

Federal Court



Cour fédérale

**Date: 20200116**

**Docket: IMM-1548-19  
IMM-1549-19  
IMM-1550-19**

**Citation: 2020 FC 62**

**Ottawa, Ontario, January 16, 2020**

**PRESENT: The Honourable Mr. Justice Ahmed**

**Docket: IMM-1548-19**

**BETWEEN:**

**GURTEJ SINGH SANGHA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**Docket: IMM-1549-19**

**BETWEEN:**

**AMRINDER SINGH SANGHA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**Docket: IMM-1550-19**

**BETWEEN:**

**KULDEEP KAUR SANGHA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] This case concerns the decision of an immigration officer (the “Officer”) dated February 20, 2019, to deny the Applicants’ temporary resident visas (“TRVs”). The Applicants are citizens of India, and a family of three. The three files were considered together on judicial review. The Applicants had applied for TRVs to visit their relatives for a wedding anniversary celebration in Canada. The TRVs were denied as the Officer was not satisfied that the Applicants would leave Canada at the end of their stay, in particular, due to the Applicants’ insufficient funds.

[2] For the reasons that follow, this application for judicial review is allowed.

## II. Facts

### A. *The Applicants*

[3] Mrs. Kuldeep Kaur Sangha (the “First Applicant”), Mr. Gurtej Singh Sangha (the “Second Applicant”), and their 15-year old son, Amrinder Singh Sangha (the “Third Applicant”) (collectively, the “Applicants”) are citizens of India. The Second Applicant owns an agricultural land in India and is a dairy farmer. The First Applicant is not currently working, and the Third Applicant is enrolled in school.

[4] On January 30, 2019, the Applicants applied for TRVs to attend an uncle’s wedding anniversary to be celebrated on February 22, 2019. On the application, the Applicants indicated that they intended to stay in Canada for 11 days. The Applicants also submitted evidence of their movable and immovable assets to support the trip, including: an accountant’s summary report stating the family’s combined net worth of \$235,437; an Indian Income tax return verification; and a letter from the Kore Wala Kalan Milk Producers Co-Op Society Ltd confirming the Second Applicant’s annual net income from dairy farming.

[5] In their applications, the Applicants included a letter of support from their extended family in Canada stating that the extended family was willing to provide all necessary financial support and accommodation during the Applicants’ visit to Canada. The relatives also provided a bank statement with a balance of \$28,158.80.

B. *Decision Under Review*

[6] On February 20, 2019, the Officer refused the Applicants' TRV applications. The Officer was not satisfied that the Applicants would leave Canada at the end of their stay because the Applicants had provided insufficient proof of their financial status and available funds. According to the Officer, the available funds were insufficient to facilitate the 11-day trip.

[7] In consideration of the Applicants' level of economic establishment and the purpose of the trip, the Officer concluded the trip was not a reasonable or affordable expense. The Officer found that the Applicants did not demonstrate sufficient establishment or ties to India that would motivate them to return. The Officer also noted the Applicants' lack of travel history, and ultimately found the Applicants were not *bona fide* visitors to Canada.

III. **Issue and Standard of Review**

[8] The issue on this judicial review is whether the Officer's decision is reasonable, and in particular:

1. Whether the Officer erred in making subjective and arbitrary findings; and
2. Whether the Officer erred in failing to consider contradictory evidence.

[9] Prior to the Supreme Court's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII) [*Vavilov*], the reasonableness standard generally applied to the review of an immigration officer's refusal of a TRV: *Anand v Canada (Citizenship and Immigration)*, 2019 FC 372 (CanLII) at para 9; *Paramasivam v Canada (Minister of Citizenship and Immigration)*, 2010 FC 811 (CanLII) at para 14).

[10] The applicable standard of review of the Officer's decision must be determined in accordance with the framework set out in *Vavilov*. As noted by the majority in *Vavilov*, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker," (*Vavilov* at para 85). Furthermore, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency," (*Vavilov* at para 100). In this case, I see no reason to deviate from the existing jurisprudence on the applicable standard of review. The reasonableness standard applies to the case at bar.

#### IV. Relevant Provisions

[11] Sections 11(1) and 20(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") read as follows:

##### **Application before entering Canada**

**11 (1)** A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

##### **Obligation on entry**

**20 (1)** Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish,

(a) to become a permanent resident, that they hold the visa or other document required under

##### **Visa et documents**

**11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

##### **Obligation à l'entrée au Canada**

**20 (1)** L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver:

a) pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;

the regulations and have come to Canada in order to establish permanent residence; and

(b) to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

b) pour devenir un résident temporaire, qu'il détient les visa ou autres documents requis par règlement et aura quitté le Canada à la fin de la période de séjour autorisée.

[12] Subsection 179(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (“*IRPR*”), reads as follows:

#### **TEMPORARY RESIDENT VISA**

##### **Issuance**

**179** An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national

[...]

(b) will leave Canada by the end of the period authorized for their stay under Division 2;

#### **VISA DE RÉSIDENT TEMPORAIRE**

##### **Délivrance**

**179.** L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis:

[...]

b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

#### **V. Analysis**

[13] The Applicants submit that the Officer's finding that the trip was not a reasonable expense was subjective and arbitrary, and that the Officer failed to consider contradictory evidence. The evidence before the Officer showed sufficient funds including: an accountant's statement showing \$13,775 CAD in the Second Applicant's savings account; the Applicants' joint chequing account statement showing a balance equal to \$13,448.11 CAD; the Applicants' relative's bank statement showing a total balance of \$28,158 CAD; and a letter of employment for the Applicants' relative indicating his monthly salary of \$11,000 CAD. As the evidence showed a combined amount of approximately \$55,000 CAD readily available to the Applicants,

the Applicants submit it was unreasonable for the Officer to conclude this amount was insufficient for an 11-day trip to Canada. The Applicants argue the Officer failed to consider significant evidence that contradicts the findings (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC)). The Applicants also submit the Officer's finding that the Applicants lack sufficient establishment and ties to India does not properly reflect evidence, as the Applicants have lived their entire lives in India: they have raised a family, own property, and run a farm in India.

[14] The Respondent submits it was reasonable for the Officer to have concerns about the Applicants' ability to finance their trip because the Applicants indicated on their application that the family had \$3,500 CAD available for their trip. The Respondent also submits the Officer reasonably held concerns about the Applicants' economic establishment in India because the family had an annual income of \$16,328 CAD. With respect to the letter of support from their relatives, the Respondent relies on *Clement v Canada (Citizenship and Immigration)*, 2019 FC 703 (CanLII) at paras 29-30 for the proposition that the provision of a bond does not necessitate granting a TRV. The Respondent submits the Officer was not required to address the financial situation of the uncle and aunt, or their promise to support the Applicants.

[15] In my view, the Officer erred by failing to consider contradictory evidence and making subjective and arbitrary findings, which render the decision unreasonable. Although the Officer found there were insufficient funds for the trip, there was significant evidence to the contrary. On each application, it was indicated that the Applicant had \$3,500 CAD available for the trip. Since each application was submitted individually, the most obvious explanation would be that each Applicant would have \$3,500 CAD in available funds for an 11-day trip, not that the entire family would be limited to \$3,500 CAD. Even given the latter scenario, the Officer's conclusion

fails to have regard to other contradictory evidence, since there were approximately \$55,000 CAD in available funds for the Applicants.

[16] It is unclear why the Officer concluded the funds were insufficient after having reviewed the Applicants' proof of assets and their relative's bank account statements. In light of the evidence contradictory to the Officer's findings, the Officer's assertion of having "reviewed all documentation" rings hollow. Furthermore, contrary to the Officer's finding that the Applicants were not sufficiently financially established in India, there was evidence of property ownership in India, both residential and agricultural, worth approximately \$213,357 CAD.

[17] In short, the Applicants were submitting a TRV to be in Canada for a short period of 11 days. They had submitted all the relevant documents showing their financial capacity to fund the trip, their financial establishment in India, and even their extended family's willingness and ability to fund the trip, if necessary. Despite the plethora of evidence, the Officer made an unreasonable finding that there were insufficient funds for the Applicants to travel and visit Canada. In my view, the Officer had a duty to state why there were insufficient funds given that the evidence supported otherwise. This renders the Officer's decision unreasonable.

## VI. **Certified Question**

[18] Counsel for each party was asked if there were any questions requiring certification. They each stated that there were no questions for certification and I concur.

## VII. **Conclusion**

[19] This application for judicial review is allowed.





**JUDGMENT in IMM-1548-19 and IMM-1549-19 and IMM-1550-19**

**THIS COURT'S JUDGMENT is that:**

1. The decision is set aside and the matter is to be returned for redetermination by a different decision-maker.
2. There is no question to certify.
3. A copy of this Judgment and Reasons will be placed on files IMM-1549-19 and IMM-1550-19.

"Shirzad A."

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1548-19 AND IMM-1549-19 AND IMM-1550-19

**STYLE OF CAUSE:** GURTEJ SINGH SANGHA V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION  
AMRINDER SINGH SANGHA V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION  
KULDEEP KAUR SANGHA V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** NOVEMBER 13, 2019

**JUDGMENT AND REASONS:** AHMED J.

**DATED:** JANUARY 16, 2020

**APPEARANCES:**

Raj Sharma FOR THE APPLICANTS

David Shiroky FOR THE RESPONDENT

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