

Federal Court



Cour fédérale

Date: 20120801

Docket: IMM-8928-11

Citation: 2012 FC 964

Ottawa, Ontario, August 1, 2012

PRESENT: The Honourable Mr. Justice Mandamin

BETWEEN:

KULVIR KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Ms. Kulvir Kaur, applies for judicial review of the October 31, 2011 decision denying the Applicant's application for an exemption on humanitarian and compassionate [H&C] grounds from the requirement of applying for permanent residence from outside Canada.

[2] The standard of review of H&C decisions is reasonableness (*Baker v. Canada (Minister of Citizenship and Immigration)*), [1999] 2 S.C.R. 817. The weighing of relevant factors is the responsibility of the Minister or the Minister's delegate and that it is not the role of the Court to re-

examine the weight given to the different factors (*Legault v. Canada (Minister of Citizenship and Immigration)*), [2002] 4 F.C. 358 at paragraph 11.

[3] Ms. Kaur came to the United States from India with her mother and brother in 1992 when she was 12 years old. Her father obtained permanent residence status in Canada on H&C status in 2000. He sponsored his wife and son and they became permanent residents in May 2002. The applicant was not part of that application because she was too old to qualify as a dependent possibly due to previous counsel's carelessness or error.

[4] Ms. Kaur did not have family in the United States or India. She came to Canada in May 2003. After an unsuccessful refugee claim and Pre-removal Risk Assessment [PRRA] application, the Applicant made an H&C application in 2007. For some reason, the H&C claim was not referred to an H&C Officer until October 2011.

[5] The H&C Officer accepted the Applicant had strong family ties but decided she had no links to Canada. The Officer also decided that the applicant could return to India and apply for permanent residence.

[6] The H&C Officer questioned the applicability of country documents submitted by the Applicant which related to attitudes against women in India, notably those relating to domestic violence, dowry deaths and honour killings. Other documents related to the Hindu context as related to the status of Hindu women. The Officer found Ms. Kaur was not married and would not be at risk of domestic violence or dowry-related violence. The Officer acknowledges there

continues to be violence against women with one study reporting that 80% of women in New Delhi feared violence but the Officer found there were an increasing number of young, single women working in cities with increasing freedoms and opportunities and, in some sectors, increasing wages.

[7] Ms. Kaur left India as a young dependent child and has no knowledge of the Indian economy or its cultural milieu. She grew up in the United States which has a culture similar to Canada not India. She has no family in India. She has only her immediate family in Canada. Her lack of status is strangely at odds with the acceptance of her father, mother and brother as permanent residents.

[8] In my view, the H&C Officer failed to conduct a realistic assessment of the hardships the Applicant would face on return to India to apply there for permanent residence from outside the country. There was no assessment of how long that process may take. Nor was there any assessment of the Applicant's opportunities to adapt given the fact she did not speak the language nor have experience with the economy, culture and mores of India. The Officer also failed to assess the restrictive attitudes in India towards single women as they would relate to this Applicant given she would be in India without family support in that country.

[9] I find the failure of the Officer to give full consideration to the hardships that this Applicant would face on return to a country she left as a child was unreasonable. Accordingly, the application for judicial review succeeds.

[10] Neither party having submitted a serious question of general importance for certification in relation to the determinative issue.

JUDGMENT

THIS COURT'S JUDGMENT IS that:

1. The application for judicial review is allowed, the October 31, 2011 decision is set aside, and the matter is remitted for re-determination by a different H&C Officer.
2. No question of general importance is certified.

"Leonard S. Mandamin"

Judge

Federal Court



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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-8928-11

STYLE OF CAUSE: KULVIR KAUR v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 25, 2012

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

DATED: August 1, 2012

APPEARANCES:

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