



IAD File No. / N° de dossier de la SAI: TB1-16875  
Client ID No. / N° ID client: 5453-7913

## Reasons and Decision – Motifs et décision

### SPONSORSHIP

<b>Appellant(s)</b>	<b>NARINDER KAUR DHILLON</b>	<b>Appelant(e)(s)</b>
<b>Respondent</b>	<b>The Minister of Citizenship and Immigration Le ministre de la Citoyenneté et de l'Immigration</b>	<b>Intimé(e)</b>
<b>Date(s) and Place of Hearing</b>	<b>November 22, 2012 Toronto, Ontario</b>	<b>Date(s) et lieu de l'audience</b>
<b>Date of Decision</b>	<b>November 22, 2012 December 7, 2012 (reasons signed)</b>	<b>Date de la décision</b>
<b>Panel</b>	<b>Harvey Savage</b>	<b>Tribunal</b>
<b>Counsel for the Appellant(s)</b>	<b>Harinder S. Gahir Barrister and Solicitor</b>	<b>Conseil(s) de l'appelant(e) / des appelant(e)(s)</b>
<b>Counsel for the Minister</b>	<b>Millie Hrnjez</b>	<b>Conseil du ministre</b>

2012 CanLII 101851 (CA IRB)

## ORAL REASONS FOR DECISION

[1] The appellant, Narinder Kaur Dhillon, appeals the refusal to issue permanent resident visas to her parents and her two brothers. The application was refused on the grounds of the appellant and her co-sponsor spouse did not meet the Minimum Necessary Income (MNI) pursuant to section 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations* (the *Regulations*).

[2] The appellant does not challenge the legal validity of the refusal.

[3] The refusal is valid in law.

[4] The appellant bases her appeal solely on humanitarian and compassionate grounds, taking into account the best interest in any child affected by this decision.

[5] The panel is of the view that the Immigration Appeal Division's (IAD's) decision in *Jugpall*,<sup>1</sup> which was decided under the former *Immigration Regulations*, remains a useful framework for determining whether discretionary relief should be granted in a financial appeal. In *Jugpall*, the IAD held that an appellant's current ability to meet the Low Income Cut-Off now MNI requirement is relevant to the exercise of the statutory discretion. The framework of analysis outlined in *Jugpall* is as follows.<sup>2</sup>

1) Do the current circumstance of the appellant indicate that a test for financial solvency under the amended Regulations is met as of the date of the hearing? This includes determining whether the appellant has a track record meeting the Low Income Cut-Off criteria the 12 months preceding the date of hearing.

2) If the answer to the first question is in the affirmative, are there any other positive factors which warrant the granting special relief? Are there negative factors which weigh against the granting of the special relief? A lesser standard than that required by *Chirwa* [*Chirwa v. Canada (Minister of Manpower*

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<sup>1</sup> *Jugpall, Sukhjeewan Singh v. Canada (Minister of Citizenship and Immigration)* (IAD T98-00716) Aterman, Goodman, Townshend, April 12, 1999.

<sup>2</sup> *Ibid.*, pages 21-22.

*and Immigration*) (1970), 4 I.A.C. 388 (I.A.B.)] may be sufficient to justify granting special relief.

3) If the answer to the first question is negative, are there nonetheless sufficient, compassionate or humanitarian considerations to warrant the granting of special relief, in accordance with the test in Chirwa, given that the appellant can not in substance meet the requirements of the Act. The number and nature of those factors will vary, depending on the extent to which the appellant fails to meet the requirements in the act.

[6] Now, at the conclusion of the evidence, Minister's counsel has agreed that as of the current date the appellant and her co-sponsor meet the MNI requirement. I have reviewed the recent Notice of Assessments and I will not go in to all the numbers because they are entered into evidence. I also reviewed the Notice of Assessments of the co-sponsor since 2006 and I note that his income from that period of time has been relatively stable and with some variation it has been roughly around the \$40,000 to \$45,000 dollar a year range.

[7] Both appellant and her co-sponsor have letters of employment from their respective employers confirming employment. So, with that in mind, I agree with Minister's counsel and with the appellant's counsel that the appellant and her co-sponsor have met the MNI requirements.

[8] We move to the other parts of the test in *Jugpall* since it is now a *Jugpall* determination and not a *Chirwa* determination. *Jugpall* does require a lesser standard but nevertheless you still have to do some balancing of positive and negative factors.

[9] So on the positive side what we have here are the children. The elder son, when he was about five months old, did spend roughly just a little over one year with his grandparents in India because of an asthmatic condition. He obtained some health care during that period of time before he returned to Canada. I see that as a positive factor here since the elder son spent an early stage of his life with his grandparents, the applicants, and misses them.

[10] Another positive which I find is that it would appear that the appellant's father will sell his land and will likely bring a fairly substantial amount of money to Canada to purchase what

she says is farm land. That does not necessarily mean that he will not live with the family. I believe the evidence might be a bit silent or unclear on that issue, but I do recognize the fact that in India there is this thing called a joint family system and elders tend to live with their children. There is no evidence to contradict that in any event and it is perhaps an assumption on my part but that tends to be a cultural factor.

[11] The presence of the grandparents could probably in the appellant's case enable her to have more free time to pursue higher education. She has a Master's degree in economics from India. She will continue with her job, according to her, but this may free up some of her time to pursue some of these other areas. It would help with child care because since the appellant's husband is a truck driver and may possibly be absent from home at times. It is always good for grandchildren to be with their grandparents. I note that the father's parents are deceased so these are the only set of grandparents and they are not presently in Canada.

[12] We now move to the other side of the ledger which is the possible negative aspects. On the negative side is the fact that there is a brother who is married, the appellants' brother in India, who appears to be living with the applicants there. He has children, so the applicants have grandchildren in India and grandchildren in Canada. This then is a neutral factor. They also seem to have a decent lifestyle in India. They own the farm and the farm seems to be worth a lot of money so they do not have a bad lifestyle in India. I agree with Minister's counsel that it is hard to say there is any undue hardship for the applicants to continue remaining in India, other than providing the opportunities listed for the appellant and her children.

[13] I am particularly mindful that these children in Canada really only have one set of grandparents and the children in India have the applicants living in India and another set of grandparents who live in India on their mother's side.

[14] The balance favours the best interests of the children in Canada to at least have a set of grandparents that they can be reunited with and I would also take into account the grandson who was in India from the age of five months until almost one and one-half year age. So I take that into account as just an additional positive and when I look at the balance and I look at the fact

that a lower threshold does exist under *Jugpall*, I would say that the balance of this case would appear to favour allowing this appeal, finding there are sufficient humanitarian and compassionate grounds, taking into account the best interest of the child affected by this decision, and this appeal be allowed.

[15] I am allowing the appeal.

[edited for grammar and syntax]

### 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.

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"Harvey Savage"

**Harvey Savage**

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December 7, 2012

**Date**

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.