as parents, **do not** have an appeal to the IAD. Note also that pursuant to s.65 of *IRPA* the IAD has limited discretionary jurisdiction. Is it open to the IAD to consider on its own initiative, or if raised by the Minister, whether the person was a spouse, common-law

partner or child within the meaning of the legislation? In *Manzanares*[33] the panel noted that "it remains to be decided whether, where the ground of refusal is misrepresentation under section 40 of *IRPA*, there is any right of appeal at all – even a right of appeal to determine jurisdiction – under section 64(3) of *IRPA*."

Transitional Issues

Section 192 of *IRPA* provides as follows:

> 192. If a notice of appeal has been filed with the IAD immediately before the coming into force of this section, the appeal shall be continued under the former Act by the Immigration Appeal Division of the Board.

IRPA came into force on June 28, 2002.

Nature of the Misrepresentation

In *Singh*[34] the appellant married her nephew to facilitate her admission to Canada as his spouse. She then divorced, remarried and sponsored her present husband to Canada in 2000 and their child was born in 1999. She was ordered removed from Canada on the basis of misrepresentations made and failures to disclose material facts in immigration applications respecting her marriages. The appellant claimed the IAD erred in concluding there were deliberate misrepresentations made by her respecting her second husband's application in the absence of evidence. The Court found that although there was no direct evidence of the appellant's knowledge of her husband's misrepresentations, there was some evidence on which those inferences could be made. The IAD did not make a finding she colluded with her second husband in his misrepresentations. The IAD did not specifically consider the benefits that her son would enjoy if he were allowed to stay and grow up in Canada. It is unnecessary for a decision-maker to make a finding to that effect (*Hawthorne*).[35] The IAD considered the respective benefits and disadvantages to the child of the applicant's removal or non-removal and the decision cannot be characterized as dismissive of the child's best interests. The application for judicial review was dismissed. [Note: no specific reference was made to section 40 of *IRPA*.]

For misrepresentations in the context of s. 117(9)(d) of the IRPR refer to the Sponsorship Appeals paper for a complete treatment of this topic.

---

33 *Manzanares, Ma. Christina v. M.C.I.* (IAD TA2-15088), Stein, June 9, 2003.

34 *Singh, Rajni v. M.C.I.* (F.C., no. IMM-2038-03), O'Reilly, December 19, 2003; 2003 FC 1052.

35 *Hawthorne v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 475, [2002] F.C.J. 1687 (QL), following *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

Humanitarian and Compassionate Considerations

Humanitarian and compassionate factors are discussed generally in Chapter 9 of this paper, but the following notes are illustrative of the approach taken in removal order appeals.

The jurisdiction to grant discretionary relief is found in s. 67(1)(c) of *IRPA.* That section reads as follows:

> 67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the
>
> time the appeal is disposed of,
>
> (c) other than in the case of an appeal by the Minister, 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.

In considering all the circumstances, the Immigration Appeal Division exercises its discretion within the statutory context. The leading case in this area is *Ribic.*[36] In that case, the Immigration Appeal Board set out factors to be considered in the exercise of its discretion. These factors are as follows:

- the seriousness of the offence or offences leading to the removal order;
- the possibility of rehabilitation or, alternatively, the circumstances surrounding the failure to meet the conditions of admission;
- the length of time spent, and the degree to which the appellant is established in Canada;
- the family in Canada and the dislocation to the family that removal would cause;
- the family and community support available to the appellant; and
- the degree of hardship that would be caused to the appellant by the appellant's return to his or her country of nationality.

These factors are not exhaustive and the way they are applied and the weight they are given may vary according to the particular circumstances of the case.[37]

---

[36] *Ribic, Marida v. M.E.I.* (IAB T84-9623), D. Davey, Benedetti, Petryshyn, August 20, 1985; as affirmed by *Chieu v. Canada (Minister of Citizenship and Immigration),* 2002 S.C.C. 3, January 11, 2002 and *Al Sagban v. Canada (Minister of Citizenship and Immigration),* 2002 S.C.C. 4.

[37] *Mikula, Istvan v. M.P.S.E.P.* (IAD VA5-01150), Ostrowski, May 1, 2006.

Generally, inadvertent or careless misrepresentation is treated more favourably than is misrepresentation of an intentional nature. In *Mikula*[38] the IAD found that the appellant intentionally misrepresented on documents to immigration authorities that he had never been detained or incarcerated. However, even where misrepresentation is found intentional, the panel may take into account all the relevant circumstances of the case and grant discretionary relief.[39]

The Immigration Division member and the IAD member found that the appellant misrepresented her name, age and marital status when she acquired permanent resident status in Canada. Her actions did induce an error in the administration of the Act and she was, therefore, inadmissible on the grounds of misrepresentation and was excluded from Canada. After assessing the *Ribic* factors the IAD found there were not sufficient humanitarian and compassionate considerations to warrant special relief. The IAD placed emphasis on the fact of the serious and deliberate nature of the misrepresentations, the fact that her husband remains in Sri Lanka, and the fact that no one in Canada is dependent on her for care and support, and there was no remorse.[40]

Lack of remorse[41] and other aggravating circumstances such as being arrogant and contemptuous also demonstrate a lack of genuine rehabilitation.[42] It is also relevant to assess the intentional nature of the misrepresentation, that is, whether it was simply inadvertent or careless.[43]

The applicant misrepresented her marital status. The applicant put in almost no evidence with respect to her best interests and humanitarian and compassionate factors. The Court held that it was unreasonable to expect the IAD to engage in a hypothetical analysis of H & C factors not advanced by the applicant.[44]

In *Balgobind*[45] the appellant had lived with one woman for ten years in Guyana. She allegedly left the appellant and his two infant sons to live with another man. The appellant then met a stranger, fell in love and married within the space of a week. He was landed in Canada as her sponsored spouse. A month or so after his arrival in Canada she gave birth to another person's child. He then divorced his wife in Canada and sponsored his ex-partner and her sons to join him in Canada. A removal order was made against him pursuant to section 40(1)(a) of *IRPA* which the IAD found to be legally valid.

---

38 ibid.

39 *Cen, Wei Huan v, Canada (Minister of Citizenship and Immigration)* (V95-01552), McIsaac, July 23, 1996.

40 *Dissahakage, Dinesha Chandi v. M.C.I.* (IAD VA5-02066), Lamont, December 13, 2007.

41 ibid.

42 *Angba, Bartholemy v. M.C.I.* (IAD MA4-02658), Guay, December 8, 2006.

43 *Villareal, Teodor v. M.C.I.* (F.C.T.D., no. IMM-1338-98), Evans, April 30, 1999.

44 *Kaira, Charanjit Kaur v. M.C.I.* (F.C., no. IMM-2750-06), Phelan, April 11, 2007; 2007 FC 378.

45 *Balgobind, Harry Persaud v. M.C.I.* (IAD TA2-25814), Hoare, December 10, 2003.

After assessing the factors set out in *Ribic*[46] the IAD found there were insufficient humanitarian or compassionate circumstances to warrant the granting of special relief and the appeal was, therefore, dismissed.

In *Gomes*,[47] the appellant was ordered removed on the basis that she was granted permanent residence by reason of misrepresentations. She was granted landing under the family class, sponsored by her brother as an accompanying dependant of her parents. She presented herself as single and with no dependants. In fact, she was married and had a child. She subsequently sought to sponsor her husband and daughter. On appeal, the appellant conceded that the removal order was valid in law. In considering whether to grant the appellant discretionary relief, the Immigration Division could not ignore the fact that she and her family had a concerted plan over a period of about seven years to induce error in Canadian immigration officials in order to obtain permanent residence. The appellant was well aware of what she was risking when she married her husband, but tried to have the best of both worlds, her husband and Canada. The appellant had family in Bangladesh and it would not be a hardship for her to return there. The circumstances did not warrant special relief.

Terms and Conditions

In *Mohammad*[48] the appellant was being sponsored by his "wife" and failed to indicate that he had been married before. He had taken no steps either to obtain an annulment of that marriage or to obtain a divorce. The legal validity of the removal order was not challenged. The IAD found that there were sufficient humanitarian and compassionate considerations to warrant granting special relief taking into account the best interests of the appellant's children. A stay was granted on conditions, including a condition that he have his first marriage annulled or obtain a divorce.

---

46 *Ribic, Marida v. M.E.I.* (IAB T84-9623), D. Davey, Benedetti, Petryshyn, August 20, 1985; *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 S.C.C. 3, January 11, 2002; *Al Sagban v. Canada (Minister of Citizenship and Immigration)*, 2002 S.C.C. 4.

47 *Gomes, Elizabeth Ranu v. M.C.I.* (IAD MA3-03555), Patry, January 16, 2004.

48 *Mohammad, Samu-Ud-Din v. M.C.I.* (IAD VA3-01399), Kang, December 2, 2003.

CASES