

Federal Court



Cour fédérale

**Date: 20230721**

**Docket: IMM-8617-21**

**Citation: 2023 FC 1002**

**Ottawa, Ontario, July 21, 2023**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**DHARMINDER ARORA, RICHA ARORA,  
SANAN ARORA AND SAMARTH ARORA**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT and REASONS**

I. Overview

[1] The Applicants are a family: a mother, a father, a 17-year-old daughter, and a 14-year-old son. They have been living in Canada for approximately five years. The Applicants asked to remain in Canada by making an application for permanent residence based on humanitarian and compassionate grounds (“H & C Application”). An Officer at Immigration, Refugees and Citizenship Canada [IRCC] refused their application. They challenge this refusal on judicial review.

[2] The Applicants raise a number of arguments. The determinative issue is whether the Officer reasonably assessed the best interests of the two children impacted by their decision. I agree with the Applicants that the children's interests were not "well identified and defined" and examined "with a great deal of attention," contrary to the Supreme Court of Canada's guidance in *Kanthisamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 and *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC). For the reasons provided below, the matter must be sent back to be redetermined by a different officer.

## II. Applicants' History in Canada

[3] The Applicants are citizens of India. They arrived in Canada in June 2018 as visitors. Soon after, they filed refugee claims based on their fear of persecution by Godman Baba Ram Rahim Singh and his Dera Saucha Sect followers. The Refugee Protection Division [RPD] made no negative credibility findings about the Applicants' risk allegations, but refused their claims because the family could safely relocate to Mumbai or Kolkata. The Applicants unsuccessfully appealed the RPD's decision; the Refugee Appeal Division [RAD] agreed with the RPD that there are internal flight alternatives available to the Applicants.

[4] IRCC received the Applicants' H & C Application in May 2020. IRCC refused it in August 2021. The Applicants filed additional evidence and submissions the following month, asking the Officer to reconsider. The Officer considered the new submissions and evidence and confirmed their refusal decision in November 2021, adding an addendum to the original decision. The November 2021 refusal is the decision under review.

### III. Issue and Standard of Review

[5] The determinative issue on this judicial review is the Officer's evaluation of the best interests of the two children impacted by their decision. The parties agree, as do I, that I should review the Officer's decision on a reasonableness standard. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 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. Best Interests of the Children

[6] 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, including the best interests of any child directly affected (*IRPA*, s 25(1)). *Kanhasamy* 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'" (*Kanhasamy* at para 21).

[7] 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* at paras 74-75).

[8] The best interests of the two children were a central basis for the Applicants' request for humanitarian relief. The Applicants raised several factors relating to the children's best interests, including the daughter's mental health, the son's asthma, the prevalence of sexual violence in India and its impact on the daughter, who had already experienced attempted rape in India, and the ability of the children's mother to care for them given the anticipated deterioration of her mental health upon return.

[9] The Respondent argues that the Officer considered all the relevant facts and factors raised by the Applicants and the Applicants are simply asking this Court to reweigh the evidence on judicial review. I do not agree. In my view, the Officer failed to grapple with the issues raised by the Applicants, including those relevant to the best interests of the children. Overall, the Officer's approach was to minimize the concerns raised instead of dealing directly with the submissions and evidence before them.

[10] For example, twice in the decision, the Officer minimized the Applicants' concerns about conditions in India, specifically air quality and the prevalence of sexual violence against girls, by noting there is no "guarantee" the children will not also suffer poor air quality or violence in Canada. The Officer's approach distorts the relevant factors raised by the Applicants, leading to the type of constricted assessment cautioned against in *Kanthasamy*.

[11] The Officer accepted that the minor son had asthma and, due to poor air quality, had to use a nebulizer twice a day in India or more frequently when he played sports, and that he did not require the nebulizer in Canada. This was the factor raised by the Applicants—that the minor

son's condition would be worse in India than in Canada. While acknowledging that India has the world's fifth-worst air quality in the world, the Officer discusses the poor air quality Edmonton experienced that year and states that Alberta in general will have worsening air quality due to wildfires. The Officer then concludes: "While it is acknowledged that the risk of health complications due to environmental conditions may be increased in India, it is noted that remaining in Canada does not guarantee that the applicants would not subject to the same." The Officer's assessment does not indicate what is in the son's best interests and instead minimizes the Applicants' concerns without grappling with the evidence and the submissions before them.

[12] With respect to the prevalence of sexual violence and the particular risk to the daughter, who had already suffered attempted rape in India and mental health issues stemming from that incident, the Officer again relies on the lack of a guarantee that the children would be free from violence in Canada. The Officer writes:

While factors such as violence may have adverse impacts on a minor child's integration into a new society, this does not automatically equate to a significant detriment to the best interests of the child. No country, including Canada can guarantee that crime, or other negative factors will not occur during a child's upbringing.

[13] The Officer distorts the best interests test, asking whether the adverse country conditions in India "automatically equate to a significant detriment to the best interests of the child." Phrasing the question narrowly as whether it is an automatic and significant detriment limits the Officer's consideration of a relevant factor. The Officer also suggests that the adverse conditions are not relevant because there is no country without crime or negative factors that could affect a

child. Again, the Officer takes a narrow view of the factors that can be considered. This approach is not indicative of genuine engagement with the factors raised by the Applicants.

[14] *Kanathasamy* reaffirmed that a reasonable best interests of the child analysis requires that a child's interests be "well identified and defined" and examined "with a great deal of attention" in light of all the evidence" (*Kanathasamy* at para 39, citing *Legault v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125 at paras 12, 31; *Kolosovs v Canada (Minister of Citizenship and Immigration)*, 2008 FC 165 at paras 9-12).

[15] Overall, I find that the Officer's analysis falls well short of the requirement to examine the interests of the child directly impacted "with a great deal of attention." Neither is it an approach that considers the children's best interests from their perspective (*Etienne v Canada (Minister of Citizenship and Immigration)*, 2014 FC 937 at para 9). The failure to give due consideration to the interests of the children makes this decision unreasonable.

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

1. The application for judicial review is allowed;
2. The matter is sent back to a different officer for redetermination; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

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

**DOCKET:** IMM-8617-21

**STYLE OF CAUSE:** DHARMINDER ARORA, RICHA ARORA, SANAN ARORA AND SAMARTH ARORA v THE MINISTER OF CITIZENSHIP AND IMMIFRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE

**DATE OF HEARING:** FEBRUARY 7, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** JULY 21, 2023

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