

Federal Court



Cour fédérale

Date: 20230519

Docket: IMM-5854-22

Citation: 2023 FC 703

Ottawa, Ontario, May 19, 2023

PRESENT: Mr. Justice O'Reilly

BETWEEN:

SWARAN KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Swaran Kaur, a recently-widowed 89-year-old citizen of India, sought permanent residence in Canada on humanitarian and compassionate grounds (H&C). She has three children living in British Columbia and a fourth in India. She visited her children in Canada for extended periods in 2017 and 2018. In 2019, she acquired a temporary resident visa (TRV) which expires in 2025.

[2] An immigration officer dismissed Ms Kaur's H&C application finding that, while she had a modest degree of establishment in Canada, she did not depend on her family to care for her, she could continue to visit Canada when her TRV expired, and she could connect with her children and six grandchildren through mail, telephone and internet. Further, in assessing the best interests of the children involved, the officer conceded that Ms Kaur has a close relationship with her grandchildren, but noted that she was able to sustain a relationship with them on past occasions when she had to leave Canada. Considering the conditions that would await Ms Kaur on her return to India, the officer found no evidence that she could not obtain adequate health care or re-establish herself in her community.

[3] Ms Kaur maintains that the officer's decision was unreasonable because it failed to include a "global assessment" of the various factors relevant to her application. Rather, she says, the officer weighed the factors individually and selectively. She asks me to quash the officer's decision and order another officer to reconsider her claim.

[4] I agree with Ms Kaur that the officer's assessment of the relevant factors was deficient – in particular, the officer discounted the importance of Ms Kaur's family ties in Canada, the hardship that her grandchildren would experience if she left Canada, and the deprivations to which she would be subject on her return to India. Therefore, I will allow this application for judicial review.

[5] The sole issue is whether the officer's decision was unreasonable.

II. Was the officer's decision unreasonable?

[6] The Minister contends that the officer properly considered the relevant factors in Ms Kaur's application and did, indeed, conduct a "global assessment" of those factors. In addition, the Minister asserts that the officer properly took account of the fact that Ms Kaur had other means of obtaining status in Canada (eg through a sponsorship application) and that she would have adequate family support even if she leaves Canada.

[7] I disagree.

[8] In my view, the officer appeared to overlook some important factors relevant to Ms Kaur's application.

[9] For example, while the officer considered Ms Kaur's family ties in Canada, a number of aspects of those connections do not appear to have formed part of the officer's assessment. The officer did not mention Ms Kaur's heavy reliance on her family members in Canada – they help her with medications, medical visits, meals, and finances. The officer gave little consideration to Ms Kaur's age and medical issues because she had not provided corroborating medical reports. It seems plain, however, even in the absence of documentary evidence, that Ms Kaur would experience difficulty travelling in the future between India and Canada to visit her children and grandchildren, even though she had been capable of doing so in the past. The officer suggested that family members could escort Ms Kaur back and forth between India and Canada but there is no evidence that they are in a position to do so. In addition, there was no evidence that Ms Kaur has the ability to communicate by electronic means from her rural residence in India, or that she had done so in the past.

[10] Similarly, while the officer found that Ms Kaur would be able to obtain medical services in India and reintegrate into her community, the officer did not take account of the fact that Ms Kaur would be living on her own in a remote area with no family support. Her remaining family members in India are not able to assist her due to their own medical and financial circumstances. Her ability to access medical care and participate in community life in India would be limited by her personal circumstances.

[11] Regarding the best interests of the children, Ms Kaur's children and grandchildren all described their close ties with her and the serious impact that her departure would have on them; the officer characterized their feelings as "some emotional discomfort".

[12] In the absence of a weighing of the all the relevant evidence, I find that the officer's conclusion was unreasonable, and that the reasons for dismissing Ms Kaur's application are not transparent, intelligible or justified. I must, therefore, grant this application for judicial review.

III. Conclusion and Disposition

[13] The officer's conclusion that Ms Kaur did not merit H&C relief was unreasonable because it failed to take adequate account of the evidence relevant to her application. Therefore, I must allow this application for judicial review. Neither party proposed a question of general importance for me to certify and none is stated.

JUDGMENT IN IMM-5854-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is returned to another officer for reconsideration.
2. No question of general importance is stated

"James W. O'Reilly"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5854-22

STYLE OF CAUSE: SWARAN KAUR v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BC

DATE OF HEARING: APRIL 5 2023

JUDGMENT AND REASONS: O'REILLY J

DATED: MAY 19, 2023

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