



IAD File No. / N° de dossier de la SAI: VB8-03829/ VB8-03843

Client ID no. / N° ID client: 5944-1258/ 1674

Reasons and Decision – Motifs et décision

RESIDENCY OBLIGATION

Appellant(s)	Pahalad RAMPHAL Soonita CHUNDHOO	Appelant(e)(s)
and		et
Respondent	The Minister of Citizenship and Immigration	Intimé(e)
Date(s) of Hearing	February 15, 2019	Date(s) de l'audience
Place of Hearing	Vancouver, BC	Lieu de l'audience
Date of Decision	March 5, 2019	Date de la décision
Panel	Judith Boer	Tribunal
Counsel for the Appellant(s)	Massood Joomratty Barrister and Solicitor	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	Stephanie Naqvi	Conseil du ministre

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (IAD) in the appeal by Pahalad RAMPHAL and Soonita CHUNDHOO (Appellants), from a determination made by an immigration officer on May 5, 2017. The officer determined that the Appellants failed, as permanent residents, to comply with the residency obligation requirements in section 28 of the *Immigration and Refugee Protection Act* (IRPA).¹ The determination was made outside Canada.

[2] The Appellants do not challenge the finding that they did not comply with the residency obligations. However, they argue that the appeal should be allowed on the basis that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case, taking into account the best interests of any child directly affected by the decision.

DECISION

[3] I find that the refusal is valid in law but that there are sufficient humanitarian and compassionate grounds, in light of all the circumstances of the case, taking into account the best interests of a child directly affected by the decision, for me to find in the Appellants' favour. Their appeals are therefore allowed.

ANALYSIS

[4] As per the Appellants' IMM 5524 forms,² which were received by Immigration, Refugees and Citizenship Canada (IRCC) on March 13, 2018, the Appellants were physically present in Canada zero days in the relevant five year period. Based on the evidence before me, the Appellants have not met the residency obligation requirements under section 28 of the IRPA and the determination is therefore valid in law and fact.

[5] I have the discretion to allow the Appellants' appeal on humanitarian and compassionate grounds, taking into account the best interests of a child directly affected by the decision. The following factors are considered in the exercise of discretionary jurisdiction in the context of appeals by permanent residents who failed to meet their residency obligations: the extent of the non-compliance with the residency obligation; when and why the Appellants left Canada; the circumstances surrounding the breach of the residency obligation, including the reasons for and extent of the absence(s) from Canada; the length of time the Appellants have spent in Canada and the degree to which the Appellants are established in Canada; whether the Appellants made reasonable attempts to return to Canada at the first opportunity; the best interests of any child directly affected by the decision; the Appellants' family in Canada and the impact to the family that loss of status would cause; and the degree of hardship that would be caused to the Appellants by loss of status in Canada, including the conditions in the likely country of removal. These factors are not exhaustive and the weight assigned to each factor will vary depending on the circumstances of each case.

[6] Ms. Soonita Ramphal is a nurse from Mauritius who dreamt of immigrating to Canada. She applied to immigrate to Canada around 2005. In 2007, she married Pahalad Ramphal and he was added to her permanent resident application as a dependent spouse. They were approved for permanent residence and shortly after receiving their visas, they moved to Canada. They became permanent residents on October 26, 2009.

[7] Ms. Ramphal obtained part-time work as a caregiver. She could not yet work as a nurse because she had to obtain her Canadian credentials and she started making inquiries on that process. Mr. Ramphal had been a police officer in Mauritius and so he opted to become a security guard. He did hope to become a police officer again, but decided to work as a security guard in the meanwhile. He took the required exam to become a security guard.

[8] When the couple immigrated in 2009, they had been married for over two years. They wanted to have children but had not yet conceived. Ms. Ramphal had started seeing Dr. Beebeejaun sometime in 2002³ (prior to her marriage) and the couple had sought his assistance when they faced fertility issues. In December 2009, about two months after their arrival in Canada, they received an email from the doctor advising them to get more testing done. As having a child was very important to the couple, they travelled to Mauritius to undergo the tests.

[9] Minister's counsel argued that the couple could have gone to a doctor in Canada but I find it understandable that the couple opted to return to the doctor with whom Ms. Ramphal had a long and trusted relationship.

[10] The doctor suggested IVF treatment and the couple decided to try this. Mr. Ramphal testified that they had planned to have a baby once they had settled in Canada. They underwent two IFV treatments in 2010 and for practical reasons they remained in Mauritius during this time. Unfortunately, the two treatments were unsuccessful and the couple was referred to another doctor at a fertility clinic. This doctor suggested surrogacy to the couple. The Appellants were uncertain about this option and decided not to pursue it.

[11] In May 2011, the couple returned to Canada and settled in Surrey, British Columbia. They decided to move to Surrey as Mr. Ramphal had a friend who lived there. They stayed with the friend for about a week and then they moved into their own apartment. Mr. Ramphal started work as a security guard and Ms. Ramphal started the nursing accreditation process.

[12] However, they could not let go of their dream of having a child. Thus, they decided to return to Mauritius to explore the surrogacy process further. They left Canada on July 24, 2011.

[13] Surrogacy treatment is not available in Mauritius and the treatment for citizens from Mauritius is therefore arranged in India. As the whole surrogacy process is quite expensive, the couple resumed their professional jobs in Mauritius in order to save up the necessary money. While they could have worked in Canada, it would have taken them substantially longer to save up the money as they were new immigrants working entry-level jobs in Canada. They were able to start the treatment at a fertility centre in India in May 2013. The Appellants learned that they were going to have twins about three months into the surrogate's mother pregnancy. On June 8, 2015, the Appellants became the parents of a boy and a girl.

[14] The Appellants explained that they could not immediately return to Canada in June 2015 as they had depleted their savings on the surrogacy process, including multiple trips to India. Further, they benefitted from their family's assistance in caring for the babies. The Appellants applied to return to Canada once they replenished their savings and their twins were about 2.5 years old. Based on the circumstances of the two Appellants and their reasons for being abroad, I find that they made reasonable attempts to return to Canada at the first opportunity.

[15] I find that the circumstances surrounding the Appellants' breach of the residency obligation are very compelling and that they warrant special relief. The Appellants provided credible testimony as well as corroborating documents to thoroughly explain their situation, their options and decisions, and their unique circumstances.

[16] There are negative factors in this appeal, specifically the length of time the Appellants have spent in Canada and their lack of establishment; the lack of hardship if they were to lose their status; and the fact that they do not have family members in Canada who would be affected

by the decision. In regard to the best interest of the child, the Appellants have two young children who are much loved and are in the care of both their parents. Their best interest is to remain with their parents, be in in Mauritius or Canada.

[17] Lastly, the Appellants have a comfortable life and family support in Mauritius and Minister's Counsel expressed concern that the Appellants would not remain in Canada if the appeal is allowed, and that they would file another residency obligation appeal in the future. However, I find this speculative and the Appellants have demonstrated through their two previous attempts that they are serious about establishing their life in Canada. The only reason for their return to Mauritius was to complete their family. Now that is accomplished, they can focus on building a future for themselves and their two children, and they envision that future in Canada.

CONCLUSION

[18] Based on all the evidence before me, I find that the Appellants' reasons for their absence from Canada and their continued intent to return to Canada are of particular significance in this appeal, and that, overall, these positive factors outweigh the negative factors. I find there are sufficient humanitarian and compassionate grounds, in light of all the circumstances of the case, for me to find in the Appellants' favour. The appeals are allowed.

NOTICE OF DECISION

The appeals are allowed. The decision of the officer made outside of Canada on the appellants' residency obligation are set aside. The Immigration Appeal Division finds that the appellants have not lost their permanent resident status.

(signed)

“Judith Boer”

Judith Boer

March 5, 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 Act*, S.C. 2001, c. 27.

² Record, pages 2-4.

³ Record, page 86.