Federal Court  Cour fédérale

Date: 20220602

Dockets: IMM-7199-19
IMM-7201-19

Citation: 2022 FC 804

Ottawa, Ontario, June 2, 2022

PRESENT: The Honourable Mr. Justice Phelan

Docket: IMM-7199-19

BETWEEN:

GURPREET KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-7201-19

AND BETWEEN:

SANDEEP KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] These are the judicial reviews from the humanitarian and compassionate [H&C] decisions rendered by a New Delhi Visa Officer [Officer] denying the father's sponsorship of his two children, Sandeep and Gurpreet, under the Family Class provision of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, because they both exceeded the dependent child age limit.

[2] The two Applicants' judicial reviews are based on the same facts and submissions. Therefore, only one set of reasons is necessary.

II. Background

[3] The Applicants are from India and were 23 (Sandeep) and 25 (Gurpreet) years old when their father applied to sponsor them as permanent residents based on H&C factors primarily related to family reunification.

[4] The father, Gurinder Singh, came to Canada as a temporary worker in 2008. His first applications under the Alberta Immigrant Nominee Program [AINP] in 2010 and 2012 were dismissed due to Mr. Singh not meeting the required levels of recognized secondary schooling in India. After completing further education, Mr. Singh applied again in 2015. He became a permanent resident in August 2017 and successfully sponsored his wife and dependent son. He

did not include his daughters in the eventually successful 2015 application, and neither of them met the then-age requirement of 19 (lowered from 22 to 19 in August 2014).

[5] In 2018, Mr. Singh applied to sponsor the Applicants for permanent residence based on H&C factors as they recognizably exceeded the dependent child age requirement, which was raised back to 22 in October 2017. These applications were deemed incomplete and returned in December 2018 due to lack of proof that the Applicants met the dependent child definition. The Applicants applied for judicial review of these refusals, and the Respondent consented to remitting the matters back for re-determination. On re-determination, the Officer denied the most recent application because both of the Applicants were over the age of 22 and therefore did not meet the age requirement. The Officer also concluded that neither Applicant was facing hardship.

III. Analysis

[6] There is no issue that H&C decisions are highly discretionary and attract a standard of review of "reasonableness"; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, and *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*].

[7] The Applicants put substantial reliance on the efforts of their father to put himself in a position to sponsor his daughters. They rely significantly on a sympathy factor in part because the age qualification changed over the period from the time of the first application and that they would have been age eligible if either of his first two applications were successful or if the age limit did not change by the time Mr. Singh successfully applied in 2015.

[8] The Applicants argued that the Officer applied the wrong legal test by elevating hardship above other relevant H&C factors without regard to the adverse country conditions' evidence. The Applicants further submitted that the Officer required them to establish "exceptional circumstances" in order to secure exceptional relief.

[9] With great respect, I cannot see that the Officer applied such an erroneous test. As Justice Abella held at para 21 of *Kanthasamy*:

> But as the legislative history suggests, 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.

[10] Justice Zinn in *Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 at para 19, put it succinctly that the test is whether relief from the rigidity of the law, which is exceptional, is justified based on the applicant's particular circumstances exciting in a reasonable person in a civilized community a desire to relieve their misfortunes.

[11] In summary, it is the relief which is exceptional not the circumstances. The Officer did not explicitly require the Applicants to establish exceptional circumstances, though the Respondent emphasized that such exceptional circumstances were required in its submissions to the Court.

[12] Justice McHaffie, in *Damian v Canada (Citizenship and Immigration)*, 2019 FC 1158 at para 21, correctly distilled the thrust of such words as "exceptional" or "extraordinary":

> [T]o the extent that words such as “exceptional” or “extraordinary” are used simply descriptively, their use appears to be in keeping with the majority in *Kanthasamy*, although such use may not add much to the analysis. However, to the extent that they are intended to import a legal standard into the H&C analysis that is different than the *Chirwa/Kanthasamy* standard of “exciting in a reasonable person in a civilized community a desire to relieve the misfortunes of another, provided those misfortunes justify the granting of relief,” this would appear to be contrary to the reasons of the majority. Given the potential for words such as “exceptional” and “extraordinary” to be taken beyond the merely descriptive to invoke a more stringent legal standard, it may be more helpful to simply focus on the *Kanthasamy* approach, rather than adding further descriptors.

[13] Against that framework, it was reasonable for the Officer to conclude that there were no circumstances which justified the extraordinary relief. There is an insufficient link between the general country conditions’ evidence and any hardship for the Applicants who were adults, relatively independent, educated, healthy, financially supported and receiving support from extended family in India.

[14] Sympathy can take one only so far. The fact remained that when Mr. Singh attempted previously to sponsor his daughters (who were or were close to age eligibility), he himself was not qualified to make the applications.

[15] The Applicants argue that they should be allowed to come to Canada for better opportunities and presumably secure the “establishment” component of an H&C. However, this would be using the H&C process as an alternative to the immigration process – an improper use of s 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

IV. Conclusion

[16] For all these reasons, the judicial reviews will be dismissed. There is no question for certification.

JUDGMENT in IMM-7199-19 and IMM-7201-19

THIS COURT'S JUDGMENT is that the applications for judicial review are dismissed. There is no question for certification.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7199-19
STYLE OF CAUSE:	GURPREET KAUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-7201-19
STYLE OF CAUSE:	SANDEEP KAUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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