Federal Court Cour fédérale

Date: 20171106

Docket: IMM-1635-17

Citation: 2017 FC 1000

Ottawa, Ontario, November 6, 2017

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

SIMRANJIT SINGH BHATIA
GURSHARAN KAUR BHATIA
EKAM SINGH BHATIA
ACHINT BHATIA
MAHINDER KAUR BHATIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Simranjit Singh Bhatia, his wife Ms. Gursharan Kaur, their sons Ekam Singh and Achint, and his mother Ms. Mahinder Kaur, are all citizens of India. Mr. Bhatia,

his wife and his eldest son Ekam arrived in Canada in December 2010; his mother and his youngest son Achint joined them two months later. In February 2011, Mr. Bhatia filed a refugee claim on behalf of himself and his family. Mr. Bhatia alleged that they were being persecuted by the police in India since January 2010. In November 2014, the Refugee Protection Division [RPD] rejected the refugee claim, as it concluded that the Bhatia family was not credible and that they would not be persecuted or tortured in India. In December 2015, the Bhatia family submitted a pre-removal risk assessment application, which was refused in March 2017.

[2] In June 2016, the Bhatia family applied for permanent resident status pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. This provision gives the Minister of Immigration, Refugees and Citizenship [Minister] discretion to exempt foreign nationals from the ordinary requirements of the IRPA if the Minister is of the opinion that such relief is justified by humanitarian and compassionate [H&C] considerations, including the best interests of any child directly affected. In February 2017, a senior immigration officer [Officer] denied the H&C application, finding that the Bhatia family had failed to demonstrate that their personal circumstances justified granting a discretionary exemption based on H&C grounds [Decision]. In the Decision, the Officer found that the Bhatia family had not demonstrated a sufficient degree of establishment in Canada; that the children would be able to readjust to life in India without excessive difficulty; that the family would not face hardship if returned to India; and that neither Mr. Bhatia nor his mother would unduly suffer if deported due to their alleged medical conditions.

[3] The Bhatia family now seeks judicial review of the Decision. They contend that the Officer's conclusions are unreasonable for three main reasons. First, the Officer erred in his assessment of the Bhatia family's establishment in Canada and in his finding that it was minimal and insufficient; second, the Officer failed to apply the proper legal tests and took a too narrow approach to analyze the best interests of the children affected; third, the Officer's conclusions on the absence of adverse country conditions in India are erroneous. They thus ask this Court to quash the Officer's Decision and to order another immigration officer to reconsider their claim for discretionary relief on H&C grounds.

[4] The only issue to be determined is whether the Officer's Decision is unreasonable.

[5] For the reasons that follow, I will dismiss this application for judicial review. Having considered the Officer's findings, the evidence before him and the applicable law, I can find no basis for overturning the Decision, whether on the Bhatia family's establishment in Canada, on the treatment of the best interests of the children, or on the various findings made by the Officer in his assessment and weighing of the H&C factors at stake. The Decision thoroughly reviewed the evidence and the Officer's conclusions fall within the range of possible, acceptable outcomes based on the facts and the law. There is no reason justifying the intervention of this Court.

II. Background

A. *The Decision*

[6] In the Decision, which is rather comprehensive, the Officer considered the following H&C factors: 1) the Bhatia family's level of establishment in Canada; 2) adverse country conditions in India; 3) the best interests of the children; and 4) the medical condition of Mr. Bhatia and his mother.

(1) Establishment in Canada

[7] The Officer first found that the Bhatia family had not demonstrated a sufficient degree of establishment in Canada. In particular, the Officer determined that the Bhatia family failed to show an adequate level of economic self-sufficiency, English proficiency and integration in Canadian society.

[8] In terms of economic self-sufficiency, the Officer found that the Bhatia family had been on social assistance from their arrival in Canada up to March 2015, when Mr. and Mrs. Bhatia both started working full-time for the same company. The Officer gave negative inference to the fact that Mr. and Mrs. Bhatia had only been working for the last two years, over a total period of more than six years in Canada. The Officer further noted their failure to provide bank account statements and tax assessment documents to prove that they had in fact been able to support themselves for the last two years, without the government's financial assistance. Moreover, the Officer observed that Mr. Bhatia's mother had never worked in Canada and had always required

social assistance, despite no mention of any impediment to work in documents relating to her medical condition.

[9] With respect to language, the Officer found that the “basic knowledge” of English acquired by Mr. and Mrs. Bhatia was not sufficient to be autonomous after more than six years of living in Canada.

[10] The Officer considered the six support letters and affidavits on file, and gave them no weight. The Officer noted that they were all in the same format and stated identical information, save for the names and dates. Since the letters were not personalized, the Officer said, they could not be considered as expressing the support of someone who knew the Bhatia family personally. The Officer likewise gave no weight to the Regional Program for the Settlement and Integration of Asylum Seekers [PRAIDA] letter, which sought to establish that the Bhatia family had demonstrated great efforts to integrate into Québec society and Canadian life. The PRAIDA letter falsely indicated that Mr. Bhatia had supported his family by working soon after his arrival and obtaining his work permit.

[11] Regarding their integration in Canada, the Officer further found that the Bhatia family has more affiliation and ties to India considering that they have lived there for the greater part of their lives, that they have no relatives in Canada and that the rest of their family resides in India. The Officer underlined that India remains their country of birth, and of their customs, mother tongue, habits and religion. Though the Officer found it positive that the Bhatia children were attending school regularly and were doing well, he nevertheless determined that the Bhatia

family had not provided objective evidence to support that they have integrated Canadian society outside of their Sikh community. The Officer found that the fact that they volunteer their time at their place of worship and community centre, as well as contribute to them financially, was merely a manifestation of a tenet of their religion as Sikhs and would likewise be practised whether living in India or Canada. Though their social implication was positive, the Officer noted it had been limited to their own cultural community.

(2) Best interests of the children

[12] The Officer then turned to the best interests of the children. The Officer acknowledged that the Bhatia children had established themselves in Canada, but concluded that they would be able to readjust to life in India without excessive difficulty. According to the Officer, both children have knowledge of their Indian and Sikh customs, habits, maternal tongue and religion through their parents' regular attendance at their community centre, place of worship, as well as through their mingling within the Sikh community, their volunteer work, and the fact that both their parents and grandmother have spent the greater part of their lives in India. The Officer also noted that the Bhatia family has not provided objective evidence showing that the children would be unable to overcome the stress linked to returning to India. The Officer concluded that it was reasonable to believe that the children could communicate in their parents' maternal tongue. The Officer further believed that it is in the best interests of the children to remain with their parents and grandmother, as they have been living with them since their arrival in Canada in 2011; likewise, the distress associated with moving to India and starting a new life would be lessened by the presence of their family.

[13] In light of the Federal Court of Appeal's [FCA] decision in *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 [*Owusu*], which states that an immigration officer must remain "alert, alive and sensitive" and must not "minimize" the best interests of the children who may be adversely affected by a parent's deportation, the Officer chose to give some weight to this factor.

(3) Adverse country conditions in India

[14] With respect to country conditions, the Officer found that the Bhatia family had not established that they would face hardship if they had to return to India. The Officer noted that the risk allegations submitted by the Bhatia family were the same as those presented in their refugee claim. Although the risk assessment in an H&C application differs from that made by the RPD, the facts and conclusions in the RPD's decision remain valid in the present case. Thus, the Officer noted that the RPD had found the Bhatia family not truthful and that their behaviour did not support their alleged fear in India. On the whole, the Officer gave "a lot of weight" to the RPD's finding.

[15] The Officer further gave no weight to the affidavit from Mr. Bhatia's father as evidence that the family would be at risk in India. The Officer noted that the original version of the document was not provided, despite there being ample time to obtain it. Moreover, the Officer found the father's statements inconsistent with the behaviour of a person who fears for his life. The Officer also found that the Bhatia family had not provided objective evidence to show that the father is being actively sought by the Indian police today, noting that the affidavit was made in the same city the father had allegedly fled to in 2014. The Officer further observed that the

father and Mr. Bhatia's mother had returned to India in November 2010 after having sought asylum in the United States, which coincided with the time Mr. Bhatia was about to leave India because of the allegations of detention, torture and risk to his life. The Officer noted that the father and Mr. Bhatia have not provided objective evidence to support Mr. Bhatia's past detentions and torture in February and July 2010, as well as the father's own detention and torture. The Officer further found the father's affidavit to be self-serving evidence given the link between him and the Bhatia family.

[16] The Officer gave no more weight to the affidavit of Mohinder Singh, a family friend. Again, the Officer noted that the document is a copy. Second, the Officer found that the author provided no objective evidence to support the existence of persecution and torture of the Bhatia family by Indian police. Third, the Bhatia family has not mentioned the author in their allegations, nor the role he allegedly played in giving them advice to flee their home country. Fourth, the author has provided no evidence that he has been personally questioned by the police about the whereabouts of the Bhatia family. Finally, the author has not provided objective evidence to the effect that Mr. Bhatia is a facilitator and is linked to terrorists, or that Mr. Bhatia and his father are wanted by the police today.

[17] When dealing with the documentary evidence proffered by the Bhatia family, the Officer concluded that the copy of the annotated index of the July, 2015 Immigration and Refugee Board's National Documentation Package for India was not helpful, as titles of documents and keywords do not constitute personal evidence and do not support that the Bhatia family is itself at risk in India on a balance of probabilities. General conditions in India are experienced by all

those in the country, and are not personal to the Bhatia family. Citing *Lalane v Canada (Citizenship and Immigration)*, 2009 FC 6, the Officer noted that H&C applicants have the burden of establishing a link between evidence of a particular risk and their personal situation.

(4) Medical condition of Mr. Bhatia and his mother

[18] The Officer gave no weight to the medical conditions of Mr. Bhatia and his mother. In particular, the Officer refused to give credence to a medical letter attempting to corroborate that Mr. Bhatia would suffer difficulties in India because of manifestations of anxiety and depression which have occurred since his alleged detention by Indian police. The Officer noted that the letter did not indicate that Mr. Bhatia cannot return to India because of his condition, or that his condition could not be treated. Nor had the Bhatia family provided objective evidence to support that Mr. Bhatia cannot receive treatment or medication in India for his symptoms, or that he could not receive psychological or psychiatric support in India.

[19] In regards to Mr. Bhatia's mother's medical condition, the Officer noted that the doctor's letter indicated that she completed chemotherapy in February 2016 following her being diagnosed with lymphoma in June 2015. The Officer underlined that the Bhatia family had not provided follow-up information to establish that the mother was still ill or that future treatment was required. The Officer found that there was no objective evidence on file to support an alleged need for more treatment. Moreover, the Officer noted that the Bhatia family had not provided evidence to support that treatments for the mother's affliction or other medical condition are not available in India.

(5) Conclusion and weighing of the factors

[20] In his conclusion, the Officer restated that the Bhatia family had shown minimal establishment in Canada, and were not able to demonstrate that they could support themselves. He gave no weight to this factor. He similarly gave no weight to the adverse country conditions factor and to the health of Mr. Bhatia and his mother. He however gave some weight to the best interests of the children. In the end, after balancing all the factors, and despite the positive weight given the best interests of the children, he found that the H&C considerations submitted by the Bhatia family were insufficient to justify the exceptional remedy of subsection 25(1) of the IRPA and to exempt them from the normal procedure of applying for permanent residence in Canada from abroad.

B. *The standard of review*

[21] It is not disputed that the applicable standard of review in analyzing a discretionary decision based on H&C applications under subsection 25(1) of the IRPA is reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at para 44; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at para 62). Findings on the sufficiency of H&C grounds involve the exercise of discretion by immigration officers and the application of a specialized legislation to particular facts, for which the applicable standard of review is reasonableness.

[22] It is also well-settled that the purpose of H&C applications made under section 25 of the IRPA is to seek an exemption from Canadian immigration laws that are otherwise universally

applied (*Sutherland v Canada (Citizenship and Immigration)*, 2016 FC 1212 at para 11; *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at para 57). This relief sits outside the normal immigration classes or refugee protection streams by which foreign nationals can come to Canada permanently. It is only available for exceptional cases.

[23] When reviewing a decision on the standard of reasonableness, the analysis is concerned with the existence of justification, transparency and intelligibility within the decision-making process, and the decision-maker's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). In conducting a reasonableness review of factual findings, deference is warranted and it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 [*Kanthasamy FCA*] at para 99). This is especially the case where expertise arises from the specialization of functions of administrative tribunals having familiarity with a particular legislative scheme (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 [*City of Edmonton*] at para 33). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 17).

[24] The reasonableness standard commands deference to the decision-maker because it "fosters access to justice [by providing] parties with a speedier and less expensive form of decision making"; the reasonableness standard is indeed "grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing" (*City of Edmonton* at paras 22, 33; *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 757 [*Kaur*] at para 26). The Supreme Court has repeatedly said that reasonableness "takes its colour from the context" and "must be assessed in the context of the particular type of decision-making involved and all relevant factors" (*Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29 at para 22; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

III. Analysis

A. *The establishment in Canada*

[25] On their establishment in Canada, the Bhatia family argues that it was unreasonable for the Officer to conclude that they had failed to demonstrate a sufficient level of economic self-sufficiency, English competency, or integration into Canadian society. They contend that the cumulative effect of these errors of fact justifies this Court's intervention.

[26] I disagree.

[27] The Officer's assessment of the Bhatia family's degree of establishment in Canada was reasonable, as it hinged on the appreciation of three valid and oft-cited factors: economic self-

sufficiency, integration into the Canadian community and English-language proficiency (*Brar v Canada (Citizenship and Immigration)*, 2011 FC 691 at para 64; *Jamrich v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 804 at para 22). The Bhatia family is essentially asking the Court to reweigh the evidence, which it cannot do on judicial review. On the contrary, the Court owes a large degree of deference to the Officer (*El Thaher v Canada (Citizenship and Immigration)*, 2012 FC 1439 at para 43). Indeed, an immigration officer "has the expertise and experience necessary to permit him or her to identify the level of establishment that is typical of persons who have resided in Canada for the same approximate length of time as the Applicants and, therefore, to use this as a yardstick in assessing their establishment" (*Kaur* at 69; *Villanueva v Canada (Citizenship and Immigration)*, 2014 FC 585 at para 11).

[28] With respect to economic self-sufficiency, the evidence demonstrates that Mr. Bhatia and his family have not been able to support themselves, and have always needed the financial help of the government, in terms of either social security assurance or unemployment insurance benefits. I acknowledge that qualifying all of these benefits as "social assistance" was not entirely accurate, but the Officer's conclusion that the Bhatia family has not been able to support itself without the assistance of the government certainly was. I see no contradiction in the findings made by the Officer on Mr. and Mrs. Bhatia's employment history. Thus, the Officer's negative inference on this count falls well within the range of possible, acceptable outcomes and is reasonable.

[29] The Bhatia family claims that the Officer's errors, though minor, have a cumulative effect, and seriously distort the assessment of Mr. and Mrs. Bhatia's degree of establishment in

Canada. They argue that cumulative factual errors can warrant judicial review (*Sarkis v Canada (Minister of Citizenship and Immigration)*, 2006 FC 595 at para 13) and that multiple errors of fact can suggest inattentiveness to the details of the case and can undermine the decision as a whole (*Garmenova v Canada (Minister of Citizenship and Immigration)*, 2004 FC 414 at para 11). I do not share that view. Many small, immaterial errors are not enough to render a decision unreasonable (*Canada (Public Safety and Emergency Preparedness) v Louis*, 2016 FC 172 at para 29; *Guerrero Moreno v Canada (Citizenship and Immigration)*, 2011 FC 841 at para 15). An imperfect decision is still reasonable. The standard of review is not concerned with the decision's degree of perfection but rather its reasonableness.

[30] Turning to their knowledge of English, the Bhatia family again refers to some evidence that, in their view, should have been interpreted differently by the Officer. They claim, relying on *Cepeda-Gutierrez v Canada (Citizenship and Immigration)*, [1998] FCJ No 1425 (QL) [*Cepeda-Gutierrez*], that the Officer's omission to take into account all of the information provided in the application was unreasonable (*Cepeda-Gutierrez* at para 17). I do not agree. *Cepeda-Gutierrez* does not stand for the proposition that the mere failure of an administrative tribunal to refer to an important piece of evidence that runs contrary to the tribunal's conclusion necessarily renders a decision unreasonable and results in the decision being overturned. To the contrary, *Cepeda-Gutierrez* says that a tribunal need *not* refer to every piece of evidence; it is only where the non-mentioned evidence is critical and squarely contradicts the tribunal's conclusion that the reviewing court *may* decide that its omission means that the tribunal did not have regard to the material before it. This is not the case here.

[31] The Bhatia family's own submissions stated that they have only acquired a basic knowledge of English and the evidence on the record shows that they have not been able to support themselves since they arrived in Canada. These findings are supported by evidence, and the Bhatia family has been unable to point to any evidence ignored or not considered by the Officer. They simply wish that the Officer had assessed the evidence differently and come to a conclusion more favourable to them. This is not a ground for judicial review.

[32] I am also not convinced by the Bhatia family's contention that the Officer provided an unreasonable assessment of their level of integration into Canadian society. The Officer underlined the fact that their integration took the form of volunteer work in their own cultural community and was mandated by religious belief. Counsel for the Bhatia family claimed that the Officer diminished this integration by implying that volunteer work in the Montreal Sikh community was less than fully Canadian. At the hearing, counsel for the Bhatia family even qualified the Officer's comments as connotative of racism. This, in my view, is not a fair reading of the Officer's reasons. The Officer's analysis could perhaps have been written in more elegant terms, but I do not agree that bias or racism against the Bhatia family has infected the Decision.

[33] It was open to the Officer to conclude that, despite social involvement and volunteer work within the Sikh community, the Bhatia family had not shown such deep roots in Canada as to warrant an exceptional relief to palliate an "unusual and undeserved or disproportionate hardship" under H&C grounds (*Kanthasamy* at para 26). It was perfectly within the Officer's purview to assess the overall degree of establishment by taking into consideration factors such as whether they had other relatives in Canada (they have none) or whether they had demonstrated

deep bonds with other established Canadians. In other words, though there was evidence to allow the Officer to find that some ties were established in Canada, the level of establishment was not significant enough to trigger humanitarian concerns. In this case, a reading of the Decision indicates that all the evidence was considered. The analysis was highly fact-driven, and was conducted by the Officer on the basis of his specialized expertise in immigration matters; it is not this Court's role to revisit it.

B. *The best interest of the children*

[34] The Bhatia family also claims that the Decision is unreasonable in light of the Officer's treatment of the best interests of the two children involved and the ensuing conclusions on its limited weight. They submit that the Officer failed to examine the best interests of the children with the degree of attention and sensitivity required by the relevant legislation and case law, and that the Officer gave insufficient weight to these interests in light of the children's circumstances. In particular, they argue that the Officer inappropriately relied on *Owusu* to limit the scope of inquiry, while failing to afford sufficient attention to the Supreme Court's guidance articulated in *Kanthasamy*, which prescribes that the best interests must be well identified and defined, and examined with a great deal of attention (*Kanthansamy* at para 39).

[35] I disagree.

[36] Contrary to the assertions of the Bhatia family, the Officer's reference to the *Owusu* decision is not erroneous. *Owusu* is still good law and has frequently been approved by the FCA. The Officer invoked *Owusu* to state that an immigration officer must remain "alert, alive and

sensitive" and must not "minimize" the best interests of the children. There is no doubt that this is the test confirmed by the Supreme Court in *Kanthasamy* and that it is the correct test. Furthermore, the Officer validly used the principle set by the FCA in *Owusu* when he concluded that the evidentiary burden rests with the Bhatia family, and when he held that the Bhatia family had not submitted credible and objective evidence that the children would suffer any hardship other than those normally associated with removal.

[37] All the evidence mentioned by the Bhatia family on the best interests of the children (school enrolment letters, report cards, PRAIDA letter attesting to the children's integration into Canadian society) has been considered by the Officer, but was not ultimately retained as a factor important enough to justify granting the exceptional relief sought by the Bhatia family. The Decision reflects that the Officer examined the best interests of the child with a great deal of attention. The Officer made a complete analysis and was alert and sensitive to the interests of the Bhatia children. After making the analysis, the Officer concluded that the children would only suffer the normal consequences of removal, as they will be reunited with their relatives in India, are not ignorant of the Indian or Sikh cultures and presumably speak Punjabi.

[38] The Bhatia family takes particular exception with the Officer's conclusion that the children would not have trouble readjusting to life in India and are familiar with the customs, habits, religion and mother tongue in India. They assert that these comments are grounded in speculation, not evidence. I do not share that view. Speculation is not to be confused with inference. It is acceptable for a decision-maker to draw logical inferences based on clear and non-speculative evidence (*Laurentian Pilotage Authority v Corporation des pilotes du Saint-*

Laurent central inc, 2015 FCA 295 at para 13; *Kaur* at para 62). In the same vein, it is well-accepted that a decision-maker can rely on logic and common sense to make inferences from known facts. An immigration officer cannot engage in speculation and render conjectural conclusions. However, a reasoned inference is not speculation.

[39] In this case, there was evidence about the involvement of the parents in volunteer work with their Sikh community, and on their limited knowledge of English. It was therefore not unreasonable to infer from that evidence that the children, aged 5 and 7, would be familiar with the customs, religion and language in India. The fact that the children have spent virtually their whole lives in Canada and that their education has taken place in Canada did not prevent such an inference. Similarly, it was also reasonable for the Officer to infer that because their parents are Sikhs, have lived most of their lives in India, and are actively involved in the Sikh community in Montreal, the children would also be familiar with Sikh and Indian culture.

[40] The Officer afforded adequate consideration to the best interests of the children and no errors of reasoning are apparent in the determinations on this point. Again, the legal test is whether the immigration officer was "alert, alive and sensitive" to the best interests of the children in their analysis (*Baker* at para 75; *Canada (Minister of Citizenship and Immigration) v Hawthorne*, 2002 FCA 475 [*Hawthorne*] at para 10). In order to demonstrate that the immigration officer is alert, alive, and sensitive best interests of the children, their analysis should address the "unique and personal consequences" that removal from Canada would have for them (*Tisson v Canada (Citizenship and Immigration)*, 2015 FC 944 at para 19; *Ali v Canada (Citizenship and Immigration)*, 2014 FC 469 at para 16); the analysis must likewise not be made

in a vacuum (*Kanthasamy* at para 35; *Hawthorne* at para 5). The interests must be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence (*Kanthasamy* at para 39; *Hawthorne* at para 32; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 [*Legault*] at paras 12, 31). However, being alert to the best interests of the children does not dictate the result to be reached; it is up to the Officer to weigh that factor, among others (*Kanthasamy* at para 41; *Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 [*Kisana*] at paras 24, 26; *Legault* at para 12).

[41] The Officer acknowledged that the return to India would indeed be upsetting for the children, and gave weight to this factor, but determined that it alone did not outweigh all other factors in the H&C analysis. As the Officer correctly highlighted, the mere presence of children does not necessarily call for a certain result and their interests will not always outweigh other considerations or mean that there will not be other reasons for denying an H&C claim (*Kanthasamy* at para 38). It is well-established that the best interests of the children "[do] not necessarily trump other factors for consideration in an H&C application" even if they are an important factor (*Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 28), as it remains only one factor to be weighted among others (*Kisana* at para 72; *Hawthorne* at para 5; *Legault* at para 12).

[42] The approach flowing from *Kanthasamy* necessitates a certain mindset and disposition on the part of immigration officers, and it dictates the path to be followed in their analysis of the evidence in order to echo the overarching purpose of H&C provisions like subsection 25(1) of

the IRPA. But immigration officers still retain their discretion to assess the evidence, equipped as they are with their specialized expertise in handling immigration matters.

[43] I am satisfied that, in this case, the Decision amply demonstrates that the Officer conducted the required analysis and was alert, alive and sensitive to the best interests of the two children. The Officer looked specifically at their situation and did not fail to engage in the analysis. He was aware of their history and concerns, and referred extensively to the children's conditions in the Decision. I can understand that the Bhatia family may disagree with the assessment of the best interests of the children made by the Officer, but it is not this Court's role to interfere with the weight attributed by the Officer to the different H&C considerations. Taken as a whole, the Officer's Decision denying the H&C application is transparent. The Officer provided intelligible reasons for concluding that the Bhatia family did not meet their onus of establishing, on balance, that they should be permitted to apply for permanent residency from within Canada for H&C reasons.

C. ***Adverse conditions in India***

[44] The Bhatia family finally argues that the Officer's treatment of the adverse conditions in India was unreasonable. They claim that the Officer erroneously required that documentary evidence corroborate the statements contained in the affidavits by Mr. Bhatia's father and a family friend.

[45] Again, I am not persuaded by the Bhatia family's arguments.

[46] The Bhatia family has not submitted any credible and trustworthy evidence to prove the existence of adverse country conditions. Their only evidence on this front consisted of affidavits from Mr. Bhatia's father and from a friend of the family which repeated facts previously found not credible by the RPD. The purpose of an H&C application is not to re-argue the same facts that were presented to the RPD or to indirectly contest the conclusion of the RPD. Indeed, the Officer must show great deference to the RPD's appreciation of the facts (*Kaur v Canada (Citizenship and Immigration)*, 2012 FC 918 at para 22; *Akinosho v Canada (Citizenship and Immigration)*, 2011 FC 1194 at paras 9-10; *Begum v Canada (Citizenship and Immigration)*, 2008 FC 1015 at para 21).

[47] The Officer found that the two affidavits had no probative value and were not sufficient to override the RPD's and Federal Court's conclusions that the Bhatia family's claim of persecution was unfounded. The Officer rejected the affidavits on multiple grounds: they were copies, not originals; they repeated facts that were not found credible by the RPD; and no objective evidence is provided to corroborate the affiants' allegations, notably in regards to Mr. Bhatia being wanted by the police. The fact that Mr. Bhatia's father's affidavit was self-serving because it was written by a member of the Bhatia family was clearly not the only reason the Officer concluded that it had no probative value. In sum, the Bhatia family has simply failed to prove that country conditions warrant granting their H&C application.

[48] It is also important not to lose sight that subsection 25(1) of the IRPA remains an exception to the ordinary operation of the IRPA. On that note, the Supreme Court in *Kanthasamy* underlined that "[t]here will inevitably be some hardship associated with being required to leave

Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1), […] nor was s. 25(1) intended to be an alternative immigration scheme" (*Kanthasamy* at para 23). An H&C exemption is an exceptional and discretionary remedy (*Legault* at para 15). This relief sits outside the normal immigration classes or refugee protection streams by which foreign nationals can come to Canada permanently, and it acts as a sort of safety valve available for exceptional cases. Such an exemption is not an "alternative immigration stream or an appeal mechanism" for failed asylum or permanent residence claimants (*Kanthasamy FCA* at para 40).

[49] There is a very high threshold to meet when requesting H&C exemptions pursuant to subsection 25(1) of the IRPA. As this Court has often noted, the H&C process is not designed to eliminate all hardship that applying for a visa from outside of Canada can cause but to provide relief from "unusual and undeserved or disproportionate hardship" should an applicant be required to leave Canada and apply to immigrate through the usual channels (*Ibabu v Canada (Citizenship and Immigration)*, 2015 FC 1068 at para 23). In order to obtain relief on H&C grounds, the test is not whether Canada would be a more desirable place to live than the applicants' country of origin; rather, applicants must demonstrate that they would be subject to more than the usual consequences of having to apply for permanent residence through the normal process (*Kanthasamy* at para 41).

[50] In this case, the Bhatia family did not show a sufficient degree of establishment in Canada, that the children would unduly suffer from having to return to India, or that the Officer had unreasonably disregarded evidence before them when assessing their H&C application.

Therefore, it was reasonable for the Officer to determine that the Bhatia family had failed to demonstrate that they would suffer more than the usual consequences of having to return to India and attempt to obtain permanent resident status therefrom. The finding is heavily based on the particular factual situation of the Bhatia family. It is explained in detail in the Decision and it is supported by the evidence. This was a very factual analysis, reached by the Officer on the basis of his specialized expertise in immigration matters, and it is not the role of a reviewing court to revisit that.

IV. Conclusion

[51] For all the reasons detailed above, the Officer's Decision dismissing the Bhatia family's request on H&C grounds represented a reasonable outcome based on the law and the evidence. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. I have no hesitation to conclude that this is the case here. Both the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility. Therefore, I must dismiss the application for judicial review.

[52] Neither party has proposed a question of general importance to certify. I agree there is none.

JUDGMENT in IMM-1635-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs.

2. No question of general importance is certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1635-17
STYLE OF CAUSE:	SIMRANJIT SINGH BHATIA, GURSHARAN KAUR BHATIA, EKAM SINGH BHATIA, ACHINT BHATIA, MAHINDER KAUR BHATIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 18, 2017
JUDGMENT AND REASONS:	GASCON J.
DATED:	NOVEMBER 6, 2017

APPEARANCES:

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