



IAD File No. / N° de dossier de la SAI: TB6-13048  
Client ID No. / N° ID client: 6005-2634

## Reasons and Decision – Motifs et décision

### SPONSORSHIP

<b>Appellant(s)</b>	INDERJIT SINGH GURAYA	<b>Appelant(e)(s)</b>
<b>and</b>		<b>et</b>
<b>Respondent</b>	The Minister of Citizenship and Immigration Le ministre de la Citoyenneté et de l'Immigration	<b>Intimé(e)</b>
<b>Date(s) of Hearing</b>	June 11, 2018	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	June 27, 2018	<b>Date de la décision</b>
<b>Panel</b>	Malcolm Mercer K. Fainbloom N. Treksler	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	Harinder S Gahir Barrister and Solicitor	<b>Conseil(s) de l'appelant(e) / des appelant(e)(s)</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e)(s) désigné(e)(s)</b>
<b>Counsel for the Minister</b>	Anthony Divecchia	<b>Conseil du ministre</b>

## REASONS FOR DECISION

[1] Santokh Singh Guraya (“Santokh”) is a resident and citizen of India. He applied for permanent residence in Canada. His son, Inderjit Singh Guraya (“Inderjit”), applied to sponsor his father’s application. Inderjit’s wife, Upkar Kaur Singh (“Upkar”), co-signed the sponsorship application. The responsible immigration officer refused the application for permanent residence on the basis that Inderjit and Upkar did not have the required total income to sponsor Santokh.<sup>1</sup>

[2] Inderjit appeals from the decision of the immigration officer. He accepts that the immigration officer properly concluded that he and Upkar did not have the necessary total income when the application was made. However, Inderjit submits that their total income now meets the requirement for sponsorship and that Santokh ought to be granted permanent residence for compassionate and humanitarian reasons.

[3] The Minister of Citizenship and Immigration opposes this appeal on the basis that Inderjit and Upkar’s total income, properly determined, has not sufficiently improved and that there are not sufficient compassionate and humanitarian reasons to allow the appeal.

[4] The Appellant gave *viva voce* testimony at this appeal. The Panel has heard the testimony and considered the documentary evidence and closing submissions of both parties. For the following reasons, the appeal is allowed based on humanitarian and compassionate considerations.

### The statutory framework

[5] The immigration objectives of the *Immigration and Refugee Protection Act*<sup>2</sup> (the “Act”) include seeing that families are reunited in Canada and promoting the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society.

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<sup>1</sup> First names are used in these reasons to assist the reader. No disrespect is intended.

<sup>2</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 3(1).

[6] Section 12(1) of the *Act* provides that “a foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.”

[7] Section 13(1) of the *Act* provides that “a Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, ... may sponsor a foreign national, subject to the *Regulations*.”

[8] As a foreign national, Santokh is eligible to be considered for permanent residence because he is the parent of Inderjit who is a Canadian permanent resident. Inderjit may sponsor Santokh subject to the *Immigration and Refugee Protection Regulations* (“*Regulations*”).<sup>3</sup>

[9] Section 133(1)(j)(i) of the *Regulations* is applicable because the sponsorship application is in respect of the sponsor’s father.<sup>4</sup>

[10] Section 133(1)(j)(i) of the *Regulations* provides that “a sponsorship application shall only be approved by an officer if, on the day on which the application was filed and from that day until the day a decision is made with respect to the application, there is evidence that the sponsor ... has a total income that is at least equal to the minimum necessary income plus 30% for each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application....”.

[11] To summarize, section 133(1)(j)(i) of the *Regulations* did not allow the immigration officer to approve Santokh’s application unless Inderjit and Upkar had a total income in each of the three years prior to the application that was at least equal to the minimum necessary income,<sup>5</sup> plus 30%. It is agreed that this requirement was not met when the application was made in 2010 and that the decision of the immigration officer was legally valid.

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<sup>3</sup> *Immigration and Refugee Protection Regulations*, SOR/2002-227.

<sup>4</sup> And because Inderjit does not reside in a province that has entered into an agreement referred to in subsection 8(1) of the *Act*.

<sup>5</sup> The minimum necessary income is defined under the *Regulations* based on an amount concerning low income cut-offs that is published annually by Statistics Canada under the *Statistics Act*.

[12] Section 63(1) of the *Act* provides that a person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.

[13] Section 67(1) of the *Act* provides that:

To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,

(a) the decision appealed is wrong in law or fact or mixed law and fact;

(b) a principle of natural justice has not been observed; or

(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

[14] There is no claim that the decision appealed is wrong in law or fact or mixed law and fact nor that a principle of natural justice has not been observed. Accordingly, in order to allow this appeal we must be satisfied that taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.<sup>6</sup>

### **Humanitarian and Compassionate Considerations**

[15] Cases have recognized that the total income at the time of the original application may differ from total income when an appeal is disposed. As was said in *Jugpall*<sup>7</sup> and as upheld in the

Federal Court:

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<sup>6</sup> Section 65 of the *Act* is not applicable because it is agreed, and we find, that Santokh is a member of the family class and Inderjit is a sponsor within the meaning of the Regulations. Section 65 provides that in an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the Regulations.

<sup>7</sup> *Jugpall v Canada (Citizenship and Immigration)*, (IAD T98-00716). Aterman, Goodman, Townshend, April 12, 1999.

In the context of cases where Parliament's concerns with admissibility have been met, it may not be necessary to look for overwhelming circumstances in order to grant special relief. The values of quick and fair adjudication would not be served by forcing the appellant to start the sponsorship process all over again if the evidence clearly demonstrates that the appellant is presently capable of meeting the standard for sponsorship which Parliament has set in the amendments to the Regulations.

[16] Where the evidence clearly demonstrates that total income presently meets the required minimum level, the *Jugpall* standard applies to determining the sufficient humanitarian and compassionate considerations. Where this is not the case, the more onerous *Chirwa*<sup>8</sup> standard applies. In any event, where the total income is near but does not meet the required minimum level, this may weigh in favour of granting relief.<sup>9</sup>

#### **Current total income**

[17] The required total income depends on whether the applicant and the sponsor have dependents. While Santokh had a dependent when the application was made, that is no longer the case. In 2017, Inderjit and Upkar had a daughter. They have no other dependents.

[18] Accordingly, the required total income for 2015, 2016 and 2017 would be determined based on a family size of three persons in 2015 and 2016 and a family size of four persons in 2017.

[19] On this basis, the total income required for 2015, 2016 and 2017 was \$47,476, \$48,404 and \$59,425, respectively. Inderjit's total income was \$62,609 in 2016 and \$60,530 in 2017 which exceeded the total income required for those years. In 2015, Inderjit's total income was \$39,149 and Upkar's total income was \$10,761. Together, their total income on its face exceeded the required total income in 2015.

[20] However, Minister's counsel took the position that the required total income for 2015 was not achieved because of outstanding obligations owed to the Ministry of Community and

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<sup>8</sup> *Chirwa v. Canada (Minister of Manpower and Immigration)*, (1970), 4 I.A.C. 338 (I.A.B).

<sup>9</sup> *Yu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1323 (CanLII).

Social Services. These outstanding obligations arose from the fact that Upkar previously received social assistance payments under the Ontario Disability Support Program (ODSP). The evidence on appeal is that these outstanding obligations were repaid at the rate of \$100 per month and were satisfied in full in December of 2015.

[21] The Minister's position seems to be premised on section 134 of the *Regulations* which establishes rules for the calculation of sponsor's total income. Section 134 provides that certain amounts are not to be included in total income including any social assistance received by the sponsor from a province. However, Upkar did not receive social assistance in 2015. Rather, the ODSP social assistance payments received some years previously was fully repaid in 2015. In 2015, only approximately \$1,200 remained to be repaid.

[22] We conclude that Upkar's income for 2015 of \$10,761 is not properly reduced by ODSP social assistance received by her in earlier years. If that is in error, we would conclude that no more than the amount not yet repaid should be excluded in which case her total income would have been approximately \$9,561 (i.e. \$10,761 less \$1,200). A combined 2015 total income of \$39,149 plus \$9,561 would still exceed the required total income in 2015 of \$47,476.

[23] Even if the Minister's position is fully accepted and Upkar's 2015 income must be fully excluded, the evidence clearly demonstrates that Inderjit is presently capable of meeting the required annual total income. Indeed, we think it significant that Inderjit and Upkar were able to satisfy outstanding obligations to repay past ODSP assistance and earn a further amount sufficient to satisfy the total income requirement in 2015. The purpose and intent of the minimum income requirement has been fully satisfied.

[24] We conclude that *Jugpall* applies rather than *Chirwa*. Even if *Chirwa* applies, the fact that Inderjit has demonstrated a consistent earning capacity exceeding the minimum required is a significant factor weighing in favour of granting relief. In this regard, we note that Upkar's income in 2015 arose from her employment in Inderjit's trucking business.

[25] Santokh is a widower in his mid-60s. Two of his children, Inderjit and his sister, are resident in Canada. Santokh has a third child, a son, who resides in the United States. Santokh has three siblings, two of whom reside in India. One of his siblings resides in Spain.

[26] Santokh is a farmer in India. According to Inderjit, Santosh's health is good as he continues to farm what appears to be a valuable farm property. That said, Santokh is no longer a young man and his ability to continue to farm will no doubt diminish in the years to come.

[27] The evidence demonstrates that Santokh and Inderjit are close. Inderjit says that he is deeply attached to his father and wants to live with him. Inderjit visits his father in India. Inderjit believes that his father is lonely which is understandable as Santokh lives alone and his children are overseas. Inderjit has taken his young daughter, Santokh's granddaughter, to India to meet her grandfather. Santokh has recently visited Canada to spend time with Inderjit, Upkar and his granddaughter. Inderjit testified that Santokh now has a close relationship with his granddaughter.

[28] It is certainly possible for this family to continue to visit each other in Canada and India respectively. But there are costs involved in travel and travel becomes increasingly difficult with older age. It is possible for Santokh to spend extended time in Canada but he has his farm to take care of which limits his ability to spend time in Canada. The stated intention is that Santokh will sell his farm and bring the anticipated significant proceeds of sale to Canada if he is permitted to become a permanent resident.

[29] The goal of family reunification is weighty here. Allowing an older parent to join his son and his son's family in Canada for emotional and, over time, other support is important. Indeed, allowing Inderjit and Upkar's daughter to have a significant relationship with her grandfather will be important for her. Inderjit has made clear the importance to him of his relationship with his father. It appears clear that reunification will be beneficial for all of the members of this family especially as Santokh advances in age.

[30] This is not a case in which there is particular reason to be considered that an applicant will become a burden on Canadian society. Inderjit is doing well economically. He has a

trucking business and owns several trucks. He purchased a house in Brampton in 2013 for nearly \$450,000. Having immigrated to Canada in 2009, his annual business income has averaged nearly \$60,000 over the last three years. As noted above, it is expected that Santokh will sell his farm if he becomes a permanent resident. Inderjit testified that proceeds of sale are expected to be significant which provides further economic security.

## **CONCLUSION**

[31] Whether *Jugpall* or *Chirwa* applies, we conclude that the circumstances are such that special relief is warranted taking into account the overall circumstances of the appellant and applicant, including those supportive of special relief and those non-supportive of such relief, as well as consideration of the legal obstacle to admission. The overall circumstances are supportive of special relief and the legal obstacle to admission has been substantially, if not completely, overcome.

[32] The appeal is allowed.



## NOTICE OF DECISION

The appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and an officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

Malcolm Mercer

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**Malcolm Mercer**

June 27, 2018

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**Date**

Concurred in by:

K. Fainbloom

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**K. Fainbloom**

Concurred in by:

N. Treksler

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**N. Treksler**

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.