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 : VA6-01393
Client ID no. / N° ID client : 4144-4937

Reasons and Decision – Motifs et décision

Sponsorship

Appellant(s)	**Appelant(s)**
GURMIT SINGH BRAR	
Respondent	**Intimé**
The Minister of Citizenship and Immigration Le Ministre de la Citoyenneté et de l'Immigration	
Date(s) and Place of Hearing	**Date(s) et Lieu de l'audience**
25 April 2007 Vancouver, BC	
Date of Decision	**Date de la Décision**
25 April 2007 (rendered orally) 22 May 2007 (written decision)	
Panel	**Tribunal**
Renee Miller	
Appellant's Counsel	**Conseil de l'appelant(s)**
Massood Joomratty Barrister & Solicitor	
Designated Representative	**Représentant désigné**
Nil	
Minister's Counsel	**Conseil de l'intimé**
Rick Brummer	

Oral Reasons for Decision

[1] These are my oral reasons and decisions regarding the appeal of Gurmit Singh BRAR (the "appellant"), from the refusal of his application to sponsor his father, Jagjit Singh BRAR, his mother, Gurdial Kaur BRAR, and brother, Parmatma Singh BRAR (the "applicants"), for permanent residence in Canada. The application was initially refused because the appellant did not meet the requirements of the *Immigration and Refugee Protection Act* (the "*Act*")[1] as it then was for low income cut-off, which required that for the 12 months immediately preceding his application that he meets a minimum amount of income (the "MNI").

[2] Subsequent to the applicant's application, the legislation has changed but there is a similar provision in the new legislation which requires the appellant to meet a MNI figure. At the start of the hearing the parties agreed that the MNI the appellant is required to meet for 7 people is $53,821.00. The appellant brings his appeal on humanitarian and compassionate grounds.

[3] I have listened to the oral testimony today of the appellant. As well, I reviewed the documentary evidence that was presented by the Minister and the two documents[2] submitted by the appellant in support of his appeal.

[4] With regard to the appellant's income, I note that on the last reporting to Canada Customs and Revenue Agency for 2006, his and his wife's combined income (as she is a co-sponsor) was $63,204.[3] However, through testimony today it was clear that approximately $14,000 of that income was a one-time payment to the appellant for a real estate transaction. I am persuaded by the argument of counsel for the Minister that this amount does not satisfy the requirements under the *Act* for income. The evidence of the appellant was that that was a one-time transaction and he had no reasonable expectation that that would occur in the future. It is not an ongoing matter and the appellant is not licensed to receive commission from the real estate transactions. Therefore, I do not think that that payment can be considered as part of the appellant's income.

[5] I am prepared to rely on the documentary evidence filed, stating the appellant had income from Purewal Blueberry Farms and Greyhound Drywall, as well as the income from his wife

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1 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
2 Exhibits A-1 and A-2.
3 Exhibit A-2 to the Record.

excluding unemployment insurance and other government benefits, and I arrive at an approximate income figure of $42,466 for the year 2006. That is slightly different from the figure the Minister arrived at, but was not that far off. Therefore, the appellant does not meet the MNI required to sponsor his relatives to come to Canada.

[6] However, MNI is simply a tool for gauging the appellant's resources to look after his relatives if they were to come to Canada. It is not determinative of an appeal brought on humanitarian and compassionate grounds, which is also one of the grounds that the appellant has asserted today.

[7] I have the authority to grant the appellant's appeal, taking into account whether there are sufficient humanitarian and compassionate grounds to warrant the granting of special discretionary relief. In my view, the appellant has met the burden of proof on him and I allow his appeal.

[8] The Minister made a valid point with regard to the appellant's income and the fact that there is no corroboration of his new employment, and that he has not been in that employment for a full 12 months. But, I was also persuaded by the argument of counsel for the appellant that the appellant has a stable work history in Canada since his arrival, as does his wife, and the immigration of the applicants will facilitate their ongoing employment. The documentary evidence provided, both in the Record and in Exhibits A-1 and A-2, show that the appellant and his wife have had relatively stable income for the years reported. Therefore, I am prepared to conclude that the appellant will continue to work and will have relatively stable income, although below the MNI figure.

[9] I also looked at the other factors in this appeal. I noted the fact that the appellant has not been back to visit his family since he arrived in Canada. But, given the fact that his income is close but below the MNI required to sponsor his relatives, I accepted his explanation as to why he had not been back to visit his relatives and noted that his wife had been back to visit twice in the past year. As well, there was corroboration of the fact that there are frequent telephone calls between the appellant and the applicants, as often as two to three times per week and those are factors in his favour.

[10] I also noted that although the appellant appears to be close with his parents, they are not alone in India; they do have other relatives there and, therefore, are not without support either emotionally or financially. That is not particularly a factor in his favour.

[11] However, the most significant humanitarian and compassionate factor in this appeal is the best interests of the appellant's minor children. In my view, the appellant's action in sending his two small children to live with his parents in India is a significant factor and is indicative of the importance that he places on his familial relationship and the strength of the relationship between the children and grandparents. I acknowledge the argument by counsel for the Minister that childcare is facilitated if the applicants come to Canada and care for the children in the appellant's home. However, in my view, it is also clearly in the best interests of those children to be living in their own home with their parents. I accept that it is optimal for these children to be living in their own parents with the child care of the grandparents and, in my view, the actions of the appellants in arranging that child care for their children in India is indicative of the strength of that relationship. Therefore, I accept that there are sufficient humanitarian and compassionate considerations in this case to warrant the granting of special relief, despite the fact that the appellant does not meet the MNI figure and, therefore, my decision is that the refusal of the visa officer was not valid and the appeal is allowed.

[Edited for clarity, spelling, grammar and syntax.]

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.

"Renee Miller"
Renee Miller

22 May 2007
Date (day/month/year)

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.