

Federal Court



Cour fédérale

**Date: 20241022**

**Docket: IMM-10634-23**

**Citation: 2024 FC 1664**

**Ottawa, Ontario, October 22, 2024**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**SUKHWINDER SINGH BRAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant Sukhwinder Singh Brar is a citizen of India. His application for a temporary resident visa to visit his brother and cousin in Canada was refused.

[2] The officer was not satisfied that Mr. Brar would leave Canada at the end of his stay because the purpose of his visit was inconsistent with a temporary stay, and his assets and financial situation were insufficient to support the stated purpose of his travel [Decision].

[3] Mr. Brar seeks judicial review of the Decision, arguing procedural unfairness and unreasonableness.

[4] I find that the Decision is unreasonable and, thus, will be set aside because the officer overlooked, or at least fundamentally misapprehended, key evidence that contradicts the finding of financial insufficiency. This issue is determinative; I thus decline to address the procedural unfairness issue.

## II. Analysis

[5] I find that Mr. Brar has met his onus of establishing that the Decision was unreasonable.

[6] A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints. The party challenging an administrative decision has the burden of showing that it is unreasonable. A decision may be unreasonable if the decision maker misapprehended the evidence before it: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 99-100, 125-126.

[7] This Court previously has held that, “[e]ven though an officer is presumed to have weighed and considered all of the evidence on file ..., if the officer ignores relevant evidence pointing to an opposite conclusion and contradicting the officer’s findings, it can be inferred that the officer did not review the evidence or arbitrarily disregarded it”: *Kheradpazhooh v Canada (Citizenship and Immigration)*, 2018 FC 1097 at para 18.

[8] Here, the Global Case Management System [GCMS] notes, which form part of the reasons for the Decision, state that “[i]ncome is not supported with evidence of pay stubs, letters of employment, proof of income, etc. Limited evidence pertaining to the source of these funds.”

[9] Mr. Brar’s evidence, however, states that he derives his income from his business “M/S Unitravel Enterprise OPC Pvt Ltd” and that he derives passive income from commissions, dividends, and interest on fixed deposits. He also provides an estimate of his annual gross income based on these sources. His documentary evidence includes financial statements and business accounts for his business.

[10] I am not satisfied that the officer actually evaluated this specific evidence, bearing in mind that Mr. Brar’s affidavit in itself is evidence in respect of which the Respondent had an opportunity to cross-examine but did not. If the sworn evidence and corroborating evidence were insufficient, the officer should have stated why: *Dhillon v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1446 at paras 5, 7; *Brar v Canada (Citizenship and Immigration)*, 2020 FC 445 at para 20.

[11] Instead, I find that the Respondent Minister urges the Court to consider the asserted insufficiencies in Mr. Brar's evidence in a manner that, in my view, is not apparent or readily discernible from the officer's reasons.

[12] I add that the focus of the GCMS notes is Mr. Brar's financial sufficiency. The notes conclude, "[t]he purpose of the applicant's visit to Canada is not consistent with a temporary stay given the details provided in the application. Weighing the factors in this application, I am not satisfied that the applicant will depart Canada at the end of the period authorized for their stay."

[13] If any other factors were weighed, these should have been stated because they are not evident to the Court which makes meaningful judicial review challenging. For example, it is not clear if Mr. Brar's financial situation was determinative of whether his visit to Canada was not consistent with a temporary stay, or if any other unstated factors contributed to this conclusion.

### III. Conclusion

[14] For the above reasons, this judicial review will be granted. The Decision will be set aside, with the matter remitted to a different officer for redetermination.

[15] Although Mr. Brar seeks his costs of this judicial review, he has not demonstrated any special reasons justifying a costs award, pursuant to rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. Success on the judicial review, in itself, is insufficient. I therefore exercise my discretion to decline to award costs in this matter.

[16] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

**JUDGMENT in IMM-10634-23**

**THIS COURT'S JUDGMENT is that:**

1. The Applicant's judicial review application is granted.
2. The August 20, 2023 decision of the visa officer is set aside, with the matter remitted to a different decision-maker for redetermination.
3. No costs are awarded.
4. There is no question for certification.

"Janet M. Fuhrer"

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Judge

**Annex “A”: Relevant Provisions**

***Federal Courts Citizenship, Immigration and Refugee Protection Rules, SOR/93-22***  
***Règles des cours fédérales en matière de citoyenneté, d’immigration et de protection des***  
***réfugiés, DORS/93-22***

<p><b>Costs</b></p> <p><b>22</b> No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.</p>	<p><b>Dépens</b></p> <p><b>22</b> Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d’autorisation, la demande de contrôle judiciaire ou l’appel introduit en application des présentes règles ne donnent pas lieu à des dépens.</p>
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**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-10634-23

**STYLE OF CAUSE:** SUKHWINDER SINGH BRAR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 8, 2024

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** OCTOBER 22, 2024

**APPEARANCES:**

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