Federal Court Cour fédérale

Date: 20250903

Docket: IMM-3141-24

Citation: 2025 FC 1451

Ottawa, Ontario, September 3, 2025

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

PARRY KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Parry Kaur seeks judicial review of a determination by a visa officer [Officer] that she was ineligible to sponsor her parents to Canada under the Parent and Grandparent Program [PGP]. The Officer found that Ms. Kaur did not meet the Minimum Necessary Income [MNI] requirement pursuant to ss 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] Ms. Kaur is a citizen of India. She became a permanent resident of Canada on February 18, 2017.

[3] Ms. Kaur married Rajinder Maha on April 28, 2015. He was abusive towards her. Ms. Kaur obtained an Emergency Protection Order against Mr. Maha on July 24, 2018. They separated the same day, and have been living apart ever since. They formally divorced on February 19, 2021.

[4] Ms. Kaur submitted the sponsorship application under the PGP in December 2022. On the application form, she indicated that if she was found ineligible to sponsor her parents, then she wished to withdraw the application rather than receive an adverse decision.

[5] Ms. Kaur submitted proof of her income in 2019, 2020, and 2021. She declared that her family consisted of three members: herself and her two parents.

[6] On January 11, 2024, Ms. Kaur was sent a procedural fairness letter requesting a copy of her divorce certificate. She submitted a copy of the certificate confirming that she and Mr. Maha had divorced on February 19, 2021.

[7] On January 18, 2024, a visa officer refused the sponsorship application on the ground that Ms. Kaur did not meet the MNI requirement. The officer found that her family included her former husband during the years 2019 and 2020, when they were separated but not yet divorced.

[8] By letter dated January 18, 2024, Ms. Kaur requested reconsideration of the visa officer's decision. She said that her former husband should not be included as a family member in 2019 and 2020, as they were separated at the time. Ms. Kaur concluded her request with the following:

> I hope this explanation will help you to remove the misunderstanding on my marital status as well as 3 size of family income too. Kindly give me one chance more to my parent's application as there is no one at the back home to take care of my mother because of her sickness and I need emotional support a lot in my life by my parents after getting divorced.

[9] The Officer refused Ms. Kaur's reconsideration request on February 6, 2024. The Officer found that Ms. Kaur's former husband was correctly included as a member of her family for the years 2019 and 2020, and incorrectly excluded for the year 2021:

> […] Your separated spouse (at the time) meets the definition of spouse (until divorce has taken place) for years 2019 and 2020, therefore was included correctly for those two years. Your divorced spouse was incorrectly excluded for years 2021. The correct family size for years 2021, should have been calculated as 4. The divorced spouse needs to be included for the partial year they were divorced. In this case, years 2021.
>
> Your reconsideration request, will not be granted. As it appears MNI was not met for years 2019. Separated spouse counts as a family member, as the meet the definition of spouse to the SPR, until the marriage has been dissolved.

[10] The sole issue raised by this application for judicial review is whether the Officer's decision following reconsideration was reasonable.

[11] 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).

[12] 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).

[13] The written Memorandum of Argument submitted on behalf of Ms. Kaur identified only two issues for the Court's consideration: whether the Officer erred by failing to find that Ms. Kaur was separated from her former husband during the relevant time period; and whether the Officer erred in failing to consider humanitarian and compassionate [H&C] factors. In oral submissions, counsel for Ms. Kaur departed significantly from the written Memorandum and challenged the Officer's decision on two new grounds. Counsel for the Respondent did not object to the presentation of new arguments, and responded to the best of her ability given the lack of notice.

[14] Counsel for Ms. Kaur argued that the Officer should have considered the totality of her circumstances and assessed whether she would be able to sufficiently support her parents even if she did not meet the MNI requirement (citing *Canada (Minister of Citizenship & Immigration) v Seepall*, 1995 CanLII 19433 (FC) [*Seepall*]). In the alternative, he argued that the Officer should have warned Ms. Kaur that withdrawing her application would deprive her of the right to appeal

to the Immigration Appeal Division [IAD] of the Immigration and Refugee Board, which might have jurisdiction to exempt her from the MNI requirement on H&C grounds.

[15] In *Seepall*, Associate Chief Justice James Jerome of the Federal Court, Trial Division cited with approval the following excerpt from a previous decision of the IAD:

> From the foregoing, and a long line of decisions of the Board, it is clear that whether or not a sponsor has an income at least equal to the low income cutoff figure for the number of his dependants plus the number of his sponsorees is not determinative of anything. It is but one factor that an immigration officer should consider in deciding whether or not the sponsor will be able to fulfil his undertaking. It is a factor that must be considered, but it is not and should not be an exclusively determining factor. Other matters which ought to be considered include: stability of sponsor's employment and prospects for advancement; willingness of sponsor and spouse and close relatives to do everything possible for the sponsorees; prospects of future employment of the sponsorees; likelihood of the sponsorees establishing themselves quickly and easily; ownership of a house and other assets; sponsor's opportunity to get other work in case of lay-off; and whether sponsor's skills are in a declining or expanding trade ... These and all other relevant facts must be fully considered and weighed. Neither the immigration officer nor the Board can be diverted from this duty by an apparent shortfall in the sponsor's income when compared with the low-income cutoff guidelines figure for his locality and number of dependants and sponsorees.

[16] The Respondent notes that *Seepall* was decided in 1995, and concerned the sponsorship of a son by his parents. The regulatory regime in effect 30 years ago differs from the present. The PGP imposes strict conditions on sponsors who wish to bring their parents and grandparents to Canada, and the Officer had little, if any, discretion in applying the IRPR.

[17] The Officer's decision letter included links to two websites. The first was a help centre page published by Immigration, Refugees and Citizenship Canada [IRCC] titled "How do I calculate my family size to sponsor my parents and grandparents?" According to the webpage:

> To count your family size, include
> - the people in your family (including people you sponsored before), which includes
>   - yourself (the sponsor)
>   - your spouse (even if you're separated, in most cases) or common-law partner
>
> [Emphasis added]

[18] The second link clarified the circumstances in which a sponsor's separated spouse must be included as a family member. The link led to the IRCC's operational instructions and guidelines concerning family size calculation for the PGP. The webpage states that "[t]he sponsor's separated spouse must be included […] unless the separated spouse is a foreign national and they are in a common-law relationship with another person". This is consistent with the IRPR, which provide that family size for the purpose of meeting the MNI requirement includes "the sponsor and their family members", and defines family members as including "the spouse or common-law partner of the person" (IRPR, ss 1(3), 2).

[19] The Officer did not have jurisdiction to consider H&C factors. Subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] states:

Humanitarian and compassionate considerations — request of foreign national	**Séjour pour motif d'ordre humanitaire à la demande de l'étranger**

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35, 35.1 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35, 35.1 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking in to account the best interests of a child directly affected.	**25 (1)** Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35, 35.1 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

[20] In *Khandaker v Canada (Citizenship and Immigration)*, 2020 FC 985, Justice Andrew Little found that the relief contemplated by s 25(1) could affect a sponsor's eligibility, but added the following important caveat (at paras 74-76):

> To be clear, however, I do not conclude that a successful H&C application under IRPA subsection 25(1) would grant an exemption […] to a sponsor. An H&C application under subsection 25(1) is made by the applicant, not by the sponsor. If an H&C application is successful, the sponsor is not exempted from

> the requirements of the IRPA. The applicant foreign national is granted relief from the strict requirements of the IRPA or the IRPR on H&C grounds. [Emphasis original]

[21] Ms. Kaur's counsel emphasized the unfortunate consequences of Ms. Kaur's decision to indicate on the sponsorship application form that she wished to withdraw her application in the event that she was found ineligible to sponsor her parents. He notes that Ms. Kaur did not have the benefit of legal representation, and nothing in the guidance published on the IRCC website warns applicants that withdrawal of an application will deprive them of their right to appeal to the IAD.

[22] It is possible that Ms. Kaur could have requested H&C relief on behalf of her parents at the IAD. The language of s 67 of the IRPA is broader with respect to those who may request special relief, and sponsors have made similar appeals in the past (see, *e.g.*, *Patel v Canada (Citizenship and Immigration)*, 2016 FC 1221; *Begum v Canada (Citizenship and Immigration)*, 2017 FC 409). However, the fact remains that Ms. Kaur elected to withdraw her application if she was found ineligible to sponsor her parents.

[23] There is a "clear incentive" associated with this election. Ineligible sponsors receive a refund of the application fee, less $75.00 (*Phan v Canada (Citizenship and Immigration)*, 2014 FC 1203 at para 7). While Ms. Kaur was not required to seek the assistance of a lawyer when completing the sponsorship application, she must accept the consequences of not doing so (*Wagg v Canada (FCA)*, 2003 FCA 303, [2004] 1 FCR 206 at para 25).

[24] The Officer had no obligation to clarify or rectify any deficiencies in Ms. Kaur's application, to help her to make her case, to apprise her of concerns about whether the requirements set out in the legislation had been met, to provide her with a running score at every step of the application process, or to offer further opportunities to respond to unresolved concerns (*Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 23). Nor could the Officer be expected to provide guidance to Ms. Kaur on whether and how to preserve her appeal rights in the event that she was found ineligible to sponsor her parents.

[25] The Respondent notes that it is unclear whether the Officer had a discretion to permit Ms. Kaur to amend her application form to change her election respecting the withdrawal of the application in the event she was found to be ineligible to sponsor her parents. Even if the matter were remitted to a different visa officer for redetermination, the result would likely be the same.

[26] While the Court has considerable sympathy for Ms. Kaur, there are a number of alternatives to parental sponsorship that she could explore. These include visitor's visas, or even a "super visa" that may permit her parents to visit for up to five years at a time, and be eligible for multiple entries over 10 years. Counsel for Ms. Kaur confirmed that her parents are currently in Canada on visitor's visas.

[27] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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