Immigration and Refugee Board of Canada
Immigration Appeal Division

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Section d'appel de l'immigration

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IAD File Number: VA6-01588
Client ID: 57082425

STATEMENT THAT A DOCUMENT WAS PROVIDED

On December 13, 2007 I provided the **Reasons and Decision**

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IMMIGRATION AND REFUGEE BOARD
IMMIGRATION APPEAL DIVISION

COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
SECTION D'APPEL DE L'IMMIGRATION

IAD File No. / N° de dossier de la SAI : VA6-01588
Client ID no. / N° ID client : 5708-2425

Reasons and Decision – Motifs et décision

Residency Obligation

Appellant(s)	JASWANT KAUR DHILLON	**Appelant(s)**
Respondent	**The Minister of Citizenship and Immigration** **Le Ministre de la Citoyenneté et de l'Immigration**	**Intimé**
Date(s) and Place of Hearing	October 11, 2007 Vancouver, BC	**Date(s) et Lieu de l'audience**
Date of Decision	December 4, 2007	**Date de la Décision**
Panel	M[e] Robert Néron	**Tribunal**
Appellant's Counsel	Massood Joomratty Barrister & Solicitor	**Conseil de l'appelant(s)**
Minister's Counsel	Steve Bulmer	**Conseil de l'intimé**

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IRB Representative
Représentant de la CISR

Reasons for Decision

[1] **Jaswant Kaur DHILLON** (the appellant) appeals the determination made by Immigration Officer in New Delhi that she has not complied with the residency obligation as articulated in section 28 of the *Immigration and Refugee Protection Act*[1] (the Act).

[2] The appellant does not challenge the legal validity of the decision made outside Canada regarding her residency obligation, but seeks discretionary relief on her appeal, pursuant to subsection 63(4) of the Act. She thus bears the onus of establishing that, taking into account the best interests of a child or children directly affected by the decision, sufficient humanitarian and compassionate considerations exist which warrant special relief in light of all the circumstances of the case.

[3] The appellant, represented by counsel at hearing, testified with the assistance of an interpreter as to why she remained outside Canada since 1983. Her son also testified as to why his mother stayed outside Canada for the last 25 years. Furthermore, the evidence indicates that the appellant became a permanent resident of Canada in 1982. The appellant testified that she left Canada in 1983 and has not returned since. By the appellant's own admission, through to the five-year period ending July 20, 2006, she is unable to meet the requisite 730 day period of residency. Therefore, I conclude the removal order is valid in law in that the appellant has not met the residency obligation as articulated in section 28 of the Act.

[4] In addition, the appellant testified that she had to return to India to take care of her sick son who passed away in 2005. Therefore, she left her sons and daughter along with their father in Canada in order to assist her sick son.

[5] Minister's counsel tried, in cross-examination, to have the appellant admits that she was only a courier parent when she came in 1982. However, he was unable to get that information since she was clearly not a courier parent. The evidence show that she came to Canada with the intention to remain here but because of family circumstances, she had to return to India.

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

[6] In essence, we have here a widow who is living with a grand-daughter who will married shortly and who has nobody in India, all her children are in Canada. Not only that, she has at least 13 to 14 grand-children in Canada. That family appears to be a close kind family where her son testified that he sent to his mother financial support when needed.

[7] Now, Minister's counsel is telling me that they just have to sponsor the appellant in order to have him immigrating to Canada. In contrast, the appellant's counsel is telling me that it will take years before she is able to come if they file a sponsorship at present. I disagree with both counsel. My decision should not be based on the fact that if the appellant is sponsorsable or not in the future. I should look if there is, at present, sufficient humanitarian or compassionate factors in this case to exercise my discretion to allow this appeal or not. I do not see that if someone may revail himself or herself of the permanent residency to be a compelling factor or not in my analysis.

Analysis

[8] Notwithstanding the validity of a removal order, the Appeal Division has the discretion to allow an appeal, and must be satisfied that the appellant has met his requisite onus to establish on a balance of probabilities that when taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case[2]

[9] With respect to the analysis of the evidence before me relating to whether or not to afford discretionary relief in relation to residency obligation appeals, I follow the decision of Kuan[3] where the Appeal Division has considered as relevant in residency obligation appeals evidence of acquisition or retention of assets in Canada, the reasons for departure from Canada, the reason for extended absence from Canada, visits to Canada, family and other ties to Canada, and similar indicia. In addition to the objective factors noted previously, it is open to the Appeal Division to consider a wide range of other factors that may or may not give rise to special relief in the circumstances of the case. The test for discretionary relief within the current Act is a broad one.

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2 IRPA, s. 67 (1)(c).

3 *Kuan v. Canada (Minister of Citizenship and Immigration)* (IAD VA2-02440), Workun, September 24, 2003.

[10] Humanitarian or compassionate considerations are generally "...taken as those facts, established by the evidence, which would excite in a reasonable man in a civilized community a desire to relieve the misfortunes of another..."[4].

[11] Other relevant considerations, in the context of an appeal from a removal order based on an appellant's failure to meet his/her residency obligations include an appellant's initial and continuing degree of establishment in Canada, his or her reasons for departure from Canada, reasons for continued, or lengthy, stay abroad, ties to Canada in terms of family, and whether reasonable attempts to return to Canada were made at the first opportunity. The considerations noted are not exhaustive. The inclusion of "sufficient" along with the requirement that humanitarian and compassionate considerations warranting relief be assessed, "in light of all the circumstances of the case" suggest that a balancing or weighing process must take place.

[12] First and foremost, I find the appellant to be a forthright and credible witness. Certainly, there are salient factors that exist in favour of granting discretionary relief. I find that, on the evidence before me, and noting the onus is on the appellant, that these positive factors are sufficient on balance. The circumstances of this case lead me to determine that, upon weighing all the evidence on a balance of probabilities, discretionary relief is to be afforded the appellant.

[13] In the case at hand and as previously stated, the appellant credibly testified that after immigrating to Canada in 1982 she returned to India in 1983 to take care of her sick son. It was an unfortunate event where the appellant had to assist her son in difficult times. However, she stayed in contact with her children and her husband who remained in Canada.

[14] The appellant has provided a sufficient explanation for her decision to remain away from Canada for the extended period in question and provides sufficient foundation for discretionary relief. In looking to all the circumstances of this case, I conclude it would be unfortunate if this appellant were unable to pursue her future in Canada by reason of her decision, volitional or not, to return to India in 1983.

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

[15] This case is not a typical case of someone who spend less then one year to Canada and who returned to his or her country of origin. It is the case of someone who sacrificed herself to help a sick son and who has all her family including minor grand-children in Canada. Without a doubt in my mind, it is in there best interest to be reunified to Canada with other loving grand-mother.

[16] Based on the above, I conclude the appellant has met the onus on her of demonstrating that, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of this case.

[17] The appeal is therefore allowed without the imposition of any stay conditions.

Conclusion

[18] The removal order is valid in law; however, discretionary relief is warranted on the facts of this case. The appeal is therefore allowed.

NOTICE OF DECISION

The appeal is **allowed**. The decision of the officer made outside of Canada on the appellant's residency obligation is set aside. The Immigration Appeal Division finds that the appellant has not lost her permanent resident status.

Robert Néron

M^e^ Robert Néron

December 4, 2007

Date

/el

NOTA - Contrôle judiciaire - Aux termes de l'article 72 de la *Loi sur l'immigration et la protection des réfugiés*, vous pouvez, avec l'autorisation de la Cour fédérale, présenter une demande de contrôle judiciaire de la décision rendue. Veuillez consulter un conseil sans tarder car cette demande doit être faite dans un délai précis.