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: TB7-24935
Client ID No. / N° ID client: 5774-4024

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	HARJINDER SINGH SAINI	**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) of Hearing	October 30, 2019	**Date(s) de l'audience**
Place of Hearing	Toronto, Ontario	**Lieu de l'audience**
Date of Decision	December 17, 2019	**Date de la décision**
Panel	Isoken Osunde	**Tribunal**
Counsel for the Appellant(s)	Gurpreet Khaira	**Conseil(s) de l'appelant(e) / des appelant(e)(s**
Designated Representative(s)	N/A	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	Doug Baker	**Conseil du ministre**

Certified True Copy
Copie Conforme

Case Officer
Agent préposé au cas

Canada

REASONS FOR DECISION

INTRODUCTION

[1] These are my reasons for allowing the appeal of Harjinder Singh Saini (the appellant) against the refusal of a visa officer at the Case Processing Centre in Mississauga, Ontario to issue permanent resident (PR) visas to his father Gurbax Singh (the principal applicant) and mother Gurmeet Kaur (the female applicant). The principal applicant's application for PR was refused because the visa officer determined that the appellant did not have sufficient income to satisfy the minimum necessary income (MNI) under section 133(1)(j)(i) of the *Immigration and Refugee Protection Regulations* (Regulations).[1]

BACKGROUND

[2] The appellant is 39-year-old Canadian citizen. He immigrated to Canada in 2008 with his ex-wife by applying to immigrate to Canada under the Federal Skilled Worker category. He has a ten-year-old child from his marriage to his ex-wife. He works full-time as a Territory Sales Representative for Rogers Communications Canada.[2] As indicated above, the applicants are his parents. They are 68 years old and 63 years old respectively. They currently reside in India.

[3] Prior to this appeal, the appellant's ex-wife was a co-signer in his application to sponsor his parents to Canada.[3] She is no longer a co-signer to the application, as they are now divorced.

ANALYSIS

[4] In assessing whether financial admissibility is met under section 133(1)(j) of the Regulations, section 134(1)(a) states that the appellant's income must be calculated in respect of each of the three consecutive taxation years immediately preceding the date of filing of the sponsorship application. In cases such as this, case law provides guidance for the appropriate humanitarian and compassionate (H&C) standard to apply. In *Jugpall*[4], 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 should be applied. The higher threshold for granting special relief, set out in *Chirwa*[5], is appropriate in circumstances where the appellant has not overcome the legal impediment at the time of the hearing.

[5] At the outset of the hearing, the parties agreed to the following:

- The relevant three years applicable to this appeal are 2016, 2017, 2018;
- The family size for the purpose of calculating the minimum necessary income (MNI) is four;
- There is a *bona fide* parent-child relationship between the appellant and the applicants;
- The appellant exceeds the MNI to sponsor a family of four for the three relevant years in this appeal; and
- The lower threshold for the exercise of special relief, as set out in *Jugpall*, should be applied in this case.

I find the evidence before me supports the outlined facts above, agreed upon by the parties.

DETERMINATION

[6] For the reasons set out below, and taking into account the best interests of a child directly affected by the decision, I find that there are sufficient H&C considerations to warrant special relief in light of all the circumstances of this case.

Reason for sponsorship

[7] The appellant testified that he is an only son of his parents. While his two sisters reside in India, they are married and have their own lives. It is his religious belief as a Sikh for the son to care for his parents. He also has a cultural obligation to care for the applicants as their only son. He is also concerned about the health of the applicants as the male applicant suffers from high blood pressure and the female applicant suffers from diabetes. The applicants were in Canada with the appellant almost through out 2018. The appellant in my view maintains a close bond with the applicants. This, in addition to his religious and cultural obligation to care for his parents, lead me to conclude that the reason for the sponsorship is reasonable and weighs in his favour in this appeal.

Hardship

[8] In 2017, the appellant and his ex-wife divorced and he testified there was a fire incident at one of his properties. He testified he woke up to find he had lost the ability to speak and upon visiting a neurologist, he was informed he had suffered a stroke. He testified the applicants assisted with his speech recovering during their visit to him in 2018 by speaking to him regularly on the doctor's recommendation. Although there was no documentary evidence to support the appellant's testimony that he suffered a stroke in 2017 and encountered a fire incident in one of his properties, I found his testimony credible and I accept it. The appellant also testified that he is unable to travel often to visit the applicants because he works flexible hours and this requires clients to contact him at odd hours. Being outside of the country for long periods of time bars him for taking calls from clients and ultimately leads to loss of income. The appellant has worked full-time since 2013 but due to the stroke he had and the ensuing loss of his speech, he has been unable to return to work and is currently on long-term disability.[6] He has been on long-term disability since March 2017 and he testified he expects to return to work in March 2020. The male applicant is a retired naval officer and earns the equivalent of about CAN$650 to CAN$700 per month in pension income. The female applicant has never worked. The applicants own a three-bedroom bungalow in India that they have lived in for about 30 years. They plan to sell the house and bring the funds to Canada if they are allowed to reside in Canada permanently. While the appellant testified he sends them money regularly, it was unclear how much he sends to them monthly. He testified the applicants have difficulties moving around and as such when he is in India he buys sufficient groceries to last months and, in his absence, his friends assist the applicants with shopping for groceries. They currently have multiple-entry temporary resident visas to Canada. I agree with the Minister that being unable to shop for themselves is not an exceptional circumstance which the applicants are faced with in India, given arrangements have been made to ensure they have adequate supply of groceries. I also find, given the appellant's testimony that they are able to obtain adequate medical care in India, there is no hardship to the applicants as it relates to obtaining treatment for their medical conditions in India and there will not likely be financial hardship to them if they are unable to reside in Canada permanently. However, the hardship I find in this case is towards the appellant. He is, in my view, an honest and hard-working individual who, due to an unfortunate incident in

his life, has been unable to return to his full-time job of over five years. The evidence before me is also indicative of the fact that the applicants, being in Canada in 2018, helped with the recovery of his speech. There is, therefore, sufficient persuasive evidence before me to demonstrate that the applicants' presence in Canada will be likely helpful to him as it relates to focusing on his job as a sales person, given the emotional support the applicants provide to him. In my view, given the appellant's testimony regarding his inability to visit the applicants more often due to the nature of his work, it is likely that he will be faced with choosing between spending time with his parents in India or remaining in Canada to work and earn sufficient income, and being faced with making this difficult choice in my view amounts to undue hardship to the appellant. Of note to me, also, is the applicants' plan to sell their house in India and bring the funds to Canada. I find this is indicative of the fact that they will likely not be a burden on the Canadian government. I find hardship is a factor weighing in the appellant's favour in this appeal.

Best interest of the appellant's minor child

[9] The appellant is single father and he does not have custody of his child. He has visitation rights and visits him on weekends. It was the appellant's testimony that on one occasion, his ex-wife visited India and his son spent a week with the applicants during that visit. I find the evidence before me does not demonstrate that the best interest of the appellant's minor child is necessarily served by the applicants residing in Canada permanently.

CONCLUSION

[10] The refusal is legally valid. As stated above, the lower threshold for H&C consideration is applicable in this case as the appellant has worked hard to ensure the obstacle of inadmissibility has been overcome. I find there is more than sufficient H&C considerations to warrant the granting of special relief in this case: the appellant is an only son with a cultural and religious obligation to care for his parents; he suffered a stroke two years ago and the applicants were instrumental to his recovery; and there will be undue hardship to the appellant if the applicants cannot reside in Canada permanently. When I consider all these alongside one of the

objectives of the Act, which is to promote the reunification of families, I find there is more than sufficient H&C considerations in this case to warrant the granting of special relief.

[11] 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.

Isoken Osunde
Isoken Osunde

December 17, 2019
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.

---

[1] *Immigration and Refugee Protection Regulations*, SOR, 2002-227.
[2] Exhibit A5, at p. 1.
[3] Exhibit R1, at p. 19.
[4] *Jugpall v. Canada (Minister of Citizenship and Immigration)* (1999), 2 IMM L.R. (3d) 222 (IAD).
[5] *Chirwa v. Canada (Minister of Manpower and Immigration)* (1970), 4 I.A.C. 338 (I.A.B.).
[6] Exhibit A5, at p. 1.