

Federal Court



Cour fédérale

**Date: 20120801**

**Docket: IMM-9363-11**

**Citation: 2012 FC 954**

**Ottawa, Ontario, August 1, 2012**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**SATYA DEVI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

I. Overview

[1] Ms Satya Devi's daughter, Babita, and Babita's children, Harish and Alisha, are Canadian citizens. In 2006, Ms Devi came to Canada from India on a visitor's visa to help Babita care for Harish, a quadriplegic with cerebral palsy, who was undergoing surgery at the time. Ms Devi asked for and received extensions to her visa over the years. In 2011, she applied for permanent residence

in Canada based on humanitarian and compassionate considerations. In support of her application, she relied primarily on the care she provides for Harish and the strong bond she shares with Alisha.

[2] An immigration officer denied Ms Devi's application. The officer found that the care Ms Devi provides Harish could be provided by others, including Babita's husband. The officer accepted that Ms Devi's ongoing presence could benefit the Canadian health care system by relieving it of the burden of providing care to Harish. However, Ms Devi would probably have trouble meeting the physical demands of caring for Harish as he grew. The officer also concluded that Ms Devi had not shown that she had firmly established herself in Canada. The officer recognized the strong bond between Ms Devi and Alisha, but felt that Ms Devi's departure would not cause Alisha unusual or disproportionate hardship. She could still provide emotional support from India, and their relationship could be nurtured through future visits.

[3] Ms Devi argues that the officer failed to give adequate consideration to the best interests of the children affected by the decision. She asks me to quash the officer's decision and order another officer to reconsider her application.

[4] I agree with Ms Devi that the officer did not give sufficient attention to the best interests of the children, particularly Alisha's, and must, therefore, allow this application for judicial review.

[5] The sole issue is whether the officer gave adequate consideration to the best interests of the children.

II. Did the officer give adequate attention to the best interests of Harish and Alisha?

[6] Ms Devi argues that the officer ignored important evidence. In particular, the evidence showed that Babita's husband was unable to help care for the children because he experiences schizophrenia and physical limitations from a past injury. The officer also believed that Ms Devi's diminutive stature would make it more difficult for her to care for Harish in the future but the evidence showed that, even if true, this would not affect her ability to help with household chores, feeding and changing Harish, and caring for Alisha.

[7] In addition, the officer did not consider the fact that Alisha lived with Ms Devi in India from 2001, when she was just seven months' old, until early 2005. Ms Devi has been caring for her in Canada since July 2006.

[8] I agree with Ms Devi that the officer's consideration of the best interests of the children was inadequate. Ms Devi provided evidence of significant hardship to Alisha if they were to be separated. The officer failed to recognize that Alisha has spent almost her entire life in Ms Devi's care.

[9] Further, the officer did not consider the evidence showing that Babita's husband was unable to work, or to care for himself or his children, and was abusive toward them. In fact, it was due to his behaviour that Alisha left Canada to live with Ms Devi in India from 2001 to 2005.

[10] Similarly, while the officer concluded that Ms Devi would have difficulty caring for Harish in the future, this did not take account of her other tasks or a physician's letter explaining that Ms Devi plays an important role in helping Babita lift Harish.

[11] In my view, the officer was not sufficiently alert, alive and sensitive to the needs of Harish and Alisha. Therefore, the officer's decision was unreasonable.

### III. Conclusion and Disposition

[12] While the best interests of children do not determine the outcome of applications based on humanitarian and compassionate grounds, officers must be alert, alive sensitive to children's needs. Here, the officer overlooked and discounted evidence that showed that Ms Devi plays a significant role in the lives of two children, and that her removal from Canada would cause them serious hardship. Accordingly, the officer's decision was unreasonable and I must, therefore, allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT**

**THIS COURT’S JUDGMENT is that:**

1. The application for judicial review is allowed. The matter is referred back to another officer for reconsideration;
2. No question of general importance is stated.

“James W. O’Reilly”

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-9363-11

**STYLE OF CAUSE:** SATYA DEVI  
v  
THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** July 4, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** O'REILLY J.

**DATED:** August 1, 2012

**APPEARANCES:**

Deepa Mattoo FOR THE APPLICANT

Tessa Kroeker FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

South Asian Legal Clinic of Ontario FOR THE APPLICANT  
Toronto, Ontario

Myles J. Kirvan FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario