Federal Court Cour fédérale

Date: 20170804

Docket: IMM-5283-16

Citation: 2017 FC 757

Ottawa, Ontario, August 4, 2017

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

PARMJIT KAUR
KARTAR SINGH
JASHANPREET SINGH
HARMANPREET KAUR

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Mrs. Parmjit Kaur, her husband Mr. Kartar Singh, and their two minor children, Jashanpreet and Harmanpreet, are citizens of India. Mrs. Kaur arrived in Canada with her two children in April 2009, and Mr. Singh followed more than 30 months after, in December

2011. They all sought to obtain refugee protection upon their respective arrival, but their claims were denied in November 2011 and in March 2016, respectively.

[2] In early May 2016, the Canada Border Services Agency [CBSA] met Mrs. Kaur and her children, and informed them that they would have to leave Canada by the end of June 2016. Shortly after, Harmanpreet, who was 12 years old at the time, started having anxiety problems. Twice, she made suicide attempts. She kept saying that she would rather die than return to India and be separated from her father again.

[3] On May 10, 2016, the Applicants applied for permanent resident status pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. This provision gives the Minister of Immigration, Refugees and Citizenship discretion to exempt foreign nationals from the ordinary requirements of the IRPA if the Minister is of the opinion that such relief is justified by humanitarian and compassionate [H&C] considerations, including the best interests of any child directly affected. In November 2016, an immigration officer [Officer] denied the Applicants' H&C application, finding that they had failed to demonstrate that their personal circumstances justified granting a discretionary exemption based on H&C grounds [Decision].

[4] The Applicants now seek judicial review of the Decision. They contend that the Officer's conclusions are unreasonable for three reasons. First, the Officer failed to apply the proper legal tests and took a too narrow approach to the best interests of the children affected, in particular Harmanpreet; second, the Officer erred in his assessment of the Applicants' establishment in

Canada and in his finding that it was minimal and insufficient; third, many of the Officer's findings amount to pure speculation. The Applicants thus ask this Court to quash the Officer's Decision and to order another immigration officer to reconsider their claim for discretionary relief on H&C grounds.

[5] The only issue to be determined is whether the Officer's Decision is reasonable.

[6] For the reasons that follow, and despite the fact that Harmanpreet's story certainly attracts sympathy, I must dismiss this application for judicial review. Having considered the Officer's findings, the evidence before him and the applicable law, I can find no basis for overturning the Decision, whether on the treatment of the best interests of the children, on the Applicants' establishment in Canada, or on the various findings made by the Officer in the assessment and weighing of the H&C factors at stake. The Decision thoroughly reviewed the evidence on each of those fronts and the Officer's conclusions fall within the range of possible, acceptable outcomes based on the facts and the law. There are no reasons justifying the intervention of this Court.

II. Background

A. *The Decision*

[7] In the Decision that is rather comprehensive and written in French[1], the Officer started by summarizing the Applicants' immigration history before turning to the three main submissions made by them to support their claim that H&C considerations justify obtaining permanent residence in Canada. These were the family's establishment in Canada; the adverse country conditions in India; and the best interests of the children.

(1) Establishment in Canada

[8] The Officer first analyzed the Applicants' establishment in Canada. In terms of work-related establishment, Mrs. Kaur indicated that she had been unemployed until 2015, but that she now owned a transportation company, as well as a fashion boutique. The Officer was satisfied that she owned a transportation company. However, the Officer found the evidence clearly insufficient ("nettement insuffisante") to demonstrate that Mrs. Kaur played any real role in the company. As for the fashion boutique, Mrs. Kaur only provided an insurance document addressed to her relating to a store bearing the name "Fancy Indian Clothing Store". As Mrs. Kaur had no other documents, such as a tax declaration or a registration certificate, the Officer was not satisfied that she owned the boutique.

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[1] I mention this point as, throughout this judgment, the references to the contents of the Decision will often specify the exact French words used by the Officer in his reasons.

[9] The Officer then turned to Mr. Singh's work-related establishment in Canada. The Officer observed that Mr. Singh had probably received social welfare until 2013, and had started working in 2014. The Officer also noted that Mr. Singh reported a total income of $19,000 in 2014, which resulted in a taxable income of $6,000.

[10] Based on his review of the evidence, the Officer concluded that the Applicants had not been financially independent since their arrival in Canada and had not proven their ability to support themselves financially with their incomes, without some assistance from the State. He added that several bills in evidence showed outstanding accounts. Mrs. Kaur and Mr. Singh's work-related establishment in Canada was therefore negatively considered by the Officer.

[11] Mrs. Kaur and Mr. Singh also claimed that they were well integrated in their community, had done volunteer work and had developed social relationships with many persons in Canada. They provided a letter from a sikh temple as well as some 29 letters from various acquaintances to support this. The Officer gave no weight to this last group of letters, as they all used similar wording, with no proof as to the identity of their authors. Finally, the Officer did not give any weight to the fact that the Applicants had bought belongings in Canada and had no criminal records, as he found that anyone who stays in Canada for some time is expected to accumulate things and not to violate the law.

[12] The Officer ultimately found that, in light of the evidence, the Applicants' degree of establishment in Canada and links with the country were not significant. He concluded that, despite having spent several years in the country, the Applicants were only able to show a very

limited degree of establishment ("très faible degré d'établissement") in Canada, and that this was a negative factor in the overall assessment of the Applicants' H&C application. The Applicants' limited links with Canada would thus create only few difficulties for them if they were removed to India.

(2) Adverse country conditions in India

[13] On a second H&C ground, the Applicants claimed that they would be persecuted if they had to return to India. However, the Officer noted that their refugee claims, which were based on that same fear, had been found not credible by the Canadian immigration authorities, and rejected.

[14] The Officer acknowledged that poverty exists in India, but found that the mere fact that Canada is in better economic health does not justify the granting of an H&C application. Moreover, the Officer observed that the unemployment rate was lower in India than in Canada, and that there would be no reason why Mrs. Kaur and Mr. Singh would not be able to find jobs in India upon their return.

[15] Given that the Applicants did not show that they would suffer any difficulty attributable to adverse country conditions in returning to India, that they had spent most of their lives in India, and that they spoke Punjabi, English and French, the Officer decided that he would not afford any weight to this factor in his evaluation.

(3) Best interests of the children

[16] The Officer's lengthiest and more detailed comments in the Decision were made on the best interests of the two children, Jashanpreet and Harmanpreet. On this front, the Officer first acknowledged that both are going to school in Canada, have good grades and are well integrated, and that their teachers appreciate them.

[17] Although Mrs. Kaur claimed that her children would face extreme poverty should they return to India, the Officer found that she had not been able to prove this statement. The fact that the general standard of living is greater in Canada than in India was not viewed as being enough to grant an H&C application. The Officer also noted that the children's mother tongue was Punjabi, which should help their reintegration in India.

[18] The Officer then turned to Harmanpreet's fragile psychological state. The Officer was aware of the fact that Harmanpreet had made two suicide attempts when she learned from the CBSA that her mother, her brother and her would have to leave Canada. Following that, Harmanpreet had to be taken care of by the provincial child protection services. The thought of being sent back to India and separated from her father was then unbearable for Harmanpreet. The Officer referred to letters from psychologists and to reports from the child protection services. He noted that, since these events, Harmanpreet has benefited from psychological counselling and that she and her family accepted the help offered.

[19] The Officer indicated that, while Mrs. Kaur knew that she would have to return to India eventually (as she was without status), it is likely that Harmanpreet only learned about this when the CBSA met with her mother, her brother and her, and told them they had to leave the country, which could explain her extreme reaction. The Officer, however, noted that the situation had changed since the psychologists' report and that Harmanpreet would most likely not be separated from her father if the H&C application was declined and she was to return to India. Since Mr. Singh had no status in Canada following the dismissal of his refugee claim, the Officer found it reasonable to expect that Mr. Singh would go back to India with his wife and children. Moreover, the Officer found that Harmanpreet's psychological counselling sessions certainly helped her get through this situation, and that she would have more time to get accustomed to her departure. The Officer also explained that, in light of the temporary resident status of Mrs. Kaur and her children until the end of August 2017, the Applicants could choose the right time to leave in order to limit the consequences on Harmanpreet.

[20] The Officer found that the best interests of the children were to stay in Canada with their two parents, as it is usually the case for children who have spent most of their conscious lives in Canada. The Officer found that, should they return to India, they would most probably have difficulties adapting to their new lives at first, but that they would eventually adapt to their new country.

[21] The Officer concluded that the impact of the removal would be important on the two children, especially Harmanpreet. He therefore afforded an important weight ("un poids important") to this factor in his global evaluation of the H&C application. He found that their

best interests would be somewhat affected ("compromis dans une certaine mesure"), but mostly in the short term during the adaptation period. Even though the Officer indicated that it was an important factor, he concluded that the best interests of the children were not a determinative element ("un élément déterminant") in the present case, sufficient to grant the requested relief despite the other dimensions of the file. In reaching this conclusion, the Officer referred to the fact that the children will not be separated from their parents, that they speak Punjabi and English, that they are relatively young (which will facilitate their integration), and that they will have members of their extended family in India, contrary to their current situation in Canada.

(4) Conclusion and weighing of the factors

[22] In his conclusion, the Officer restated that Mrs. Kaur and Mr. Singh had shown minimal establishment in Canada, and were not able to demonstrate that they were capable of supporting themselves. Their limited links with Canada ("peu de liens") was described by the Officer as a negative element in his global assessment of the application. The Officer also found that the Applicants failed to demonstrate how the country conditions in India would raise humanitarian considerations. The Officer acknowledged that the best interests of the children would be to stay in Canada, and that Harmanpreet will most probably be upset ("bouleversée") when she will learn that the H&C application is denied. The Officer indicated that the family would nonetheless be able to leave Canada all together and that they could decide the best moment to leave Canada in order to limit the consequences on the children.

[23] The Officer indicated that the best interests of the children was undoubtedly a positive factor, but that it was the sole positive one in the Applicants' request, as the only other factor to

which weight was afforded, namely establishment in Canada, was found to be negative. In the result, the Officer concluded that the best interests of the children were not adversely affected ("compromis") to such an extent as to be a determining factor sufficient, in and of itself, to justify the granting of residence on H&C grounds.

B. *The standard of review*

[24] It is not disputed that the applicable standard of review in analyzing a discretionary decision based on H&C applications under subsection 25(1) of the IRPA is reasonableness (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at para 44; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at para 62). Findings on the sufficiency of H&C grounds involve the exercise of discretion by immigration officers and the application of a specialized legislation to particular facts, for which the applicable standard of review is reasonableness.

[25] When reviewing a decision on the standard of reasonableness, the analysis is concerned with the existence of justification, transparency and intelligibility within the decision-making process, and the decision-maker's findings should not be disturbed as long as the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para 47). In conducting a reasonableness review of factual findings, deference is warranted and it is not the role of the Court to reweigh the evidence or the relative importance given by the decision-maker to any relevant factor (*Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 [*Kanthasamy FCA*] at para 99). This is especially the case where expertise arises from the

specialization of functions of administrative tribunals having familiarity with a particular legislative scheme (*Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd*, 2016 SCC 47 [*Edmonton*] at para 33). Under a reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, a reviewing court should not substitute its own view of a preferable outcome (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 17).

[26] This standard requires deference to the decision-maker as it “fosters access to justice [by providing] parties with a speedier and less expensive form of decision making”, and as the reasonableness standard is “grounded in the legislature's choice to give a specialized tribunal responsibility for administering the statutory provisions, and the expertise of the tribunal in so doing” (*Edmonton* at paras 22 and 33). The Supreme Court has repeatedly said that reasonableness “takes its colour from the context” and “must be assessed in the context of the particular type of decision-making involved and all relevant factors” (*Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29 at para 22; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

III. <u>Analysis</u>

[27] While the Applicants raise three arguments in their challenge of the Decision, their main focus is on the unreasonable treatment by the Officer of the best interests of the children affected, in particular Harmanpreet. At the oral hearing before the Court, it was clear that this

issue drove the Applicants' position as counsel for the Applicants focused her submissions on the evidence regarding Harmanpreet's mental health and fragile state.

A. *The assessment of the best interests of the children was reasonable*

[28] The Applicants claim that the Decision is unreasonable in light of the Officer's treatment of the best interests of the two children involved and the ensuing conclusions on its limited weight. The Applicants assert that the Officer did not adhere to the principles set forth in *Kanthasamy* and that the reasons fail to demonstrate adequate consideration of Harmanpreet's unique circumstances and two suicide attempts. More specifically, counsel for the Applicants argues that the Officer misapplied the tests and approaches articulated in *Kanthasamy* and unreasonably minimized Harmanpreet's situation.

[29] I respectfully disagree.

[30] I accept without hesitation that Harmanpreet's situation attracts sympathy and, in that regard, I do share the concerns and worries expressed by the Applicants about her. I am also mindful that, even if the "best interests of the child" factor is not a decisive factor in an H&C application, it remains an extremely important one (*Baker* at para 75). However, I cannot agree with the Applicants that, in this case, the Officer's treatment of the best interests of Jashanpreet and Harmanpreet ignores the teachings of *Kanthasamy*, is unreasonable and falls outside the range of possible, acceptable outcomes. I concede that I might not have reached the same conclusion as the Officer. However, on an application for judicial review, it is not my role to substitute my views for those of the Officer.

(1) The approach to H&C considerations

[31] Relying on *Kanthasamy*, the Applicants first contend that the Officer failed to assess and determine whether Harmanpreet's situation "would excite in a reasonable person in a civilized community a desire to relieve her misfortunes". I do not share that view.

[32] In *Kanthasamy*, the Supreme Court clarified the legal test that representatives of the Minister must use to assess H&C applications under paragraph 25(1) of the IRPA. Prior to that decision, hardship was the general test used although the courts had acknowledged that it was not the only one. In *Kanthasamy*, the Supreme Court established that *Chirwa v Canada (Minister of Citizenship and Immigration)*, [1970] IABD No 1 [*Chirwa*] provided an important governing principle for H&C assessments. The Supreme Court expressed the view that "the successive series of broadly worded " humanitarian and compassionate" provisions in various immigration statutes had a common purpose, namely, 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": *Chirwa*, at p. 350" (*Kanthasamy* at para 21).

[33] The Supreme Court acknowledged that the hardship tests continue to apply, but added that the words "unusual and undeserved or disproportionate hardship" should be treated as "descriptive, not as creating three new thresholds for relief separate and apart from the humanitarian purpose of s. 25(1)" (*Kanthasamy* at para 33). Therefore, looking at the issue of H&C considerations solely through the lens of hardships is no longer sufficient and the language of "unusual and undeserved or disproportionate hardship" must not be used by immigration

officers in a way that limits their ability to consider and give weight to *all* relevant H&C considerations in a particular case (*Kanthasamy* at para 25).

[34] Further to my review of the Officer's reasons, I am not convinced that the Decision failed to apply the *Chirwa* approach or that the Officer looked at the matter through the limited lens of hardships. It is true that the Officer does not expressly use the words "factors that would excite in a reasonable in a civilized community a desire to relieve the misfortunes of another" in the Decision, but immigration officers do not have to recite this language explicitly in order to comply with the approach elaborated in *Kanthasamy*. There are no magic formulae or special words that officers must resort to. It suffices if the reviewing court can be satisfied that the approach outlined in *Kanthasamy* transpires from the reasons and if it can conclude that the decision-maker has, in his or her analysis, properly considered not just hardships but all relevant H&C considerations in a broader sense.

[35] I find that this is manifestly the case here. There is no passage in the Decision indicating that the Officer looked at the matter through the narrow perspective of hardships and applied a wrong legal test. The Officer did not travel on this narrow road that immigration officers should now avoid. On the contrary, in assessing the Applicants' situation, including the best interests of Harmanpreet, the Officer instead adopted the more holistic approach enunciated by the Supreme Court in *Kanthasamy*. In my view, a reading of the Decision reveals that the Officer showed compassion and concern for Harmanpreet's misfortunes, and considered numerous H&C factors. I point out that the Officer expressly stated his empathy for her ("[j]'éprouve beaucoup d'empathie pour la jeune fille") and specifically referred to Harmanpreet's fragile mental state,

her expected difficulties upon removal ("un retour en Inde […] sans doute difficile") and the context of her suicide attempts.

[36] The Officer's reasons do not reflect, in my view, the attitude of a person insensible and unresponsive to the misfortunes of others or not animated by a desire to relieve them. As Justice Roy said in *Delille v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 508 [*Delille*], an immigration officer must be guided by a concern to address circumstances that "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (*Delille* at para 42). However, the fact that immigration officers have to be desirous to relieve the misfortunes of an applicant does not mean that they have to automatically find that an H&C relief is merited. The Applicants appear to suggest that the *Chirwa/Kanthasamy* language calls for a given result. This is not how I read it and, in my opinion, this is not what it entails. The approach necessitates a certain mindset and disposition on the part of immigration officers, and it dictates a certain path to be followed in their analysis of the evidence in order to echo the overarching purpose of H&C provisions like subsection 25(1) of the IRPA. But, immigration officers still retain their discretion to assess the evidence, equipped as they are with their specialized expertise in handling immigration matters. In other words, the *Chirwa/Kanthasamy* approach to H&C applications defines the road to be taken, but it does not prescribe the destination to be ultimately reached by the decision-makers.

[37] As indicated in *Delille*, in order to properly apply the test and to follow the teachings of *Kanthasamy*, it is very relevant to assess the personal conditions of an applicant and all relevant H&C considerations in a particular situation should be weighed (*Delille* at para 42). This is what

the Officer did. In my view, the question set out in *Chirwa* and *Kanthasamy* was considered and answered by the Officer on this record, albeit not in favour of the Applicants. The factual situation here is vastly different from the context considered by Justice Roy in *Delille*.

(2) The test for the best interests of the children

[38] The Applicants further plead that the Officer also erred in the application of the more specific test governing the best interests of the children. Here again, the Supreme Court clarified the relevant test in *Kanthasamy*. It held that a decision under subsection 25(1) of the IRPA will be found unreasonable "if the interests of children affected by the decision are not sufficiently considered", in the sense that "decision-makers must do more than simply state that the interests of a child have been taken into account" by ensuring that those interests are "'well identified and defined' and examined 'with a great deal of attention' in light of all the evidence" (*Kanthasamy* at para 39). Immigration officers have the duty to consider the children's best interests "as an important factor", give them "substantial weight", and "be alert, alive and sensitive to them" (*Kanthasamy* at para 38; *Baker* at paras 74-75).

[39] The bottom line in assessing this factor is that it is not enough for an immigration officer to simply say that the best interests of the children have been considered. In order to escape judicial scrutiny, the reasons must reflect that these interests are "well identified and defined" and are effectively examined by the officer "with a great deal of attention in light of all the evidence". Ultimately, the officer must be "alert, alive and sensitive" to these interests in what is a "highly contextual" analysis because of the "multitude of factors that may impinge on the

child's best interests" such as his or her age, capacity, needs and maturity (*Kanthasamy* at paras 35 and 38-39; *Baker* at para 75).

[40] Where a child's interests are "minimized, in a manner inconsistent with Canada's humanitarian and compassionate tradition and the Minister's guidelines, the decision will be unreasonable" (*Baker* at para 75, cited in *Kanthasamy* at para 38). However, immigration officers are not required to adhere to a "magic formula" in the exercise of their discretion (*Canada (Minister of Citizenship and Immigration) v Hawthorne*, 2002 FCA 475 [*Hawthorne*] at para 7). No rigid test is prescribed or required for the analysis or to demonstrate that an immigration officer has been "alert, alive and sensitive" to the best interests of the children (*Onowu v Canada (Citizenship and Immigration)*, 2015 FC 64 at paras 44-46; *Webb v Canada (Citizenship and Immigration)*, 2012 FC 1060 [*Webb*] at para 13). In other words, form should not be elevated over substance (*Taylor v Canada (Citizenship and Immigration)*, 2016 FC 21 at para 12; *Webb* at para 11).

[41] In order to demonstrate that an immigration officer is alert, alive, and sensitive to the best interests of the children, it is of course necessary for his or her analysis to address the "unique and personal consequences" that removal from Canada would have for the children affected by the decision (*Tisson v Canada (Citizenship and Immigration)*, 2015 FC 944 at para 19; *Ali v Canada (Citizenship and Immigration)*, 2014 FC 469 at para 16).

[42] Again, I am satisfied that, in this case, the Decision amply demonstrates that the Officer conducted this type of analysis and was alert, alive and sensitive to the best interests of the two

children, in particular Harmanpreet. The Officer looked specifically at their situation and did not fail to engage in the analysis. He was aware of their history and concerns and referred extensively to the children's conditions in the Decision. The Officer specifically said that he studied the best interests of the children with a great deal of attention ("avec beaucoup d'attention"). Unlike the situation found to be unreasonable by the Supreme Court in *Kanthasamy*, the Officer gave sufficiently serious consideration to Harmanpreet's age and mental health, and to the general impact of her return to India in terms of contacts with her family, her worries about being separated from her father, her studies and her psychological state. The Officer was obviously sensitive to her two prior suicide attempts, and referred to them repeatedly. The Officer considered her psychological treatments, the fact that she was afraid to be separated from her father and the disruption caused by the removal. The Officer looked at her circumstances as a whole and did not show a "literal obedience" to the evidence of "unusual and undeserved or disproportionate" hardship (*Kanthasamy* at para 45). In fact, the Officer did not rely on these adjectives in the Decision.

[43] When the reasons are read as a whole, it is clear to me that the Officer was very mindful of the fact that Harmanpreet had made two suicide attempts, recognized that she suffered from anxiety and depression and that she had to be taken care of by the child protection services in order to protect her from herself. The Officer also acknowledged that she did not want to go back to India and to be separated again from her father. The Officer, however, found that her fear to be separated from her father would not materialize now, as Mr. Singh is without status and will likely return to India with his wife and children. The Officer also found that Harmanpreet has received psychological support and counselling since her suicide attempts. The Officer further

mentioned that Harmanpreet, her brother, and her mother all had temporary resident permits which would allow them to stay in Canada until August 2017 and that they would therefore be able to decide the appropriate moment to leave the country before that date.

[44] In my opinion, the Decision communicates the Officer's empathetic efforts to understand the evidence as well as openness and sensitivity to Harmanpreet's situation. The Officer's extensive analysis went beyond the simple hardship and reflected all H&C considerations. However, the Officer noted that some countervailing factors contributed to limit the adverse impact of the removal on the best interests of the children. On that front, he mentioned the fact that the children will not be separated from their parents, that they speak Punjabi and English, that they are relatively young (which will facilitate their integration), and that they will have members of their extended family in India, contrary to their current situation in Canada. For those reasons, the Officer concluded that the best interests of the children, while positive, was not a determinative factor sufficient to grant the H&C relief sought by the Applicants.

[45] I find that the Decision is replete with words showing compassion on the part of the Officer and illustrating how all H&C dimensions were considered in the assessment of the best interests of Harmanpreet. The Officer gave full and fair consideration to each of the factors supporting the Applicants' application. Nowhere does the Decision exhibit a lack of sensitivity towards the misfortunes of Harmanpreet. It does not lack intelligibility and it provides all the elements to understand the context of the various findings. A reading of the Decision thus convinces me that the Officer has addressed the evidence in a manner that is consistent with the

Supreme Court's teachings in *Kanthasamy* and the underlying equitable nature and purpose of the H&C process.

[46] Contrary to the situation in *Herreno c Canada (Citoyenneté et Immigration)*, 2017 CF 412, this is not a case where the Officer can be said to have failed to be alert, alive and sensitive to the best interests of Harmanpreet, to have omitted to identify and define those interests, or to have neglected to treat them with attention. The Officer demonstrated sympathy and made efforts to gain a full understanding of the real life impact of a negative H&C decision on the best interests of Harmanpreet. He was able to "articulate the suffering of a child that will result from a negative decision" (*Kolosovs v Canada (Citizenship and Immigration)*, 2008 FC 165 at para 12, cited in *Dowers v Canada (Immigration, Refugees, and Citizenship)*, 2017 FC 593 at para 12). The fact that the Officer did not reach the conclusion hoped for by the Applicants does not render the Decision unreasonable.

[47] I should emphasize that the mere presence of children does not necessarily call for a certain result and their interests will not always outweigh other considerations or mean that there will not be other reasons for denying an H&C claim (*Kanthasamy* at para 38). The best interests of the children "[do] not necessarily trump other factors for consideration in an H&C application" even if they are an important factor (*Semana v Canada (Citizenship and Immigration)*, 2016 FC 1082 at para 28). It is only one factor to be weighted among others (*Kisana v Canada (Citizenship and Immigration)*, 2009 FCA 189 at para 72; *Hawthorne* at para 5; *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 [*Legault*] at para 12). Once an immigration officer has analyzed the best interests of the children, "it is up to her

[or him] to determine what weight, in her [or his] view, it must be given in the circumstances" (*Legault* at para 12).

[48] It is also important not to lose sight that subsection 25(1) of the IRPA remains a responsive exception to the ordinary operation of the IRPA. On that note, the Supreme Court in *Kanthasamy* underlined that "[t]here will inevitably be some hardship associated with being required to leave Canada. This alone will not generally be sufficient to warrant relief on humanitarian and compassionate grounds under s. 25(1), […] nor was s. 25(1) intended to be an alternative immigration scheme" (*Kanthasamy* at para 23). An H&C exemption is an exceptional and discretionary remedy (*Legault* at para 15). This relief sits outside the normal immigration classes or refugee protection streams by which foreign nationals can come to Canada permanently, and it acts as a sort of safety valve available for exceptional cases. Such an exemption is not an "alternative immigration stream or an appeal mechanism" for failed asylum or permanent residence claimants (*Kanthasamy FCA* at para 40).

[49] In order to remain within the boundaries of reasonableness, the Officer had to consider the children's best interests as "an important factor, give them substantial weight, and be alert, alive and sensitive to them" (*Baker* at para 75). Furthermore, in conducting the analysis, the Officer had a duty to clearly identify and define the children's best interests, and examine those interests with a great deal of attention in light of all of the evidence. I am unable to conclude that such an analysis was not undertaken here.

(3) The best interests of the children were not minimized

[50] The Applicants also argue that, after recognizing Harmanpreet's fragile state, it was unreasonable for the Officer to conclude that her best interests would only be compromised in the short term. They claim that by using the words "dans une certaine mesure", the Officer was in fact "minimizing" the best interests of the children and Harmanpreet's psychological problems, in contravention with the Supreme Court's pronouncement in *Baker* (*Baker* at para 75, cited in *Kanthasamy* at para 38).They submit that Harmanpreet had acted upon suicidal thoughts twice, and that it was reasonable to believe that she would likely to commit a suicide attempt again if her application is denied.

[51] With respect, I do not agree. Counsel for the Applicants made a valiant effort to portray the "dans une certaine mesure" passage in the Decision as a reflection of a minimization of the best interests of the children, in the sense proscribed by *Baker*. However, by clinging to those few words and focusing on them in isolation to the adjacent conclusions of the Officer, the Applicants ignore the four elements expressly singled out by the Officer in the following sentences and precisely explaining why the Officer concluded that the best interests of the children would only be affected in the short term. Far from discounting the best interests of the children, the Officer in fact found that Jashanpreet's and Harmanpreet's best interests would be to remain in Canada with their parents, and that it was a positive factor favourable to the Applicants. The Officer, however, concluded that it was not sufficient to warrant a favourable decision because of other alleviating factors. This is the context in which the words "dans une

certaine mesure" were used in the Decision. It was not to diminish or minimize the best interests of the children.

[52] I should add that it is not minimizing the best interests of the child to say that the evidence is insufficient to support an H&C relief. The Applicants are interpreting "minimize" as implying that the best interests of a child should always be enough to yield a positive result as soon as they arise, irrespective of what they amount to. This is not what was meant by *Baker*. An immigration officer is not minimizing the best interests of the child if he or she finds that the evidence offered on the various H&C considerations at stake is insufficient. Once again, the Applicants wrongly equate the test developed in *Baker* and *Kanthasamy* with a certain result, and this is obscuring the Applicants' view of the Decision. The approach established by *Kanthasamy* does not mean that H&C considerations and the best interests of the children shall always win the day. It is still a discretionary and exceptional relief, highly dependent on facts and context, and the outcome will vary with the circumstances.

[53] I can understand that the Applicants may disagree with the weight given to Harmanpreet's condition and psychological state by the Officer, but it is not this Court's role to interfere with the weight attributed by the Officer to the different H&C considerations. Taken as a whole, the Officer's Decision denying the H&C application is transparent. The Officer provided intelligible reasons for concluding that the Applicants did not meet their onus of establishing, on balance, that they should be permitted to apply for permanent residency from within Canada for H&C reasons. The Officer did not use the hardship framework in a way that

fettered his discretion or caused him to discount relevant evidence. It was simply open to the Officer to find that the record did not justify relief in this case.

[54] I make one final observation. The test that a reviewing court has to apply on a judicial review like this one is reasonableness and deference, and this has not been modified by *Kanthasamy*. True, in *Kanthasamy*, the Supreme Court established that the approach of immigration officers to H&C considerations shall not be limited to hardships, and it developed a roadmap and criteria to assess the best interests of the children. But it did not change the test to be applied by a reviewing court on judicial review. Reasonableness and deference are still the standards to be applied by a reviewing court in H&C matters. While immigration officers must now refrain from looking at H&C considerations and the best interests of the children through the narrow lens of hardships, the reviewing courts are still required to look at the decision-makers' findings through the lens of reasonableness and deference.

[55] *Kanthasamy* should thus not be interpreted as if it erected a new standard of review when H&C applications are challenged. The overarching principle remains deference, and this imposes discipline on the reviewing court. On judicial review, it is not the role of the reviewing court to substitute its views for those of the decision-maker, even though the court might have reached a conclusion different from that of the decision-maker. Decisions under subsection 25(1) of the IRPA are highly discretionary and they are entitled to deference. The reviewing court should not find an immigration officer's decision unreasonable simply because it considers the result unpalatable and would itself have come to a different result.

[56] The issue is not how alert, alive or sensitive the reviewing court would have been to the best interests of the child. The question is whether the immigration officer was, and whether his or her assessment falls within the range of possible, acceptable outcomes. The issue is not whether the H&C considerations at play before the officer would have convinced the reviewing court to rule in favour of an applicant. The issue is whether these considerations were properly analyzed by the officer and whether the decision is reasonable and procedurally fair.

[57] This remains true even in situations like this one where the factual context of an application is more prone to elicit sympathy. Even in such cases, a reviewing court must resist the temptation to determine an application for judicial review on the basis of the conclusion it might have reached had it been in the shoes of the decision-maker. I can understand that sympathy could more easily draw a reviewing court to yield to that temptation. But the sympathy of a case is not the benchmark against which a reviewing court can decide to intervene or not. Reasonableness is, and it remains the standard that I am required to apply in the circumstances, no matter how harsh it may look to the Applicants.

[58] Considering that the Officer actually concluded that the best interests of the children was an important positive factor in favour of granting the application, in seeking to have this Court interfere with the Officer's determination, the Applicants are in effect asking that I engage in a reweighing of the evidence and a re-assessment of the H&C evaluation conducted by the Officer. This is not the role of the Court on judicial review. This case is reminiscent of what was *not* the situation in *Dellile* and to which Justice Roy alluded at paragraph 46 of his decision. Here, it is a situation where the Applicants make allegations that certain evidence was ignored or not given

enough weight by the Officer. This must be discarded as it is simply an attempt to make this Court re-weigh the evidence.

[59] Considerable deference is owed to the Officer's weighing of H&C factors (*Wang v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 705 at para 29). Therefore, as long as the totality of the evidence was properly examined, the question of weight remains entirely within the expertise of the immigration officer (*Lopez v Canada (Citizenship and Immigration)*, 2013 FC 1172 at para 31). On the evidence, I cannot find that the Officer's analysis or conclusions were unreasonable.

B. *The Officer's findings are not speculative*

[60] As a second ground of judicial review, the Applicants also claim that the Officer speculated on a number of fronts, rendering the Decision unreasonable. They contend that it was pure speculation to conclude: (1) that Harmanpreet's reaction would be different now that she has had more time to mentally prepare for her departure and that such a departure would somehow be less traumatizing for her; (2) that Mr. Singh would return to India with his wife and children; and (3) that Mrs. Kaur and her children would be able to choose the most ideal time to leave Canada. The Applicants submit that speculative reasons that are not drawn from the evidence are unreasonable (*Inniss v Canada (Citizenship and Immigration)*, 2015 FC 567 [*Inniss*] at para 18; *Lao v Canada (Citizenship and Immigration)*, 2008 FC 219 at para 23).

[61] Again, I do not share the Applicants' views and do not find that the Officer's findings amount to pure speculation.

[62] Speculation is not to be confused with inference. It is acceptable for a decision-maker to draw logical inferences based on clear and non-speculative evidence (*Laurentian Pilotage Authority v Corporation des pilotes du Saint-Laurent central inc*, 2015 FCA 295 at para 13). In the same vein, it is well accepted that a decision-maker can rely on logic and common sense to make inferences from known facts. While an immigration officer cannot engage in speculation and render conjectural conclusions, he or she can draw logical inferences from the evidence (*Dhudwal v Canada (Citizenship and Immigration)*, 2016 FC 1124 at para 21; *Ma v Canada (Citizenship and Immigration)*, 2015 FC 838 at para 54). A reasoned inference is not speculation.

[63] Here, I am not convinced that the Officer speculated when reaching the impugned findings singled out by the Applicants. I am instead satisfied that the Officer based these inferences and conclusions on the evidence.

[64] I do not find that it was speculative to infer that there was no reason why Mr. Singh would not leave Canada with his wife and children, when there was clear and cogent evidence indicating that he is without status in Canada and will need to leave eventually. Similarly, the inference that Mrs. Kaur and her children would be able to choose the most ideal time to leave is also anchored in the evidence, as the Officer made this conclusion after having mentioned that they still had temporary resident permits valid until August 2017. It was therefore not unreasonable for the Officer to infer that they would not have to leave as soon as his Decision was issued, and that they would be able to decide when they want to leave, before the expiry of the permits. The statement that Harmanpreet's extreme reaction from May 2016 might not occur again is also a reasonable inference based on the evidence on record. The psychological evidence

established that Harmanpreet's suicide attempts were caused by her fear of returning to India and being separated from her father. With the evidence on the absence of status of her father, it was reasonable and certainly open to the Officer to conclude there was no reason to believe that she would be separated from her father should they need to return to India. Moreover, there was evidence allowing to infer that the family would be able to prepare for the departure and to leave at the most appropriate time for Harmanpreet. The Officer noted that, while the need to depart might have come to her as a surprise in 2016, Harmanpreet has had some time since those events to digest the information and to prepare mentally for a possible departure. In addition, Harmanpreet received and continues to receive counselling and psychological help for her anxiety and depression problems.

[65] The situation here is fundamentally different from the cases relied on by the Applicants, such as *Douglas v Canada (Citizenship and Immigration)*, 2007 FC 740 at para 19 or *Inniss* at para 18. In those cases, the speculative findings were not grounded in the evidence and were not supported by it.

[66] Again, the issue before this Court is not whether I would have reached the same conclusion as the Officer, but whether the decision "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir* at para 47). This is the case here, and there is therefore no reason for the Court to intervene.

C. *The conclusion on the low degree of establishment is reasonable*

[67] Finally, the Applicants claim that the conclusion on their establishment in Canada is unreasonable. They contend that they had provided several documents proving their establishment in Canada, including letters from friends; various documents showing that Mrs. Kaur owns a transport company and a fashion boutique; a letter from Mr. Singh's employer demonstrating that he holds a permanent, full-time job; school certificates and report cards showing that both children are well integrated; bank statements and a copy of the lease for their home. To conclude that they had close to no sufficient establishment was simply untrue and unreasonable, say the Applicants.

[68] I disagree.

[69] In the Decision, the Officer reviewed the evidence in detail and it was certainly open to him to conclude as he did. There was evidence supporting the findings that the Applicants were not financially self-supporting since their arrival. It was also reasonable to conclude that the evidence filed with regard to Mrs. Kaur's companies was insufficient to show their existence. There was certainly enough evidence to allow the Officer to find that, while some ties were established in Canada, this did not rise to the level of humanitarian concerns. In a context where hardship is not demonstrated, an immigration officer is entitled to afford negative weight to an applicant's establishment in Canada, as long as the officer takes into consideration all evidence on H&C factors, explains why he or she reached this conclusion, and the conclusion is supported by the evidence on record (*Judnarine v Canada (Citizenship and Immigration)*, 2013 FC 82 at

para 32; *Da Silva v Canada (Citizenship and Immigration)*, 2011 FC 347 at paras 16-17; *Frank v Canada (Citizenship and Immigration)*, 2010 FC 270 at paras 35-38). Indeed, an immigration officer "has the expertise and experience necessary to permit him or her to identify the level of establishment that is typical of persons who have resided in Canada for the same approximate length of time as the Applicants and, therefore, to use this as a yardstick in assessing their establishment" (*Villanueva v Canada (Citizenship and Immigration)*, 2014 FC 585 at para 11). Once again, deference is owed to the immigration officer in this context (*El Thaher v Canada (Citizenship and Immigration)*, 2012 FC 1439 at para 43).

[70] The question remains whether the conclusions reached by the Officer fall within a range of possible, acceptable outcomes. This Court is not entitled to reweigh the evidence or to substitute its own assessment to that of the Officer's. Furthermore, a judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54), and the Court should approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Canada (Minister of Citizenship and Immigration) v Ragupathy*, 2006 FCA 151 at para 15). Reviewing courts should also take care not to overly dissect or parse the reasons given by a decision-maker, and instead give respectful attention to such reasons. In the present case, the Officer decided to draw negative inferences from employment evidence of the Applicants and their lack of financial independence. Based on that evidence, the Officer concluded that the weak ties of the Applicants to Canada will cause few difficulties if they return to India. This finding is heavily based on the particular factual

situation of the Applicants, it is explained in the Decision and supported by the evidence, and it bears all the attributes of a reasonable conclusion.

[71] This was a very factual analysis, reached by the Officer on the basis of his specialized expertise in immigration matters, and it is not the role of a reviewing court to revisit that. Under the reasonableness standard, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the decision is supported by acceptable evidence that can be justified in fact and in law, the reviewing court should defer to the decision-maker.

IV. Conclusion

[72] For all the reasons detailed above, the Officer's Decision dismissing the Applicants' request on H&C grounds represented a reasonable outcome based on the law and the evidence. On a standard of reasonableness, it suffices if the decision subject to judicial review falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. I have no hesitation to conclude that this is the case here. Therefore, I must dismiss the application for judicial review. I do so somewhat reluctantly, though, as I may not have reached the same conclusion as the Officer. However, on an application for judicial review, I cannot substitute my views for those of the Officer. If I were to do so, I would not be fulfilling the role devolved to this Court on judicial review.

[73] Neither party has proposed a question of general importance to certify. I agree there is none. The parties agree that the style of cause should be changed to replace the name of the applicant Paramjeet Kaur by Parmjit Kaur. The judgment will order accordingly.

JUDGMENT in IMM-5283-16

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs;

2. No question of general importance is certified;

3. The name of the applicant Paramjeet Kaur is modified to Parmjit Kaur, with immediate effect.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5283-16
STYLE OF CAUSE:	PARMJIT KAUR, KARTAR SINGH, JASHANPREET SINGH, HARMANPREET KAUR v MINISTER OF CITIZENSHIP AND IMMIGRATION
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