

Federal Court



Cour fédérale

**Date: 20230412**

**Docket: IMM-3369-22**

**Citation: 2023 FC 511**

**Ottawa, Ontario, April 12, 2023**

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

**BETWEEN:**

**NAGENDIRAM SHANTHAKUMAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant's application for permanent residence from within Canada based upon humanitarian and compassionate [H&C] considerations was denied. He submits that the officer's decision was unreasonable and should be set aside. For the reasons that follow, I agree.

[2] The Applicant, a Tamil and citizen of Sri Lanka, entered Canada on July 11, 1995 and claimed refugee protection, which was granted on January 31, 1996. He then became a

permanent resident and sponsored his family including his wife and two sons to Canada. On October 1, 2003, the Applicant lost his permanent resident status due to a conviction of sexual interference.

[3] The decision under review is his second H&C application, the first having been denied in 2013.

[4] The H&C officer considered the application under three headings: History and Immigration Status, Establishment, and Risk and Adverse Country Conditions. Several submissions were made concerning the reasonableness of the decision.

[5] First, the Applicant submits that the officer applied an incorrect test as the “officer applied a test of hardship” rather than asking whether the Applicant’s particular circumstances excite in a reasonable person in a civilized community a desire to relieve their misfortune: see *Zhang v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1482.

[6] Although the decision of the officer does speak of hardship if the exemption is not granted, I agree with the Respondent that the officer cannot be faulted because he is merely addressing submissions of hardship put forward by the Applicant: see *Del Chiaro Pereira v Canada (Minister of Citizenship and Immigration)*, 2022 FC 799, at paras 66-67.

[7] Second, the Applicant submits that the officer unreasonably focused on the Applicant’s criminal convictions. In this regard, the officer writes:

The applicant was convicted of sexual interference in 2003 which is considered serious criminality as per section A36(1)(a) as it is an offence liable to imprisonment for a term of not more than 14 years. In addition, the applicant has also been convicted of operation while impaired on two occasions, once in January 2003 and another in September 2018. Counsel stated that the applicant served his criminal sentence and has change [*sic*] his life to become law abiding. In support of this positive change, counsel referred to the fact that his last offence was over two years ago at the time of the application. In contrast to counsel's statement, I find that the applicant being convicted again in 2018 for a repeated offence is demonstrative of his complete disregard for the law and the safety of Canadians, particularly considering his previous criminal history and his precarious immigration status. I am not persuaded that the applicant attending counselling sessions as per one of his probation condition is demonstrative of his efforts to rehabilitate. I assign significant negative weight to the applicant's criminal history. [emphasis added]

[8] There can be no question that sexual interference is a serious offence warranting serious consideration. While the offence of driving while impaired is not a matter to be taken lightly, two offences 15 years apart, coupled with the sexual interference offence, cannot reasonably be said to demonstrate a "complete disregard for the law." More troubling is the officer's failure to weigh the fact of these offences against the whole of the evidence before him.

[9] There is scant reference to the Applicant's acknowledgment of his past misdeeds and his statements of remorse, such as the following:

I acknowledge that I made mistakes in the past that led to the criminal convictions. I am deeply remorseful for what I have done. But I am now living a positive lifestyle.

I deeply regret my past actions. I have been focused on living a productive life and being a good father, husband, and grandfather.

Since finishing the probation, I have been working to maintain my health and refrain from drinking. After all of the problems I have had, it is important to me that I do not drink anymore.

[10] Additionally, there is no consideration given to the submission of the Applicant that he has complied with all reporting conditions and poses little or no danger to the public:

Mr. Shanthakumar's reporting conditions with CBSA were changed from 'the last week of every sixth month' to 'the fourth week of every 12 months' on July 30, 2018. This is an indication that Mr. Shanthakumar has been complying with his conditions and cooperative with authorities.

On July 24, 2019, Mr. Shanthakumar received a letter from the Canada Border Services Agency, which stated:

[ ... ]

The circumstances of your case have been considered carefully and a decision has been made to not proceed with deportation action. As a result of this decision, the Canada Border Services Agency will not be undertaking removal action at the present time

[ ... ]

It is submitted that if the Canada Border Services Agency is not moving forward with removal proceedings, his criminal history has not been considered to constitute a danger to the public.

[bolding in original deleted]

[11] Third, the Applicant submits that the officer's assessment of his establishment is unreasonable.

[12] The officer noted that the Applicant submitted property tax bills and mortgage information statements but discounts them as they are in the name of the Applicant's wife and "it is unclear ... whether the applicant has any ownership or rights to the property." The officer fails to mention that the Applicant's wife attests as follows: "He provides major contributions to paying our house mortgage, even though the house is under my name" [emphasis added].

[13] The officer also minimized the Applicant's employment record:

The applicant demonstrated some evidence of stable employment with modest income over the last six years. While I assign some positive weight to this fact, I find that these submissions are insufficient to demonstrate that the applicant has had a long and stable employment over the course of his residency that has led to a strong financial establishment in Canada. [emphasis added]

[14] In contrast, the record reveals that but for the period of imprisonment, the Applicant has been gainfully employed, although at a modest income, assisted in the purchase of a home with his wife, and supported and raised his children. These attributes go to a positive appreciation of establishment that is lacking in the officer's weighing of the evidence. The result is an unreasonable assessment and decision.

[15] No question was posed for certification.

**JUDGMENT in IMM-3369-22**

**THIS COURT'S JUDGMENT is that** the application is allowed, the decision under review is set aside, the Applicant's application for permanent residence on humanitarian and compassionate grounds is to be assessed by a different officer, and no question is certified.

"Russel W. Zinn"

---

Judge

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

**DOCKET:** IMM-3369-22

**STYLE OF CAUSE:** NAGENDIRAM SHANTHAKUMAR v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MARCH 23, 2023

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** APRIL 12, 2023

**APPEARANCES:**

Steven Blakey FOR THE APPLICANT

Ian Hicks FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Waldman & Associates FOR THE APPLICANT  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario