

Federal Court



Cour fédérale

Date: 20191002

Docket: IMM-79-19

Citation: 2019 FC 1249

Ottawa, Ontario, October 2, 2019

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

VIJAY KUMAR GILL

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Gill seeks to set aside the October 23, 2018 decision of an immigration officer [the Officer] denying his application to apply for permanent residence from within Canada on humanitarian and compassionate grounds. For the reasons that follow, I can find no basis to set aside the Officer's decision; based on the evidence, it is reasonable.

[2] Mr. Gill is a 50-year old Indian citizen. In 2006, his sister applied to sponsor him and his parents for permanent residence in Canada. As part of this process, Mr. Gill underwent a

medical examination, which revealed that he is HIV positive. Because of his diagnosis, he did not meet the permanent residency requirements and was unable to come to Canada with his parents. Both his sister and parents currently live in Canada. Until 2016, Mr. Gill lived with another sister in India. Since 2016, he has lived alone in India.

[3] Mr. Gill owns a business in India that provides him with limited income. He feels that he is unable to obtain other work because of the stigma associated with his HIV status. He relies on his sister and his parents for financial support, which includes a trust account set up in his name.

[4] In December 2016, Mr. Gill came to Canada on a visitor visa to visit his parents and sister. During this visit, Mr. Gill began integrating himself into his sister's family and he helped take care of her physically disabled husband and elderly father-in-law. He also did many of the household chores and formed a bond with his niece. During this visit, Mr. Gill also applied for an exemption from the in-Canada selection criteria based on humanitarian and compassionate grounds to facilitate his processing for permanent residence from within Canada.

[5] Mr. Gill informed the Officer of his HIV positive status and his fears that he will be subjected to discrimination in India. He also claimed that he will lack support in India because much of his family lives in Canada. Lastly, he noted the close ties he has formed with his sister's extended family and the need for him to remain in Canada.

[6] The Officer found that while Mr. Gill was close to his family, he had not established that returning to India would sever those family bonds. The Officer noted the availability of various

means of communication and that Mr. Gill's family in Canada could visit him in India. The Officer also found if Mr. Gill returned to India, his sister could find alternate care for her husband and father-in-law. It was noted that Mr. Gill could continue to receive financial support, and that his two sisters in India could provide him with emotional support if needed. Based on his findings, the Officer concluded that Mr. Gill's family ties should receive "some positive consideration" in the context of his application.

[7] Concerning Mr. Gill's establishment in Canada, the Officer afforded this factor "minimal weight." In the Officer's view, Mr. Gill had not provided enough evidence to demonstrate integration in the community or efforts to develop skills that would aid his integration. On the other hand, the Officer gave Mr. Gill's establishment in India significant weight as he was born there, owns a business there, has family there, and has received care for his HIV there.

[8] The Officer also considered Mr. Gill's HIV status in detail. He outlined recent changes in Indian law that aim to eliminate the stigma and discrimination around HIV as well as increased availability of treatment. The Officer acknowledged that India's measures are "not perfect" and that the stigma and discrimination toward individuals with HIV persist, but found that India's attempts to address these problems weakened the weight he afforded to Mr. Gill's HIV status. The Officer further noted that Mr. Gill and his doctor both provided evidence that his HIV is under control and that he would have continued access to treatment in India. Considering this information, the Officer found that the evidence did not corroborate Mr. Gill's fear of significant negative impacts resulting from his HIV status.

[9] Finally, the Officer addressed the best interests of Mr. Gill's niece. The Officer found that the niece attended university and only visited her family once every three to four weeks. The Officer also noted that Mr. Gill could maintain his relationship with his niece from India and that if she found the separation difficult, she had family in Canada to support her.

[10] Upon performing a "global assessment" of Mr. Gill's application, the Officer found that there were insufficient grounds to allow the application.

[11] Mr. Gill submits that the Officer erred by focusing on the Indian government's efforts to combat HIV. In doing so, it is submitted that the Officer improperly shifted the focus away from Mr. Gill's individual experience. Mr. Gill submits that the Officer's failure to deal with his particular facts is a reviewable error.

[12] Mr. Gill relies on several authorities indicating that Officers err when they rely solely on country evidence to find that HIV positive applicants do not face hardship in their home countries: *XY v Canada (Citizenship and Immigration)*, 2018 FC 213 [XY] at para 33; *Mings-Edwards v Canada (Citizenship and Immigration)*, 2011 FC 90 [Mings-Edwards] at para 15.

[13] I agree with the Respondent that on a reading of the full decision, the Officer considered Mr. Gill's actual situation. The Officer described Mr. Gill's statement regarding his treatment in India and stated that he considered Mr. Gill's personal circumstances before turning to the general evidence. As the Respondent notes, Mr. Gill has lived with HIV in India for 10 years and had "very little to say" on the stigma and discrimination he faced.

[14] Mr. Gill's situation differs significantly from those in *XY* and *Mings-Edwards*. In those cases, the HIV positive individuals only learned they were HIV positive after coming to Canada. Their applications turned on whether the officers properly assessed the change in personal circumstances. Here, Mr. Gill has lived with HIV in India and has only provided a statement that he feels stigmatized without providing much, if any, corroborating evidence.

[15] Mr. Gill also submits that the Officer ignored evidence outlining the reality of HIV positive individuals in India. He says that the Officer relied on documentary evidence to find that India had taken efforts to reduce HIV stigma, but did not address portions of the same evidence that contradicted that position. These portions describe how HIV positive individuals in India continue to face discriminatory attitudes, particularly in the health care sector.

[16] Mr. Gill states that if an Officer only cites evidence that supports his or her conclusion and does not address contradictory evidence, the Officer is presumed to have ignored evidence that contradicts his or her conclusion: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35, 1998 CanLII 8667 (Fed TD) [*Cepeda-Gutierrez*]. Mr. Gill relies on two further decisions to reinforce the claim that the Officer unreasonably ignored evidence describing the difficulties of HIV positive individuals in India. In *XY*, Justice Pentney noted at para 28 that the officer erred by failing to engage with specific evidence that described Ethiopia's weak enforcement of a policy against HIV-related discrimination. In *Ocampo v Canada (Citizenship and Immigration)*, 2015 FC 1290, Justice Martineau stated at para 9 that "a boilerplate statement by the Officer that the government is making efforts to improve the situation was clearly unreasonable, when considered in relation to specific and contradictory

evidence submitted by the applicant, and in the face of contradictory evidence within the very same report upon which the Officer relied.”

[17] I agree with the submission of the Respondent that the evidence in question does not engage the principle in *Cepeda-Gutierrez*. In his personal evidence, Mr. Gill does not identify any particular stigma that he has suffered, so general evidence that some people in India face discrimination is “not particularly germane” to his case. Moreover, the Officer recognized this general reality. He acknowledged that “the applicant will be returning to a society where some discrimination and social stigma are associated with individuals who are HIV positive.”

[18] Neither of the cases Mr. Gill relies upon is applicable to the facts before this Court as there is no evidence, specific or otherwise, submitted by Mr. Gill, that contradicts the findings of the Officer.

[19] Lastly, Mr. Gill submits that the Officer erred by failing to properly assess his family ties to Canada in two ways.

[20] First, he submits that the Officer failed to consider the cultural expectation that Mr. Gill would take care of his parents. Mr. Gill argues that the Officer focused solely on Mr. Gill’s relationship with his sister and her family and that the finding that his relationships can persist from a distance was flawed because caring for his parents requires physical proximity.

[21] Second, Mr. Gill submits that the Officer did not fully appreciate that he is lonely in India. He argues that the Officer's finding that his two sisters in India could provide emotional support discounts his strong bonds with his family in Canada and, he says, is indicative of the Officer focusing solely on hardship, which is not the proper test.

[22] In my view, the Officer's analysis of Mr. Gill's family ties is reasonable. The assessment is thorough and while the Officer does not address every piece of information, his reasons indicate that he did not ignore Mr. Gill's evidence.

[23] Turning to Mr. Gill's specific concerns, I am satisfied that the Officer considered Mr. Gill's desire to care for his parents. Mr. Gill again relies on *Cepeda-Gutierrez* for the principle that an Officer cannot ignore evidence that contradicts his or her conclusion. However, the Officer's reasons indicate that he did not ignore Mr. Gill's evidence on this point. The evidence that Mr. Gill wishes to care for his parents is found in his statutory declaration. The Officer's reasons included multiple excerpts from that same declaration. This shows that the Officer read and considered the declaration. Therefore, I cannot conclude that the Officer "ignored" Mr. Gill's evidence that he wishes to take care of his parents.

[24] I am also satisfied that it was reasonable for the Officer to find that Mr. Gill's sisters in India could support him. The Officer provided a full assessment of the information before him and reached a conclusion that is owed deference. While Mr. Gill disagrees with the treatment of this information, that does not make it unreasonable.

[25] The decision under review was based on a full reading and consideration of all of the evidence, and reasonably reflects it. This application must be denied.

[26] No party proposed a question to be certified.

JUDGMENT IN IMM-79-19

THIS COURT'S JUDGMENT is that this application is dismissed, and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-79-19

STYLE OF CAUSE: VIJAY KUMAR GILL v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 12, 2019

JUDGMENT AND REASONS: ZINN J.

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