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: VB7-02675

Client ID no. / N° ID client: 6134-1712

Reasons and Decision – Motifs et décision

REMOVAL ORDER

Appellant(s)	Brijesh Kumar MADAN	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Public Safety and Emergency Preparedness	**Intimé(e)**
Date(s) of Hearing	June 12, 2018	**Date(s) de l'audience**
Place of Hearing	Vancouver, BC	**Lieu de l'audience**
Date of Decision	June 12, 2018 (rendered orally) June 21, 2018 (written decision)	**Date de la décision**
Panel	Kashi Mattu	**Tribunal**
Counsel for the Appellant(s)	Massood Joomratty Ravneet Rakhra Barristers and Solicitors	**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	Gregory Zuck (By written submissions)	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (the "IAD") in the appeal by Brijesh Kumar MADAN (the "appellant") from a removal order made against him on May 8, 2017.[1] The appellant was found to be inadmissible on the basis of failing to comply with the residency obligation requirements of section 28 of the *Immigration and Refugee Protection Act* (the "*Act*").[2]

[2] The appellant testified at the hearing and additional documentary evidence was provided.[3] Minister's counsel provided written submissions as well as documents dated June 6, 2018.

[3] There was no challenge to the legal validity of the removal order. Based on the evidence before me, the removal order is valid in law as the appellant has not met their residency obligation requirements under section 28 of the *Act*.

[4] However, the IAD has discretionary jurisdiction to permit an appellant to retain their permanent resident status despite a breach of the residency obligation. The test is that the IAD must be satisfied at the time that the appeal is disposed of, and that will be today, taking into account the best interest of any child directly affected by the decision whether there are sufficient humanitarian and compassionate considerations that warrant special relief in light of all the circumstances of the case. The appellant testified in the usual areas that are considered by the IAD in the exercise of its discretionary jurisdiction.

[5] The appellant, with his wife and daughter, immigrated to Canada in July 2013. The appellant's wife, an IT professional, was the principal applicant and the appellant and daughter were dependents.

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[1] Record, p. 2.
[2] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[3] Exhibit A-1.

[6] The appellant and his family are citizens of India. However, they had travelled and his wife was working in the United States since 2007. The appellant testified that his wife was working since that time and his daughter attending school. However, he was not originally authorized to work but then obtained authorization and started to work in the United States. It was from the United States that the appellant and his family applied to immigrate to Canada. The appellant explained the circumstances as to why that was their intention and plan.

[7] The appellant testified with respect to time and efforts to return to Canada since landing including circumstances with respect to his young daughter, with respect to his wife's health circumstances and his father's health circumstances in India. The appellant also provided documentary evidence to support or corroborate his evidence with respect to the medical circumstances of his father and wife. He explained that his daughter, at a relatively young age, has now married to an individual that she has had a relationship with in the United States for a few years. The appellant testified with respect to the circumstances of timing of that marriage.

[8] Based on the evidence before me, and particularly given all of these actions occurred within the first five year period of the appellant immigrating to Canada as compared to other circumstances where it might be in the second or third five years of immigrating that there were some very compelling reasons for the appellant to remain outside Canada and they are sufficient to justify the extent of time that he has remained outside Canada over the years. The appellant returned to Canada again in May 2017 with the intention to remain but the removal order was issued. The appellant has not left Canada and there have been two significant events that have occurred since that time: his father's funeral and his daughter's wedding. He testified that he did not attend those significant events in his life as a demonstration of his commitment, that despite previously he was not able to for other reasons, to fulfil his residency obligation that it continues to be his intention to do so.

[9] Based on the evidence before me, the appellant has made reasonable attempts to return to Canada at the earliest opportunities. While the appellant was not established prior to the removal order in Canada, since that time he has demonstrated commitment. He has been working and

making plans with respect to opening a business in Canada. There was some documentary evidence with respect to a partner with whom he may open this business and there was credible evidence of the capacity to be able to do so, particularly given the work that he is doing now with the experience that he has gained and financially. This is a positive factor in the circumstances of this case.

[10] There is no concern now about any best interests of a child. His daughter is now an adult and has made her decision to remain in the United States. The appellant explained the reasons why originally his plans had been to live and work and settle in Alberta but now that has changed to British Columbia.

[11] There is credible evidence of some hardship that the appellant would face from losing his status at this time. He is a citizen of India and does not have permanent status in the United States and would have to return to India rather than the United States. While there might be some options for him to return to the United States, that is not the intention at this point and there would likely be uncertainty in being able to reacquire a permanent resident status at this stage for the appellant and/or his wife.

[12] Counsel provided some case law to consider but, of course, every case turns on its facts. In this particular case, I find that the appellant was credible and forthright and has demonstrated clearly his intentions that had been ongoing since he initially immigrated to Canada.

[13] The appellant has met the onus of proof. There were sufficient compelling reasons in his circumstances for the appellant to remain outside Canada and he has made efforts to return to Canada at the earliest reasonable opportunity and demonstrated that commitment more recently. Based on the evidence before me and on a balance of probabilities, taking into account the best interests of a child directly affected by the decision, there are sufficient humanitarian and compassionate considerations that warrant special relief in light of all the circumstances of the case.

[14] Therefore, the appeal is allowed. The removal order is set aside and the IAD finds that the appellant has not lost his permanent resident status.

[Edited for spelling, grammar and syntax]

NOTICE OF DECISION

The appeal is allowed. The removal order is set aside. The Immigration Appeal Division finds that the appellant has not lost his permanent resident status.

(signed) **"Kashi Mattu"**

Kashi Mattu

June 21, 2018

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.