

Federal Court



Cour fédérale

**Date: 20200303**

**Docket: IMM-2357-19**

**Citation: 2020 FC 328**

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

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**GURPREET SINGH,  
BY HIS LITIGATION GUARDIAN  
RAJBIR KAUR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is a judicial review of the Immigration Appeal Division (IAD) decision cancelling the Applicant's lengthy stay of removal. In 2001, Mr. Singh was found inadmissible due to serious criminality. He was granted a series of stays and extensions of those stays due to his mental health issues and the fact that he was under the supervision of the Ontario Review Board

(ORB). In 2005, he was admitted to the Centre for Addiction and Mental Health (CAMH), where he continues to reside.

[2] Mr. Singh's mental health has deteriorated and he now suffers from a major neurocognitive disorder which is irreversible. As a result of his condition, he cannot be released to his family or into the community.

[3] In March 2019, the IAD dismissed his outstanding appeal. I have concluded that the IAD assessment was reasonable, and accordingly, there is no basis for this Court to intervene. For the reasons that follow, this judicial review is dismissed and I decline to certify the questions posed by the Applicant.

### **Factual Background**

[4] Mr. Singh is a citizen of India who became a permanent resident of Canada in 1987. In October 2000, Mr. Singh was convicted of two counts of threatening death, assault on a Peace Officer, and resisting arrest. In 2001, he was found to be inadmissible due to criminality and a removal order was issued against him. He has a history of alcohol abuse and the use of illicit drugs. Mr. Singh also suffered from a schizoaffective disorder, and was prone to violent outbursts. He has threatened to kill his ex-wife and ex-mother-in-law, threatened to rape his ex-wife, and tried to burn down his ex-wife's apartment building. Because of his schizoaffective disorder, he was found not criminally responsible (NCR) for these offences.

[5] Following the NCR finding, Mr. Singh was placed under the supervision of the ORB. He has been detained at CAMH continually since 2013. While in CAMH's care, he assaulted two patients and engaged in inappropriate behaviour with female patients and female staff members.

[6] In 2018, the ORB concluded that his mental health problems are irreversible and he has deteriorated such that he cannot be safely released into the community or his family's supervision.

[7] The IAD considered Mr. Singh's appeal from the inadmissibility finding in August 2007 and granted a four-year stay of his removal from Canada based upon the recommendation of the Minister. Between 2012 and 2018, a number of reconsiderations and extensions of the stay were granted.

[8] On March 19, 2019, the IAD dismissed his appeal, which is the decision now under review.

### **Decision under Review**

[9] The issue before the IAD was if there were sufficient humanitarian and compassionate (H&C) reasons to warrant special relief for Mr. Singh.

[10] The IAD noted that in considering the H&C factors it was guided by the factors outlined in *Ribic v Canada (Minister of Employment and Immigration)* (1986), [1985] IABD No 4 (Imm. App. Bd.) and section 3(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [IRPA].

[11] The IAD found that Mr. Singh's offences were serious as they involved "violence and threatening behaviour, and [were] part of a pattern of criminality for much of the decade prior to the incident underlying the reportable offences". The IAD determined this was a "strong negative factor weighing against special relief".

[12] With respect to rehabilitation, the IAD noted that the purpose of the stays granted in the past had been to allow Mr. Singh to demonstrate the potential for rehabilitation. In considering his current circumstances, the IAD concluded that there was "little possibility of rehabilitation" considering his history of aggressive and threatening behaviour and the continuing deterioration of his mental health. This factor weighed strongly against special relief.

[13] With regard to establishment in Canada, the IAD concluded this was a neutral factor. Although Mr. Singh has been in Canada since 1981, the IAD found there was "little evidence of positive establishment due to the length of time he has been under removal orders (18 years) and his lengthy criminal record". Although the IAD did find there was limited establishment, this factor was considered against his mental health struggles.

[14] The impact on his family in the event he is removed from Canada was considered. However, the IAD noted that given Mr. Singh's lengthy stay at CAMH and the ORB's finding that it is no longer possible to release him to his family, there was little positive evidence on this factor. However, the IAD did weigh this factor mildly in favour of special relief, as his second wife and his adult children 'remain supportive'.

[15] With respect to the support of his family and the community, the IAD noted that this was a positive factor because he had a strong support system in place at CAMH.

[16] The IAD considered the hardship that Mr. Singh would likely face in India, and this factor weighed strongly in favour of special relief. The IAD found that Mr. Singh would likely face hardship in India because he had limited work experience or transferrable skills. There was no evidence of friends and family in India who could assist him, and the IAD acknowledged that there would be less support for his psychiatric conditions.

[17] The IAD noted that the best interest of the child factor was not relevant to the analysis as there were no children under the age of 18 affected by the removal.

[18] According to the IAD, after considering these factors, the balance did not weigh in favour of continuing the stay, noting that “a stay must serve a purpose”, such as making progress towards rehabilitation. Given Mr. Singh’s condition, rehabilitation was no longer an achievable goal.

[19] The IAD noted that the *IRPA* prioritizes security and that the Minister was no longer in support of granting a stay as had been the case in the past. As a result, the IAD found that the balance of the factors did not warrant special relief for either extending the stay or allowing the appeal.

## **Preliminary Issue**

[20] At the opening of the hearing, the Applicant's legal counsel made a motion to name a new Litigation Guardian, as a result of the death of the previously named Litigation Guardian. The Respondent consented to this motion.

[21] The Court granted the Applicant's request and the Litigation Guardian is hereby changed to be Raijbir Kaur, and the style of cause is amended with immediate effect.

## **Issues**

[22] The Applicant raises the following issues:

- a) Did the IAD fetter its discretion?
- b) Is the IAD's decision reasonable?

## **Standard of Review**

[23] The presumptive standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]). “[J]udicial review considers not only the outcome, but also the justification for the result (where reasons are required)” (*Canada Post Corp v Canada Union of Postal Workers*, 2019 SCC 67, at para 29).

[24] To determine whether a decision is reasonable, the Court must “ask whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and

whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at para 99).

[25] The standard of reasonableness also applies to fettering of discretion issue raised by the Applicant (*Vavilov*, at para 17).

## **Analysis**

### *a) Did the IAD fetter its discretion?*

[26] Mr. Singh argues that the IAD fettered its discretion by failing to consider that a stay of his removal could be continued on H&C grounds alone, even if rehabilitation was no longer possible.

[27] With respect to fettering discretion, the Federal Court of Appeal, in *BSH Home Appliances Ltd v Canada (Border Services Agency)*, 2016 FCA 135 (at para 11), found that a “decision-maker entitled to exercise discretion in the course of its duties fetters its discretion when it creates a standard practice and adheres to that practice instead of approaching each exercise of discretion on a case-by-case basis, having regard to the relevant evidence.”

[28] Here however, despite Mr. Singh’s arguments, H&C factors are implicit in the *Ribic* factors that were considered and applied by the IAD. The *Ribic* factors are a non-exhaustive list of factors the IAD considers in determining whether special relief on H&C grounds is warranted under s. 67(1)(1) of the *IRPA (Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, at paras 7 and 65). The factors are:

- (1) the seriousness of the offence leading to the removal order;
- (2) the possibility of rehabilitation;
- (3) the length of time spent, and the degree to which the individual facing removal is established, in Canada;
- (4) the family and community support available to the individual facing removal;
- (5) the family in Canada and the dislocation to the family that removal would cause; and
- (6) the degree of hardship that would be caused to the individual facing removal to his country of nationality (*Khosa* at para 7).

[29] Additionally, section 67(1)(c) of the *IRPA* specifies that the best interests of a child directly affected by the decision must also be taken into account as part of the *Ribic* analysis.

[30] The IAD considered the hardship to Mr. Singh as well as the impact on his family. The IAD afforded these factors some positive weight even though there was little evidence of actual or continued interaction with his family. While the IAD noted that a stay of removal needed to serve a purpose (and in the past rehabilitation was the purpose) that was not the only factor considered by the IAD. In Mr. Singh's case, however, the H&C factors did not tip the balance in favor of granting special relief.

[31] The IAD did consider the facts and evidence unique to Mr. Singh's circumstances. The IAD did not perform a narrowed or blindfolded assessment of his circumstances. The IAD did not apply a 'standard practice' of only considering rehabilitation as a basis to grant relief. Given the deterioration of Mr. Singh's condition, the possibility of rehabilitation, which had grounded the previous stays, was no longer a factor weighing in his favour. The fact that the IAD did not



offer other H&C factors does not mean that it considered rehabilitation to be the only possible basis upon which to grant a continued stay of his removal.

[32] Mr. Singh also argues that the IAD fettered its discretion by misapplying *Medovarski v Canada (Minister of Citizenship and Immigration)* (2005 SCC 51) and argues that the IAD's concern for public safety "permeated the board's consideration of all the different factors." I do not agree that this concern 'permeated' all of the IAD's reasons. It was discussed, but it did not dominate the analysis. As noted, all of the *Ribic* factors were considered and weighed by the IAD.

[33] The IAD identified Mr. Singh as a risk to the public and therefore public safety concerns were properly considered. In my view, this was reasonable for the IAD and demonstrates that the IAD recognized that stays are discretionary and that the 'wait and see' approach that has been taken with Mr. Singh in the past was no longer justified as rehabilitation was no longer possible. In recognition of this fact, the IAD decided not to exercise its discretion in favour of Mr. Singh. That is not a fettering of discretion.

[34] I would further note that the onus was on Mr. Singh to identify issues for consideration by the IAD that go beyond the *Ribic* factors. "If the onus is not met, the default position is removal. Noncitizens do not have a right to enter or remain in Canada..." (*Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at para 57).

[35] In my view, the IAD did not fetter its discretion, and Mr. Singh is asking the Court to reconsider and reweigh the factors assessed by the IAD. Although he disagrees with how the IAD exercised its discretion that is not a basis for this Court to intervene. In the circumstances, the IAD's conclusion that the need to protect the public outweighed the other factors does not amount to fettering of discretion.

*b) Is the IAD decision reasonable?*

[36] Mr. Singh also argues that the decision of the IAD is unreasonable. He argues that the IAD should have maintained the status quo and maintained the stay of removal, in the absence of any reasons to change it. He does not cite any legislative authority or case law in support of this proposition.

[37] Section 68 of the *IRPA* states:

|   |   |
|---|---|
| 68 (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case. | 68 (1) Il est sursis à la mesure de renvoi sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales. |
|---|---|

[38] In order for the IAD to stay a removal order there must be sufficient humanitarian and compassionate grounds to warrant special relief.

[39] As noted above, the IAD properly considered the *Ribic* factors which include H&C consideration (*Khosa* at para 65 and *Chieu* at para 77). The IAD noted the factors that weighed heavily against granting special relief being the seriousness of the offences and the pattern of violent behaviour. Similarly, the possibility of rehabilitation did not weigh in Mr. Singh's favour due to his deterioration and the ORB's finding that his condition is now irreversible and he cannot be safely released.

[40] The IAD properly recognized the two factors weighing in his favour, being the support available from his family and the community and the hardship he would face if removed. With regard to the support he had available from his family and his community, the IAD recognized that he had strong support available through the CAMH. The IAD also addressed the hardship he would face if he were deported to India, specifically, that he would be unlikely to receive the same level of care in India, and that there was no evidence of a support system from friends and family there. The IAD did note, however, that he would likely be able to receive some treatment in India, and there was no evidence that he could not obtain his medications and treatment in India.

[41] The IAD accorded little weight to the impact on his family, as it is no longer possible for him to live with them or even be released to them for short stays, despite them remaining supportive.

[42] In considering the IAD decision overall, the test is not if the reviewing Court agrees with the IAD decision, but rather if the IAD properly and reasonably considered the factors raised by

the Applicant and determining if the reasons of the IAD are justified in relation to the relevant factual and legal constraints. The IAD noted that the factor that tipped the balance in favour of not granting relief was that “a stay must serve a purpose”, such as rehabilitation, and that due to the recent deterioration of his health, rehabilitation is no longer possible. The IAD also noted that unlike the 2016 reconsideration, there was no longer a joint recommendation for a stay.

[43] With respect to rehabilitation efforts, the record discloses that in the past the Mr. Singh was in a position where he could be discharged to his family or to the community. However, his condition has now deteriorated to the point where he cannot live with family and there is a danger to the public if he were to be released.

[44] Mr. Singh cannot therefore abide by the conditions of his stay. While his deteriorating mental health may be the reason he cannot comply with the condition attached to his stay “...mental illness ...does not give non-Canadians the right to remain in Canada” (*Gardner v Canada (Citizenship and Immigration)*, 2011 FC 895 at para 41).

[45] The IAD properly balanced the positive factors against the negative factors. In the circumstances, the positive factors did not outweigh the negative factors. This is not unlike the situation in *Khosa*, where, at para 66, the Court states:

The weight to be given to the respondent’s evidence of remorse and his prospects for rehabilitation depended on an assessment of his evidence in light of all the circumstances of the case. The IAD has a mandate different from that of the criminal courts. *Khosa* did not testify at his criminal trial, but he did before the IAD. The issue before the IAD was not the potential for rehabilitation for purposes of sentencing, but rather whether the prospects for rehabilitation were such that, alone or in combination with other factors, they

warranted special relief from a valid removal order. The IAD was required to reach its own conclusions based on its own appreciation of the evidence. It did so.

[46] Although the decision of the IAD may appear to be harsh, in the circumstances, the decision is reasonable.

### **Certified Questions**

[47] The Applicant asks to have the following questions certified:

- 1) Can a stay be issued in circumstance where there is no reasonable prospect of rehabilitation?
- 2) In exercising its equitable jurisdiction, can the IAD order a stay even if it appears unlikely that the appeal will ever be allowed?

[48] In my view, *Khosa* is a full answer to the first question posed by the Applicant. As noted above, the *Ribic* factors are applicable and the weight to be attributed to each of the factors varies from case to case (*Khosa* at para 65). Since the relevance of each factor changes based on the circumstances of a particular case, the role of the individual factors is fact-dependent. As a result, the answer to the first question, as articulated, would not be dispositive in this case.

[49] The second question posed was answered in *Chieu*, at para 40, where the Supreme Court of Canada recognized that the IAD may consider factors beyond the *Ribic* factors.

[50] I therefore decline to certify the questions posed. They are not serious questions of general importance within the meaning of s. 78 of the *IRPA*, as they are not dispositive of this judicial review (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22, at para 46).

**JUDGMENT IN IMM-2357-19**

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

1. The style of cause is amended with immediate effect and the Litigation Guardian is hereby changed to be Rajbir Kaur.
2. This judicial review is dismissed and no questions are certified.

"Ann Marie McDonald"

Judge

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

**DOCKET:** IMM-2357-19

**STYLE OF CAUSE:** GURPREET SINGH v MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 13, 2020

**JUDGMENT AND REASONS:** MCDONALD J.

**DATED:** MARCH 3, 2020

**APPEARANCES:**

Jack C. Martin

FOR THE APPLICANT

Ada Mok

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Jack C. Martin  
Barrister and Solicitor  
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada  
Department of Justice  
Toronto, Ontario

FOR THE RESPONDENT