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: TB1-16106
Client ID No. / N° ID client: 5409-7708

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	**HARJIT KAUR DHESY**	**Appelant(e)(s)**
Respondent	**The Minister of Citizenship and Immigration** **Le ministre de la Citoyenneté et de l'Immigration**	**Intimé(e)**
Date(s) and Place of Hearing	**September 4, 2012** **Toronto, Ontario**	**Date(s) et lieu de l'audience**
Date of Decision	**September 4, 2012** **September 6, 2012 (reasons signed)**	**Date de la décision**
Panel	**Donald V. Macdougall**	**Tribunal**
Counsel for the Appellant(s)	**Gurpreet Khaira**	**Conseil(s) de l'appelant(e) / des appelant(e)(s)**
Counsel for the Minister	**Cathy Poulis**	**Conseil du ministre**

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Agent préposé au cas

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 her applicant father (and accompanying mother and sister) 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 only 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] In July 2011, the applicant applied for a permanent resident visa for himself and his dependent wife and daughter;[2] the appellant applied to sponsor him as her father.[3] In September 2011, the immigration officer refused the permanent residence visa, deciding that the appellant

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

[2] Exhibit R-1, pages 8-24.

[3] Exhibit R-1, pages 25-36.

did not meet the MNI requirement to allow a sponsorship pursuant to *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 respondent filed one Exhibit consisting of the record. At the end of the hearing, the panel reserved its decision.

[6] The 27-year-old appellant was born in India, came to Canada in November 2004, sponsored by her husband, and became a Canadian citizen in about 2009.[7]

[7] The 56-year-old applicant father is a citizen of India and applied for a permanent resident visa with his accompanying 47-year-old wife and 22-year-old daughter.[8]

Analysis

[8] A Canadian 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]

> **120. Approved sponsorship application** -- 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

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

[5] Exhibit R-1, page 5.

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

[7] Exhibit R-1, pages 40, 41.

[8] Exhibit R-1, pages 8-9.

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

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

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

> 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) Requirements for sponsor** -- 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, ...

[9] "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] 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]

[11] The panel is cognisant of the immigration objectives, especially "to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;"[15] "to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;"[16] "to see that families are reunited in Canada;"[17] and "to promote the successful integration of permanent residents into Canada, while

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

[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] *IRPA* section 3(1)(a).

[16] *IRPA* section 3(1)(c).

[17] *IRPA* section 3(1)(d).

recognizing that integration involves mutual obligations for new immigrants and Canadian society."[18] .

[12] The panel had the benefit of hearing and seeing the appellant testify under affirmation. She gave straight-forward and direct answers; the panel finds that she was sincere and accepts her evidence as being credible, trustworthy and reliable. Her husband, the sponsorship co-signor, and their son were also present during the hearing.

MNI impediment

[13] The appellant did not contest the legal validity of the visa refusal based on the decision that she did not meet the MNI at that time. However, the documentary evidence filed at the appeal, along with the testimony, demonstrated that the MNI level had been exceeded for 2011 and 2012 (as projected). Both counsel agreed that the consideration for this appeal is six family members and that the 2012 MNI is $53,808.[19] The immigration officer had different considerations.[20]

[14] The appellant's husband co-signed the sponsorship application.[21] The appellant and her husband derive their incomes as employees of the husband's self-owned and operated trucking business.[22] Their Notices of Assessment and tax documents indicate total income of:

- 2005: $29,116[23]
- 2006: $41,641[24]
- 2009: $52,100[25]

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[18] *IRPA* section 3(1)(*e*).

[19] Exhibit R-1, page 46.

[20] Exhibit R-1, pages 44, 45, 37-39. Also since the original assessment, the applicant's dependent son has died (Exhibit R-1, pages 56, 58) and the appellant has a son born in November 2008.

[21] Exhibit R-1, page 25.

[22] Exhibit A-1, pages 39-41; Exhibit A-2, pages 1-3.

[23] Exhibit R-1, pages 47-48, 51-52.

[24] Exhibit R-1, pages 49-50, 53-55.

[25] Exhibit A-1, pages 35, 37.

- 2010: $55,200[26]
- 2011: $54,000[27]

[15] The expected 2012 total income is about $65,000-70,000, based on testimony and accounting documents.[28] Additional financial documents were filed in support.[29] Although some of the financial documents showed negative balances and it appears the business may have been operating at a loss for some periods, the respondent did not submit that the 2011 and 2010 MNIs were not met.

[16] In assessing the grounds for special relief, the panel has taken into consideration that at the time of this hearing the appellant's circumstances have changed so that the legal impediment to sponsorship has been removed. In *Jugpall*,[30] upheld in *Dang*,[31] 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*[32] is appropriate.

[17] The panel finds that the appellant has met her onus of showing that she meets the MNI for 2010 and 2011 and probably 2012, and that this effectively removes that impediment and weighs in favour of her appeal.

Family in Canada and India

[18] The appellant works for her husband's self-owned trucking business, as discussed above. She testified that her husband owns two trucks and they own a three-bedroom home (plus a

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[26] Exhibit A-1, pages 36, 38.

[27] Exhibit A-1, pages 1-34; Exhibit A-2, pages 4-6.

[28] Exhibit A-2, pages 13, 7-12, 19; Exhibit A-3.

[29] Exhibit A-1, pages 42-58; Exhibit A-2, pages 20-34.

[30] *Jugpall v. Canada (Minister of Citizenship and Immigration)*, [1999] I.A.D.D. No. 600.

[31] *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.).

[32] *Chirwa* v. *Canada (Minister of Manpower and Immigration)* (1970), 4 I.A.C. 338 (I.A.B.).

basement bedroom), where she, her husband and their three-year-old son live.[33] Their son presently attends pre-school and the appellant is his main caregiver. The appellant's husband's parents both live and work in Canada.

[19] The applicant along with his wife and dependent daughter live in a home co-owned with his two brothers; he is a farmer on their co-owned farm. These two brothers live in Vancouver, as do five sisters; one sister lives in India.[34] The applicant's father is deceased, but his mother (the appellant's paternal grandmother) lives in Vancouver.

[20] The appellant testified that her mother (the applicant's wife) has one brother living in the UK, one sister in the UK and a sister in Vancouver, with no siblings in India; although this is not reflected on her application and the discrepancy was not adequately explained.[35] The applicant's wife's mother is deceased and her father lives with his brother's family in India.

[21] The appellant's only sibling is her sister, the applicant's accompanying dependent child; her brother is deceased.

[22] The appellant visited her parents twice since arriving in Canada, alone for three weeks in 2008 and with her son in 2009. She explained that their family business, child rearing of their son, and the cost of travel prevent her from more frequent visits.

[23] The appellant testified that she financially supports her parents and sister in India by sending about $1,000 to $1,200 yearly, but she did not file any supporting documentation. She explained that almost all of her parent's siblings are no longer in India, they are isolated, and that she has a cultural obligation as eldest child to look after them. She also provided evidence about their potential accommodation in her home and their ability to provide care giving, which could lead to more children for the appellant and assist in the family business.

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[33] Exhibit A-2, pages 35-44.

[34] See Exhibit R-1, page 22.

[35] See Exhibit R-1, page 23.

[24] The evidence demonstrating family reunification and other circumstances weighs in favour of the appellant's appeal.

Conclusion

[25] The appellant has met her evidentiary and persuasive burden. The circumstances mitigate towards allowing this appeal and the panel finds that the humanitarian and compassionate considerations overcome the residual negative aspects of the original impediment to sponsorship.

[26] Having considered the factors and weighed the evidence and submissions, the panel finds that the appellant has proven on a balance of probabilities, 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.

[27] 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 the officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

"Donald V. Macdougall"
Donald V. Macdougall

September 6, 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.