Federal Court  Cour fédérale

Date: 20220329

Docket: IMM-3695-21

Citation: 2022 FC 376

Ottawa, Ontario, March 29, 2022

PRESENT: Madam Justice St-Louis

BETWEEN:

AMANDEEP KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ms. Amandeep Kaur seeks judicial review of the decision of a Senior Immigration Officer of Immigration, Refugees and Citizenship Canada [the Officer] dated May 3, 2021 denying the in-Canada application for permanent residence she presented based on humanitarian and compassionate considerations [H&C] per subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] In their decision, the Officer outlined having considered the extent to which Ms. Kaur, given her particular circumstances, would face hardship if she had to leave Canada in order to apply for permanent residency abroad, in the normal manner. Following what they described as a cumulative and global assessment of the factors and circumstances particular to Ms. Kaur, the Officer concluded they were not satisfied that her personal circumstances were sufficiently compelling in order to justify the granting of relief from the normal immigration processing requirements.

[3] For the reasons exposed below, I find that Ms. Kaur has not met her burden to convince me that the Officer's decision is unreasonable per the teachings of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. For the reasons exposed below, I will dismiss the application for judicial review.

II. Context

[4] Ms. Kaur is a citizen of India. On February 24, 2011, she entered Canada using her sister's passport, and claimed refugee protection. She then alleged, essentially, having been victim of persecution and having been attacked and raped by the police in India. She claimed that the Indian police suspected her father to have assisted her cousin, himself suspected of being a militant or linked to militants. In brief, Ms. Kaur also alleged that her father was found dead, and that the police raped her after she and her mother went to see a lawyer to prepare a complaint against the police. She alleged fearing going back to India for the same reasons.

[5] On October 8, 2014, the Refugee Protection Division [RPD] determined that Ms. Kaur was not a Convention refugee or a person in need of protection [RPD Decision] and dismissed her refugee claim. Contrary to what Ms. Kaur stated in her submissions in support of H&C application, which were filed before the Court in these proceedings, the RPD did find that Ms. Kaur had not credibly established the factual elements alleged in support of her refugee claim. The RPD found that she was not a credible witness.

[6] The RPD noted, *inter alia* that (1) in 2009, Ms. Kaur had twice attempted to obtain a Canadian visa without success; (2) in 2008 and in 2010, she visited her uncle in the United Kingdom and her sister in Sweden, for months; and (3) in February 2011, she came to Canada using her sister's passport and claimed Canada's protection once her identity had been questioned. The RPD noted that Ms. Kaur's conduct, narrative and testimony contained fatal inconsistencies, regarding *inter alia* (1) the date when she was allegedly raped, declaring that it was January 2010 at the port of entry, but September 4, 2010 in her narrative; (2) the fact that she never claimed protection in the United Kingdom, in Sweden where she remained for months, or in any other Schengen country she had access to; (3) the fact that she did not leave India in September 2010 when she obtained a new United Kingdom visa; (4) her testimony that she could not do anything after finding that her father was dead contradicts her allegation that she took action and met with a lawyer to prepare a complaint against the police; (5) the allegation that her uncle in the United Kingdom requested her to leave his home; (6) the allegation that she stole her sister's passport and used her sister's credit card without her sister's knowledge; and (7) the contradiction between her allegation that she was sought by the police in India, and her confirmation that she left India with her own passport without difficulty.

[7] On January 29, 2015, the Court denied Ms. Kaur's leave for judicial review of the RPD Decision.

[8] In April 2016, Ms. Kaur applied for a pre-removal risk assessment [PRRA]. She then reiterated essentially the same allegations that had been reviewed and assessed by the RPD. She declared she still feared the police and added that the authorities in India will harm her because of her status as a failed refugee claimant who will be deported. On November 27, 2017, Ms. Kaur's PRRA was denied. The PRRA Officer noted that Ms. Kaur had not submitted personalized evidence demonstrating that she had not complied with Indian laws on departure and that she was thus of particular interest to the Indian authorities. The PRRA Officer also noted that the evidence did not counter the RPD's conclusions, nor did it sufficiently establish the alleged risks of return.

[9] There is no indication in the record that Ms. Kaur challenged this negative PRRA decision before the Court.

[10] On August 12, 2019, Ms. Kaur applied for Canadian permanent resident status based on H&C considerations per section 25 of the Act. She then raised her solid economic integration and the excessive difficulties she would face if she had to return to India given her sex and social group. The record shows that some 150 pages of submissions and documents were submitted along with her application.

[11] In January, February and August 2020, Ms. Kaur filed additional submissions and documents in support of her H&C application.

[12] Two documents were submitted in regards to Ms. Kaur's medical condition. The first, found at page 52 of the Applicant Record, is a note from a specialized nurse of the "CLSC". It confirms, essentially, that Ms. Kaur has been known for some 11 years at their clinic and that she has no chronical health situation. It outlines Ms. Kaur's allegations and asks that she be granted refugee status. The second document is found at page 81 of the Applicant Record, refers to psychiatry and appears to be a medical prescription.

[13] In her submissions to this Court, both written and oral, Ms. Kaur referred to another medical document, implying it was in the Certified Tribunal Record [CTR] in these proceedings, and that it was before the Officer examining Ms. Kaur's H&C application. However, at the hearing before this Court, counsel was unable to confirm if this document was in fact in the CTR and if it was before the Officer, and counsel was unable to identify the document in the record. The Minister confirmed that this document existed, but that it was not in the CTR and not before the H&C Officer. The Minister confirmed that it had been submitted to the Court in other proceedings.

[14] After a careful examination of the CTR, I have not found this document. Furthermore, a careful examination of the documents listed in each of the submissions presented to the Officer confirms that it was not included. As indicated during the hearing, I conclude that this document was not before the Officer, and that it is not before the Court in these proceedings. Hence, the

only medical documents before the H&C Officer were afore-mentioned documents found at pages 52 and 81 of the Applicant Record.

[15] In support of her H&C application, Ms. Kaur outlined that she was a victim of serious torture and rape in India and that she suffered from post-traumatic stress disorder. She indicated that she had a lot of support from various groups and a very good reputation. She added that she has no one to go back to in India and passed through England and Sweden before coming to Canada.

[16] Before the Officer, Ms. Kaur particularly identified certain factors that she considered relevant, they were: (1) Victims of serious torture and human rights abuses; (2) Economic and family establishment in Canada; (3) The international decisions about Sikh torture; and (4) The Gender Guidelines and custodial rape in India.

[17] With regards to the fact that she is a victim of serious torture and human rights abuse, Ms. Kaur indicated that the RPD refused her claim not on the basis of serious credibility findings linked to her testimony or evidence. She submitted that being a victim of custodial rape and having made an almost-successful suicide attempt are factors which must be addressed in the humanitarian decision. She alleged that she has given $10,000.00 to $15,000.00 for PRRA and H&C submissions to her former consultant, but no one has asked her for evidence of what happened to her until the last couple of weeks.

[18] With regards to economic and family establishment in Canada, Ms. Kaur submitted that she had a very solid economic integration, as she is a very good worker and has an excellent reputation.

[19] With regards to international decision about Sikh torture, she quoted the article 3 of the *Convention Against Torture* as well as the *Chahal v The United Kingdom*, [1996] 23 EHRR 413 [*Chahal*] decision.

[20] Finally, on the Gender Guidelines and custodial rape in India, Ms. Kaur indicated that she understands there can be negative connotations attached to the fact that there is a previous request for refugee status that the RPD has refused. However, she indicated that she did not believe that the Gender Guidelines of the RPD were respected.

[21] Ms. Kaur was scheduled to leave Canada on February 5, 2020. On January 23, 2020, the Canada Border Services Agency [CBSA] denied Ms. Kaur's request for a deferral of her removal. Ms. Kaur filed an application for leave and judicial review of the negative deferral decision. On February 4, 2020, the Court granted her motion to stay her removal, pending the decision on the merits of the underlying application for judicial review, which was subsequently granted by the Court.

[22] On May 3, 2021, the Officer denied Ms. Kaur's H&C application.

[23] The Officer noted that Ms. Kaur has been in Canada for more than 10 years and that this factor itself does not amount to the granting of relief on H&C grounds. The Officer observed that the factors Ms. Kaur wishes to be considered in the H&C assessment include discrimination or adverse country conditions in India, establishment in Canada and lack of support in India.

[24] The Officer also noted that Ms. Kaur's submissions indicate that she does not wish to return to India because of the police abuse, including rape, she endured and impunity granted for the country's police officers and underlines the fact that she suffers from post-traumatic stress syndrome [PTSD]. The Officer found that her submissions on her abuses and factual context leading to of her establishment to Canada do not rebut the factual determinations of the RPD upheld by the Federal Court of Canada, which had already reviewed these allegations under sections 96 and 97 of the Act.

[25] The Officer recognized that there are some human rights problems in India, but noted that Ms. Kaur had not demonstrated that the country conditions would have a direct negative impact on her and would therefore cause her hardship such that an exemption is justified in her particular case.

[26] The Officer further found that Ms. Kaur had provided insufficient evidence to demonstrate that (1) she faces hardship upon her return to India based on her statement of risk associated with her refugee claim; (2) she suffers from PTSD or other mental health issues or that she is unable or unwilling to obtain any mental health treatment she may require in India or that she would incur undue hardship in doing so; and (3) she will be affected by the adverse

country conditions in her home country to the extent that an exemption is justified in her particular case.

[27] The Officer underlined the fact that Ms. Kaur's supporters did not (1) inform how or in what manner they intend to assist her should she remain in this country; and (2) enumerate the hardship they may incur should she depart Canada. Again, the Officer concluded that there is insufficient evidence to support that there exists a mutual dependence between herself and her personal ties such that her departure from Canada would create difficulties for those involved.

[28] Referring to Ms. Kaur's employment, volunteerism, religious affiliation and financial efforts while in Canada, the Officer outlined that the question is not whether she would make a welcome addition to Canadian society but whether her removal to India amounts to hardship such that an exemption is justified.

[29] The Officer specified that the exercise of discretion on H&C grounds should be something other than that which is inherent in removal after a person has been in a place for a period of time and that there are no concerns in the present case regarding the Applicant's credibility. The Officer finds that the following a cumulative and global assessment of the factors and circumstances particular to the Applicant, including the exceptional nature of H&C relief, does not satisfy the Officer that Ms. Kaur's personal circumstances are sufficiently compelling in order to justify the granting of relief from the normal immigration processing requirements.

[30] This is the decision under review by the Court in these proceedings.

III. Arguments raised by the Applicant

[31] Before the Court, in her memorandum of facts and law, Ms. Kaur raises the following argument as against the Officer's decision:

> Is the fact that someone is a victim of serious gender persecution in their country, suffering from serious trauma and anxiety sufficient to establish that they are a refugee? Does this decision respect the Gender Guidelines and the right to equality?
>
> Has the senior immigration officer followed the proper criteria for the exercise of her discretion on the existence of humanitarian reasons? Has the decision-maker followed the direction of the Supreme Court in the *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] decision?
>
> Has the immigration officer properly justified her decision? Does this respect what the Supreme Court has required in the *Vavilov* decision? Can this decision possibly be reasonable?
>
> What is the impact of the poor or lack of representation both on the PRRA submissions and the late submission of the humanitarian case? Should the decision-maker give some importance to the evidence submitted of ongoing danger in India rather than making facile references to the RPD decision?
>
> Is the humanitarian decision-maker obliged to address the evidence of a psychological or medical nature that points to PTSD or rape victim trauma? Is this approach respectful of Canada's international human rights obligations?
>
> Does this decision respect the prohibition of return to a substantial risk of torture in Article 3 of the *Convention against Torture*?

[32] In particular, Ms. Kaur submits that the Officer refused the case on the basis of the flawed credibility findings of the RPD. Subsequently, she states that "[w]e have no reason to doubt her basic story as it is laid out in the refugee narrative". Moreover, Ms. Kaur states that "[t]here are many serious errors in the analysis of credibility by the RPD".

[33] Ms. Kaur adds that affidavits, medical reports and letters from the family as well as evidence of the danger to the family in India have been submitted about the main facts, confirming that the police is still persecuting her family and that if she returns to India, the police will probably mistreat her and maybe rape her again. Ms. Kaur adds that Amnesty International, Human Rights Watch and Indian rights organizations all confirm that there is a problem of police impunity in India.

[34] Ms. Kaur also alleges that it is impossible for someone like her to have an Internal Flight Alternative [IFA] in India as there is a system of cover-up, intimidation and threats in the Punjab Police and cites the UNHCR Guidelines on an IFA. She also alleges that the decision-maker did not address the fact that she, as a vulnerable person, was not treated with respect by the immigration consultant, and also adds that the H&C Decision does not address the principal reasons invoked for stopping the deportation.

[35] Ms. Kaur submits that it is clear that a deportation without any look at the humanitarian aspect of the case of a victim of sexual abuse in India does not respect the fundamental values and belief in the equality of the sexes laid out in the Canadian Charter. She adds that the Canadian public does not believe that Canada is sending back rape victims to the same police that raped them.

[36] Ms. Kaur alleges that the Officer did not respect the principles of the *Kanthasamy* decision, and she also relies on *Rainholz v Canada (Citizenship and Immigration)*, 2021 FC 121

to argue that the jurisprudence underlines the importance of psychiatric and psychological evidence.

[37] Ms. Kaur alleges that the main reasoning behind the H&C Decision is the facilitation of deportations without regard to whether they respect fundamental rights or not, and restates that the presence of PTSD and the negligence of the immigration consultant is hardly addressed in the H&C Decision. Per the Applicant's submissions, not giving any importance to a victim of rape who suffers from PTSD and depression does not respect the Gender Guidelines of the RPD. Relying on the *Vavilov* decision, the Applicant submits that there is an issue of a lack of serious motivation observed in the H&C Decision.

[38] Ms. Kaur also submits that the Officer should have considered what was submitted about the lack of effective representation. At paragraph 38 of her memorandum, she states that "[w]hat is more shocking though, is the fact that the request for humanitarian reasons was paid for at a very high price in 2016, but only sent in August 2019 after the reception of the refusal of the PRRA".

[39] On PTSD and treatment of a rape victim, Ms. Kaur alleges that both Justice Bell in the decision on the stay application and Justice Shore on judicial review gave great deal of weight to the letter from the CLSC and the other Canadian professionals who have given their opinions. Citing *Kanthasamy,* Ms. Kaur adds that giving little importance to psychologists and doctors from Canada is clearly wrong in law.

[40] With regards to the prohibition of return to torture, Ms. Kaur states that the standard of review in a context of true human rights situation must surely be a constitutional level of review. She alleges that the Canadian Charter applies, and cites the *Chahal* decision to stress the obligations of a government pursuant to article 3 of the *Convention on Torture*. She also submits that the reasoning applied by the European Court in *Chahal* should be applied to interpret article 12 of the Canadian Charter. She reminds the Court that she is at risk of being subjected to torture upon return to India.

[41] Ms. Kaur stresses that the standard to be applied is "[…] whether there is a reasonable possibility of persecution, torture and inhumane treatment for Mrs. Kaur and her family". Ms. Kaur raises issues of natural justice violation.

[42] In her memorandum in reply, Ms. Kaur confirms that she wishes to relitigate. Before the Court, the RPD's conclusions of facts.

IV. Issues before the Court

[43] In essence, the Court must determine if Ms. Kaur, as it is her burden, has demonstrated the Officer's decision to be unreasonable.

[44] In light of the arguments raised by Ms. Kaur, I must determined in particular if

> (1) As part of these proceedings, Ms. Kaur can, as she argues, relitigate the RPD and the PRRA's factual determinations because the RPD and the PRRA made mistakes and failed to follow the RPD Guidelines on gender and because her consultant was incompetent in his representations;

> (2) The Officer erred when they concluded that the submissions on her abuses and factual context leading to of her establishment to Canada did not rebut the factual determinations of the RPD upheld by the Federal Court of Canada;
>
> (3) The Officer erred when they found that Ms. Kaur had provided insufficient evidence to demonstrate that she suffers from PTSD or other mental health issues or that she is unable or unwilling to obtain any mental health treatment she may require in India or that she would incur undue hardship in doing so; and
>
> (4) The Officer erred by not applying or referring to the RPD Guidelines on gender.

V. Standard of review

[45] I agree with the parties that the proper standard of review when reviewing a decision made under paragraph 25(1) of the Act is reasonableness, including the decision-maker's reasoning process and its outcome.

[46] As explained in *Vavilov*, there is a presumption of reasonableness review in administrative decision-making. Previous case law confirms that the standard of review in H&C decisions is the standard of reasonableness (*Kisana v Canada (Minister of Citizenship and Immigration*), 2009 FCA 189 at para 18 [*Kisana*]; *Williams v Canada (Citizenship and Immigration)*, 2020 FC 8 at para 20). The Court shall bear in mind the deference that is owed to decisions made under section 25(1) of Act (*Kanthasamy* at para 64).

[47] As stated by the Supreme Court of Canada in *Vavilov* at paragraph 85, "[…] reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is

justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision."

VI. Decision

[48] It is important to repeat that an H&C application remains an exceptional and extraordinary remedy, see *Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 per Justice Gascon at paragraph 15:

> It has been consistently held that an H&C exemption is an exceptional and discretionary remedy (*Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 [*Legault*] at para 15; *Adams v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1193 [*Adams*] at para 30). 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 v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 [*Kanthasamy FCA*] at para 40).

[49] In this connection, see also *Santiago v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 91 at paragraphs 27 and 28, *Canada (Public Safety and Emergency Preparedness) v Nizami*, 2016 FC 1177 at paragraph 16, and *Joseph v Canada (Citizenship and Immigration)*, 2015 FC 904 at paragraph 24.

[50] With regards to Ms. Kaur's argument on the Canadian Charter, she does not explain *how* the Charter can apply in the present proceedings. Stipulating that there is a constitutional level of review and that the Charter is supposed to be apply at every step of the procedures is not enough

to demonstrate the application of the Charter with an H&C decision. I will not analyze this argument further.

[51] On Ms. Kaur's submission that there is nothing at all reasonable about the Officer refusing to deal with evidence on the basis of the credibility findings at RPD 7 years ago particularly given the flagrant errors of analysis in that decision, again, I would dismiss the argument. On one hand, I note that this is not a judicial review of the RPD Decision and that the RPD Decision was not redetermined, as application for leave has been dismissed by this Court (IMM-7420-14). Consequently, this Court cannot accept that there are flagrant errors of analysis in the RPD Decision. On the other hand, I disagree on the fact that the Officer refused to deal with evidence as he noted that he has reviewed the submissions and determine that they do not rebut the factual determinations of the RPD Decision. This wording means quite clearly that the Officer has looked at the evidence in order to determine if there has been rebuttal of the factual determinations.

[52] In her submissions, Ms. Kaur's confirms that she is attempting to relitigate an issue that was decided by the RPD, this Court and the PRRA officer. The situation in the case at bar is indeed similar to that in *Herrada v Canada (Citizenship and Immigration),* 2006 FC 1003 where the Court decided that an applicant cannot argue that credibility findings made by the RPD, a PRRA officer and this Court be freshly reargued and relitigated before the H&C decision-maker. Paragraphs 37 to 39 of *Herrada* state the following:

> Mr. Salomon Herrada and his family seem to believe that if they add documents to the record at the stage of their application based on humanitarian and compassionate considerations, the conclusions reached by the RPD, the Federal Court and the PRRA

officer about their credibility will be set aside or forgotten. Likewise, they also seem to believe that the conclusion concerning state protection in Peru will also be set aside if they submit documentary evidence about the situation in Peru.[38]

However, *Ahmed v. Canada (Minister of Citizenship and Immigration)*, [2001] 1 F.C. 483, [2000] F.C.J. No. 1365 (QL), at paragraph 27, specifies that the officer who processes an application based on humanitarian and compassionate considerations does not sit on an appeal or judicial review of a decision of the RPD:

> In my opinion, the PCDO process is an administrative one. As such, the officer's role is limited to a review of the evidence in the record, including any new documents and submissions presented by the applicants. Thus, it is not open for the officer to conduct a new assessment of an applicant's credibility and to reverse the credibility findings of the Refugee Division. Just as Nadon J. stated in *Hussain v. Canada (M.C.I.)*, that an immigration officer does not sit in appeal or review of the Refugee Board's decision in a humanitarian and compassionate application, where its purpose is not to re-argue the facts which were originally before the Refugee Board, I am of the view that the same applies to a PDRCC application. (See also: *Hussain v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 751 (F.C.T.D.) (QL), at paragraph 12.)

Accordingly, in processing the application based on humanitarian and compassionate considerations, the immigration officer was not entitled to conduct a new assessment of the credibility of Mr. Salomon Herrada and his family and set aside the RPD'S findings regarding credibility. The immigration officer was also not entitled to set aside the conclusion of the RPD concerning the adequacy of state protection in Peru. More specifically, the immigration officer could not base his decision on the allegation that Mr. Salomon Herrada and his family had been targeted by the Shining Path, given the conclusions reached by the RPD on this point.

[53] Accordingly, and since Ms. Kaur raised the same issues that had been decided by the RPD and the PRRA officer, it was reasonable for the Officer to find, at page 3 of their reasons, second paragraph, that the factual determinations of the RPD had not been rebutted.

[54] In regards to the alleged incompetence of her representative, Ms. Kaur has not followed the Protocol established by the Court back in 2014 and termed *Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court* that applies when alleging professional incompetence or negligence by a former legal counsel or another authorized representative. As the Minister argued, a bald reference to a "fairly unscrupulous consultant" is insufficient to successfully argue incompetence of a former counsel or representative in the Federal Court.

[55] With regards to Ms. Kaur's submission that the H&C Decision is unreasonable in its treatment of the medical and social worker evidence, it must fail in light of the dearth of evidence that was put to the Officer. The Officer stated in the H&C Decision that "[t]he Applicant has provided insufficient evidence to demonstrate that she suffers from PTSD or other mental health issues […]". Reviewing the letter at page 52 of the Applicant Record and the prescription found at page 81 of the Applicant Record, I find the Officer's conclusion reasonable, as these documents contain no probative medical commentary. Moreover, as the Federal Court of Appeal stated, "[i]t is well established that evidence filed on judicial review is limited to the evidence that was before the administrative tribunal […]" (*Brink's Canada Limited v Unifor*, 2020 FCA 56 at para 13). Ms. Kaur's reliance on Justice Bell's Decision and Justice Shore's Decision is flawed as it is clear that additional evidence was put before the Court in those cases,

evidence that was not before the Officer in the H&C application and is therefore not before this Court, as I have outlined earlier.

[56] The Officer did consider Ms. Kaur's establishment in Canada and considered it as positive factors in an H&C application. The Officer also considered the support letters filed in the application. As noted, the letters do not explain how these individuals would assist Ms. Kaur should she remain in Canada nor do they indicate any hardship to them or their organizations should she return to India.

[57] Finally, Ms. Kaur has not convinced me that the Officer was compelled to follow the RPD Guidelines on gender as part of its H&C assessment, which is completed entirely based on the written submissions, without testimony. The case law cited by Ms. Kaur during the hearing confirms that the Officer is not compelled to follow said Guidelines.

[58] On a last note, and given the arguments raised in these proceedings, I find useful to cite Justice Roussel's words, as found at paragraph 11 of *Singh*:

> [11] Finally, the Applicant's arguments relating to Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as Canada's obligation to comply with international law instruments and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11, have already been addressed and rejected several times (*Sandhu v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 902 at para 2 (FCA); *Ogiemwonyi v Canada (Citizenship and Immigration)*, 2021 FC 46 at para 39; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 341 at paras 17-18; *Fares v Canada (Citizenship and Immigration)*, 2017 FC 797 at paras 40-44; *Sidhu v Canada (Minister of Citizenship and Immigration)*, 2004 FC 39 at para 16).

[59] Ms. Kaur has suggested the following for certification:

> Does the current standard of review at the Federal Court of reasonableness and lack of attention to the substance of decisions regarding our international obligations respect the right to an effective legal recourse that is provided for in Article 24 of the Canadian Charter of Rights and Freedoms? Do the current legal recourses of the humanitarian application and judicial review by the Federal Court respect our international human rights obligations to provide an effective recourse under Article 2(3) of the International Covenant on Civil and Political Rights linked with the substantial rights of Articles 6 and 7 of this same convention in deportation matters?
>
> Is the decision-maker obliged to give some weight to new evidence submitted years after the RPD decision regarding a central point in the decision and is there an obligation to comment on this evidence and the human rights situation in India? Can it be reasonable for the administrative decision-maker or the Federal Court judge on judicial review to restrict their inquiry into the possible human rights violations on the basis of the credibility findings of the RPD?

[60] The Minister opposes certification. I agree with the Minister that none of the questions ought to be certified for the reasons he outlined in his letter dated March 4, 2022, and I will thus decline Ms. Kaur’s invitation to certify a question.

JUDGMENT in IMM-3695-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified.

3. No costs are awarded.

"Martine St-Louis"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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