

Federal Court



Cour fédérale

Date: 20220908

Docket: IMM-1159-21

Citation: 2022 FC 1270

Ottawa, Ontario, September 8, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

GURSATINDER KAUR DHALIWAL

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Gursatinder Kaur Dhaliwal is a citizen of India. She seeks judicial review of a decision by a senior immigration officer [Officer] to refuse her request to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] The Officer misapprehended Ms. Dhaliwal's submissions respecting the social isolation and stigma she would face as a single woman living alone in India, and focused unduly on the threat to her physical safety. The Officer also misapprehended Ms. Dhaliwal's submissions respecting her need for daily interactions with family members to cope with the "deep emotional void" in her life following the death of her parents.

[3] The application for judicial review is therefore allowed.

II. Background

[4] Ms. Dhaliwal is 34 years old. She is originally from the small village of Dalo Majra in the province of Punjab. She is an adherent of the Sikh religion, has never been married, and has no children.

[5] Ms. Dhaliwal has two older sisters. Her eldest sister is married and, in keeping with Sikh tradition, lives with her husband in another Indian province more than 100 kilometres away from Dalo Majra. Her other sister, Gurwinder, lives in Canada with her husband and child. At the time of the H&C application, Gurwinder was expecting another child.

[6] Before arriving in Canada in 2018, Ms. Dhaliwal lived with her parents in the family home. Her mother died unexpectedly in 2016 from a heart condition. Her father was hospitalized in October 2018 and died shortly thereafter.

[7] Ms. Dhaliwal was issued a temporary resident visa [TRV] on October 31, 2018 to visit Gurwinder. She arrived in Canada on November 27, 2018. She has remained in Canada in accordance with extensions of the TRV.

[8] Ms. Dhaliwal submitted her request for H&C relief on November 9, 2019. In support of her request, she noted that she no longer had any family in India with whom she could reside, and she would face stigmatization, discrimination and a substantial threat of sexual violence if she returned there. She also said that her isolation in India had caused her significant emotional difficulty, which was alleviated by living with her sister in Canada.

[9] The Officer found there was insufficient evidence to demonstrate Ms. Dhaliwal or any similarly-situated family members in India had previously experienced gender-based violence. The Officer also found that Ms. Dhaliwal had failed to explain why communication with her siblings through modern or traditional technology would not be adequate to meet her emotional needs.

[10] The Officer noted that Ms. Dhaliwal is highly educated and holds a Master's degree in Arts. It would not therefore be "unduly harsh" for her to relocate to another part of India, perhaps closer to the sister who resides there.

[11] The Officer rejected Ms. Dhaliwal's request for H&C relief on January 22, 2021.

III. Issue

[12] The sole issue raised by this application for judicial review is whether the Officer's decision was reasonable.

IV. Analysis

[13] The Officer's decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where "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).

[14] The criteria of "justification, intelligibility and transparency" are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[15] Ms. Dhaliwal challenges the Officer's decision on two principal grounds: (a) the Officer unreasonably found that the sister residing in India could provide her with "refuge or support"; and (b) the Officer unreasonably focused on her physical safety in India, rather than the risk of discrimination, stigma and social isolation.

[16] The Officer acknowledged Ms. Dhaliwal's submission that she could not live with her sister and her husband as part of their family in India. The Officer nevertheless suggested that they could provide her with "refuge or support":

While the applicant submits that they cannot reside with their family members in India due to cultural reasons, evidence has not been submitted demonstrating that these family members are unwilling or unable to provide refuge or support for the applicant, or otherwise assist with their re-integration in their home country, if only emotionally.

[17] The use of the term "refuge" in this context is potentially confusing, but is qualified by the words "if only emotionally". Elsewhere in the decision, the Officer cited country condition documentation to support the conclusion that Ms. Dhaliwal could relocate within India if she chose to do so:

[...] country documentation submitted by the applicant states that "in general it will not be unduly harsh for a woman, especially if single and without children to support, who is able to access accommodation or is educated or skilled or wealthy enough to be able to support [herself] to relocate". As previously noted, the applicant has completed their formal education in India, including attaining a Master's Degree. After graduating, they were gainfully employed for over four years as a clerk at a College of Law until their arrival in Canada. It is not indicated that during this time the applicant was reliant on their parents for financial support or that they were otherwise not self-supporting. While it is acknowledged that it may be potentially difficult, pursuant to the evidence submitted by the applicant it is reasonable to conclude that relocation would be possible should they choose to do so. Further, should the applicant remain in Dalo Majra, sufficient evidence has not been submitted supporting that they would be unable to resume or obtain employment in their hometown, that they would not have access to their family home or would otherwise face hardship with their reestablishment.

[18] Ms. Dhaliwal argues that her parents' deaths caused a significant change in her personal circumstances. While they were still alive, and because she was unmarried, she continued to live as part of the family. After their deaths, she was perceived to be "alone" and therefore at a greater risk of violence and exploitation, particularly of a sexual nature.

[19] The Officer dealt with this assertion as follows:

It is accepted that incidents of gender based crime occur in India, as in most countries in the world including Canada. However, evidence has not been submitted supporting that the applicant was a victim of such incidents in their home country prior to their arrival in Canada, nor has evidence been provided from individuals similarly situated to them such as their family in India which support that they have previously experienced hardship as a result of gender based violence in the country. While country conditions in India may not be ideal, particularly as it pertains to single women, the applicant has not demonstrated that they would endure hardship upon their return resulting from current country conditions to the extent that an exemption is warranted in their case.

[20] Ms. Dhaliwal says she was not required to demonstrate that she or other similarly-situated family members had previously been the victim of gender-based violence (citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 53-55). She relies on Justice Nicholas McHaffie's decision in *Cezair v Canada (Citizenship and Immigration)*, 2019 FC 1510 [*Cezair*] for the proposition that, "where the evidence put forward is of broader concerns such as gender-based violence in a country, it is sufficient to show membership in the group" (at para 43). While these factors will not be determinative of the application, they cannot be discounted based on the lack of discrimination encountered by the applicant or other family members (*Cezair* at para 44).

[21] The Officer observed that Ms. Dhaliwal previously resided with her father, who was almost 70 years old. The Officer noted there was nothing to suggest she resided with anyone, “male or otherwise”, whose physical presence could provide security from the identified risks, or that Ms. Dhaliwal’s physical safety would be significantly different if she returned to India now.

[22] I agree with Ms. Dhaliwal that the Officer misapprehended the basis for her H&C request by focusing on the physical protection she enjoyed while living as part of a family. Her submissions and the country condition evidence were directed more towards the discrimination, stigma and social isolation experienced by single women living alone in India.

[23] The Respondent says Ms. Dhaliwal has over-simplified the experiences of single women living in India. According to one of the studies she relied upon, there is wide diversity among single women, as well as diversity in living conditions, class, race, ethnicity, caste, age and/or position. The Respondent argues that Ms. Dhaliwal provided little in the way of evidence concerning the situation of a relatively young, highly educated woman with a house in a rural area and full-time employment.

[24] According to the Respondent, country condition reports indicate that India is increasingly accepting of single women who head their own households. Furthermore, Ms. Dhaliwal does not share the profile of women who are most frequently subjected to discrimination and stigmatization, *e.g.*, the elderly, widows, and those who are disabled or homeless. Nor did she adduce any psychiatric reports describing emotional challenges or an unusual inability to cope with social isolation.

[25] An immigration officer may consider a variety of factors, including an applicant's geographical location and socio-economic status, when assessing the risk of hardship (*Amadin-Iroro v Canada (Citizenship and Immigration)*, 2019 FC 577 at paras 11-13; *Cezair* at para 42). However, in this case it appears the Officer committed the same error that caused Justice McHaffie to allow the application for judicial review in *Cezair*.

[26] An immigration officer must not discount the risk of gender-based violence or discrimination "on the basis that some members of the group (whether family members or otherwise) have not experienced such violence" (*Cezair* at para 43). Furthermore, the Officer's focus on Ms. Dhaliwal's physical safety served to minimize the evidence of discrimination, stigma and social isolation arising from her status as a single woman living alone.

[27] The Officer also misapprehended Ms. Dhaliwal's submissions respecting her need for daily interactions with family members to cope with the "deep emotional void" in her life. Ms. Dhaliwal's submissions emphasized the importance of day-to-day interactions and a familial social life. Phone calls and videoconferences are no substitute for regular personal interactions among people in the same household. As Justice Michel Shore held in *Yu v Canada (Minister of Citizenship and Immigration)*, 2006 FC 956 at paragraph 30, "there is a significant factual difference between living together and sharing day-to-day life and an occasional visit".

V. Conclusion

[28] The application for judicial review is allowed, and the matter is remitted to a different immigration officer for redetermination.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed,
and the matter is remitted to a different immigration officer for redetermination.

“Simon Fothergill”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1159-21

STYLE OF CAUSE: GURSATINDER KAUR DHALIWAL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE BETWEEN TORONTO
AND OTTAWA, ONTARIO

DATE OF HEARING: AUGUST 8, 2022

JUDGMENT AND REASONS: FOTHERGILL J.

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APPEARANCES:

David Orman FOR THE APPLICANT

Michael Butterfield FOR THE RESPONDENT

SOLICITORS OF RECORD:

Orman Law FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario