

Federal Court



Cour fédérale

Date: 20250417

Docket: IMM-4253-24

Citation: 2025 FC 705

Ottawa, Ontario, April 17, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**BALVIR SINGH
NAVNIT KAUR
TAJPREET KAUR
RAHATPREET KAUR
SEHAJPREET KAUR**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a decision (the “Decision”) by an officer of Immigration, Refugees and Citizenship Canada (the “Officer”). The Decision found the Applicants inadmissible for permanent residence under the Provincial Nominee Class Program

for noncompliance under section 41(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the “Act”).

II. Background

[2] The Principal Applicant, Mr. Balvir Singh, lost his temporary resident status in Canada in April 2022.

[3] The Principal Applicant made multiple attempts to restore his work permit status, but these attempts were unsuccessful. From April 2022 to August 2022, his applications were refused, at least in part, due to errors made by the Regulated Canadian Immigration Consultant he had hired.

[4] In August 2022, the Principal Applicant retained new counsel and requested reconsideration of his application for restoration of temporary resident status. In December 2022, he applied for a temporary resident permit with a work permit. These applications were refused in January 2023 and June 2023, respectively.

[5] In both the refusal letters sent in January and June 2023, the Principal Applicant was advised that he and his family (together, the Applicants) no longer have legal status in Canada and were required to depart Canada immediately.

[6] The Applicants proceeded to remain in Canada without authorization.

[7] On September 27, 2023, the Principal Applicant made a request under section 25 of the Act to exempt him from the requirement to maintain his status in Canada throughout the processing of his permanent residence application. The Principal Applicant's submissions for section 25 relief referred to the errors of his former consultants, his efforts to maintain and re-obtain legal status in Canada, the length of time he had been in Canada, his establishment in Canada, and hardship on returning to his home country.

[8] On December 11, 2023, the Applicants were issued a procedural fairness letter proposing to find them inadmissible for financial reasons, as the Officer was concerned that the Applicants would be unable to become economically established in Canada. The Applicants replied to this letter displaying sufficient liquid funds and assets available to sell upon obtaining permanent residence, as well as employment offer letters in Canada.

III. The Decision

[9] In a letter dated March 1, 2024, the Officer informed the Applicants that their application for permanent residence in Canada was refused.

[10] The Decision explains that the Applicants failed to comply with the condition to depart Canada under subsection 29(2) of the Act by remaining in Canada without status since April 4, 2022, despite being instructed to leave. Subsection 29(2) of the Act requires a temporary resident to leave Canada by the end of the period authorized for their stay and may only re-enter if their authorization provides for re-entry. As a result of failing to comply with a provision of the Act, he was inadmissible under subsection 41(a) of the Act.

[11] The Decision also found that it would not be justified by Humanitarian and Compassionate (“H&C”) considerations to exempt the Applicants under subsection 25(1) of the Act from any applicable criteria or obligation of the Act.

IV. Issues

[12] Was the Decision reasonable?

V. Analysis

[13] The standard of review with respect to the Officer’s substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 25).

[14] The Applicants argue that the Officer erred by fettering their discretion and refusing to exercise their jurisdiction under subsection 25(1) of the Act. The Applicants assert that the Officer did so by finding that they did not have discretion to consider an exemption to subsection 29(2) of the Act under a section 25 request.

[15] The Applicants assert that the following statement in the Global Case Management System (“GCMS”) notes is “central” to the Officer’s Decision and demonstrates that they fettered their discretion:

The intent of A25 is to give the minister the flexibility to deal with situations which are unforeseen by IPRA/IRPR where H&C grounds compel the minister to act. Parliament did not intend for the purpose of A25 to exempt status.

[16] While this statement, in-of-itself, is clearly wrong, I find that the statement is not central to the Officer's Decision, but one factor considered among many in the Officer's H&C analysis. The Officer was aware of and exercised their discretion to consider an exemption to subsection 29(2) of the Act under section 25 of the Act. The GCMS notes and refusal letter demonstrate the Officer reviewed and considered the Applicants' submissions on H&C considerations and ultimately found that in balancing and weighing the factors, an H&C exemption was not warranted. Indeed, the Officer noted that "the factors claimed on his humanitarian and compassionate grounds, do not outweigh all other factors, specifically PA's disregard for our immigration laws as a foreign national in Canada." A contextual and fulsome reading of the Decision does not result in a finding of fettering of discretion, but an exercising of their discretion to weigh all the H&C factors before them.

[17] While the Applicants may disagree with the Decision, it is not open to this Court to reassess and reweigh the evidence (*Vavilov* at para 125).

[18] The Applicants have not raised any other error with the Decision, and I find none exist. The Decision is transparent, justified and intelligible based on the facts and law constraining it.

VI. Conclusion

[19] The Decision is reasonable and the application is dismissed.

[20] There is no question for certification.

JUDGMENT in IMM-4253-24

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4253-24

STYLE OF CAUSE: BALVIR SINGH, NAVNIT KAUR, TAJPREET KAUR,
RAHATPREET KAUR, AND SEHAJPREET KAUR v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 15, 2025

JUDGMENT AND REASONS: MANSON J.

DATED: APRIL 17, 2025

APPEARANCES:

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