

Federal Court



Cour fédérale

**Date: 20200303**

**Docket: IMM-3640-19**

**Citation: 2020 FC 326**

**Ottawa, Ontario, March 3, 2020**

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

**BETWEEN:**

**VIJAY RAM LOCHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This application for judicial review challenges the reasonableness of a decision made by a Senior Immigration Officer (Officer) refusing the application by Vijay Ram Lochan for a permanent residency visa on humanitarian and compassionate (H&C) grounds.

[2] Mr. Lochan is 60 years-of-age and a citizen of Guyana. He came to Canada in May of 2018 and, since then, he has lived with his sister Joyce in Mississauga. He applied for H&C relief about 6 months after arriving in Canada.

[3] Mr. Lochan's claim to relief was based primarily on his family ties in Canada and the corresponding absence of family support in Guyana. His stated intention was to live with his sister with her financial support. He claimed that if he went back to Guyana he would be financially unstable and at personal risk.

[4] Mr. Lochan argues that the Officer's decision is unreasonable on several grounds.

[5] While the Officer recognized the strong and mutually supportive relationships that were present between Mr. Lochan and his siblings (primarily with his sister Joyce) the Officer is said to have irrationally found that this loss of family support could be overcome by purchasing services. The impugned sentence is the following:

I acknowledge that the applicant has filled this void in Joyce's life and she is willing to provide him with financial support; however, I note that there are companies and individuals who can provide the maintenance and social services to Joyce, should she desire.

[6] Mr. Lochan is over-reading the significance of the above passage. The intent of this admittedly awkward observation is only that, to the extent Mr. Lochan is helping his sister with maintenance and services, those things can be replaced by others. This was responsive to his sister's declaration that he helped her with household chores.

[7] Mr. Lochan also takes issue with the Officer's statement that insufficient evidence had been presented to establish that Joyce's positive mood and outlook would reverse if he returned to Guyana, and that their relationship could be maintained by visiting and through the use of technology. Again, Mr. Lochan attributes more significance to this statement than it will bear. The Officer was not suggesting that these options were equivalent to Mr. Lochan's immediate presence but only that he would not be permanently or completely separated from his Canadian family. Mr. Lochan's situation is also distinguishable from the facts that were considered in *Epstein v. Canada (Citizenship and Immigration)*, 2015 FC 1201, 260 ACWS (3d) 346. That was a case where the applicant, an 82 year old grandmother, was found to be "entirely reliant on her family" for the provision of food, shelter, and emotional and financial support (para 15). It was the failure by the decision-maker to account for the proven level of dependency that was held to be unreasonable, and not the additional comments about staying in touch by other means.

[8] Mr. Lochan asserts that the Officer failed to meaningfully engage with the country condition evidence which spoke to the risks he would face in Guyana. Included among those concerns were the risk of crime, the lack of state protection, poverty and elder abuse. In particular, he takes issue with the Officer's statement that he had provided insufficient objective evidence that he would fall victim to or be adversely affected by such conditions.

[9] The Officer's concern about the absence of evidence linking Mr. Lochan to the identified generalized risks was not misplaced. The evidence he presented was very weak. He expressed fears about discrimination, unemployment, crime and homelessness but, for the most part, he

provided no particulars verifying that he had experienced such problems during the many years he lived in Guyana.

[10] It was not unreasonable for the Officer to have expected evidence of actual unemployment, poverty, discrimination and homelessness. Instead, Mr. Lochan described living a “very simple life in Guyana” and an ability to “sustain myself through odd jobs I would find as a welder and through working on construction”. Although he stated it was “very hard for me to earn a living”, he reported no periods of homelessness or profound poverty, nor was there evidence that his Canadian family had been called upon to support him.

[11] The one instance of actual victimization he reported was a series of assaults related to an attempt to evict him from a property. Apparently the perpetrators were prosecuted and fined. When these events took place was not stated. Without further details, it was not unreasonable for the Officer to discount the significance of this evidence in the consideration of future risk.

[12] The Officer assessed the evidence of hardship including the country condition evidence in the following way:

In this application, the applicant indicates that he fears discrimination and ill-treatment due to his age and lack of steady employment. The applicant states that he feels very alone and vulnerable in Guyana without any immediate family, and feels scared that when he gets sick, there is no one around to take care of him or make sure he is ok. However, I note that the applicant is 59 years old and has lived in Guyana all his life, thus I find it reasonable to assume that he has developed friends and acquaintances whom he could call on if needed when sick or feeling alone.

The applicant also indicates that living in Guyana as one ages is difficult because older people become more vulnerable to robbery

and abuse; however, he has not provided any objective evidence to suggest that he would be perceived as vulnerable and fall victim to robbery and/or abuse in Guyana where he has resided all his life working in general labour positions.

The applicant has indicated that he is worried how he will support himself as he ages without any savings or pension; however, he has not provided any evidence to indicate that the state does not assist people in these situations or provided any evidence that he could not continue to be employed in general labour positions as he ages but with modified duties. Additionally, I note that the applicant's sisters have all indicated their concern for him and that they would provide him with financial assistance while he is in Canada, therefore I find it reasonable to assume that they would be able to provide the applicant with financial assistance should he return to Guyana as well.

The applicant indicates that he has been beaten up 5 times by people who wish to evict him from his apartment and that he went to the police and two court on two occasions to deal with these incidents. I note that the applicant has not provided any evidence to indicate that he could not find a roommate with whom to share the costs if he is worried about money for rent and for companionship so neither would feel as alone and vulnerable, or that he could not find a different place to reside.

The applicant is concerned about returning to Guyana where there are adverse economic conditions, elder abuse and widespread violence. The applicant has submitted articles in relation to these concerns; however, I note that these are general country conditions in Guyana and the applicant has provided insufficient objective evidence to indicate that he would fall victim to such conditions, be adversely affected by such conditions or discriminated against due to these factors upon his return to Guyana.

Although the applicant's removal to Guyana would subject him and his sisters personally to some hardship and while I acknowledge that some areas of Guyana can be under stress and country conditions are not always favourable, the applicant has not resided in Guyana for over one year and has provided insufficient objective evidence that he would be adversely affected by such stresses or be discriminated against for any reason upon his return.

[13] There is nothing in this analysis suggesting that the Officer overlooked or misinterpreted the evidence, such as it was. The Officer recognized that Mr. Lochan's life in Guyana would present some hardships and would not compare favourably to his Canadian experience. Nevertheless, the Officer found that the situation was not so exceptional or dire that H&C relief was warranted. In the absence of evidence to the contrary, the Officer's inference that Mr. Lochan could call upon friends in Guyana or his Canadian family for personal and financial support was not unreasonable. Mr. Lochan was apparently not suffering from illness or serious physical limitations and, thus, it was also reasonable for the Officer to find that, as in the past, some employment would likely be available to him. The Officer also noted that Mr. Lochan had been gone from Guyana for less than a year.

[14] The Officer similarly took into account the advantages that Mr. Lochan's presence brought to Joyce and his other siblings including their close and interdependent relationships. These considerations were reasonably found to be partially mitigated by the opportunities to visit and to communicate from a distance. This was also not a situation where an extreme level of dependency was established.

[15] It is undoubtedly the case that a favourable decision might have been rendered on this evidentiary record. However, the role of the Court on judicial review is only to consider the reasonableness of the rendered decision and not the decision that could have been made. In this case, I can identify no reviewable flaws in the Officer's evidentiary analysis or in the conclusion reached. What Mr. Lochan complains about is the weight attributed to evidence by the Officer in

concluding that relief was not warranted. This is a highly discretionary balancing exercise that was reasonably carried out.

[16] For the foregoing reasons, this application is dismissed.

[17] Neither party proposed a certified question and no issue of general importance arises on this record.

**JUDGMENT IN IMM-3640-19**

**THIS COURT'S JUDGMENT is that** this application is dismissed.

"R.L. Barnes"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3640-19

**STYLE OF CAUSE:** VIJAY RAM LOCHAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 12, 2020

**JUDGMENT AND REASONS:** BARNES J.

**DATED:** MARCH 3, 2020

**APPEARANCES:**

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