

Federal Court



Cour fédérale

**Date: 20230731**

**Docket: IMM-7034-22**

**Citation: 2023 FC 1043**

**Ottawa, Ontario, July 31, 2023**

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

**BETWEEN:**

**SURINDER SINGH BANSAL  
MANISHA PAUL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicants, Mr Surinder Singh Bansal and Ms Manisha Paul, are citizens of India who met in Canada and married here in 2019. Mr Bansal had arrived in Canada in 2015 on a visitor's visa. He later filed a claim for refugee protection, which was dismissed. Ms Paul also arrived in 2015 on a study permit. She completed a diploma program at Mohawk College and then applied for permanent residence. Her application was cancelled in 2021 because she could not provide a valid passport for Mr Bansal – his passport had expired in 2020.

[2] The applicants then filed an application for permanent residence on humanitarian and compassionate (H&C) grounds. An immigration officer dismissed their application, finding insufficient grounds to grant them H&C relief.

[3] The applicants argue that the officer's decision was unreasonable because it ignored important evidence in their favour, such as Ms Paul's promising application for permanent residence, the couple's family ties to Canada, and their establishment in this country. They also contend that the officer wrongly assumed that their Canadian-born daughter would leave Canada with them rather than stay with their relatives here, as they had proposed. Further, they suggest that the officer only considered the hardship they would suffer on their return to India, not the hardship that would flow from leaving their life in Canada behind. They ask me to quash the officer's decision and order another officer to reconsider their H&C application.

[4] I agree with the applicants that the officer did not fully address the evidence supporting their H&C application and, as a result, rendered an unreasonable conclusion. I must, therefore, allow this application for judicial review.

[5] The sole issue is whether the officer's decision was unreasonable.

## II. The Officer's Decision

[6] The officer acknowledged that the applicants had already spent several years in Canada and had forged many meaningful relationships, had become active members of their temple, and had achieved financial security. The officer went on to find that the applicants' ties to Canada

could likely be maintained from India, where they would have little difficulty re-establishing themselves.

[7] The officer found that the applicants' young child could accompany them to India without any significant emotional or psychological impact.

[8] The officer also concluded that the applicants would not experience significant hardship if they had to return to India. They have many family members there who could provide support. They would likely be able to find employment given their education, work experience, and financial resources.

### III. Was the Officer's Decision Unreasonable?

[9] The Minister maintains that the officer appropriately considered the factors of establishment, the best interests of the child, and hardship in arriving at the decision denying the applicants' H&C application.

[10] I agree that the officer considered those factors. However, I find that the officer overlooked important evidence relating to each of them.

[11] On establishment, the officer failed to consider Ms Paul's near-successful permanent residence application. But for the expiry of Mr Bansal's passport, she may well have achieved permanent residence without the need for an H&C application.

[12] Regarding the best interests of the applicants' child, the officer only considered the impact on the child of moving to India with her parents. However, the applicants had proposed that the child remain in Canada with family members here while they applied for permanent residence from India. Accordingly, the officer needed to consider the impact on the child's best interests in that scenario. The officer was aware that the child should be with her parents, stating that the parents are "an integral part of a child's healthy emotional, physical, and cognitive growth". But the officer did not consider the impact on the child's best interests in the situation where the child would remain in Canada while her parents returned to India.

[13] On the issue of hardship, the officer did not evaluate the hardship that would result from the applicants' leaving their Canadian life behind. The officer only considered whether they would experience hardship on their return to India. If required to leave Canada, the applicants would leave behind friends, fellow congregants, and family members. In addition, they would have to abandon the home-renovation business Mr Bansal had established.

[14] In sum, I find that the officer failed to consider a number of important factors in assessing their H&C application. That failure resulted in an unreasonable conclusion, one that is not justifiable, intelligible, or transparent.

#### IV. Conclusion and Disposition

[15] The officer failed to consider a number of relevant factors in the assessment of the applicants' H&C application. That failure resulted in an unreasonable decision. Accordingly, I

must allow this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-7034-22**

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

1. The application for judicial review is allowed and the matter is returned to another officer for redetermination.
2. No question of general importance is stated.

"James W. O'Reilly"

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Judge

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

**DOCKET:** IMM-7034-22

**STYLE OF CAUSE:** SURINDER SINGH BANSAL ET AL v MCI

**PLACE OF HEARING:** TORONTO, ON

**DATE OF HEARING:** JULY 17, 2023

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

**DATED:** JULY 31, 2023

**APPEARANCES:**

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