

**Date: 20080416**

**Docket: IMM-2284-07**

**Citation: 2008 FC 489**

**Ottawa, Ontario, April 16, 2008**

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

**BETWEEN:**

**PERMINDER KAUR THANDAL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. INTRODUCTION**

[1] The Applicant's application of permanent residence as a skilled worker and her H&C application from outside Canada were denied. She has sought judicial review of that decision.

## II. BACKGROUND

[2] The Applicant is a 34-year-old citizen of India with a 9-year-old daughter. She is a widow living in her ancestral village while she claims her parents and brothers live in Canada and are Canadian citizens. Her parents and brothers provide financial assistance to her and her parents visit her every six months.

[3] An interview was conducted where the Applicant went on to explain that she had little contact with her other family members in the same village, that her brother-in-law had tried to kidnap her and that she had concerns for her daughter's education in India.

[4] The officer who considered her application found insufficient evidence to justify a favourable H&C and concluded that the best interests of the Applicant's daughter were to remain in India where she was born, where she was being raised by her mother and where she was going to school.

[5] The officer had some difficulties with the Applicant's story. The officer found no good explanation for the lack of contact with her relatives in the village, the absence of evidence that the daughter could not obtain a good education in India, and the lack of evidence that her financial support from Canada would be terminated. The Applicant had not established fear of her brother-in-law, had made no contact with police at the time of the threatened kidnapping and had had no contact from the brother-in-law since then.

[6] The Applicant has raised issues of procedural fairness and the merits of the H&C decision itself. There was no issue concerning her ineligibility under the skilled worker class.

### III. ANALYSIS

[7] With the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, it is settled that procedural fairness is to be reviewed on a correctness standard while the H&C decision is to be reviewed on a reasonableness standard. The reasonableness standard admits of a range of reasonable outcomes. The Court is aware that an H&C decision is discretionary, an exception to the normal rules. The officer, by virtue of familiarity and having interviewed the Applicant, was in an excellent position to assess the merits of the Applicant's story.

[8] On the matter of procedural fairness, the Applicant complains that she was not given a further opportunity to further address the officer's concerns about some aspects of her story.

[9] It is well established that an applicant has the burden of establishing her case. Generally, an applicant is to do that once, rather than on the basis of some sort of rolling story of reply, sur-reply and so forth. The Applicant had an interview at which all the relevant issues were canvassed. There is nothing unfair in the officer deciding the case on the evidence as provided by the Applicant at that time.

[10] Regarding the merits of the H&C decision, the CAIPS Notes, prepared contemporaneously, indicate as well that the officer considered all the humanitarian issues. Even though the issue of best

interests of the non-Canadian child may not fall within the officer's mandate to consider, the issue was nevertheless considered fully.

[11] In my view, it was open to the officer, on this record, to reach the decision under review.

The attempt to put forward evidence not before the officer is neither permissible nor is the evidence of particular assistance to the reasonableness of the officer's conclusions.

#### IV. CONCLUSION

[12] Therefore, this judicial review will be dismissed. There is no question for certification.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that** this application for judicial review is dismissed.

“Michael L. Phelan”

---

Judge

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

**DOCKET:** IMM-2284-07

**STYLE OF CAUSE:** PERMINDER KAUR THANDAL

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 1, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** Phelan J.

**DATED:** April 16, 2008

**APPEARANCES:**

Mr. Max Chaudhary FOR THE APPLICANT

Ms. A. Leena Jaakimainen FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

MR. M. MAX CHAUDHARY FOR THE APPLICANT  
Barrister & Solicitor  
North York, Ontario

MR. JOHN H. SIMS, Q.C. FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario

