Federal Court  Cour fédérale

**Date: 20230125**

**Docket: IMM-856-22**

**Citation: 2023 FC 119**

**Ottawa, Ontario, January 25, 2023**

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

**BETWEEN:**

**PRABJOT KAUR BINDRA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] This is an application for judicial review of a decision of a Citizenship and Immigration Officer [Officer], dated January 20, 2022 [the Decision]. In the Decision, the Officer refused the Applicant's application for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds.

[2] As explained in greater detail below, this application is allowed, because the Decision is unreasonable in that it does not disclose the treatment of country condition evidence [CCE] required in an H&C application.

## II. **Background**

[3] The Applicant is a 77-year-old citizen of India. She is currently in Canada on a super visa. She has been visiting her son and his family in Canada since 2014 and last entered Canada over three years ago. While in Canada, the Applicant has been living with her son, daughter-in-law, and two grandchildren. The Applicant's son and grandchildren are Canadian citizens.

[4] The Applicant states in her application that her son is her only immediate family member who is able to provide care and support for her during her elderly years. While she has three siblings, two of whom still reside in India, the Applicant claims that none of her siblings can provide support for her due to their own medical ailments or age-related health issues.

[5] In 2021, the Applicant filed an H&C application explaining that, as she reaches the final stages of her life, she wishes to remain in Canada surrounded by the support and love of her family. She claims to be fully supported by her son and to have a close bond and attachment with her grandchildren. The Applicant contrasts these circumstances with the isolation, lack of care and support, and hardship she fears if she returns to India, including relying on adverse CCE to support that fear.

## III. **Decision under Review**

[6] In the Decision under review in this application, the Officer notes that the Applicant based her H&C application on establishment and family ties in Canada, adverse country conditions in India, and the best interests of her grandchildren [BIOC].

[7] The Officer began the H&C analysis by considering the Applicant's establishment and family ties, giving positive weight to the Applicant's family ties in Canada.

[8] The Officer also acknowledged the mutual desire of the Applicant and her family to have the Applicant live in Canada with her son, and that separation from her son and his family might be difficult for the Applicant. However, the Officer considered that all parties involved should have expected a degree of separation, especially given her son's choice to immigrate to Canada in 2012. While recognizing that pursuing the usual sponsorship process may cause anxiety to prospective applicants, the Officer observed that an H&C application is an exceptional measure and that there was little evidence to indicate that the Applicant's son had attempted to file an application to sponsor the Applicant.

[9] The Officer also noted that the Applicant provided little information as to her living situation in India and where she was living after her son immigrated to Canada. While the Applicant stated that she was financially supported by her son, the Officer concluded that there was little information to indicate that her son could not continue to financially support her if she

was to return to India. The Officer likewise found there to be little evidence in the record to indicate that the Applicant's siblings in India could not emotionally support her.

[10] With respect to the Applicant's own establishment in Canada, the Officer found there was little to demonstrate that the Applicant had established herself in Canada other than through her familial ties.

[11] Observing that the Applicant's super visa is valid until March 2, 2031, the Officer also concluded that there was little information to indicate that the Applicant would be unable to extend her stay in Canada or that she would be unable to travel back and forth between Canada and India if she were to return to India.

[12] The Officer next analysed the BIOC. While the Applicant had raised BIOC considerations with respect to her 14-year-old grandson and her 18-year-old grandson, the Officer did not consider the best interests of the 18-year-old due to his age.

[13] With respect to the 14-year-old grandson, the Officer considered a letter of support he provided and acknowledged that the Applicant and her grandson have a close relationship. However, the Officer ultimately concluded that there was little evidence to demonstrate that the dependence was such that the grandson would be adversely affected if the Applicant were to return to India. The Officer also found that there was little evidence to indicate that the Applicant would be unable to connect with her grandson through virtual means and, again, that there was

little information to indicate that the Applicant would be unable to travel back and forth between Canada and India.

[14] Finally, the Officer assessed the adverse CCE related to crime against seniors in India. While the Officer recognized the country conditions as presented by the Applicant, the Officer found that the conditions were generalized and may occur to everyone living in the country. Given that conclusion, and the fact that the Applicant did not provide evidence that she was previously targeted by criminals or experienced any difficulties as a result of crime, the Officer was not satisfied that the evidence demonstrated that the Applicant would be specifically targeted by criminals upon her return to India based on her particular circumstances.

[15] Based on the foregoing analysis, the Officer was not satisfied that the H&C considerations submitted by the Applicant justified an exemption.

## IV. **Issues**

[16] The single issue raised by this application for judicial review is whether the Decision is reasonable. As suggested by this articulation of the issue, the parties agree (and I concur) that the Decision is reviewable on the reasonableness standard.

## V. **Analysis**

[17] My decision to allow this application for judicial review turns on the Applicant's arguments surrounding the Officer's treatment of the CCE. The Applicant submits that the Officer erred in conducting this analysis, because the law does not require her to show that she was targeted in the past in order to rely on CCE to support hardship warranting H&C relief. The Applicant relies on *Caleb v Canada (Citizenship and Immigration)*, 2020 FC 1018 [*Caleb*] at paragraph 11, in which Justice McHaffie explained as follows:

> 11. In *Kanthasamy*, the Supreme Court of Canada underscored that an applicant for H&C relief need not show that they have been personally affected or targeted by adverse country conditions: *Kanthasamy* at paras 52–56; *Isesele v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 222 at para 16. Similarly, unlike in an assessment under section 97, country condition evidence showing a risk faced by the entire population in the country of origin may still be relevant on an H&C application: *Diabate v Canada (Citizenship and Immigration)*, 2013 FC 129 at paras 32–33; *Miyir* at paras 21, 29–30.

[18] The Respondent submits that the Officer's analysis is reasonable, as the Officer was entitled to consider whether the Applicant had discharged her onus of showing that the adverse country conditions would have a negative impact on her, such that her H&C application should be granted. The Respondent relies on *Jean v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1104 [*Jean*] at paragraphs 14 to 15, in which Justice Martineau upheld an H&C officer's treatment of CCE:

> 14. The officer did not commit a reviewable error in finding that the applicant's allegations were not supported by the evidence

> in the record and that the applicant had failed to demonstrate that the adverse conditions in his country of origin were sufficient to warrant granting an exemption.
>
> 15. Among other things, the applicant failed to establish to the officer's satisfaction that he risked being personally targeted by criminals or that his psychological condition precluded his return. The officer did not act unreasonably by noting that the applicant's fears had no connection to his personal situation (*Bakenge v Canada (Citizenship and Immigration)*, 2017 FC 517 at paras 27-33; *Cadet v Canada (Citizenship and Immigration)*, 2016 FC 1242 at para 10; *Paramanayagam v Canada (Citizenship and Immigration)*, 2015 FC 1417 at para 19; *Kanthasamy v Canada (Citizenship and Immigration)*, [2015] 3 SCR 909 at paras 55-56 [*Kanthasamy*]).

[19] In my view, there is no jurisprudential inconsistency between these authorities, both of which rely on the leading authority of the Supreme Court of Canada in *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 [*Kanthasamy*]. I agree with the Respondent's position that an applicant seeking to rely on CCE in support of H&C relief has a burden of establishing a link between the general CCE and the applicant's specific circumstances (see, e.g., *Uwase v Canada (Citizenship and Immigration)*, 2018 FC 515 at para 43).

[20] However, applicants can meet that burden other than by demonstrating that they have been personally targeted in the past. In paragraphs 52 to 56 of *Kanthasamy*, upon which *Caleb* relies, the Supreme Court explained that the officer in that case erred in requiring the applicant to demonstrate that he had been targeted in the past. The consideration of hardship in an H&C application is not the same as an assessment of the fear of persecution or risk faced by a refugee claimant required under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [IRPA] (see *Caleb* at para 10). As such, CCE can be relevant to a request for H&C relief regardless of whether a person has been personally targeted (see *Kanthasamy* at para 56).

[21] Similarly, in *Diabate v Canada (Citizenship and Immigration)*, 2013 FC 129 [*Diabate*] at paragraph 33, Justice Gleason explained that an officer errs by conducting an H&C analysis that imports a requirement from s 97 of the IRPA. In finding the officer's decision unreasonable, *Diabate* (at para 34) also relied on *Shah v Canada (Citizenship and Immigration)*, 2011 FC 1269, in which Justice Mandamin set aside a decision by an officer who had reasoned that an applicant had provided insufficient evidence that she would be personally targeted by criminal elements upon her return to her home country (at para 70-71).

[22] In the case at hand, the relevant portion of the Officer's reasoning states as follows:

> The applicant has submitted several country condition articles regarding crimes that have occurred against seniors in India and drugs in Punjab. I acknowledge that crimes against seniors have been committed in India. I also acknowledge that elderly individuals may, generally, be a vulnerable group in society and I recognise that the applicants are fearful of becoming victims of crime; however, I find it reasonable to believe that crime is a generalised country condition which may occur to everyone living in a country. I also note that the applicant lived in India for the majority of her life and did not provide any evidence that she were previously targeted by criminals or that she experienced any difficulties as a result of crime. I am not satisfied that the evidence provided demonstrates that the applicant would likely be specifically targeted by criminals upon her return to India based on her particular circumstances.

[23] In my view, this analysis demonstrates the same errors as were identified in the authorities canvassed above. In analyzing the Applicant's H&C submissions based on the CCE,

the Officer focused solely on whether the Applicant had been personally targeted in the past and found that she had not established that she would be personally targeted in the future. The Officer's analysis concludes with that finding. However, that finding answers a question that is not the relevant test in an H&C application.

[24] To be clear, consistent with *Jean* (at para 15), I do not consider it unreasonable for an officer conducting an H&C analysis to consider whether applicants have been personally targeted in the past or to assess whether they may be targeted in the future. Such considerations clearly may be relevant to the hardship that an applicant may assert in support of an H&C application. However, *Jean* notes that this consideration was "among other things" underlying the officer's analysis in that case and that ultimately the officer found that the applicant's fears had no connection to his personal situation (at para 15). In the case at hand, it is the Officer's failure to conduct the broader analysis of the Applicant's hardship based on the CCE that results in the Decision being unreasonable.

[25] Having found the Decision unreasonable on this basis, this application for judicial review must be allowed, and it is unnecessary for the Court to consider the Applicant's other arguments. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT in IMM-856-22**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed, the Decision is set aside, and the matter is returned to a different officer for re-determination. No question is certified for appeal.

"Richard F. Southcott"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-856-22 |
| **STYLE OF CAUSE:** | PRABJOT KAUR BINDRA V THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | JANUARY 19, 2023 |
| **JUDGMENT AND REASONS:** | SOUTHCOTT J. |
| **DATED:** | JANUARY 25, 2023 |

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