Immigration and Refugee Board of Canada
Immigration Appeal Division

Commission de l'immigration et du statut de réfugié du Canada
Section d'appel de l'immigration

IAD File No. / N° de dossier de la SAI : TA9-03096
Client ID No. / N° ID client : 5293-4727

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	**JASVIR SINGH DEOL**	**Appelant(e)(s)**
and		**et**
Respondent	**The Minister of Citizenship and Immigration** **Le ministre de la Citoyenneté et de l'Immigration**	**Intimé(e)**
Date(s) and Place of Hearing	**January 18, 2011** **Toronto, Ontario**	**Date(s) et lieu de l'audience**
Date of Decision	**January 18, 2011** **January 24, 2011 (Reasons Signed)**	**Date de la décision**
Panel	**Donald V. Macdougall**	**Tribunal**
Counsel for the Appellant(s)	**Harinder Gahir** **Barrister and Solicitor**	**Conseil(s) de l'appelant(e) / des appelant(e)(s)**
Counsel for the Minister	**I. Catterall**	**Conseil du ministre**

Canada

Reasons for Decision

Introduction and Issue

[1] This is an appeal pursuant to section 63(1) of the *Immigration and Refugee Protection Act*[1] (*IRPA*) by the appellant from a decision of the immigration officer not to issue a permanent resident visa to his applicant father (and accompanying mother and two sisters) on the basis that the appellant did not meet the sponsorship requirement of Minimum Necessary Income (MNI).

[2] The appellant did not contest the validity of the immigration officer's decision. The issue is whether, taking into account the best interests of a child directly affected by the decision, there are sufficient humanitarian and compassionate considerations to warrant special relief in light of all the circumstances of this case.

Decision

[3] Having considered the evidence and submissions, the panel finds that there are sufficient humanitarian and compassionate considerations to warrant special relief in all the circumstances of this case. The appeal is allowed pursuant to section 66(*a*) of *IRPA*.

Background

[4] The applicant applied for a permanent resident visa;[2] the appellant applied to sponsor him.[3] In January 2009, the immigration officer refused the permanent residence visa, deciding that the appellant did not meet the MNI requirement to allow a sponsorship pursuant to

[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[2] Exhibit R-1, pp. 15-36.

[3] Exhibit R-1, pp. 10-14.

Immigration and Refugee Protection Regulations[4] (*IRPR*) section 133(1)(*j*).[5] The appellant appealed that decision.[6]

[5] At the hearing of this appeal, the appellant testified and filed three exhibits of documentary evidence. The appellant's wife, co-signer of the sponsorship undertaking, also testified. The respondent filed two exhibits including the record.

[6] At the end of the hearing, the panel allowed the appeal, with reasons to follow.

[7] The 32-year-old appellant came to Canada from India in September 2003, sponsored by his wife, and became a Canadian citizen in 2008. The 29-year-old appellant's wife, the co-signer, came to Canada from India in February 2000 as a dependent of her mother, married the appellant in India in February 2003 and sponsored him to Canada, and became a Canadian citizen in 2006. The appellant and his wife have two children, ages 6 and 3.[7]

[8] The 58-year-old applicant is the appellant's father and a citizen of India; his accompanying dependent applicants are his wife (56), and two daughters (29 and 26).[8]

Analysis

[9] A Canadian permanent resident or citizen may sponsor the application of a foreign national member of the family class;[9] a father is a member of the family class.[10] However, in certain circumstances, *IRPR* sections 120 and 133(1)(*j*) may disallow a sponsorship:[11]

[4] *Immigration and Refugee Protection Regulations*, SOR, 2002-227.

[5] Exhibit R-1, p. 5.

[6] Exhibit R-1, pp. 1-2.

[7] Exhibit A-1, pp. 110, 111.

[8] Exhibit R-1, p. 15-16.

[9] *IRPA* s. 13(1).

[10] *IRPR* ss. 130(1), 117(1)(*a*).

[11] Also see *IRPR* s. 2 (definition) and s. 134.

> **120.** For the purposes of Part 5,
>
> > (a) a permanent resident visa shall not be issued to a foreign national who makes an application as a member of the family class or to their accompanying family members unless a sponsorship undertaking in respect of the foreign national and those family members is in effect; and
> >
> > (b) a foreign national who makes an application as a member of the family class and their accompanying family members shall not become permanent residents unless a sponsorship undertaking in respect of the foreign national and those family members is in effect and the sponsor who gave that undertaking still meets the requirements of section 133 and, if applicable, section 137.
>
> ...
>
> **133. (1)** 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
> ...
> > (j) if the sponsor resides
> >
> > > (i) in a province other than a province referred to in paragraph 131(*b*), has a total income that is at least equal to the minimum necessary income, ...
>
> ("Minimum necessary income" is defined in *IRPR* section 2.)

Special Relief

[10] The appellant bears the burden of proof. To allow this appeal, the panel must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.[12]

[12] *IRPA* s. 67(1)(*c*).

[11] In considering whether special relief is available, the panel considered a number of factors[13] and took into account additional evidence that was not before the immigration officer.[14] The panel also reviewed *Buttar (aka Johal) v. M.C.I.*, cited by the appellant.[15]

[12] The panel is cognisant of the immigration objectives, especially "to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;"[16] "to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;"[17] "to see that families are reunited in Canada;"[18] and "to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society,"[19] and "to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces."[20]

[13] The panel had the benefit of hearing and seeing the appellant and his wife testify under affirmation.[21] They both testified in a straight-forward and direct manner. The panel finds that they were well-spoken and sincere, and accepts their testimony as being credible, trustworthy and reliable.

[13] *Canada (Minister of Citizenship and Immigration) v. Dang*, [2001] 1 F.C. 321 (T.D.); (2000), 6 Imm. L.R. (3d) 300 (F.C.T.D.). *Jugpall v. Canada* (*Minister of Citizenship and Immigration*) (1999), 2 Imm. L.R. (3d) 222 (IAD). *Chirwa v. Canada* (*Minister of Manpower and Immigration*) (1970), 4 I.A.C. 338 (I.A.B.).

[14] *Kahlon v. M.E.I.* (1989), 7 Imm. L.R. (2d) 91 (F.C.A.).

[15] *Buttar (aka Johal) v. M.C.I.*, VA6-00764 (2007 IAD).

[16] *IRPA* s. 3(1)(*a*).

[17] *IRPA* s. 3(1)(*c*).

[18] *IRPA* s. 3(1)(*d*).

[19] *IRPA* s.3(1)(*e*).

[20] *IRPA*, s. 3(1)(*f*)

[21] He also swore an affidavit: see Exhibit R-1, pp. 93-111.

MNI

[14] Although the appellant does not contest the validity of the refusal decision, income is a circumstance when considering special relief.

[15] At the time of the sponsorship application, the appellant was married with one child. The family total was 7 persons and the MNI required was $49,060. The immigration officer calculated the available income as $47,522.87, for a shortfall of $1,537.[22]

[16] However, the appellant now exceeds the MNI required. The respondent accepted that documents filed at this hearing demonstrated that the family was now a total of 8 persons and that the available income was $67,996.[23] The required MNI is $64,816.[24]

[17] In *Jugpall*,[25] upheld in *Dang*,[26] it was held that where the obstacle to admissibility has been overcome at the time of the hearing, a lower threshold for the exercise of special relief than that set out in *Chirwa*[27] is appropriate. That is especially the case here, since the original deficit was small. In assessing this circumstance for special relief, the panel finds that the original default is now of little importance. This weighs in favour of the appeal.

Employment and assets in Canada

[18] The appellant testified that he has been a truck driver for the last five years, has been employed since his arrival in Canada, and has never received social assistance. He filed confirmation of employment.[28] The appellant's co-signer wife testified that she has been

[22] Exhibit R-1, pp. 52-53.

[23] Exhibits A-1, A-2 and A-3.

[24] Exhibit R-2.

[25] *Jugpall v.* Canada (*Minister of Citizenship and Immigration*) (1999), 2 Imm. L.R. (3d) 222 (IAD).

[26] *Canada (Minister of Citizenship and Immigration*) *v. Dang*, [2001] 1 F.C. 321 (T.D.); (2000), 6 Imm. L.R. (3d) 300 (F.C.T.D.)

[27] *Chirwa v. M.M.I.* (1970), 4 I.A.C. 338 (I.A.B.).

[28] Exhibit R-1, pp. 46, 47; Exhibit A-1, p. 7; Exhibit A-2, pp. 8, 10.

employed since the sponsorship application, except for maternity leave when she received maternity benefits.[29]

[19] The appellant testified that he has about $60,000 in savings and filed banking statements concerning both himself and his wife.[30]

[20] The appellant, his wife and their two children have lived in their house since 2005, in which he holds about $100,000 mortgage-free equity. The house is in his cousin's name; his cousin and family with two children also live there.

Family, hardship and other circumstances

[21] The appellant testified that he last visited his parents and sisters in India in 2007. In 2005, he, his wife and their then 9-month-old daughter visited his parents and sisters. The appellant stayed for one month, his wife for three, and their daughter stayed with the applicants for six months, returning to Canada with the appellant's wife's mother. The youngest child has not met the appellant's parents. They have not visited more recently in order to save money. However, the appellant testified that his parents communicate with him and his children every few days by phone and internet. He testified that there is an emotional attachment and bond that he wants to encourage and that the applicant's presence in Canada would be valuable for his children.[31]

[22] The appellant explained that he is the only son, with two sisters, and that he has a cultural primary responsibility to care for his parents. He also testified that his parents will assist in childcare and cultural upbringing responsibilities.

[23] The appellant and his wife both testified that they will provide for the applicants and the appellant testified that he has been accruing assets and plans to purchase a house for all of them to live together. He feels that his two sisters will be able to work at a beauty salon and at dress designing, in which they have completed their training.

[29] Exhibit A-1, pp. 28, 94; Exhibit A-2, p. 28; Exhibit R-1, pp. 48-49.

[30] Exhibit A-1; Exhibit A-2; Exhibit A-3, p. 8.

[31] *Baker v. M.C.I.*, [1999] 2 S.C.R. 817, especially paragraphs 67-75.

[24] The appellant testified that his father is a farmer with about 5 or 6 farm workers and owns the land valued at about CDN$1 million. His father plans to liquidate the property and transfer the money to Canada in order to invest in farming.

[25] The appellant's wife has her mother, one brother and three sisters all living close by in Canada.

Conclusion

[26] The panel has considered the minimal impact of the original MNI shortfall, the subsequent incomes and assets, plans for the applicants' settlement in Canada, along with the circumstances of the appellant and his family, and finds that the appellant has met his evidentiary onus. There are sufficient positive factors and few, if any, negative ones.

[27] Having considered the factors and weighed the evidence and submissions, the panel finds that there are sufficient humanitarian and compassionate considerations to warrant special relief in all the circumstances of this case. The appeal is allowed pursuant to section 66(*a*) of *IRPA*.

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.

(signed) **"Donald V. Macdougall"**

Donald V. Macdougall

January 24, 2011

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.