

Federal Court



Cour fédérale

**Date: 20240826**

**Dockets: IMM-4572-22  
IMM-6567-23**

**Citation: 2024 FC 1275**

**Ottawa, Ontario, August 26, 2024**

**PRESENT: Madam Justice Gagné**

**Docket: IMM-4572-22**

**BETWEEN:**

**AMANDEEP KAUR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**Docket: IMM-6567-23**

**AND BETWEEN:**

**AMANDEEP KAUR**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND  
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**Respondent**

## **JUDGMENT AND REASONS**

[1] Ms. Amandeep Kaur challenges two decisions rendered by a senior Immigration Officer. The first denying her application for an exemption to apply for permanent residence from within Canada on humanitarian and compassionate [H&C] grounds (file IMM-4572-22), the second denying her request to reopen her application (file IMM-6567-23). These reasons will focus on the Officer's decision to deny the Applicant's H&C application.

### **I. Facts**

[2] The Applicant is a national of India. She got married in May 2009 and the couple had three children. The first two children were born in India in 2010 and 2011 and the third was born in Canada a few months after the Applicant arrived in Canada with her family in May 2016.

[3] The Applicant first came to Canada on a visitor's visa and remained until she obtained a work permit in October 2017. She returned to India for approximately two months and came back to Canada in December 2017. She then obtained employment as a cleaner.

[4] The Applicant held different employments from October 2018 to March 2022, with a period of unemployment from November 2019 to October 2020.

[5] The Applicant alleges spousal abuse and violence resulting in a separation in July 2021 and a restraining order being issued against her ex-spouse.

[6] In February 2022, the Applicant's spouse was charged with uttering threats against the Applicant in December 2021 and was released on conditions prohibiting contact with the Applicant or the children and requiring him to maintain a radius of distance from them.

[7] In April 2022, the Applicant applied for permanent residence under section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], seeking an exception to apply inland on humanitarian and compassionate grounds.

## II. Decision Under Review

[8] The Officer denies the Applicant's application as he finds she did not establish sufficient humanitarian and compassionate circumstances under section 25(1) of the IRPA to justify an exemption from the statutory requirement to apply for permanent residence from abroad.

[9] With respect to the Applicant's establishment in Canada, the Officer notes she has been in Canada since the end of 2017, that she has been involved in her community, that she has made friends and that she has built a support system in Canada. However, the Officer finds that there is no evidence of the impact of her departure on her friends and that she would be able to maintain contact through several forms of communication.

[10] The Officer considers the Applicant's personal circumstances flowing from the family violence she and her children suffered. He notes that they are receiving support from an organization dedicated to family violence abuse but states there is no indication as to what support they are receiving or whether similar support would be available in India. The Officer

concludes that there is insufficient evidence that the Applicant's husband would have the ability to know that she has left Canada and to find her in India.

[11] The Officer also considers the best interests of the minor children affected by the decision. He notes that although not necessarily determinative, this factor is important and should be given significant weight in the assessment of an H&C application. The Officer acknowledges the potential negative impact and disruption on the children's lives if they were to return to India and gives this factor some consideration. However, he considers that the two older sisters are likely to adapt to India as they adapted well to Canada. As to the fact that the children witnessed the abuse against their mother and were themselves abused by their father, the Officer finds there is limited evidence that they could not obtain support in India. In addition, the children's father does not support them and the restraining order prevents him from being in contact with the children so returning to India would not result in a separation.

[12] Finally, the Officer considers the hardship the Applicant would face upon return to India as a divorced woman raising three minor children and finds that the process of re-establishment to a country whose economic conditions are less prosperous than those found in Canada to be an ordinary consequence of removal.

### III. Issues and Standard of Review

[13] The only issue raised by this Application for Judicial Review is whether the Officer erred in his assessment of the Applicant's H&C factors.

[14] It is uncontested that the applicable standard of review is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

IV. Analysis

[15] The Applicant alleges several errors on the part of the Officer.

[16] However, I find that only one is determinative of this Application.

[17] In *Febrillet Lorenzo v Canada (Citizenship and Immigration)*, 2019 FC 925 at paragraph 18, Justice Cecily Strickland found that “the Officer appears to have failed to recognize that the domestic abuse the Applicant has suffered is, in and of itself, a compassionate factor to be weighed in the Officer’s analysis”.

[18] In the case before me, although the Officer acknowledges “that abuse suffered by an individual is in and of itself a compassionate factor to consider”, I find that he misses the point when his assessment is limited to whether the Applicant’s husband will know she departed Canada and will be able to find her in India. Respectfully, the Officer also misses the point when he fails to assess the impact the domestic abuse had on the children and the potential cumulative effect that a removal would have on them at this point.

[19] The issue is not to give the children a better education or to make up for the difference between the standard of living in Canada as opposed to that of India. The issue is what impact a

removal would have on minor children who recently went through domestic violence that resulted in the separation of their parents and a restraining order being issued against their father.

[20] In my view, the Officer specifically needed to assess that and the fact that it was not is a reviewable error.

V. Conclusion

[21] Considering that the Officer failed to properly assess the impact of domestic violence and abuse on the Applicant and on her minor children, this Application for Judicial Review is granted. The parties proposed no question of general importance for certification and no such question arises from the facts of this case.

**JUDGMENT in IMM-4572-22 and IMM-6567-23**

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

1. The Application for judicial review is granted;
2. The file is sent back to the Immigration Division for a new determination by a different Immigration Officer;
3. No question is certified.

“Jocelyne Gagné”

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Judge

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

**DOCKETS:** IMM-4572-22 AND IMM-6567-23

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**STYLE OF CAUSE:** AMANDEEP KAUR v THE MINISTER OF  
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**AND DOCKET:** IMM-6567-23

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AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JUNE 3, 2024

**JUDGMENT AND REASONS:** GAGNÉ J.

**DATED:** AUGUST 26, 2024

**APPEARANCES:**

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