

Federal Court



Cour fédérale

Date: 20240410

Docket: IMM-1085-23

Citation: 2024 FC 572

Ottawa, Ontario, April 10, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

**TIRATH SINGH DULAY
GURVINDER KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Tirath Singh Dulay and Gurvinder Kaur, are married. Their only two children and four grandchildren live in Canada. They filed an application for permanent residence based on humanitarian and compassionate grounds [H & C]. An officer at

Immigration, Refugees and Citizenship Canada [IRCC] refused their application. The Applicants are challenging this refusal on judicial review.

[2] The Applicants argue that the Officer erred in their review of their establishment in Canada and the best interests of their four grandchildren. I do not agree. I find that the Officer reviewed the limited materials provided and explained their reasoning in a transparent and intelligible way. The Applicants do not point to specific parts of the evidence or submissions that the Officer ignored or misconstrued. The Applicants' arguments really amount to a request for the Court to reweigh the Officer's findings on the best interests of the children and establishment, which is not the Court's role on judicial review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125).

II. Procedural History

[3] The Applicants are citizens of India. They came to Canada on temporary resident visas in the super visa category for parents and grandparents in July 2019 and have remained here continuously since that time. The Applicants have two sons and four grandchildren in Canada. They live in Canada with one of their sons and their three grandchildren (aged approximately 3, 5, and 9 years old). Their other son and 14 year old grandchild also live close by.

[4] The Applicants filed their H & C application in June 2022. The application was refused on January 11, 2023.

III. Analysis

[5] Foreign nationals applying for permanent residence in Canada can ask the Minister to exercise Ministerial discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because of humanitarian and compassionate factors (IRPA, s 25(1)). The Supreme Court of Canada in *Kanthisamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthisamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration) (1970)*, 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is “to offer equitable relief in circumstances that ‘would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another’” (*Kanthisamy* at para 21).

[6] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case,” there is no limited set of factors that warrants relief (*Kanthisamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them” (*Kanthisamy* at para 25, citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74–75).

[7] The Applicants are arguing that the Officer failed to consider the evidence and submissions made with respect to their establishment in Canada and the best interests of the children in Canada. The Applicants make this assertion but do not point to anything specific in

the Officer's decision as an instance of the Officer failing to consider an aspect of the Applicants' materials.

[8] The Officer acknowledged that the Applicants assert that they had made connections at their Sikh temple and local playgrounds, but ultimately gave this factor little weight because of the limited details provided about the nature of these relationships, including length and frequency of contact. This was a determination that was open to the Officer to make based on the evidence before them.

[9] The Officer acknowledged that the Applicants had family ties in Canada but noted that there was limited evidence provided to establish the difficulties that would arise in Canada if they were to leave, the impact on the best interests of their grandchildren, or the hardship they would face in India. There was no supporting material provided, other than proof of the permanent resident status and citizenship status of the Applicants' family members in Canada. The Officer thoroughly considered the Applicants' submissions as set out in the forms, including those about the best interests of the four children impacted by their decision.

[10] The Applicants on judicial review expand on the submissions filed with the Officer and ask that the Court draw inferences based on this material. However, given the limited evidence and submissions provided, I cannot find that there is any basis to interfere with the Officer's decision. The Applicants have not shown that the Officer "fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at para 126). The Officer thoroughly

considered the limited materials and provided an explanation for why discretionary relief would not be provided.

JUDGMENT in IMM-1085-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1085-23

STYLE OF CAUSE: TIRATH SINGH DULAY AND GURVINDER KAUR v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 30, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: APRIL 10, 2024

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