Federal Court Cour fédérale

Date: 20220509

Docket: IMM-3804-21

Citation: 2022 FC 678

Ottawa, Ontario, May 9, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

TAKHAR, BALRAJ SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] The applicant, Balraj Singh Takhar, a 61-year-old citizen of India, seeks judicial review of a decision of a senior immigration officer [Officer] dated June 1, 2021, refusing his application for permanent residence on humanitarian and compassionate [H&C] grounds – he is seeking an exemption from the requirement of applying for permanent residence from abroad. The Officer determined that there were insufficient factors to grant such an exemption on H&C

grounds. The Officer assigned moderate weight to Mr. Takhar's establishment in Canada and minimal weight to factors associated with hardship, including as they may relate to adverse country conditions, on account of insufficient evidence. In the end, the Officer determined that the H&C considerations submitted by Mr. Takhar do not justify granting an exemption from the obligation to apply for permanent residence in Canada from abroad.

[2] This is Mr. Takhar's latest in a long line of applications for permanent residence on H&C grounds – it is actually his sixth since first arriving in Canada – all of which were refused. Mr. Takhar was born in a small agricultural village in the Punjab, in northern India, and initially made an application for permanent residency from outside of Canada as a member of the family class in the late 1990s, around the time that his sister – a Canadian citizen since 1989 who is living in Surrey, British Columbia [B.C.] – sponsored their parents to come to Canada. Although Mr. Takhar's parents were successful in their bid to come to Canada, Mr. Takhar was not as lucky, and his appeal to the Immigration Appeal Division was dismissed in November 1999. Later the next year, in October 2000, Mr. Takhar arrived in Canada and claimed refugee protection. Although his parents and the sister who sponsored them lived in Surrey, B.C., Mr. Takhar decided to settle in Montreal, close to his other sister, who is also a Canadian citizen and who has been living in Canada since 1996. Mr. Takhar obtained a work permit in early 2001.

[3] Mr. Takhar's refugee claim was refused in November 2001; the claim was found not to be credible and the matter did not proceed to judicial review. In June 2007, Mr. Takhar submitted the first of his applications for permanent residency on H&C grounds, which was refused in November 2007. Mr. Takhar lived in Quebec until December 2010 when he moved to

Surrey, B.C. to be with his family (I should mention that the record contains conflicting information as to whether Mr. Takhar left Canada for a short period and returned in 2003, however it is not relevant for the present application). After moving to Surrey, B.C., Mr. Takhar filed a second H&C application in June 2011 and applied for a pre-removal risk assessment in January 2012; both applications were refused in October 2012. Mr. Takhar then filed his third and fourth applications on H&C grounds in 2012 and 2014, both of which were refused.

[4] In 2011, the wife with whom Mr. Takhar had his two sons – who were born in 1993 and 1996 – died from cancer; she was living in India at the time. Mr. Takhar was in the midst of his attempts to remain in Canada, and for some reason, could not return to India. He claims that his mother would travel to India for months at a time after the death of his wife to take care of the boys, who were 18 and 15 at the time. Mr. Takhar continued to own the family farm in India, on which one of his sons continues to live to this day. In April 2013, Mr. Takhar submitted another application for permanent residency as part of an FC1 family class application, this time with his third wife; however, this application was eventually withdrawn by the sponsor on account of their divorce.

[5] In 2018, after spending eight years in Surrey, Mr. Takhar returned to Montreal, this time along with his parents. They bought a home together in a Montreal suburb, where the three continue to live, close to Mr. Takhar's other sister, who is a Canadian citizen and who has been living in Canada since 1996. Mr. Takhar submitted a fifth H&C application in July 2019, which was refused in November 2020. The matter before me relates to what is Mr. Takhar's sixth

application for permanent residence on H&C grounds, which he filed on February 10, 2021. He has been the subject of a removal order since December 12, 2019.

[6] Since returning to Montreal in 2018, Mr. Takhar has been the primary caregiver for his parents, with whom he has been living since they bought a home together. Mr. Takhar accompanies them to their medical appointments as they do not drive, acts as an interpreter as their English language skills are limited, administers his parents' medication and assists with their medical needs, runs all their errands, and does all their chores. His sister who lives in B.C. and who sponsored her parents to come to Canada in 1998 is now a widow, with three children in Surrey, and claims that she cannot care for her parents. The other sister, who lives in Montreal with her husband, her two children and her father-in-law, also claims that she cannot care for her parents. Mr. Takhar's two sons live outside of Canada. One is in India, living on the family farm and hoping to join his wife, who is studying in Canada and has a work permit; the other son lives in New Zealand.

II. The decision under review

[7] Mr. Takhar's H&C application is based on his establishment in Canada, hardship, and adverse country conditions. In support of his application, Mr. Takhar submitted notices of tax assessment; bank statements; several letters of support from family members, friends, and neighbours; letters of employment; and letters of reference related to his work as a volunteer. The Officer found that the H&C considerations submitted by Mr. Takhar did not justify granting the exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[8] As regards Mr. Takhar's establishment in Canada, the Officer gave moderate weight to his role as the primary caregiver to his parents and attached some weight to the fact that his sisters live in Canada, to his financial stability in Canada, to his consistent history of employment, and to the volunteer work he performed in his community. However, the Officer gave no weight to the prospect of Mr. Takhar's son joining his wife in Canada because Mr. Takhar's daughter-in-law possesses a temporary work permit with no guarantee of being able to remain in Canada, and Mr. Takhar's son's intention to come to and settle in Canada was purely speculative. Although she/he attributed moderate weight to Mr. Takhar's establishment factor, the Officer also noted that Mr. Takhar still continues to have strong ties to India. He spent the majority of his life in India, where he completed his education before coming to Canada at the age of 39; one of his sons still resides in India and maintains the family farm; and Mr. Takhar is still very familiar with the language and culture of India as he has been involved in the Sikh community in Canada. In the end, the Officer determined that Mr. Takhar is more likely than not to have stronger ties to India than to Canada.

[9] As regards any hardship that Mr. Takhar would face in returning to India, the Officer considered Mr. Takhar's role as the principal caregiver for his elderly parents – according to Mr. Takhar, without his care, his parents may become dependent on government assistance. The Officer acknowledged the role and responsibilities that Mr. Takhar has with his parents, but determined that if he were to return to India, his parents would continue to have the emotional and physical support of their two daughters, five grandchildren, friends, and community members in Canada. The Officer recognized the difficulties for the two daughters in taking on the role of caregiver to their parents, but considered that it was reasonable for the network of

family and friends to supplement any gaps in care, thus limiting the hardship that would be experienced by Mr. Takhar. The Officer also considered the fact that one of his sons resides in India, found insufficient evidence to establish that his family would not be able to visit him in India, and determined that Mr. Takhar would continue to communicate with his family in Canada through online communication tools. The Officer gave no weight to Mr. Takhar’s claim of hardship in reintegrating into Indian society because he had not provided any evidence that he would be affected negatively; the Officer found that Mr. Takhar would still be accustomed to his life in India as it is the country where he has lived for the majority of his life, as well as his country of birth, his country of citizenship, and the country where he learned his mother tongue. Finally, the Officer assigned very little weight to Mr. Takhar’s claim that he would experience unemployment in India because of his age and because he comes from a rural area. The Officer found that, aside from his age, Mr. Takhar provided insufficient evidence to suggest that he would have trouble finding employment in India, and the Officer noted that he could still generate income from the family farm.

[10] As regards the adverse country conditions, the Officer considered Mr. Takhar’s profile as a Sikh man who was targeted by the Indian police in the past. However, the Officer found that Mr. Takhar provided insufficient evidence to establish a link between the generalized country conditions for Sikh people in India and his personal situation. The Officer further found that Mr. Takhar provided insufficient evidence to demonstrate that the police would target him in the future.

III. Issues and standard of review

[11] The sole issue in this application for judicial review is whether the Officer's refusal to grant permanent residence on H&C grounds was reasonable.

[12] The parties agree that the applicable standard of review for the merits of an H&C decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 44 [*Kanthasamy*]).

[13] An exemption based on H&C grounds is granted in exceptional circumstances; therefore, an H&C decision is deemed highly discretionary and is entitled to deference (*Kanthasamy* at para 111; *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at para 15). A 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" (*Vavilov* at para 85). The Court must be satisfied that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100). The Court should refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55).

IV. Analysis

A. *Establishment*

[14] As regards the factor of establishment, Mr. Takhar argues that the decision is unreasonable because:

i. although his family members all wrote detailed letters attesting to their relationship with Mr. Takhar, the Officer nonetheless failed to properly analyze the closeness of the different relationships he has with his family members in Canada, aside from his relationship with his sister in Montreal, whom the Officer acknowledges Mr. Takhar "visits frequently";

ii. the Officer did not assign any weight to the fact that his daughter-in-law resides in Canada and that his son plans to move to Canada, claiming that it is more likely than not that his son will join his wife in Ontario in the near future;

iii. the Officer unreasonably found that Mr. Takhar's parents would be able to financially and physically manage their shared property in Montreal; and

iv. the Officer unreasonably found that Mr. Takhar has more likely than not stronger ties to India than Canada.

[15] I cannot agree with Mr. Takhar.

[16] The Officer fully considered Mr. Takhar's relationship with his parents and his sisters in the context of Mr. Takhar's role as caregiver to his parents. The nature or quality of the

relationship they have with Mr. Takhar, as set out in their letters of support, focused on his role as caregiver to his parents. The letter from the sister in Surrey was more extensive, addressing the problems that Mr. Takhar had to endure, in particular with the death of his first wife; however, the letter did not say much about the quality of her relationship with her brother, other than in his role of helping his parents. I have not been shown what other elements of the relationships between Mr. Takhar and his parents and sisters the Officer failed to consider given the evidence before her/him. In addition, although the Officer does not mention in the decision every letter written by Mr. Takhar’s family members, the Officer clearly considered his family ties in Canada. The Officer had no obligation to specifically mention and address in the decision every piece of evidence submitted by the applicant and is presumed to have considered all the evidence (*Palumbo v Canada (Citizenship and Immigration)*, 2009 FC 706 at para 13, citing *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC)).

[17] Mr. Takhar cites this Court’s decision in *Majkowski v Canada (Citizenship and Immigration)*, 2021 FC 582 [*Majkowski*], for the proposition that an immigration officer cannot dismiss the central reason for the H&C application, in this case, the advanced age and deteriorating health of Mr. Takhar’s parents. I accept Mr. Takhar’s submission that the central element of his claim for H&C relief is the fact that his parents are getting older and that their health is purportedly deteriorating; however, this issue was squarely addressed in the decision by the Officer, who attributed moderate weight to Mr. Takhar’s role as a primary caregiver, in particular given the evidence of his sisters as to their supposed inability to assist in the care of their parents. Putting aside that in *Majkowski*, the issue was the advanced age and the health of

the applicant, not of the applicant's parents, the fact remains that the needs of Mr. Takhar's parents were front of mind for the Officer; it is just that Mr. Takhar would have preferred that the Officer consider his role in the care of his parents as having greater weight to justify the sought-after exemption. The Officer attributed the appropriate weight to this element given the circumstances and other options available to the family, and it is not for the Court to reweigh the evidence. I find nothing unreasonable with the Officer's assessment.

[18] Nor do I find any reviewable error in the Officer determining that "it is reasonable to say that the parents can take care of the joint property without the applicant" and that "[o]ther than their age, there is no evidence presented that the applicant's parents would not be able to financially and physically manage their shared property." Putting aside the wisdom of Mr. Takhar jointly purchasing a property with his parents upon his return to Montreal from Surrey, B.C. in 2018 given his precarious immigration status, I appreciate his father's evidence that he is not able to do the same things as he once could and that with age, his strength has become limited. I also appreciate his mother's evidence that Mr. Takhar does their groceries, shopping and household maintenance, but I can find nothing in the evidence to suggest that these chores cannot be done by Mr. Takhar's parents or their daughter in Montreal. On that note, Mr. Takhar's sister who lives about seven kilometres away wrote a letter of support for her brother, in which she states the following: "It would be very difficult if [my brother] were to go back to India. I have my own responsibilities and although I try to visit them every other week, it would be very hard for me to provide the same amount of care as he does. . . . I do not know what they will do if he were to go back to India." The sister does not elaborate on how hectic her life is at the moment or say why it would be difficult for her to care for her own parents, who live

close by. I am also mindful of the fact that it was the sister in Surrey who sponsored her parents to come to Canada in 1998, and who chose to take on the obligations that came with it. No doubt it is convenient for everyone that Mr. Takhar take the lead in caring for his parents, and I appreciate that the level of care his sister could provide may not be quite the same as the level of care provided by Mr. Takhar, who lives in the same house as his aging parents, but the distance between Mr. Takhar's sister's house and his house is a few kilometres. With nothing more than a bald statement from the Montreal-based sister, as outlined above, and without any indication as to why the parents cannot return to live with their daughter in Surrey in the event that they truly need daily care, I see nothing unreasonable with the Officer's findings.

[19] I also see nothing unreasonable with the Officer giving no weight to Mr. Takhar's relationship with his daughter-in-law and to his son's plans to move to Canada:

> The applicant has a daughter-in-law MANPREET KAUR living in Oshawa, Ontario since August 2018 on a temporary resident visa. She is married to the applicant's son DILPREET SINGH TAKHAR, who is currently living in India. The applicant indicates that his son hopes to join his wife in Canada in the future. Although the applicant's daughter-in-law is currently in Canada and the son has future plans to live in Canada, this cannot be included as an existing factor of the applicant's established family ties in Canada as the daughter-in-law currently possesses a temporary permit and the son's intentions to come to Canada are prognostic. Consequently, I assign no weight to this factor.
>
> [Emphasis added.]

[20] The Officer was entitled to conclude that his daughter-in-law's temporary status in Canada was not relevant in the assessment of Mr. Takhar's establishment in Canada (*Vavilov* at paras 125-26; *Douglas v Canada (Citizenship and Immigration)*, 2017 FC 703 at para 42). In any event, even if Mr. Takhar considers this factor to be "highly relevant", it is not the Court's role to

determine if sufficient weight was given to each factor. Moreover, the Officer appropriately refused to rely on conjecture – i.e., the fact that his daughter-in-law and his son might, one day, obtain permanent resident status (*Canada (Minister of Employment and Immigration) v Satiacum*, [1989] FCJ No. 505 (FCA)).

[21] Finally, Mr. Takhar takes issue with the fact that the Officer found that he continues to have strong ties to India. According to Mr. Takhar, the Officer's conclusion is not supported by the evidence demonstrating that he has not lived in India for years, that he has 11 family members in Canada, and that his son plans on leaving soon for Canada. However, the onus was on Mr. Takhar to convince the Officer of his lack of ties to India, and the Officer had already found that his son's plans to move to Canada were speculative at best. I see nothing unreasonable with the Officer's findings.

B. *Hardship*

[22] Mr. Takhar submits that the Officer minimized the hardship his parents would face if he returned to India, failed to consider his parents' advanced age (*Majkowski*), and ignored the evidence establishing that his sisters are unable to take on the role of primary caregiver to their parents. I cannot agree with Mr. Takhar as he seems to be conflating the hardship that he would supposedly endure if he was to return to India with the hardship that his family remaining in Canada would have to endure without him as the primary caregiver for his parents. There is no doubt that the hardship of family members may under certain circumstances play a role in the assessment of hardship (*Reducto v Canada (Citizenship and Immigration),* 2020 FC 511; *Hosrom v Canada (Citizenship and Immigration),* 2022 FC 365 [*Hosrom*]). However, as was

made clear by Mr. Justice Little in *Hosrom*, it is the H&C circumstances of the applicant that are at the centre of the application, and although circumstances of hardship to a family member – in that case the sponsor – may be relevant to the Minister's assessment of hardship for H&C purposes, it is only to the extent where such circumstances of hardship may affect the applicant (*Hosrom* at para 63). Here, I am not convinced that the Officer failed to consider the hardship that Mr. Takhar's parents may face if he was to return to India – in fact, the Officer specifically addressed the issue. What is however missing from the evidence is how that hardship would affect Mr. Takhar, and in the absence of evidence to the contrary, it was not unreasonable for the Officer to note that the presence of other family members and friends in Canada who could contribute in providing emotional and physical care to his parents would be sufficient to render Mr. Takhar's hardship in returning to India but a normal consequence of removal (*Zhou v Canada (Citizenship and Immigration)*, 2019 FC 163 at para 19).

[23] Mr. Takhar further submits that the Officer erred in considering that his family could visit him in India and in suggesting that online communication tools are an acceptable way to relieve the hardship of physical separation from his family in Canada. He adds that the "Officer provides no evidence on which to base their opinion that video conferencing is an adequate replacement for being physically in the same place as one's friends and family members." The onus to establish whether an H&C exemption is warranted lies with the applicant, and Mr. Takhar has not provided evidence that his family would be unable to visit him in India or that they would be unable to communicate by telephone or videoconference. The Supreme Court of Canada recognized that "[t]here will inevitably be some hardship associated with being required to leave

Canada" and that this hardship is alone not generally sufficient to warrant relief on H&C grounds (*Kanthasamy* at para 23).

[24] Finally, Mr. Takhar argues that the Officer's conclusion that he has not demonstrated that he would be affected negatively if he has to return to India is unreasonable considering the evidence about the high unemployment rate in India, his age, and his farm not being a profitable resource. Mr. Takhar argues that there is no evidence that he could work as a farmer again or find employment as a 61-year-old man. Mr. Takhar argues that the Officer should have considered the fact that his son who lives in India stated that his father was supporting him financially to conclude that the proceeds of the farm were insufficient to provide for Mr. Takhar in the future. However, the onus to establish whether an H&C exemption is warranted lies with the applicant (*Su v Canada (Citizenship and Immigration)*, 2022 FC 366 at para 25; *Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189 at para 45). Mr. Takhar failed to provide sufficient evidence to meet his onus, such as evidence that would have established the lack of profit produced by the farm, his inability to perform the tasks to operate the farm, or his incapacity to sell the farm and find other employment.

C. *Adverse country conditions*

[25] Finally, Mr. Takhar submits that the Officer erred in concluding that he provided insufficient evidence to substantiate factors associated with hardship as they relate to adverse country conditions in India considering the evidence relating to his past political activism as a Sikh man. The Officer found the following:

> The applicant indicates that he could experience police brutality and corruption as he has been targeted in the past. The applicant

> asserts that he fears extortion, incarceration, and other mistreatment from the hands of Indian police. I note that being targeted by police has occurred for the applicant in the past and is theoretically possible for the future, <u>but there is little to suggest that the applicant is more susceptible to these realities than any other persons in India</u>. In addition, the applicant's son currently lives in India and the applicant's parents have regularly travelled to India. There has been no indication that the applicant's son or parents have experienced mistreatment from the police. As a result, I assign little weight to this factor.
>
> [Emphasis added.]

[26] Mr. Takhar did not submit any evidence establishing that the Indian police are still looking for him; he failed to establish a link between the generalized country conditions for Sikh people in India and his personal situation (*Uwase v Canada (Citizenship and Immigration)*, 2018 FC 515 at paras 41-43).

[27] Overall, Mr. Takhar submits that the Officer ignored key pieces of evidence in his or her assessment of the factors. The Officer considered and weighed the evidence before refusing Mr. Takhar's H&C application, and it seems to me that Mr. Takhar simply disagrees with the weighing of the factors made by the Officer. It is not the role of this Court to reweigh and reassess the evidence considered by the decision maker. Therefore, I find nothing unreasonable with the decision.

V. <u>Conclusion</u>

[28] In the written submissions in support of Mr. Takhar's latest H&C application, his lawyers at the time requested that the Officer "study this 6th H&C application with fresh eyes, as [Mr. Takhar] is submitting new, **compelling evidence which warrants another analysis** of his

application and granting him permanent residence" [bold emphasis in original.] At the start of the hearing, I asked Mr. Takhar's counsel to specifically point to the new evidence that was submitted which, presumably, had not been included in any of the previous applications. Counsel advised me that she was newly retained, was not involved in the preparation of the submissions, and did not have with her the previous applications, so was unable to point to any "new, compelling evidence". However, counsel for Mr. Takhar argued that the decision of the Officer must stand or fall on its own merits, regardless of previous submissions. This is of course technically correct; however, decisions in the nature of H&C applications are not made in a vacuum, and an applicant's immigration history is relevant. On judicial review, when assessing whether issues such as hardship are to be considered unusual, undeserved, or disproportionate within the context of a long string of failed similar H&C applications, it is preferable for an applicant to show why, this time, his or her application should succeed.

[29] That said, I am very sympathetic to Mr. Takhar's situation, and I certainly understand Mr. Takhar's mother when she states in her letter of support that the family "wanted to make sure [Mr. Takhar] stayed in Canada so the government will see that [he] is committed to prove [*sic*] his loyalty and show [*sic*] his respect to the immigration process." Putting aside that the never-ending H&C applications may have had the opposite effect as regards the perception of respect for Canada's immigration process, I was touched by the numerous letters of support from Mr. Takhar's friends and family attesting to his excellent character and spirit. Mr. Takhar may no doubt one day make a good Canadian citizen; however, the reality is that his situation, although worthy of empathy, is not, given the numerous refusals of his H&C applications, one which "would excite in a reasonable [person] in a civilized community a desire to relieve the

misfortunes of another" (*Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338 at p 350), thus warranting an exemption from the application of the Act.

[30] Under the circumstances, viewing the Officer's decision strictly on its own and regardless of whether I agree with it, I have not been persuaded that it was unreasonable. I must therefore dismiss the present application.

JUDGMENT in IMM-3804-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Peter G. Pamel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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