

Federal Court



Cour fédérale

**Date: 20250626**

**Docket: IMM-12145-24**

**Citation: 2025 FC 1153**

**Ottawa, Ontario, June 26, 2025**

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

**BETWEEN:**

**VIKAS BHAT JAYARAM BHAT**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] Vikas Bhat Jayaram Bhat is a citizen of India. He seeks judicial review of a refusal by an Inland Enforcement Officer [Officer] with the Canada Border Services Agency to defer his removal from Canada.

[2] The Officer failed to identify and properly assess the best interests of Mr. Bhat's son, who was then four and a half years old. The application for judicial review is allowed.

## II. Background

[3] Mr. Bhat arrived in Canada on July 2, 2021 with his former wife, Deepa Rao, and their young son. He and his wife were issued work permits on arrival.

[4] On September 23, 2021, Mr. Bhat and Ms. Rao had a domestic dispute. Mr. Bhat was subsequently charged with one count of assault, contrary to s 267(c) of the *Criminal Code*, RSC 1985, c C-46. He completed a partner assault response program in May 2022. The criminal charge was withdrawn upon the issuance of a 12-month peace bond.

[5] Mr. Bhat and Ms. Rao have been separated and living apart since the domestic dispute. On October 12, 2023, and April 11, 2024, they entered into Minutes of Settlement [MOS]. Ms. Rao retained decision-making responsibility for their son, and Mr. Bhat was granted parenting time during the summer holidays on Tuesdays, Thursdays, and alternating weekends.

[6] In May 2023, Mr. Bhat was granted an extension of his work permit until April 2024. A subsequent request to extend his work permit was refused on March 30, 2024, and Mr. Bhat was directed to leave Canada immediately.

[7] On April 23, 2024, Mr. Bhat left Canada at the Fort Erie port of entry with the intention of seeking re-entry (a practice known as “flag-poling”). He was unsuccessful in renewing his status, but was allowed back into Canada. He was issued an exclusion order.

[8] On June 20, 2024, Mr. Bhat was served with a direction to report for removal on July 18, 2024. On June 26, 2024, he applied for a temporary residence permit [TRP] and requested deferral of his removal until the application was decided.

[9] The Officer refused the deferral request on July 9, 2024.

[10] On July 10, 2024, Mr. Bhat commenced an application for leave and judicial review of the Officer’s decision. On July 17, 2024, Justice William Pentney granted Mr. Bhat’s motion for a stay of removal pending disposition of this application for leave and judicial review.

### III. Decision under Review

[11] The Officer noted that the estimated processing time for a TRP was 103 days. Mr. Bhat had applied for a TRP only recently, and the Officer found there was no reason why he could not have submitted the application earlier.

[12] The Officer reviewed the MOS, and noted that Mr. Bhat had been allocated parenting time with his son over the summer holidays. He observed that Ms. Rao’s work permit was valid until February 2026. The Officer expressed sympathy for Mr. Bhat’s desire to spend time with

his son in Canada, but also noted that the exclusion order would be in effect for only one year. Ms. Rao could bring their son to India to visit his father, and the parents could “consider the options” for Mr. Bhat to remain connected with his son from abroad. The Officer also found that the son would remain in the loving care of his mother, who would nurture him during the time he and his father were separated.

[13] The Officer remarked that forced separation from family is one of the usual consequences of deportation (citing *Fecarotta v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 317 at para 6), and did not warrant a deferral of removal.

#### IV. Issue

[14] The sole issue raised by this application for judicial review is whether the Officer’s decision was reasonable.

#### V. Analysis

[15] The Officer’s decision is subject to review by this Court against the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 10). The Court will intervene only where “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[16] The criteria of “justification, intelligibility and transparency” are met if the reasons allow the Court to understand why the decision was made, and determine whether the decision falls within the range of acceptable outcomes defensible in respect of the facts and law (*Vavilov* at paras 85-86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[17] Mr. Bhat says that the Officer failed to properly address the central issue raised in his deferral request, namely the best interests of his young son. According to the deferral request:

Mr. Bhat’s son is four and [a] half years old [...] his mother and father are living in separate residences and he sees his father only at designated times. However, those designated times are extremely important for Mr. Bhat’s son to develop a relationship with his father, as he should[,] and this can only be achieved by keeping the continuity of the relationship.

[...] During his access time, Mr. Bhat is parenting his son. Parenting and the development of a parent/child bond cannot be in any way achieved by a virtual presence. Live interaction is essential to effective parenting and the development of healthy and strong bonds between parent and child. [...]

The exigencies of Mr. Bhat’s son’s best interests are such that Mr. Bhat’s removal should be deferred pending a decision on the TRP application.

[18] Enforcement officers are required by law to enforce a removal order as soon as possible, and have a limited discretion to defer removal (*Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81 at paras 48-49). In keeping with this limited discretion, enforcement officers are not permitted to engage in a “full-blown analysis” of the best interests of a child. However, in appropriate cases they may be required to engage in a truncated consideration of the short-term best interests of children who might be affected by their parents’

removal (*Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at paras 57, 61).

[19] The Officer's analysis of the best interests of Mr. Bhat's young son consisted of the following:

Best interest of child

Counsel indicated concern pertaining to the separation of Mr. JAYARAM BHAT from his son. It further was indicated that the child's mother has a valid work permit which expires in February of 2026. It has been indicated that Mr. JAYARAM BHAT has a loving relationship with his son and that recently he was awarded allocated time with his son over the summer. The minutes of settlement on April 11, 2024, have been reviewed and considered.

It is important to state that I am empathetic to the strains placed on individuals and that additional stressors exist where families are concerned. I have considered that this is a challenging time for Mr. JAYARAM BHAT and that he wishes to remain in Canada with his child. I have also considered:

- that Mr. JAYARAM BHAT has been issued an Exclusion order from Canada for only 1 year and that he is represented by legal Counsel

- that Mr. JAYARAM BHAT and Counsel may look into his options to return to Canada, after the one year has expired

- that Ms. RAO returned to India on a trip since her arrival in Canada with their son and therefore it is possible that they may consider that she could take their son to India to visit his father, during the 1 year exclusion period. I note that this was also prioritized in the agreement dated April 11, 2024

- that Mr. JAYARAM BHAT is highly employable and therefore it is reasonable to deduce that he will be able to fulfill his financial obligations to his child over the 1 year exclusion period

- that the parents may [*sic*] consider the options for Mr. JAYARAM BHAT and his son to remain connected during the 1 year exclusion period as I note that this was also prioritized in the agreement dated April 11, 2024

-that the child will remain in the loving care of his mother, whom [sic] will nurture him during the time he and his father are separated.

[20] Conspicuously absent from the Officer's analysis was any discussion of what the short-term best interests of Mr. Bhat's son were, and how these should be balanced against the other factors that informed the Officer's exercise of discretion. No consideration was given to the importance of continuous and direct personal contact by the son with his father during a formative period of the son's development.

[21] A decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it (*Vavilov* at para 128). While an enforcement officer's assessment of the best interests of a child is necessarily limited, a failure of this kind is sufficient to render the decision as a whole unreasonable (*Foster v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 721 at para 25).

## VI. Conclusion

[22] The application for judicial review is allowed, and the matter is remitted to a different inland enforcement officer for redetermination. Neither party proposed that a question be certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed,  
and the matter is remitted to a different inland enforcement officer for redetermination.

“Simon Fothergill”

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Judge



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

**DOCKET:** IMM-12145-24

**STYLE OF CAUSE:** VIKAS BHAT JAYARAM BHAT v THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** BY VIDEOCONFERENCE IN TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 3, 2025

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** JUNE 26, 2025

**APPEARANCES:**

Hart Kaminker	FOR THE APPLICANT
Nadine Silverman	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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