

Federal Court



Cour fédérale

Date: 20191104

Docket: IMM-1062-19

Citation: 2019 FC 1381

Toronto, Ontario, November 4, 2019

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

KULWINDER KAUR RANDHAWA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application concerns a January 15, 2019 decision of the Immigration Appeal Division (IAD), on appeal from an Immigration Officer’s decision to deny the Applicant’s application to sponsor her parents to Canada.

[2] The IAD noted a “jump” in the Applicant’s spouse’s income in the years 2013 to 2015:

At this appeal the appellant filed evidence establishing the co-signer, her husband, who is the principal income earner in the

family, applied to have his income reassessed for the three years prior to 2016 – namely, for the years 2013, 2014, and 2015. These would also be the three years prior to the refusal being appealed. Specifically, the appellant’s spouse had initially declared the following total income:

2013 - \$59,119

2014 - \$60,762

2015 - \$54,983

He subsequently changed this declared income by applying for reassessment and declaring higher figures as follows:

2013 - \$108,363.81

2014 - \$103,505.13

2015 - \$99,626.46

The difference in income is significant and nearly double in most cases. The appellant’s spouse opened a garage in 2010 and one would have expected to have seen a gradual change in income – this was indeed the case from 2010 to 2012, inclusive. His processed total income for 2010 was \$22,282, in 2011 it was \$45,015 and in 2012 it was \$61,065. His income from 2013 onward is provided above.

(Decision at paras. 14-16) [Footnotes omitted]

[3] The evidence on the record goes to establishing that the Applicant’s accountant had made an error when initially declaring the Applicant’s spouse’s income to the Canada Revenue Agency (CRA). A copy of the accountant’s letter appears in Appendix “A” to these reasons.

Upon considering the letter the IAD made only the following comment about it:

The only evidence the appellant and her husband provided to explain this significant change in declared income was that their accountant had realized he had made errors in those three specific years and advised them to re-file their taxes so that they would not be penalized later on [...]

(Decision at para. 18)

[4] Nevertheless, the “jump” in the Applicant’s spouse’s income caused the IAD to speculate and conclude that the Applicant and her spouse were not truthful in declaring their income to the CRA:

The appellant is today providing highly discrepant evidence from that which she provided the visa post and is doing so without clear cogent and consistent explanation for same. This insufficiently-explained change renders questionable the new, different evidence the appellant has proffered. The timing of the change in income is simply too fortuitous and unsubstantiated to support the appellant’s central argument in this appeal. The panel is not satisfied with the appellant’s claim of a higher income as declared in 2013-2015.

(Decision at para. 21)

As a result of the speculation, the IAD rejected the Applicant and her spouse’s self-declared income for 2013-2015, and rejected the Applicant and her spouse’s 2017 Notice of Assessment (see *Motala v. Canada (Minister of Citizenship & Immigration)*, 2012 FC 123 at paras. 16-22).

[5] With respect to the IAD’s decision-making as described, the following statement from *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47 must be satisfied:

[...] In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[Emphasis added]

[6] There was no evidence on the record before the IAD to support the speculation and conclusions described in paragraph 4 of these reasons. As a result, I find that the IAD’s decision-making is not defensible and, therefore, the decision is unreasonable.

JUDGMENT IN IMM-1062-19

THIS COURT'S JUDGMENT is that the decision under review is set aside, and the matter is referred back for determination by a different IAD Member.

No question was posed for certification.

“Douglas R. Campbell”

Judge

APPENDIX "A"

ASHWIN K. ACHARYA, CPA, CGA

Tele: 519-746-2340

Fax: 519-746-2340

REF: 2018-016

06 November, 2018

Manjit Singh Mangat,

RE: Tax File Information for Ranjit and Kulwinder Randhawa

	Ranjit	Kulwinder	Combined
2013	108,363.81	12,705.00	121,068.81
2014	103,505.13	19,497.46	123,002.59
2015	99,626.46	24,378.06	124,004.52

Filed Before:2013 - \$59,119.00 for Ranjit2014 - \$60,762.00 for Ranjit2015 - \$54,983.00 For Ranjit

Just discussed with CRA at 1-800-959-8281 about above amendments to reflect true combined Income for 2013 to 2015 years.

Stacey at 1-800-959-8281 has created Case file Number: TB-183101449245 for you to verify at any given time till they expediate the adjustments.

Please do not hesitate to call me for any further matter regarding Ranjit's Tax Filings.

Sincerely,



Ashwin, K Acharya, CPA, CGA.

403 HAVENDALE CRESCENT, WATERLOO, ONTARIO, N2T2T3 Page 1

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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1062-19

STYLE OF CAUSE: KULWINDER KAUR RANDHAWA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 16, 2019

JUDGMENT AND REASONS: CAMPBELL J.

DATED: NOVEMBER 4, 2019

APPEARANCES:

Ronald Poulton FOR THE APPLICANT

Modupe Oluyomi FOR THE RESPONDENT

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Poulton Law Office Professional Corporation FOR THE APPLICANT
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