

Federal Court



Cour fédérale

**Date: 20220509**

**Docket: IMM-2433-21**

**Citation: 2022 FC 680**

**Ottawa, Ontario, May 9, 2022**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**KAMALJIT KAUR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP &  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Ms. Kaur, is a citizen of India who applied for permanent residence in Canada based on humanitarian and compassionate grounds (“H & C Application”). Most of Ms. Kaur’s immediate family live in Canada with permanent status, including her parents, two siblings and nephews. She asked for humanitarian relief to be able to remain in Canada permanently based on her relationship with her family in Canada, the best interests of her

nephews in Canada, and the hardship in living alone in India, particularly because of her physical disability. Her application was refused by a senior officer (“Officer”) at Immigration, Refugees and Citizenship Canada [IRCC]. Ms. Kaur is challenging the refusal in this application for judicial review.

[2] Ms. Kaur raised several arguments. I find the key issue is the Officer’s treatment of the country condition evidence. The Officer unreasonably held that Ms. Kaur had to demonstrate past personalized experience with discrimination or violence in India. This is not required when evaluating the hardship factor in relation to adverse country conditions in an H & C Application.

[3] Based on the reasons below, I grant this judicial review.

## II. Factual Content

[4] Ms. Kaur is approximately 47 years old. She is not married and has no children. She has worked as a teacher in India. Most of her immediate family live permanently in Canada. This includes her parents, brother, sister, nephews and cousin (who is her biological sister). Ms. Kaur has two sisters who remain in India.

[5] From childhood, due to contracting poliovirus, Ms. Kaur has a physical disability that affects her mobility. Up until her parents and brother immigrated to Canada in 2014, she received daily assistance from her family with moving around and daily chores. After moving to Canada, Ms. Kaur’s parents continued to visit her in India regularly and for prolonged periods, but due to their age and deteriorating health, they are no longer able to travel.

[6] Ms. Kaur has two sisters who remain in India but do not live in the same district as her. Ms. Kaur's sisters have attested that they are both in the process of immigrating to the United States with their families and that while in India, they are not able to assist Ms. Kaur with her day-to-day needs given the distance and their own familial obligations.

[7] Ms. Kaur entered Canada on a multiple-entry visa in February 2020 and has remained in Canada, residing with her parents, and her two siblings and their families. In June 2020, she submitted an H & C Application. The application was refused in a decision dated March 30, 2021.

### III. Issues and Standard of Review

[8] As noted above, the key issue is the Officer's assessment of the hardship factor and in particular, their evaluation of the adverse country conditions. In reviewing the decision of the Officer, I applied a reasonableness standard of review. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

### IV. Analysis

[9] Foreign nationals applying for permanent residence in Canada can ask the Minister to use their discretion to relieve them from requirements in the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] because of humanitarian and compassionate factors (IRPA, s 25(1)).

The Supreme Court of Canada in *Kanhasamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 [*Kanhasamy*], citing *Chirwa v Canada (Minister of Citizenship and Immigration)* (1970), 4 IAC 338, confirmed that the purpose of this humanitarian and compassionate discretion is “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’” (at para 21).

[10] Given that the purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case”, there is no limited set of factors that warrant relief (*Kanhasamy* at para 19). The factors warranting relief will vary depending on the circumstances, but “officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them” (*Kanhasamy* at para 25; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 74-75 [*Baker*]).

[11] At issue here is whether the Officer “substantively consider[ed] and weigh[ed] all the relevant facts and factors before them” in assessing Ms. Kaur’s hardship in returning to India. While the Officer accepted that “there are issues with discrimination, violence and crime against women with disabilities (and women in general) in India”, they found Ms. Kaur had not demonstrated that she “is more at risk than others.” The Officer unreasonably required Ms. Kaur to demonstrate that she had experienced past personal discrimination or had been subject to violence.

[12] The Officer improperly imported personalized risk analysis from s 97(1) of *IRPA*, which requires an individual face a risk “not faced generally by other individuals in or from that country” into the section 25(1) analysis. This problem has been identified in a number of decisions of this Court: *Miyir v Canada (Minister of Citizenship and Immigration)*, 2018 FC 73 at paras 21, 29-30; *Diabate v Canada (Minister of Citizenship and Immigration)*, 2013 FC 129 at paras 32-33, 36; *Martinez v Canada (Minister of Citizenship and Immigration)*, 2017 FC 69 at para 12; *Marafa v Canada (Minister of Citizenship and Immigration)*, 2018 FC 571 at paras 4-7; *Quiros v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1412 at paras 30-31. In importing this standard, the Officer failed to meaningfully assess the hardship Ms. Kaur may face upon return to India. The Officer noted that Ms. Kaur had not provided “specific examples surrounding how she has been a victim of discrimination, violence or crime.” An applicant for H & C relief need not demonstrate that they have experienced past personal discrimination or have been a victim of crime in order for related objective country condition evidence to be relevant to an officer’s analysis of the future hardship they may face (*Kanthasamy* at paras 52-56).

[13] The application for judicial review is allowed and sent back to a new officer for redetermination. The parties did not ask to certify a question of general importance and none arises.

**JUDGMENT IN IMM-2433-21**

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

1. The application for judicial review is allowed and sent back to a new officer for redetermination;
2. No question is certified.

**"Lobat Sadrehashemi"**

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Judge

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

**DOCKET:** IMM-2433-21

**STYLE OF CAUSE:** KAMALJIT KAUR v THE MINISTER OF  
CITIZENSHIP & IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 29, 2021

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** MAY 9, 2022

**APPEARANCES:**

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