

FEDERAL COURT OF CANADA  
TRIAL DIVISION

BETWEEN:

IMM-3489-96

ZABEEDA RAMPERSAUD,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent

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Heard before the Honourable Mr. Justice J.A. Jerome,  
ACJ, sitting in Courtroom No. 7 of the Federal Court  
of Canada, 9th Floor, Canada Life Building, 330  
University Avenue, Toronto, Ontario, on Monday, July  
28, 1997.

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REASONS FOR ORDER  
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APPEARANCES:

Arlene Tinkler for the Applicant

Kevin Lunney for the Respondent

Stuart Ziegler - Registrar

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Per: C. F. Nethercut, C.V.R. (Sworn)

HIS LORDSHIP: I thank you, Ms Tinkler. I'm going to allow the application and here are my reasons.

I'm aware fully, of course, of the jurisprudence that says that this isn't a right, that humanitarian and compassionate review is an extra bonus that applicants in Canada get and that this process or this section doesn't create any rights, but there are two concerns that I have. I have seen several occasions and I will certainly turn out these decisions, but I have seen cases, and the first one of these was a foreign domestic, and it was many years ago, and what I found there was that the person who had turned down the merits of the application was the same one who recommended to the Minister that there be no favourable consideration of the humanitarian question applications, and I didn't think necessarily that it had to be done by different people, and that would be, -- and I don't want to start getting into something like the Singh decision where everybody gets a separate oral hearing, and don't worry, Mr. Lenney, we're not going to overwork your client, but

the automatic pilot phrase catches me too, and I'm afraid that I see many people do this, and in this case what triggers my concern is that 96 or 97, those pages:

"Upon a complete review of the submission filed, information and statements made at the interview, it appears that the subject and her son have not provided sufficient reasons to meet the humanitarian and compassionate criteria defined in IE 9.

It is unfortunate, but the abusive situation is not a reason to grant permanent residency within Canada."

I don't see any conclusion here as to whether there really is one or not. I think it must surely deserve some finding of does the abusive situation exist because if it does, then this woman is clearly in danger of her life by going back and then she must surely be worth some consideration, and it might be better anyway that it be done by a separate officer. Obviously now we have to do it by a separate officer anyway because by my having concluded that this conclusion may be valid within various applications within the law and the

Regulations, it doesn't seem to me to be -- it seems to be sort of contradictory in its own language, that the abusive situation is there but it doesn't warrant the humanitarian consideration.

To me, I think it should go back to a fresh Immigration Officer who will reconsider it on fresh grounds and including my reasons which will highlight that if she really is trapped in a situation, I think the Visa Officer has to find that out and he has to conclude yes or no and it isn't enough to say that the abusive situation is unfortunate, but it doesn't warrant her being consideration on humanitarian and compassionate grounds.

If the abusive situation really is what she says, and it may not be, but if it is then she does deserve consideration, or she certainly may. So I think this officer got it wrong and a new one should do it. Thank you. I'll file written reasons as soon as a transcript of my own reasons are finished. Thank you.

--- Adjournment at 5:40 p.m.

--- CERTIFIED CORRECT:

C. F. Nethercut, C.V.R.

Date Transcribed: August 8, 1997