

Federal Court



Cour fédérale

Date: 20250428

Docket: IMM-14895-23

Citation: 2025 FC 763

Ottawa, Ontario, April 28, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

RAJWINDER KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Rajwinder Kaur, seeks judicial review of the refusal of her application for permanent residence (“PR”) by a migration officer (the “Officer”) on September 5, 2023. The Officer determined that the Applicant is not a dependent child under section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “Regulations”) and that humanitarian and compassionate (“H&C”) factors did not justify an exception to the regulatory criteria.

[2] The Applicant submits that the Officer's decision is unreasonable, as the Officer failed to consider the circumstances in which she became ineligible to apply for PR status as a dependent child, elevated the legal standard for H&C relief, and disregarded the Applicant's evidence of gender discrimination and family relationships in India.

[3] I disagree. In my view, the Officer made no reviewable error. This application for judicial review is dismissed.

II. **Background**

[4] The Applicant is a citizen of India. She was born in 1997.

[5] When the Applicant was six years old, her father departed India for Canada in order to provide the Applicant and her siblings with a better life.

[6] The Applicant's father remained in Canada for several years. He was defrauded by an immigration consultant, who stated that a PR application had been submitted on his behalf in 2015 when none had actually been filed.

[7] The Applicant's father eventually submitted a PR application in January 2017. The Applicant was not included as a dependent child as she was over 19 years old, the statutory age limit for dependent children at the time.

[8] In September 2018, the PR application of the Applicant's father was refused. This Court held that the refusal decision was unreasonable.

[9] The Applicant's father resubmitted his application and received first stage approval in September 2019. In February 2020, he was granted PR status.

[10] By this time, the statutory age limit for dependent children had been raised to 22. The Applicant was 22 years when her father received first stage approval and was granted PR status.

[11] In March 2021, the Applicant applied for PR status as her father's dependent child. Although she was 23 years old, the Applicant argued that she ought to be considered a dependent child because her father received first-stage approval just one month after she turned 22 and, "[b]ut for" circumstances beyond her control, she would have submitted a PR application prior to reaching the statutory age limit. In the alternative, the Applicant sought H&C relief, asserting that gender discrimination and the cultural significance of family relationships in India warranted an exception to the normal operation of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA").

[12] On August 2, 2022, the Applicant attended an interview for her PR application. During the interview, the Applicant stated that she has a masters degree but remains financially dependent on her father. She explained that she does not work because the high cost of living would make it impossible for her to save money. She stated that her sister is ill and her mother, who had recently been granted PR status and joined her father in Canada, was the only one who had been able to manage her sister's condition.

[13] Following the interview, the Applicant's PR application was refused. The Applicant sought judicial review of the refusal decision.

[14] In December 2022, the Respondent consented to the Applicant's application for judicial review. The Applicant's PR application was remitted for redetermination and the Applicant was invited to make further submissions.

[15] On September 5, 2023, the Applicant's PR application was refused again on redetermination. The Officer found that the Applicant was over the age of 22 on the lock-in date for her application in March 2021 and was therefore not a dependent child. The Officer further determined that H&C factors did not warrant an exception to the Regulations, as the Applicant "is an educated, independent and able-bodied adult" and is not "facing hardship in her current living arrangements in India." This is the decision that is presently under review.

III. **Preliminary Issue**

[16] The Applicant seeks to adduce new evidence in this application for judicial review. This evidence consists of photographs, conversation logs, and other materials allegedly submitted by the Applicant in June 2023.

[17] The Respondent submits that this evidence should not be considered, as it does not fall under any of the exceptions to the general rule against extrinsic evidence in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 (at paras 19-10).

[18] As the Applicant brought no submissions in response, I agree with the Respondent. The Applicant's new evidence will not be considered.

IV. **Issue and Standard of Review**

[19] The sole issue in this application is whether the Officer's decision is reasonable.

[20] The parties submit that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 (“*Vavilov*”)). I agree.

[21] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13, 75, 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[22] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent

exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100).

V. **Analysis**

[23] The Applicant submits that the Officer made several reviewable errors. The Applicant argues that the Officer failed to adequately assess the circumstances in which she became ineligible to apply for PR as her father’s dependent child. Had the Officer done so, the Applicant submits that the Officer would have found these circumstances were beyond the Applicant’s control. The Applicant further submits that the Officer elevated the standard for H&C relief by requiring the Applicant to demonstrate “unique or exceptional” circumstances rather than “unusual and undeserved or disproportionate hardship.” Lastly, the Applicant submits that the Officer disregarded country condition evidence about gender discrimination and the significance of family relationships in India. As a result, the Applicant submits the Officer’s decision is unreasonable.

[24] The Respondent submits that the Officer made no reviewable error. The Respondent asserts that the Officer duly considered the circumstances and history of the Applicant’s application, the hardship alleged by the Applicant, and the Applicant’s documentary evidence about gender discrimination and family relationships in India. The Respondent submits that, when viewed holistically, the Officer’s H&C assessment properly applied the threshold of “undue and undeserved or disproportionate hardship” and did not elevate the legal test for H&C relief.

[25] I agree with the Respondent.

[26] I find the Officer was attentive to the circumstances in which the Applicant became ineligible to apply for PR status as a dependent child. In the PR refusal, the Officer acknowledged that the “[A]pplicant’s father’s H&C application was refused” and, “[b]y the time his application was positively adjudged and he applied to sponsor the [A]pplicant, she had turned 22.” The Officer wrote: “I sympathize with the [A]pplicant in so far that if things worked out the way they had anticipated, she could possibly have had the opportunity to move to Canada as well.”

[27] Having acknowledged the Applicant’s framing of the circumstances, it was open to the Officer to find that they did not justify finding the Applicant to be a dependent child under section 2 of the Regulations. A dependent child is defined as follows (Regulations, s 2):

dependent child, in respect of a parent, means a child who

(a) has one of the following relationships with the parent, namely,

(i) is the biological child of the parent, if the child has not been adopted by a person other than the spouse or common-law partner of the parent, or

(ii) is the adopted child of the parent; and

(b) is in one of the following situations of dependency, namely,

(i) is less than 22 years of age and is not a spouse or common-law partner, or

(ii) is 22 years of age or older and has depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition.

As noted by the Officer, the Applicant was over the age of 22 when she submitted her PR application. Although she is financially dependent on her father, she is not prevented from being “financially self-supporting due to a physical or mental condition” (Regulations, s 2).

[28] I find no grounds for disturbing the Officer’s assessment on this point. The Applicant’s submissions rest on the premise that flaws in the processing of her father’s PR application entitle the Applicant to apply for PR status as his dependent child. With respect, this assertion is meritless (*Kaur v Canada (Citizenship and Immigration)* (January 3, 2024), Ottawa IMM-2314-23 at para 4 (FC)). The factors which warranted judicial intervention in the refusal of her father’s application do not apply to the Applicant herself. The Applicant is not a working parent who has lived in Canada for over 15 years and diligently sought to regularize her status despite being defrauded by an immigration consultant. As determined by the Officer, the Applicant is “an educated, independent and able-bodied adult” with no established “hardship in her current living arrangements” who experienced “no delays in the processing of” her PR application. The Officer did not err by deciding the Applicant’s PR application based on her particular circumstances, rather than those of her father. It would have been a reviewable error for the Officer to do otherwise.

[29] Furthermore, even had there been no issues with the processing of her father’s PR application, there was no guarantee the Applicant’s PR application as a dependent child would have proceeded in a timely manner. The choice of when to submit a PR application lies with applicants and their sponsors, not with the Minister. Indeed, in this case, the Applicant did not apply for PR status until March 2021, approximately one year after her father became eligible to sponsor her. In her PR submissions, the Applicant argued that, “[b]ut for circumstances outside

of [her and her father]'s control, namely [the Applicant's] age and the unfortunate delay, by way of roadblocks, in [her father]'s permanent resident status, she would have been included on that application for relief" and "granted permanent residence." The Officer reasonably determined that this assertion was speculative, as the absence of roadblocks would not have ensured the timely approval of her father's PR application, the timely submission of the Applicant's PR application, or the approval of the Applicant's PR application, as the Applicant contends.

[30] The Officer also reasonably determined that there were insufficient H&C grounds to warrant an exception to the eligibility criteria. Although the Applicant is correct that the Officer mentioned "unique or exceptional circumstances" in their assessment, I do not find that the Officer elevated the standard for H&C relief. Viewed holistically, the Officer's findings turned on the absence of unusual and undeserved or disproportionate hardship. For instance, the Officer found:

While I am empathetic to the desire of the [A]pplicant to be with her parents, her primary dependency on her father as a [25 year old] is financial and emotional. Both of these needs can be significantly addressed with the use of technology such as video calls, etc. and visits by the family members. [In fact], sponsor has regularly sent money and looked after her financial needs all these years. I do not foresee any undue hardship to her in this regard even if she choses [sic] not to work in India.

[Emphasis added]

Similarly, the Officer noted the following with respect to gender discrimination:

Applicant is an educated, independent and able-bodied adult and has access to the same facilities and opportunities that other females of her age do in India. It can not be negated that gender related issues exist in India but the choice of not working is hers and not a result of any kind of social compulsions that exist in

India...Applicant's situation is not different than most people of her age in this country under similar circumstances.

[Emphasis added]

I therefore do not accept the Applicant's submission that the Officer elevated the legal test. In my view, the Officer applied the correct legal standard, despite the use of the terms "unique" and "exceptional" in the refusal decision.

[31] Moreover, I do not find the Officer held the positive factor of her father's financial support against the Applicant in the refusal decision. Unlike in *Singh v Canada (Citizenship and Immigration)*, 2019 FC 1142, where an immigration officer held that the applicant's positive personal attributes weighed against the granting of H&C relief, the Officer in this case simply noted that the Applicant would not lose her father's financial support if she were to be denied PR status (at paras 36-37). This finding was relevant to the assessment of hardship and does not give rise to a reviewable error.

[32] I similarly find no reviewable error in the Officer's assessment of gender discrimination and family relationships in India. The Officer duly considered both concerns, acknowledging that "gender related issues exist in India" and the Applicant has "emotional ties" with and "financial dependence" on her family. However, the Applicant did not explain in her PR application how gender and family relationships would affect her if her request for H&C relief was denied. As in *Kaur v Canada (Citizenship and Immigration)*, 2022 FC 804 (at para 13):

...it was reasonable for the Officer to conclude that there were no circumstances which justified the extraordinary relief. There is an insufficient link between the general country conditions' evidence and any hardship for the Applicants who were adults, relatively

independent, educated, healthy, financially supported and receiving support from extended family in India.

Conclusion

[33] For these reasons, I find the Applicant has not raised a reviewable error in the Officer's decision. The Officer's findings accord with the legal and factual constraints of the application and do not warrant intervention from this Court (*Vavilov* at para 99). This application for judicial review is dismissed.

JUDGMENT in IMM-14895-23

THIS COURT’S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-14895-23

STYLE OF CAUSE: RAJWINDER KAUR v THE MINISTER OF
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