

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CRI-2022-092-001608
[2023] NZDC 20700**

MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT
Prosecutor

v

CHARANJIT SINGH
Defendant

Hearing: 14 September 2023
Appearances: T Thompson for the Prosecutor
T Clee for the Defendant
Judgment: 14 September 2023

NOTES OF JUDGE R J McILRAITH ON SENTENCING

[1] Mr Singh, you are here for sentence today in relation to two charges. Firstly, a representative charge of knowingly providing false or misleading information contrary to s 342(1)(b) of the Immigration Act 2009. And second, a representative charge of improper dealing with Immigration or identity documents contrary to s 345(1)(b) of the Immigration Act. Each of these charges carries a maximum penalty of a term of imprisonment not exceeding seven years, a fine not exceeding \$100,000, or both.

[2] As I say you plead guilty to those two charges just prior to a trial in relation to them and I am now dealing with sentencing.

[3] To assist me in that process I have received written submissions from the Ministry but also Mr Clee, on your behalf, and a pre-sentence report from the Department of Corrections dated 15 June.

[4] It is important to summarise your offending. That cannot be done particularly briefly because it is relatively complicated but having read the full summary of facts I consider that the Ministry has summarised it accurately in its written submissions so I will adopt its summary.

- (a) On 20 October 2006, Immigration New Zealand granted residence to your wife, [name deleted – person A] based on her relationship with [person B].
- (b) On 9 April 2009, you were granted a Limited Purpose Visa by Immigration New Zealand for the purpose of attending a wedding anniversary celebration for [person C] the brother of [person A]. In that application you declared that you were married and supplied a family supplementary information form which recorded [person A] as your wife and supplied a photocopy of an Indian passport issued on 14 September 2005, in the name of Charanjit Singh, date of birth [deleted] 1979. That passport recorded the name of your spouse as [person A].
- (c) On 12 April 2009, you arrived in New Zealand. You were granted a Limited Purpose Visa which allowed you to remain until 25 April 2009. You remained unlawfully in New Zealand after the expiration of that visa.
- (d) On 20 January 2011, you left New Zealand on a flight to Hong Kong, [person C] also departed on that flight.
- (e) Between 26 April 2011 and 23 December 2013, you lodged four Visitor Visa applications to Immigration New Zealand in the assumed identity of Charanjit Singh Dhindsa, an Indian male with the date of

birth of 25 June 1979. [Person A] sponsored all of these applications. In all applications you and [person A] declared that you had met and begun your relationship in 2011.

- (f) On 17 March 2016, a Visitor's Visa was granted to you under the assumed identity, that of Dhindsa, allowing you to travel to New Zealand.
- (g) On 25 March 2016, you arrived in New Zealand. At the border you presented an Indian passport in the name of your assumed identity Dhindsa. You were granted entry to New Zealand and a Visitor's Visa until 25 March 2017, under that assumed identity.

[5] After returning to New Zealand on this occasion you lodged the following visa applications.

- (a) On 2 June 2016, a Work Visa application in your assumed identity.
- (b) On 6 June 2017, a Work Visa application in your assumed identity.
- (c) On 13 July 2017, a Resident Visa application in your assumed identity.
- (d) On 20 July 2020, a Permanent Visa application in your assumed identity.

[6] In each of these application forms there was a section which contained a number of identity-related questions including "whether the applicant has ever been known by any other name". In respect of that section you left that section blank and did not provide information or previous name or answered it "not applicable" or answered it "nil" or answered it simply with a "dash". In all of these applications she signed the declaration in the application form confirming the contents of the document to be true and complete.

[7] The Supporting Partner Form for these applications where appropriate was completed by [person A] recording the name of the applicant as Charanjit Singh

Dhindsa born 25 June 1979. A biography letter signed by [person A] was presented supporting some of the applications stating that you had met her in 2011.

[8] In support of one of the applications you supplied a no-availability certificate in your assumed identity as evidence of your identity. You arrived in New Zealand on 25 March 2016, and 25 February 2019. On both of those occasions you produced an Indian passport in an assumed identity, knowing that passport had been obtained fraudulently.

[9] On 23 July 2020, you produced an Indian passport in your assumed identity with the application for a Permanent Resident visa knowing that passport had been obtained fraudulently.

[10] In terms of the approach that I take to sentencing on this occasion there are very straightforward purposes and principles of sentencing that have been recognised as being at front of mind in such matters. Denunciation and deterrence have always been recognised as being important purposes and principles in such cases. These cases are, of course, broadly classified as immigration fraud and denunciation and deterrence have always been recognised as important factors.

[11] As Ms Thompson has commented today in court your offending has directly challenged the integrity of New Zealand's immigration system. It undermines New Zealand sovereign control of its border and its ability to determine who will be granted immigration status. Not only did you fail to declare your true identity, concealing previous non-compliance with New Zealand's immigration system but you always made false declarations regarding your relationship in order to validate an assumed identity.

[12] In short, Immigration New Zealand was misled into believing you were someone you were not. Since 2016, you lodged four visa applications under an assumed identity and as a result you have received entry to New Zealand by fraudulent means. This offending has undermined the fair and effective administration of New Zealand Immigration for the hundreds of thousands of people who apply to immigrate to New Zealand and who truthfully declare their personal details and

circumstances and risk being declined. Truthful self-declaration is, of course, the cornerstone of New Zealand's immigration system.

[13] I have been referred by counsel to a number of cases so as to assist in setting the start point for your offending. They include the case of *Claudius* and also the case of *Bashir Hassan* and then Mr Clee has particularly referred to two cases that the Ministry noted, the cases of *Pitts* and *Sabhan Coglue*.

[14] In terms of setting a start point Mr Clee notes that a number of the cases relied upon by the Ministry engaged more extensive in his submission criminal enterprise. In some of the cases people involved in ongoing deception and being on the run in the sense of an additional criminal enterprise separate to that that related only to Immigration New Zealand. There is some merit in that but not, in my view, as much as Mr Clee submits.

[15] In terms of the appropriate starting point when I look at the cases to which I have been referred, while the Ministry submits a start point of around two and a half years would be appropriate Mr Clee, between 15 to 21 months, the appropriate start point in my view is two years' imprisonment. The reason that I have set the start point at that level is primarily because of the ongoing nature of Mr Singh's offending. In my view that distinguishes it from the cases on which Mr Clee has relied.

[16] From that two-year start point you are entitled to some discounts Mr Singh. The first of those is for a guilty plea. The Ministry has made the point that your guilty plea was made very late in the process just prior to a trial occurring. The maximum discount that is available for a guilty plea is of course 25 per cent. That is reserved for cases where there is a prompt and early guilty plea. Mr Clee submits that 10 to 15 per cent ought to be available to you even though your plea was late.

[17] Standing back and thinking about this, while I have some sympathy for the Ministry's position, I am nevertheless also aware that even while late a plea in a case like this, of course, frees up time for other matters to be dealt with and minimises the need for people to attend and give evidence. On that basis it seems to me that while generous, an appropriate guilty plea discount remains available at 15 per cent.

[18] Turning then to any other discounts which may be available, Mr Clee submits that you had a prior good record. I have some difficulty with that submission as can be seen from the facts as I outlined them earlier. Basically your entire time in New Zealand has been cloaked by this offending. That said, it is correct that there is no other criminal offending in your time in New Zealand.

[19] There is little evidence of remorse on your part. I have read the pre-sentence report. The report writer notes that you have described your offending as the result of some poor choices but there does not appear to be any sign of remorse. In my view again being somewhat generous to you, it is appropriate to provide you with a discount for both remorse and prior good record but it must be modest and it will be five per cent. So 20 per cent discount from that two-year start point reduces the 24 months' imprisonment to 19 months' imprisonment.

[20] The issue that I then need to consider is whether the outcome here should be home detention as opposed to prison. The Ministry submits that a prison sentence is appropriate because that is required to appropriately denounce and deter your offending. Once again, I have some sympathy with that submission but in my view when I stand back and look at this and take into account your personal circumstances also including those of your child whom I understand to be suffering from a medical condition, in my view home detention will meet the purposes and principles of sentencing here.

[21] Accordingly:

- (a) The outcome here will be home detention.
- (b) It will be for a period of nine months.
- (c) It will be on the terms of the pre-sentence report of 15 June.

Judge R McIlraith

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 29/09/2023