

Federal Court



Cour fédérale

Date: 20180220

**Dockets: IMM-3314-17
IMM-3315-17
IMM-3316-17**

Citation: 2018 FC 174

Ottawa, Ontario, February 20, 2018

PRESENT: The Honourable Madam Justice Simpson

Docket: IMM-3314-17

BETWEEN:

NAVY GERA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

Docket: IMM-3314-17

AND BETWEEN:

BINDU GERA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

Docket: IMM-3316-17

AND BETWEEN:

JIMMY GERA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered from the Bench at Toronto, Ontario on February 1, 2018)

I. **PROCEEDING**

[1] Mr. Navy Gera, Ms. Bindu Gera and Ms. Jimmy Gera [the Applicants] have applied for judicial review of identical decisions [the Decisions], dated May 24, 2017, made by an immigration officer at the High Commission of Canada, in India [the Officer]. The applications are brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act, SC 2001, c 27* [the IRPA].

II. **BACKGROUND**

[2] Mr. Ashok Kumar is a 57 year-old citizen of India, and a permanent resident of Canada. Mr. Kumar and his wife have been married since 1979 and they have four children. Mr. Kumar

entered Canada in December 1997 and made a claim for refugee protection, which was refused. Thereafter, he worked in Canada illegally and supported his family in India. Mr. Kumar applied for permanent residence [PR] on humanitarian and compassionate [H&C] grounds three times between 1999 and 2012. The first two applications were refused, however, the third application, submitted on July 3, 2012, was approved on March 15, 2013, and on April 7, 2015, he received permanent resident status.

[3] On February 29, 2016, Mr. Kumar filed a spousal sponsorship application for his wife, and it has been approved. However, at the date of the Decision, she had not yet come to Canada.

[4] Mr. Kumar's eldest son lives in India and he has not been sponsored by his father. Before the Officer, the Applicants explained that as a man over 30 years old, he is responsible for caring for the family home in India.

[5] However, Mr. Kumar filed applications to sponsor his other three children for PR in Canada as members of the family class [the Sponsorship Applications]. Those children are the Applicants herein. The Sponsorship Applications were refused on the basis that the Applicants did not qualify as members of the family class because they were over the age of 19 when the Applications were filed. The Applicants were 25, 27 and 29 years old and were full-time dependent students who arguably would have qualified before the law changed on August 1, 2014. The Officer also determined there were insufficient H&C factors to exempt the Applicants from the requirements of the legislation. Those are the three Decisions now under review.

[6] The Applicants made the following submissions in support of their request for H&C relief:

1. They qualified as dependent children when their father applied for permanent residence on July 3, 2012 and when he was approved on March 15, 2013, and they should not be disqualified because there was a delay granting permanent residence to Mr. Kumar until April 7, 2015. If PR had been granted in a timely way they would have qualified because the law did not change until August 1, 2014.
2. Their successful sponsorship will reunify the family after 19 years during which the Applicants and their mother did not see Mr. Kumar.
3. If the Sponsorship Applications are refused the family will be permanently fractured.

III. THE DECISION

[7] The Officer did not deal with the issue of delay. She appears to have focussed on the Applicants' alternative submission that they would have been included in their father's application for PR status if he had had a lawyer. However, this submission was wrong. Family offshore cannot be included when applications for PR are made in Canada on H&C grounds and I am satisfied that the Officer understood this point.

[8] The Officer concluded that Mr. Kumar chose to fracture the family by making immigration to Canada his priority. She also concluded that whether or not the mother came to Canada, the parents could visit or meet the Applicants. The Officer also addressed the fact that the Applicants are governed by conservative norms in India. Nevertheless, she concluded that living with their older brother in the family home would not breach those norms.

IV. DISCUSSION AND CONCLUSIONS

[9] Mr. Kumar's application for permanent residence was approved in 8 months. Thereafter, his permanent residence was granted in 25 months and the law changed 17 months into that period. It is noteworthy that after his PR status was granted he waited a further 10 months to sponsor the Applicants.

[10] I see no basis in this chronology for H&C relief based on undue delay and, since there was no evidence that the Respondent created expectations by suggesting that PR would be awarded in 12-18 months, the issue did not require the Officer's attention. In any event, the law changed 17 months after the Sponsorship Applications were made so it was within the 12 to 18 month window identified by the Applicants' counsel.

[11] In my view, the Decision fell within the range of reasonable outcomes.

V. CERTIFICATION

[12] No question was posed for certification for appeal.

JUDGMENT IN IMM-3314-17, IMM-3315-17 and IMM-3316-17

THIS COURT'S JUDGMENT is that the three applications for judicial review are hereby dismissed.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-3314-17, IMM-3315-17 AND IMM-3316-17

DOCKET: IMM-3314-17

STYLE OF CAUSE: NAVY GERA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

AND DOCKET: IMM-3315-17

STYLE OF CAUSE: BINDU GERA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

AND DOCKET: IMM-3316-17

STYLE OF CAUSE: JIMMY GERA v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 1, 2018

JUDGMENT AND REASONS: SIMPSON J.

DATED: FEBRUARY 20, 2018

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