

Federal Court



Cour fédérale

**Date: 20211012**

**Docket: IMM-6094-19**

**Citation: 2021 FC 1064**

**Ottawa, Ontario, October 12, 2021**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**RAVINDER KAUR PAMAL  
KARAMVEER KAUR PAMAL  
RASHMEET KAUR PAMAL**

**Applicants**

**And**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicants in this judicial review are Ms. Pamal and her two minor daughters. After Ms. Pamal's husband – the father of the minor Applicants – died by suicide in India and the family was subsequently targeted by his creditors, the Applicants came to Canada on temporary resident visas to live with Ms. Pamal's brother and family.

[2] In order to remain in Canada permanently, Ms. Pamal and her two minor daughters applied for permanent residence based on humanitarian and compassionate grounds (“H & C Application”).

[3] On September 27, 2019, the Applicants’ H & C Application was refused by a Senior Immigration Officer (“Officer”). On judicial review, the Applicants argue that there were a number of errors in the Officer’s hardship and best interests of the child (“BIOC”) analysis. I do not need to address all of these arguments in my decision. I find that the Officer unreasonably relied upon an assumption that the Applicants would have family support in India where the record before the Officer indicated the opposite – a lack of any family support. The Officer’s misapprehension on this point impacted both the hardship analysis and their assessment of the best interests of the minor Applicants.

[4] For the reasons set out below, I find the Officer’s decision is unreasonable and grant the Applicants’ judicial review.

## II. Background Facts

[5] The Applicants, Ms. Pamal and her two minor daughters, are citizens of India. Their lives fundamentally changed when Ms. Pamal’s husband and the father to her children died by suicide on December 17, 2017.

[6] Prior to his death, Ms. Pamal did not know that her husband had significant debts and that creditors were seeking money from him. Soon after his death, Ms. Pamal and her minor

daughters were threatened and harassed by creditors and her minor daughters were physically assaulted in January 2018. Ms. Pamal filed a police report; the investigation did not advance as the police told her they required the names and addresses of the attackers which she did not know. In addition to Ms. Pamal's fear of the creditors, she also worried about how she could provide for her daughters given discrimination she expected to face as a single woman and widow, with no prior work experience outside of the home.

[7] The Applicants came to Canada on temporary resident visas in April 2018. They lived in the home of Ms. Pamal's brother, along with his wife and three minor children. Ms. Pamal's eldest daughter was also in Canada on a study permit; her mother (grandmother to the minor Applicants) also lives permanently in Canada.

[8] The H & C Application, filed in October 2018, was based on a number of grounds, including: hardship in returning to India (due to Ms. Pamal's widowed status, fear of her late husband's creditors, the family's financial instability, and discrimination against women and Sikhs), establishment and ties to Canada, and the best interests of the minor Applicants.

[9] Overall, the primary grounds of focus in the H & C Application were hardship in returning to India and the best interests of the minor Applicants. There was not much information on establishment provided as the Applicants had only been in Canada for approximately six months when the H & C Application was filed. Information was provided on the ties to the family members in Canada and the lack of those ties in India. The H & C Application included

what the Applicants' counsel referred to as a "symbolic undertaking" from Ms. Pamal's brother and sister-in-law in Canada to sponsor and provide for the Applicants in Canada.

[10] The H & C Application was refused in September 2019. The Officer determined that Ms. Pamal and her daughters had only been in Canada a short time and had successfully lived and studied in India their entire lives. The Officer reasoned that they could continue to access services in India and rely on the support of their family and community in their resettlement. The Officer found that it was in the best interests of the minor Applicants to live in India with this community. The Officer did not accept that Ms. Pamal would not be able to access police assistance in India if she or her daughters were targeted by creditors again as she was able to file a police report once before and she had brothers-in-law who could assist with the police. The Officer also found that the Applicants had not shown that they had been or would be personally targeted because of their gender or Sikh identity.

### III. Issues and Standard of Review

[11] The Applicants raised the following two issues in their memorandum of argument:

1. whether the Officer's decision was unreasonable, as it both disregarded or misapprehended relevant evidence and imposed an unreasonable evidentiary standard in concluding the Applicants would not face hardship upon their return to India; and
2. whether the Officer failed to adequately assess the BIOC in accordance with the requirements of the jurisprudence.

[12] I did not find it necessary to address all of the issues as raised by the Applicants. I have limited my decision to the issue of whether the Officer disregarded or misapprehended relevant evidence about the family support available to the Applicants in India and the impact of this on the Officer's hardship and BIOC analysis.

[13] Both parties argued that reasonableness is the applicable standard of review. I agree. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

#### IV. Analysis

[14] Ms. Pamal described in her affidavit, included with her H & C Application, that she did not have a close relationship with her sisters or her in-laws in India. She also noted that she could no longer count on the support of friends as she feared that her husband owed them money as well. Overall, Ms. Pamal described being isolated in India without the support of family or friends after her husband's death:

My husband's mother has never had a good relationship with me, so she is not a source of support for me. I have no close family in India that I could depend on – most of my family lives in Canada, and I am not close to my in-laws or my sisters who remain in India.

...

I didn't have any family members or friends in India to confide in about my depression or grief, and because of my husband's debts, I was afraid to reach out to former friends or acquaintances because I was scared they would ask me for money that my husband owed

them. I was completely isolated. I required help of a doctor for my depression and anxiety because I had no emotional support.

[15] In their decision, the Officer did not reference the above statements made by Ms. Pamal about the lack of familial or friend support in India. Yet, the Officer relied upon an assumption that family support would be available to support their position that any potential hardship the Applicants would face in returning to India would be mitigated and that the minor children's best interests were better served in India.

[16] The availability of family support in India comes up a number of times in the Officer's decision. Below are the sections of the decision that reference the Applicants' family support in India:

The applicant is also not alone in India. She has the benefit of two sisters who are married and also reside in India.

...

I also make note of the fact that the applicant has two sisters who reside in India and who are married. I find if the applicant does not wish to approach the police on her own there is insufficient objective evidence presented as to why she could not request the assistance of her brother-in-laws to accompany her to the police station. The applicant has not provided sufficient objective evidence that her family in India would not be able to help her in this regard.

...

The evidence before me indicates that the principal applicant has two siblings who reside in India and insufficient objective [sic] has been adduced to satisfy me that their respective family members would be unwilling to assist the applicants in their resettlement and re-establishment upon their return to India. I find the applicants have familial ties to India and I am satisfied that it is feasible for the applicants to return to India and resume their relationship with their family. Moreover, I find that family reunification will take

place between the applicants and their respective family members upon their return to India.

...

Also, the applicants have only been outside of India for a minimal period of time. It must be recalled the applicants have resided in India for majority of their lives whereby they would have also had friends and neighbours as well as family who can aid them in resettling back into their local community.

...

It is further reasonable to believe during their years in India that they [the minor Applicants] would have developed and continued to have friends, acquaintances and social networks. If this application was to be refused, the applicants would not be returning to an unfamiliar place, language, culture or place devoid of a familial network that would render re-integration unfeasible.

[17] In my view, the above passages in the Officer's decision demonstrate two things: i) the Officer made a finding that family support would be provided to the Applicants contrary to the evidence in the record and without reference to this evidence; and ii) this finding about family support was an important part of the Officer's analysis on hardship and the BIOC.

[18] The Respondent argued that it was not that the Officer ignored the evidence of Ms. Pamal on the lack of family support; it is that the Officer found it was insufficient. The problem with this submission is that the Officer makes no mention of Ms. Pamal's evidence on this point. This is not a case where the Officer evaluated the statements made in the affidavit, explained how they were insufficient, or weighed it against other evidence in the record. There was no evaluation of Ms. Pamal's evidence.

[19] The Supreme Court of Canada in *Vavilov* held that “the reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it” (*Vavilov* at para 126). In the immigration context, it is a commonly cited principle that while decision makers need not refer to every piece of evidence, “a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact” (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53, [1998] FCJ No 1425 at para 17).

[20] The Officer's conclusion on familial support in India is directly contradicted by the Applicants' evidence; and moreover, there is no support in the record for the Officer's conclusion that “family reunification will take place.” The conclusion is based on the Officer's assumption about how family relationships should work and not supported by anything in the record. This undermines the reasonableness of the decision.

[21] In oral submissions, the Respondent argued that Ms. Pamal could have provided evidence that she had sought help from her family members and it was not forthcoming. Ms. Pamal's evidence was that she was not close to her remaining family in India; it is unreasonable to expect that she ought to seek their help. Again, this reasoning is based upon an assumption about how family members ought to behave with one another.



[22] The Respondent also argued that the decision of the Officer had to be considered as a whole, and pointed out that there were a number of findings that the Officer made about the Applicants' establishment in Canada that were not challenged in this judicial review.

[23] I find that the Officer's repeated reliance on the availability of family support in India was integral to both the hardship and the BIOC analysis. While not the sole basis for their decision, the repeated reliance on this fact that is directly contradicted in the record undermines the reasonableness of the decision as a whole and requires that the case be sent back for reconsideration.

[24] Neither party proposed a question for certification and none is certified.

**JUDGMENT IN IMM-6094-19**

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

1. The application is granted;
2. The matter is referred back to a new officer for redetermination;
3. There is no question for certification.

**"Lobat Sadrehashemi"**

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6094-19

**STYLE OF CAUSE:** RAVINDER KAUR PAMAL ET AL v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 17, 2021

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** OCTOBER 12, 2021

**APPEARANCES:**

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