Federal Court  Cour fédérale

Date: 20220207

Docket: IMM-888-21

Citation: 2022 FC 147

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 7, 2022

PRESENT: Mr. Justice Gascon

BETWEEN:

MALKIT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Malkit Singh, is a citizen of India. He is seeking judicial review of a decision [Decision] of a senior immigration officer [Officer] of Immigration, Refugees and Citizenship Canada dated January 6, 2021. The Decision rejected Mr. Singh's application under subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for

permanent resident status on humanitarian and compassionate grounds. This provision gives the Minister of Citizenship and Immigration [Minister] the discretion to exempt foreign nationals from the normal requirements of the IRPA if he believes that humanitarian and compassionate considerations warrant it. In support of his humanitarian and compassionate application, Mr. Singh had argued his degree of establishment in Canada, the hardship he would face should he return to India, and the best interests of his grandchildren. However, the officer determined that there were insufficient grounds to warrant special relief for Mr. Singh.

[2] Mr. Singh argues that the Decision is unreasonable. He asks the Court to set it aside and to remit his file to another Immigration, Refugees and Citizenship Canada officer for redetermination. According to Mr. Singh, the Officer erred in his assessment of his integration into Canada and ignored the main reason for his application, namely, to maintain ties with his family and grandchildren in Canada.

[3] For the reasons that follow, I will allow Mr. Singh's application for judicial review. In light of the Officer's findings, the evidence presented and the applicable law, I am not persuaded that the Decision has the qualities that make the reasoning logical and coherent in light of the relevant legal and factual constraints. In determining that the humanitarian and compassionate considerations advanced by Mr. Singh were not sufficiently important to convince him to deviate from the IRPA criteria for permanent residence in Canada, the Officer, in my view, overlooked the primary reason for Mr. Singh's humanitarian and compassionate application, namely, to maintain his family ties with his grandchildren in Canada. Moreover, the analysis conducted by the Officer did not take into account the teachings of the Supreme Court of Canada [SCC] with

respect to the treatment of applications based on humanitarian and compassionate considerations. This is sufficient to justify this Court's intervention.

II. Background

A. *Facts*

[4] Mr. Singh is 64 years old and has been widowed since 2015. He moved to Canada from India over 21 years ago. Shortly after his arrival in Canada, in October 2001, he made a claim for refugee protection. His claim was based on his alleged fear of the Indian police, who at the time accused him of supporting militant groups in India. His refugee protection claim failed in December 2002, and this Court denied Mr. Singh's application for leave and judicial review at the leave stage. Mr. Singh has continued to live in Canada since then.

[5] Following the failure of his refugee protection claim, Mr. Singh made numerous attempts to obtain permanent resident status in Canada. On four occasions (in 2005, 2008, 2016 and 2019), he filed applications for permanent residence on the basis of humanitarian and compassionate grounds. He also filed an application for a pre-removal risk assessment in 2012. Each time, Canadian immigration authorities refused Mr. Singh's applications, as well as the appeals for reconsideration that he sometimes made in the wake of these refusals. Yet, year after year since at least 2012, Canadian authorities have been renewing Mr. Singh's temporary worker permit for seasonal agricultural work.

[6] Since the death of his wife in 2015, Mr. Singh has lived alone in the Montréal area. He now works as a warehouse employee for a company called “Associes Threads Inc”. Mr. Singh’s children and grandchildren are all now living in Canada, in Alberta and Ontario, with Canadian citizen or permanent resident status. Mr. Singh alleges that he has no family left in India, as his wife, mother and siblings have all passed away since he came to Canada in 2001.

B. *Decision*

[7] The Decision that Mr. Singh is challenging in this application for judicial review is the refusal of his fourth application for permanent residence on humanitarian and compassionate grounds, filed in February 2019. The Officer began the Decision by recalling that the humanitarian and compassionate exemption under subsection 25(1) of the IRPA is an exceptional regime, and that the use of this regime is only appropriate where it is demonstrated that the usual prerequisites of the IRPA would be inappropriate in the circumstances. The onus is on the applicant to demonstrate that this exceptional regime is justified in the circumstances.

[8] In the Decision, the Officer first analyzed three factors put forward by Mr. Singh in support of the application: (i) his degree of establishment in Canada; (ii) the hardship he would face should he return to India; and (iii) the best interests of his grandchildren.

[9] With regard to the degree of establishment, the Officer noted that Mr. Singh is currently employed, but that his financial situation is precarious, with a negative net worth. Although the Officer recognized that Mr. Singh’s employment efforts are positive, he observed that the evidence submitted by Mr. Singh does not demonstrate a stable employment situation or sound

financial management on his part. The Officer also noted Mr. Singh's involvement in Montréal's Sikh community and his volunteer work with various religious institutions. The Officer concluded that Mr. Singh's evidence demonstrates that he has a certain degree of establishment in Canada, which is a positive factor. Nevertheless, according to the Officer, it is not possible to determine from the evidence that the degree of establishment is such that M. Singh's removal would create, for him or his employer, disproportionate hardship warranting an exemption on humanitarian and compassionate grounds. The Officer added that Mr. Singh's establishment is fairly typical of a person living in Canada for as long as Mr. Singh has.

[10] As for the hardship Mr. Singh could face upon his return to India, the Officer conceded that Mr. Singh, a 64-year-old man who left his country of origin over 20 years ago, could have difficulty obtaining employment in India. Nevertheless, the Officer noted that Mr. Singh has already held jobs in India, and that he is familiar with the country's language, culture and traditions. In addition, the Officer noted that Mr. Singh has already served in the Indian Armed Forces and that the evidence does not demonstrate that he would not be eligible for a veteran's pension when such a program exists. The Officer also observed that nothing in the evidence presented by Mr. Singh indicates that he requires assistance with his daily living. The Officer therefore concluded that Mr. Singh would not face disproportionate hardship if he were to return to India.

[11] The third factor analyzed by the Office is the best interests of the Mr. Singh's grandchildren. The Officer noted at the outset that immigration officers have an obligation to be alert, alive and sensitive to the best interests of the children concerned by an application for

exemption on humanitarian and compassionate grounds. While Mr. Singh adduced in evidence that he has five grandchildren living in Canada, the Officer noted that none of them live in Quebec, that Mr. Singh does not see his children and grandchildren on a daily basis, and that the majority of their contact with each other is through remote communication via technological tools. The Officer concluded that Mr. Singh did not present sufficient evidence to demonstrate that the removal to India would have an adverse effect on the best interests of the grandchildren to the point that an exemption on humanitarian and compassionate grounds would be justified.

[12] As an epilogue to the Decision, the Agent noted that Mr. Singh has not, over the years, attempted to pursue other avenues that might allow him to remain in Canada. For example, Mr. Singh has not considered the sponsorship route to become a permanent resident of Canada, nor has he presented any evidence to support his contention that the sponsorship process creates disproportionate hardship making it an unfeasible option in his situation. The Officer added that since the rejection of his refugee protection claim and all of his unsuccessful appeals to Canadian immigration authorities, Mr. Singh must have known that his removal to India was a possibility.

[13] The Officer concluded that, based on his cumulative review of the claims and evidence submitted by Mr. Singh, there is no basis for granting him an exemption on humanitarian and compassionate grounds.

C. *Standard of review*

[14] The parties do not dispute that the standard of reasonableness applies in this case. Indeed, the case law has already established that this standard of review governs judicial review of a

discretionary decision on an application made under subsection 25(1) of the IRPA (*Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*] at paras 44–45; *Bhatia v Canada (Citizenship and Immigration)*, 2017 FC 1000 at para 21; *Kaur v Canada (Citizenship and Immigration)*, 2017 FC 757 at paras 24–25). Moreover, in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the SCC established a presumption that, barring exceptions, reasonableness is the applicable standard in all cases involving the judicial review of the merits of administrative decisions (*Vavilov* at para 16).

[15] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Canada Post Corp. v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post Corp.*] at paras 2, 31). The reviewing court asks "whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99, citing, among others, *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74). Where reasons for a decision are required, "the decision must also be *justified*", by way of those reasons, "by the decision maker to those to whom the decision applies" [italics in the original] (*Vavilov* at para 86). Thus, a reasonableness review considers both the outcome of the decision and the reasoning process followed (*Vavilov* at para 87).

[16] Conducting reasonableness review must entail a robust evaluation of administrative decisions. However, a reviewing court must begin its inquiry into the reasonableness of a

decision by examining the reasons provided with “respectful attention” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). A reviewing court must show deference and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13). The reasonableness standard finds its starting point in the principle of judicial restraint and deference, and requires reviewing courts to demonstrate respect for the distinct role that the legislature has chosen to confer on administrative decision makers rather than on the courts (*Vavilov* at paras 13, 46, 75).

III. Analysis

[17] The Minister submits that the Decision is reasonable in all respects, and that Mr. Singh has not demonstrated that he would have difficulty establishing himself in India and maintaining contact with his family and grandchildren in Canada if he were to return to his home country. According to the Minister, the Officer set out his reasons as to why there are insufficient humanitarian and compassionate considerations to grant Mr. Singh’s application, and the Court should not interfere with the Officer’s assessment of the evidence.

[18] I respectfully disagree with the Minister. In the particular circumstances of this case, I am of the view that the Decision is unreasonable for three main reasons. First, in the course of his reasons, the Officer ignored the main factor at the heart of Mr. Singh’s application, namely, maintaining his ties with his family and grandchildren in Canada. Second, a reading of the Decision does not persuade me that the Officer complied with the teachings of the SCC with respect to the approach that administrative decision makers must now take in assessing

humanitarian and compassionate applications. Finally, the Officer's criticism of Mr. Singh's failure to explore alternative avenues to permanent residence is unreasonable in a context where Canadian immigration authorities have not issued any removal orders against Mr. Singh in over 20 years and have indirectly endorsed his continued presence in Canada as a temporary worker.

A. ***Main point raised by Mr. Singh in his application***

[19] It is clear from the file before the Officer that Mr. Singh's humanitarian and compassionate application was based first and foremost on his fear of being separated from his family and grandchildren, all of whom live in Canada. In particular, Mr. Singh filed statements to the effect that he was emotionally dependent on his children and grandchildren in Canada, that his grandchildren depended on his presence, that he had no family left in India (his wife, mother and siblings having died over the years), and that he wished to contribute to the cultural education of his grandchildren. Handwritten letters from his son and one of his grandchildren noted that Mr. Singh visited his son's children every two weeks, was always there for his family, and communicated with them every other day. The evidence also revealed that 11 members of Mr. Singh's family live in Canada, all of whom are either Canadian citizens or have permanent resident status. Conversely, Mr. Singh no longer has any family in India.

[20] It is clear that this concern to preserve ties with family members is the primary factor driving Mr. Singh's entire humanitarian and compassionate application. While I recognize that some of the evidence provided by Mr. Singh was at times scarce on details (for example, the single letter from one of his grandchildren), there is no doubt that the key issue raised by Mr. Singh before the administrative decision maker revolved around the preservation of those

family ties. However, in my view, the Officer's reasons leave the impression that this fundamental element of Mr. Singh's case was overlooked and minimized in the analysis and did not receive the attention it should have received.

[21] As Mr. Singh's counsel correctly indicated at the hearing before this Court, it has been well established by the SCC, in *Vavilov*, that the failure of an administrative decision maker to meaningfully examine "keys issues" or central arguments raised by a party in its reasons may call into question the reasonableness of its decision: "a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it" (*Vavilov* at para 128). The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. In the same vein, an administrative decision maker's silence on evidence "squarely contradicting" its findings of fact may indicate that the assessment of the case's key issues is unreasonable (*Alsaloussi v Canada (Attorney General)*, 2020 FC 364 at paras 63–64).

[22] This notion of "keys issue" establishes that the reasons for a decision must allow the parties to understand the administrative decision maker's position on the issues raised in the case, and this requires the administrative decision maker to do more than simply summarize arguments and regurgitate boilerplate phrases (*Gomes v Canada (Citizenship and Immigration)*, 2020 FC 506 at para 61, citing *Galusic v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 223 at para 42). The key issues encompass what constitutes the key or substantive issue of a party's submissions, which actually forms the basis upon which an applicant anchors his or

her claim. In *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 [*Alexion*], the Federal Court of Appeal defined the notion of "key issue" as follows: "In making its decision, the Board must ensure that a reasoned explanation is discernable on the key issues—the issues on which the case will turn and the issues of prime importance raised in the parties' submissions" [emphasis added] (*Alexion* at para 70).

[23] The critical issues in an administrative decision are determined, in part at least, by the key issues and arguments raised by the parties, and when an administrative decision maker overlooks or fails to adequately consider these elements, it may be sufficient to overturn the decision (*Vavilov* at paras 102–103, 127–128; *Alexion* at para 13).

[24] Unfortunately, this is the case here. Indeed, after reading the Decision, I must conclude that the Officer did not give the humanitarian and compassionate considerations raised by Mr. Singh with respect to his family in Canada, including his grandchildren, the attention it required. As a result, the Officer did not sufficiently justify in his reasons why the "key issue" put forward by Mr. Singh should be disregarded in the analysis of the humanitarian and compassionate considerations at stake in this case. I am not suggesting that the administrative decision maker completely ignored the presence of Mr. Singh's family in Canada or the issue of the best interests of the affected children in his analysis of the application for exemption on humanitarian and compassionate grounds. I also recognize, as the Minister has pointed out, that the onus is on the applicant to support his contention that his departure from Canada is contrary to the best interests of the child principle. In the absence of evidence to support the claim, an officer may conclude that it is baseless (*Owusu v Canada (Minister of Citizenship and*

Immigration), 2004 FCA 38 at para 5). However, given the centrality of the family ties that Mr. Singh sought to preserve in Canada to his humanitarian and compassionate application, the Officer's reasons do not meet the requirements of *Vavilov* in terms of the justification and treatment of the key issue at the heart of Mr. Singh's application.

[25] I would add that, given the evidence on the record, it was incorrect to say, as the Officer did in the Decision, that the majority of the contact between Mr. Singh and his grandchildren was via information technology tools. Indeed, the uncontradicted evidence is that Mr. Singh visited his son's children every two weeks. I do not dispute that a decision maker is not required to refer to every detail that supports its conclusion, or to every piece of evidence in the file. However, an administrative decision maker cannot overlook contradictory evidence on a key issue before it (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 (FC) (QL) [*Cepeda-Gutierrez*] at paras 16–17). True, a decision maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown (*Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at para 36; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) (QL) at para 1). However, when a decision maker is silent on evidence that squarely contradicts the findings of fact made on a key aspect of the decision, the Court may intervene and infer that the decision maker overlooked the contradictory evidence when making its finding of fact (*Ozdemir v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 331 at paras 9–10; *Cepeda-Gutierrez* at para 17). That is the case here.

B. *Officer's approach was based on hardship*

[26] Moreover, I am also of the view that, generally speaking, the Officer's approach in the Decision did not follow the teachings of the SCC in *Kanthasamy*. Indeed, instead of focusing on all the circumstances, the Officer dwelled on the "hardship" Mr. Singh would face, using this term about 12 times in the Decision. Thus, the Officer began the Decision by explaining that his job was to consider "the extent to which the applicant, given his particular circumstances, would face hardship if he had to leave Canada in order to apply for permanent residence abroad" [emphasis added]. Both Mr. Singh's degree of establishment in Canada and the circumstances of his return to India are first and foremost analyzed through the lens of hardships.

[27] However, in *Kanthasamy*, the SCC's approach was anchored in the equitable goals underlying subsection 25(1) of the IRPA authorizing the Minister to grant relief on the basis of humanitarian and compassionate considerations (*Kanthasamy* at para 33). The SCC specified the legal test the Minister's representatives must use to assess claims for humanitarian and compassionate relief. Thus, the SCC established that *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 351 [*Chirwa*] established an important guiding principle which must now govern the assessment of humanitarian and compassionate considerations: "the successive series of broadly worded 'humanitarian and compassionate' provisions in various immigration statutes had a common purpose, namely, to offer equitable relief in circumstances that 'would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another'" (*Kanthasamy* at para 21, referring to *Chirwa* at p 364).

[28] Hence, it is no longer sufficient to examine humanitarian and compassionate considerations through the sole lens of hardship, and immigration officers no longer need to use

the terms “unusual and undeserved or disproportionate hardship” so as to limit their capacity to examine all humanitarian and compassionate considerations relevant to a specific case (*Kanthasamy* at paras 25, 33). “A reviewing court must therefore be satisfied that the approach outlined in Kanthasamy transpires from the reasons and that the decision-maker has, in his or her analysis, properly considered not just hardships but all relevant [humanitarian and compassionate] considerations in a broader sense” (*Nagamany v Canada (Citizenship and Immigration)*, 2019 FC 187 at paras 31–33).

[29] Surely, immigration officers do not have to automatically grant the relief sought on humanitarian and compassionate ground simply because they must attempt to “relieve the misfortunes” of an applicant. The *Chirwa/Kanthasamy* language does not call for a given result. The approach rather necessitates a certain mindset and disposition on the part of immigration officers, and it dictates a certain path to be followed in their analysis of the evidence in order to echo the overarching purpose of humanitarian and compassionate provisions. Nevertheless, immigration officers of course retain their discretion to assess the evidence, using the specialized expertise they are equipped with in handling immigration matters. In other words, the *Chirwa/Kanthasamy* approach to humanitarian and compassionate applications therefore does not impose the destination to be ultimately reached by the decision makers.

[30] After analyzing the Officer’s reasons, I am not persuaded that the Decision respects the *Kanthasamy* and *Chirwa* approach. On the contrary, I find that the Officer looked at the case through the more limited lens of hardship and that he set out on the narrow path that immigration officers are now required to avoid. Instead of adopting the holistic approach set out by the SCC

in *Kanthasamy*, the Officer, in my view, did not show compassion and sensitivity for the misfortunes of Mr. Singh and failed to give weight to all the particular factors related to the situation, and specifically the key family considerations that Mr. Singh advanced. In other words, I am persuaded that the Officer's reasons and his discussion of the humanitarian and compassionate considerations are wide of the mark and do not reflect the attitude of a person sensitive and responsive to the misfortunes of others or animated by a desire to relieve them. To reasonably apply the teachings of *Kanthasamy*, the Officer ought to have assessed Mr. Singh's personal situation and all relevant humanitarian and compassionate considerations with attention. The Officer failed to adequately do so in the specific circumstances of this case.

[31] In arriving at this conclusion, I am not minimizing the principle that subsection 25(1) of the IRPA and humanitarian and compassionate relief remain an exception to the ordinary operation of the IRPA and, what is more, a discretionary one (*Kanthasamy* at paras 19, 23; *Canada (Minister of Citizenship and Immigration) v Legault*, 2002 FCA 125 at para 15). This relief sits outside the normal immigration classes or refugee protection streams by which foreign nationals can come to Canada permanently, and it acts as a sort of safety valve available for exceptional cases. While immigration officers must now refrain from assessing humanitarian and compassionate factors through the myopic lens of hardship, reviewing courts must still, for their part, look at the administrative decision maker's findings through the reasonableness and deference lens, with respectful attention to an officer's reasons. Said judicial restraint requires reviewing courts to focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached had it been in the administrative decision maker's shoes.

[32] Here, it is the rationale for the Decision and the treatment of the key issues put forward by Mr. Singh that, in my view, are lacking. Mr. Singh was not entitled to a certain result on his humanitarian and compassionate application, but he was entitled to a certain process and to see his application treated through the lens established in *Kanthasamy*. He did not get that in the Officer's Decision. The passages of the decision pertaining to the humanitarian and compassionate circumstances dealing with Mr. Singh's establishment in Canada, the hardship of his return to India or the best interests of his grandchildren illustrate the failures on the part of the Officer.

C. *Alternative avenues open to Mr. Singh*

[33] Finally, I find that, in the circumstances specific to Mr. Singh, the Officer's remarks that Mr. Singh could have or should have predicted an eventual return to India, and the corollary criticism that he did not take the sponsorship path to become a permanent resident of Canada, were unreasonable. As mentioned earlier, the consideration of an application for permanent residence on humanitarian and compassionate grounds pursuant to subsection 25(1) of the IRPA requires that the immigration officer who reviews it take into account all the circumstances. However, I do not see how the Officer could reasonably conclude that Mr. Singh could have predicted his return to India because of the failure of his numerous procedures to obtain permanent resident status in Canada, in a context where, for more than 20 years, Canadian immigration authorities have not initiated any removal proceedings against him, despite his repeated unsuccessful applications for permanent residence.

[34] Prior to making the application that led to the Decision that is the subject of this judicial review, Mr. Singh, I recall, had received no fewer than five negative decisions from Canadian immigration authorities, following a refugee protection claim, three previous applications on humanitarian and compassionate grounds and an application for a pre-removal risk assessment. Throughout this period, Mr. Singh was never notified by Canadian authorities of his impending removal. On the contrary, Mr. Singh's four applications for humanitarian and compassionate relief were processed and considered as if nothing had happened. In addition, Mr. Singh has had his temporary worker permit renewed and extended no fewer than 11 times. As the Minister's counsel acknowledged at the court hearing, Mr. Singh's situation was unusual, to say the least. This unusual situation did not confer on Mr. Singh a greater right to permanent residence in Canada. But the unusual nature of Mr. Singh's situation called for at least an equally [TRANSLATION] "unusual" approach on the part of the Officer, attentive to Mr. Singh's particular circumstances. The Officer could not reasonably rely on the general principle that a failed refugee protection claimant or permanent resident applicant must anticipate or be prepared for his or her eventual return to his or her country of origin. In Mr. Singh's case, he remained in Canada with at least indirect approval of the Canadian authorities, who granted him temporary work permits and allowed him to make multiple applications on humanitarian and compassionate grounds without any consequences for the repeated refusals issued to Mr. Singh.

[35] I do not see how, in these circumstances, it could be reasonable for the Officer to hold against Mr. Singh that he should have known and should have prepared for his eventual removal to India, or that he should have explored other avenues such as sponsorship, in order to mitigate the hardship that a return to his country of origin might create. In my view, there were indeed

[TRANSLATION] “circumstances beyond the control” of Mr. Singh here, contrary to the Officer’s conclusion. I am not saying that the failure of Canadian immigration authorities to act with greater diligence in response to repeated refusals of Mr. Singh’s applications is such that it created a [TRANSLATION] “legitimate expectation” that Mr. Singh could remain in Canada. But, in the circumstances, it was certainly not reasonable for the Officer, in assessing the humanitarian and compassionate factors, to raise the fact that Mr. Singh could have taken steps to minimize the hardship that he might face as a result of leaving Canada and returning to India. This is a far cry from situations, frequently noted in the case law, where an immigration officer observes that factors such as establishment in Canada should not be given much weight in the analysis of humanitarian and compassionate considerations, where that establishment is the result of non-compliance with Canadian immigration laws or a decision by an applicant to remain voluntarily in the country without any status, without any endorsement from Canadian authorities and for reasons not beyond his or her control.

IV. Conclusion

[36] For all of the foregoing reasons, Mr. Singh’s application for judicial review is allowed. Neither party has proposed any questions for certification. I agree that there is no basis to do so in this case.

JUDGMENT in IMM-888-21

THIS COURT ORDERS as follows:

1. The application for judicial review is allowed, without costs.

2. The decision of the Senior Immigration Officer of Immigration, Refugees and Citizenship Canada dated January 6, 2021, dismissing Malkit Singh's application for permanent residence on humanitarian and compassionate grounds, is dismissed.

3. Malkit Singh's application is returned to Immigration, Refugees and Citizenship Canada for reconsideration by a new officer on the basis of these reasons.

4. There is no serious question of general importance to certify.

"Denis Gascon"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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