

Federal Court



Cour fédérale

**Date: 20211124**

**Docket: IMM-1604-21**

**Citation: 2021 FC 1289**

**Ottawa, Ontario, November 24, 2021**

**PRESENT: Madam Justice Walker**

**BETWEEN:**

**RANJIT SINGH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Mr. Singh, is a citizen of India. He seeks judicial review of a decision (Decision) of a senior immigration officer dated February 26, 2021, refusing his application for permanent residence from within Canada on humanitarian and compassionate (H&C) grounds.

[2] After being denied refugee status, the Applicant sought H&C relief on the basis that his employment in Canada since 2019 has enabled him to send money to his family in India. He

stated that he would be unable to find employment in India that would allow him to continue to support his family.

[3] For the reasons that follow, the application will be dismissed. The officer thoroughly considered the Applicant's evidence of his remittances to India since 2020 and his submissions that tied his financial assistance to payment of his sons' school fees and support of his family more generally. The Applicant has identified no significant error in the officer's analysis of the objective country documentation regarding the economic downturn in India and low minimum wage as against his age and lack of marketable skills.

I. Background

[4] The Applicant was 52 years old on the date of the Decision. He arrived in Canada on April 9, 2017 and sought refugee protection on June 12, 2017.

[5] The Refugee Protection Division refused the Applicant's refugee claim in August 2017 and his appeal to the Refugee Appeal Division (RAD) was dismissed in April 2019. The Applicant's application for leave and for judicial review of the RAD's decision was dismissed at leave on October 16, 2019.

[6] The Applicant filed his H&C application in March 2020 citing: his establishment in Canada; the best interests of his children (BIOC), then aged 18 and 17 and living in India with their mother; his inability to apply for permanent residence from outside of Canada; and the

difficulties he would encounter in re-establishing himself in India due to financial and employment hurdles.

[7] In the Decision, the officer considered each H&C factor identified by the Applicant:

1. Establishment: The officer ascribed positive consideration to the Applicant's efforts to find and maintain employment in Canada but little weight to the letters of support submitted because they were form letters that provided no details of his integration or establishment in the community. The officer also acknowledged the Applicant's community involvement positively.
2. BIOC analysis: The officer found that the Applicant's BIOC evidence and submissions focused on his financial support of his family in India but provided little evidence of his sons' general needs. The officer noted that the H&C application contained no submissions from his sons or spouse.
3. Economic hardship: The officer discounted the Applicant's submissions as to his inability to apply for permanent residence in Canada from abroad but analysed in detail the difficulties he feared he would face in returning to India. The officer accepted that the pandemic has changed the economic landscape in India but stated that the Applicant had not demonstrated that his circumstances are unique and not faced by the general population. The officer concluded that the Applicant had not provided evidence to support his statement that he would be unable to secure employment in India due to his age and lack of skills or that he would be unable to afford to live and support his family in India even if able to find a job.

[8] In summary, and having weighed each aspect of the arguments and evidence separately and cumulatively, the officer concluded the Applicant had not discharged his onus of establishing that the H&C factors on which he relied warranted an exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

## II. Analysis

[9] The Applicant argues that the officer's application of the BIOC test and consideration of hardship reveal errors of law that are subject to correctness review but I do not agree. The

substance of the Applicant's arguments in this application challenge the merits of the Decision and are subject to review for reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23; *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 777 at paras 13, 37-39).

[10] The Applicant first submits that the officer failed to reasonably assess the best interests of his two sons in India and erred factually in finding that he had not included their birth certificates with his H&C application. With respect to the latter issue, I agree that the officer incorrectly stated that the Applicant had not filed the birth certificates but the error is not material to the Decision. It is clear that the officer accepted the two sons as the Applicant's children and undertook the BIOC analysis on that basis. In addition, there is no suggestion in the Decision that the officer considered the impact on the two sons of their father's return to India in any different manner because they were not born and do not live in Canada.

[11] The focus of the Applicant's H&C submissions and his arguments in this application is the impact on his family of a loss of the financial assistance he provides from his job in Canada. The Applicant submits that the officer's BIOC analysis diminishes the importance of his financial support of his family. He also submits that the officer failed to consider his personal circumstances and whether they warrant H&C relief in assessing the feared economic hardship in India. Specifically, the Applicant states that he would not be able to find work in India because of his age, lack of skills and the significant downturn in the Indian economy due to the COVID-19 pandemic.

[12] I am not persuaded by the Applicant's arguments.

[13] The officer's BIOC analysis was necessarily limited to the evidence provided which, other than the evidence substantiating financial remittances, contained little information regarding the sons, their relationship with their father or the actual impact of a loss of financial support from Canada. While there was evidence regarding the sons' school attendance, there was no information in the H&C application regarding their needs or activities in India, when they started at the school, whether the eldest had completed his studies or whether the sons would be unable to continue their education should the Applicant be forced to return to India. I find no reviewable error in the officer's BIOC analysis.

[14] In addressing the Applicant's personal financial and employment situation, the officer reviewed: the Applicant's current employment and remittances in support of his family, the general economic situation in India, and the H&C submissions of financial hardship based on poor employment prospects and remuneration in India.

[15] The officer did not discount or ignore the monetary transfers the Applicant sent to his family beginning in early 2020. The officer noted the transfers to his spouse in February 2020, and September 2020-January 2021. The officer accepted that the quantum of the transfers was considerable and that they reflected a steady pattern of financial support. However, the H&C application contained no indication of how the family had managed financially when the Applicant was not sending them funds. In my view, this finding is important in light of the recent nature of the transfers in question. The officer's conclusion reflects a rational chain of reasoning

from the Applicant's insistence on the importance of the transfers to the absence of any evidence of the family's financial situation before February 2020.

[16] Further, the Applicant has not established an error in the officer's consideration of the documentary evidence regarding the economic and employment situation in India. The Applicant points to statements in the various documents and newspaper articles regarding the negative effect of the pandemic but this approach to the evidence does not take into account either the full content of the various documents or, more importantly, the basis of the officer's analysis. The officer did not question the adverse market for jobs in India due to the pandemic, nor did they mischaracterize the general economic situation in India. Rather, the officer acknowledged the cost of living in India and the lower minimum wage paid in the country but stated that there was no evidence of the effects of those general economic conditions on the Applicant. The officer did not err in so doing. Similarly, the officer made no error in observing that different standards of living in India and Canada are not determinative in an H&C evaluation.

[17] Despite the Applicant's submissions to the Court, the officer considered his personal employment prospects. However, while the Applicant stated that he would not be able to find employment in India due to age and lack of skills, he provided no evidence to support his statement. The officer weighed the Applicant's assumption that he would find no work against the fact that he was born and raised in India, had studied two years at college level and had been working in manufacturing in India prior to coming to Canada. The Applicant has pointed to no error in this analysis. I find as a result that the officer could reasonably conclude that the Applicant "has not provided evidence to support his statement that he would be unable to secure

employment in India due to his age, nor that even if he did find work, he would be unable to afford to live in India and support his family”.

[18] The Applicant was required to establish that he would suffer greater or disproportionate hardship or misfortune “than those typically faced by persons who apply for permanent residence status in [Canada]” (*Huang v Canada (Citizenship and Immigration)*, 2019 FC 265 at paras 22, 18-19). The officer set out in the Decision a detailed and intelligible set of reasons that justified their conclusion that the Applicant had not done so.

[19] Finally, the officer did not use the Applicant’s successful employment in Canada as a weapon against him in facilitating a return to India. The officer gave positive weight to the Applicant’s establishment in Canada but balanced that positive factor against the lack of evidence demonstrating personal hardship in returning to India (*Zhou v Canada (Citizenship and Immigration)*, 2019 FC 163 at para 17).

[20] In conclusion, the Applicant was required to demonstrate why the officer’s exceptional H&C discretion should be exercised. His failure to lead sufficient evidence was fatal to his H&C application (*Gesite v Canada (Citizenship and Immigration)*, 2017 FC 1025 at para 19).

[21] An officer’s H&C decision is highly discretionary in nature and is open to a wide scope of possible reasonable outcomes (*Nguyen v Canada (Citizenship and Immigration)*, 2017 FC 27 at para 18). In the absence of a material error in the evaluation of the Applicant’s H&C

submissions and evidence, I find no basis on which the Court should intervene in the officer's refusal to exercise their considerable discretion and extend H&C relief to the Applicant.

III. Conclusion

[22] The application is dismissed.

[23] No question for certification was proposed by the parties and none arises in this case



**JUDGMENT IN IMM-1604-21**

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

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

"Elizabeth Walker"

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Judge

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

**DOCKET:** IMM-1604-21

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

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 10, 2021

**JUDGMENT AND REASONS:** WALKER J.

**DATED:** NOVEMBER 24, 2021

**APPEARANCES:**

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