

Federal Court



Cour fédérale

Date: 20200106

Docket: IMM-5474-18

Citation: 2020 FC 14

Ottawa, Ontario, January 6, 2020

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

**MANJINDER KAUR JAWANDA AND
RANJIT SINGH JAWANDA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Ms Manjinder Kaur Jawanda and Mr Ranjit Singh Jawanda, are citizens of India. They arrived in Canada in 2016 to visit their son, a permanent resident of Canada. Shortly after arrival, Ms Jawanda became ill with pneumonia and was admitted to hospital. She remained there for several weeks in intensive care. Once she was released, the applicants filed a

request for permanent residence in Canada on humanitarian and compassionate (H&C) grounds. They maintained that Ms Jawanda would not receive proper care or support in India, especially since their only son lived in Canada. Ms Jawanda was the principal applicant on the H&C; Mr Jawanda was identified as a dependant.

[2] An immigration officer reviewed the H&C application and denied it. The officer erroneously identified Mr Jawanda as the principal applicant. She found that the applicants were not well-established in Canada, having only lived here a little more than 2 years. Further, she noted that Mr Jawanda did not speak either official language. While Ms Jawanda and their son both spoke English, the officer discounted the significance of that factor since she presumed Mr Jawanda was the actual applicant. The officer also considered it a negative factor that Mr Jawanda had overstayed his visitor visa.

[3] The officer also found that there was no evidence that Ms Jawanda could not be cared for in India. Further, the officer cited a physician's opinion that Ms Jawanda could safely travel home. The officer justified her conclusion, in part, on the basis that, even in Canada, medical patients sometimes receive inadequate care and are exploited or mistreated.

[4] The applicants argue that the officer's decision was unreasonable because she misidentified the principal applicant and took extraneous factors into account. They ask me to quash the officer's decision and order another officer to reconsider their application.

[5] I agree with the applicants. The officer wrongly identified Mr Jawanda as the principal applicant; her negative conclusion on the H&C was unreasonable as a result.

II. Was the officer's decision unreasonable?

[6] The Minister argues that the officer's misidentification of the principal applicant was inconsequential. The officer was entitled, says the Minister, to take account of Mr Jawanda's language skills. Further, the officer could consider Mr Jawanda's lack of status in Canada after his visitor's visa ran out. As for Ms Jawanda's medical situation, according to the Minister, the officer properly took account of that evidence.

[7] I disagree with the Minister's submissions. The officer clearly based her conclusion on an incorrect factual finding about the identity of the principal applicant. The officer stated that Ms Jawanda and her son could speak English, but found that fact irrelevant given that it was not their application under consideration. Further, the officer considered two significant negative factors against Mr Jawanda – that he had not enrolled in courses to learn an official language, and that his status in Canada had expired. Neither of these factors applied to the principal applicant. Accordingly, the officer's conclusion, particularly on the issue of establishment, could well have been different if she had properly identified the principal applicant and weighed the evidence in her favour appropriately.

III. Conclusion and Disposition

[8] The officer wrongly identified the principal applicant, and her resulting conclusion was unreasonable. I must, therefore, allow this application for judicial review and order another officer to reconsider the applicants' H&C application. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT IN IMM-5474-18

THIS COURT'S JUDGMENT is that the application for judicial review is allowed,
and the matter is remitted to another officer for reconsideration.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5474-18

STYLE OF CAUSE: MANJINDER KAUR JAWANDA AND RANJIT SINGH
JAWANDA v THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JUNE 5, 2019

JUDGMENT AND REASONS: O'REILLY J.

DATED: JANUARY 6, 2020

APPEARANCES:

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