

Federal Court



Cour fédérale

Date: 20120313

Docket: IMM-3364-11

Citation: 2012 FC 304

Ottawa, Ontario, March 13, 2012

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

NARINDER PAL GILL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant asks for judicial review of a Pre-Removal Risk Assessment Officer's decision denying permanent residence because of the absence of sufficient humanitarian and compassionate (H&C) grounds to justify an exemption from the requirement to apply from abroad.

II. BACKGROUND

[2] The Applicant is a citizen of India currently living in Canada. His wife and three children live in India.

[3] The Applicant came to Canada in October 1996 and filed a refugee claim. That claim, based on being a target of Sikh military organizations and persecution by Indian police for alleged Terrorist ties, was denied as was leave for judicial review in 2003.

[4] In 2000 the Applicant filed his first application for permanent residence on H&C grounds. This application was denied as was his leave for judicial review.

[5] In June 2004 the Applicant filed a second application for permanent residence on H&C grounds. This application was also denied. It is this second decision which is the subject matter of this judicial review.

[6] The Pre-Removal Risk Assessment Officer (Officer) noted that the H&C factors pleaded were his establishment in Canada and his fear of return to India. On the issue of “establishment”, the Officer noted that while the Applicant had relatives in Canada, his wife and children (of whose whereabouts the Applicant claims no knowledge) are in India. The Applicant’s trucking business was built up while his immigration status was in doubt. The Officer also found that the Applicant had a place to live in India and could adjust to the return to his native country.

[7] As to the issue of “fear of return”, the Officer noted the RPD’s denial of his claim and that in the Applicant’s updated 2001 submission, there was a claim for fear of returning. The Officer dismissed the fear of returning argument noting that the Applicant had a police clearance certificate and a 2004 passport – a document unlikely to be issued to one suspected of terrorist ties. Therefore, the Officer denied the H&C application, giving little weight to the alleged fear of returning to India.

[8] Before this Court, the Applicant argued that the H&C decision was unfair and unreasonable because it was deficient in taking into account the Applicant’s establishment in Canada (where he had interests in two trucking companies), his lack of a home in India, his severed family ties and the police brutality in India.

III. ANALYSIS

[9] It is well established that the assessment of an H&C decision is reviewable on a standard of reasonableness (*Kisana v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 189). A decision to grant an exemption from the usual process for permanent residence status is highly discretionary and attracts a significant level of deference.

[10] The real challenge to the Officer’s decision is the weight she gave to various factors. The Court ought not and will not engage in a re-weighing of the evidence.

[11] It was open to the Officer to consider that the police clearance certificate and 2004 passport contradict the Applicant’s claim that police suspected him of having terrorist ties. While the

Applicant claimed that between 1996 and 2004 he did not have an Indian passport, there is no evidence that he could not obtain one.

[12] The passport issue is relevant to the issue of fear of return as there was no evidence that Indian authorities suspected him of anything. It is also relevant to showing that the Applicant could have left Canada but chose to remain and build up his business.

[13] It was open to the Officer to conclude that the Applicant's establishment in Canada was a matter of personal choice and not a matter beyond his control. This was not a situation where the Applicant was unable to leave Canada and therefore had to build up his "establishment" to survive.

IV. CONCLUSION

[14] The Court concludes that the Officer considered all the relevant facts and factors and reached a decision which was reasonably open to her.

[15] Therefore, this judicial review will be denied. There is no question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is denied.

“Michael L. Phelan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3364-11

STYLE OF CAUSE: NARINDER PAL GILL

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 20, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: March 13, 2012

APPEARANCES:

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