

Federal Court



Cour fédérale

Date: 20230803

Docket: IMM-10110-22

Citation: 2023 FC 1072

Vancouver, British Columbia, August 3, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

PRABHJIT KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant, Prabhjit Kaur, asks this Court for an order that would set aside an immigration officer's (Officer) decision refusing her application to extend her visitor status in Canada, and return her application to a different officer for redetermination.

[2] Ms. Kaur is a citizen of India who entered Canada as a visitor in March 2016. She applied for and received extensions of her visitor record since her arrival. The most recent extension was valid until February 1, 2022.

[3] Ms. Kaur is living with her spouse and their Canadian-born son. In November 2021, Ms. Kaur and her spouse applied for permanent resident status from within Canada, seeking a humanitarian and compassionate (H&C) exemption from the usual requirement to apply for permanent residence from outside of Canada: section 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Ms. Kaur applied for a further visitor record extension in order to remain in Canada with her spouse until their H&C application is processed.

[4] On September 1, 2022, the Officer refused Ms. Kaur's extension request. The Officer was not satisfied Ms. Kaur is a genuine visitor who will leave Canada at the end of the authorized period. The Officer found that Ms. Kaur had not demonstrated sufficient ties to her home country, and she had not indicated any employment or family commitments to return to in India. The Officer also noted that Ms. Kaur's spouse had been "issued consecutive no status [work permit documents] until now" and "does not hold status in Canada".

[5] Ms. Kaur submits the Officer's decision is unreasonable. Ms. Kaur concedes that the type of work permit issued to her husband did not confer "status" in the sense contemplated by sections 202 and 206 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]; however, she contends her spouse had a form of status that allowed him to support her while in Canada. Ms. Kaur asserts the Officer focused on the wrong issue, as status in the strict

legal sense is not necessarily probative of the factors that were relevant to her visitor extension application—for example, if her spouse had “status” as a visitor, that would not be relevant as it would not allow him to support her. Ms. Kaur submits the Officer’s lack of clarity on the term “status” and failure to verify her spouse’s status in terms of his ability to work led to an unintelligible, unjustifiable, and/or incorrect decision. The Officer’s analysis of “status” did not adjudicate whether the work permit allows Ms. Kaur’s spouse to earn income and support her financially while she is in Canada, and this was central to her visitor extension application.

[6] Ms. Kaur contends that the Immigration, Refugees, and Citizenship Canada (IRCC) website contemplates that family members of a person who has been issued an *IRPR* section 206 work permit can also apply for a work permit, and there is no reason why family members cannot equally apply for a visitor record. Ms. Kaur states it was unreasonable and unfair to prejudice her by denying her visitor extension application, and the Officer’s decision does not align with the objective of family reunification in section 3 of the *IRPA*.

[7] In addition, Ms. Kaur states the decision is unreasonable because the Officer ignored that members of her family live in India. This information would have been in IRCC’s records.

[8] Ms. Kaur submits the Officer’s failure to verify her spouse’s immigration status also resulted in a breach of procedural fairness. The Officer should have verified information about her spouse’s status using records that were readily available, or sent a procedural fairness letter to request the information from her.

[9] Ms. Kaur's application for judicial review must be dismissed. I agree with the respondent that Ms. Kaur simply submitted a deficient application. Ms. Kaur's visitor extension application did not include any information about her ties to India, including any family ties. It was incumbent on Ms. Kaur to provide information that would support her application; the Officer was not required to look for supporting information in IRCC's records. I agree with the respondent that the Officer refused Ms. Kaur's application because the Officer was not satisfied she would leave Canada at the end of her authorized stay, and it was open to the Officer to reach that conclusion on the basis that the application provided insufficient information and evidence to support the visitor extension she sought.

[10] Ms. Kaur has not raised any basis for concluding that the Officer committed a reviewable error stemming from her spouse's work permit or his immigration status, nor has she established that the Officer unreasonably refused her visitor extension application for reasons related to her spouse's work permit or status. Ms. Kaur's visitor extension application did not present any submissions about the work permit or her spouse's ability to support her financially. There is only a letter from Ms. Kaur's spouse that asserts, without any details, that he will be financially supporting her and their child and that the family also receives financial support from friends and loved ones.

[11] Ms. Kaur's application lists her spouse's work permit as one of three "family member proof of status documents" (the other two documents being her son's birth certificate, and an IRCC letter acknowledging that the H&C application was filed). In that context, it is not surprising that the Officer noted Ms. Kaur's spouse had been issued "no status" work permits,

and did not have status in Canada. The work permit Ms. Kaur submitted with the application plainly states, “THIS DOCUMENT DOES NOT CONFER STATUS”.

[12] Ms. Kaur has not established that the Officer breached procedural fairness by failing to verify her spouse’s status or failing to send a procedural fairness letter. Ms. Kaur provided no evidence that her husband has status, and on this application the respondent filed evidence that, according to IRCC’s records, Ms. Kaur’s spouse has never been granted any kind of immigration status in Canada. The Officer’s statement was factually correct. There was no purpose to be served by a procedural fairness letter.

[13] As stated above, the Officer’s decision turned on the sufficiency of the visitor extension application. Ms. Kaur presented insufficient information to satisfy the Officer she would leave Canada at the end of her authorized stay, and it was open to the Officer to refuse her application on this basis.

[14] The parties did not propose a serious question of general importance for certification. I find this case does not involve such a question.

JUDGMENT in IMM-10110-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10110-22

STYLE OF CAUSE: PRABHJIT KAUR v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: AUGUST 1, 2023

JUDGMENT AND REASONS: PALLOTTA J.

DATED: AUGUST 3, 2023

APPEARANCES:

Joshua Slayen FOR THE APPLICANT

Philippe Alma FOR THE RESPONDENT

SOLICITORS OF RECORD:

Coal Harbour Law FOR THE APPLICANT
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia