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. / Nº de dossier de la SAI : VC3-08712
Client ID No. / Nº d’identification du client : 5210-7089

Reasons and Decision – Motifs et décision

REMOVAL ORDER

Appellant(s) **and**	Harjinder Singh JARIA	**Appelant(e)(s)** **et**
Respondent	Minister of Public Safety and Emergency Preparedness	**Intimé(e)**
Date(s) of Hearing	January 24, 2024	**Date(s) de l’audience**
Place of Hearing	Heard by videoconference	**Lieu de l’audience**
Date of Decision	February 6, 2024	**Date de la décision**
Panel	Geoff Rempel	**Tribunal**
Counsel for the Appellant(s)	Simrit Birdi	**Conseil de l’appelant(e) /des appelant(e)s**
Designated Representative(s)	N/A	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	Carla Medley	**Conseil du ministre**

REASONS FOR DECISION

OVERVIEW

[1] Harjinder Singh JARIA (the Appellant) appeals a decision from a member of the Immigration Division who issued him a deportation order for serious criminality under section 36(1)(a) of the *Immigration and Refugee Protection Act* (the Act).[1] The Appellant was convicted on October 18, 2022 under section 267(a) of the *Criminal Code of Canada* for assault with a weapon ("the index offence").

[2] The Appellant was born in India. The Appellant became a permanent resident of Canada on May 16, 2006, at 19 years old. He is now 37. He first started using drugs in 2012, but after treatment in India was able to stop for several years. However, he began using alcohol around 2016, then fentanyl in 2019. During this period he began to commit criminal offences. Since 2018, the Appellant has received at least eight convictions under the *Criminal Code*. He has four convictions related to non-compliance, one for assault, two for uttering threats, and the index offence, which was his most recent conviction. He is still on probation for the index offence.

[3] The Appellant acknowledges that the removal order issued against him by the Immigration Division is legally valid. He is asking for a stay of his removal on humanitarian and compassionate grounds. After hearing the testimony of the Appellant, the parties made a joint recommendation for a stay of two and a half years subject to certain conditions.

DECISION

[4] I find that the removal order issued against the Appellant is legally valid. I also find that the Appellant has demonstrated sufficient humanitarian and compassionate considerations in his case, and I accept the joint recommendation of the parties for a stay of his removal for a period of two and a half years subject to conditions that are listed below.

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

ANALYSIS

The removal order is legally valid

[5] The Appellant did not challenge the legal validity of the removal order issued against him. I find that the Appellant, a permanent resident, was convicted in 2022 of a serious offence that carries a maximum penalty of 10 years imprisonment.

Framework for the consideration of special relief

[6] The IAD has the authority to consider special relief and stay the execution of a removal order, or allow an appeal from a removal order despite a finding of criminality. The test to be applied in the exercise of that jurisdiction is that the IAD must be satisfied that, at the time the appeal is disposed of, 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.

[7] Considerations in granting special relief are myriad and vary with each individual, but can include:

a) the seriousness of the offence or offences leading to the removal order;

b) the possibility of rehabilitation;

c) the length of time and degree of the Appellant's establishment in Canada;

d) the impact of removal on the Appellant's family members in Canada;

e) the support available for the Appellant in the family and community;

f) the degree of hardship that would be caused to the Appellant by the removal from Canada, including the conditions in the likely country of removal;

g) the best interests of a child directly affected by the decision.

The exercise of discretion must be consistent with the objectives of the IRPA. These include the need to protect the health and safety of Canadians and maintain the security of Canadian society.

The index offence was moderately serious

[8] The index offence was moderately serious. It resulted in a five-month global sentence (mostly credit for time served). The offence, in which the Appellant threw a pot at his wife (and missed), was part of a pattern of domestic violence against the Appellant's wife, who was also the victim in his previous assault and threat offences. The Appellant was demanding money for drugs at the time, according to the police report. The use of a weapon, even a pot, is inherently concerning. On the other hand, the victim was not physically harmed. Overall, the seriousness of the offence weighs against granting a stay of the removal order.

The Appellant has shown remorse and insight into his past criminal behavior

[9] The Appellant pled guilty to the index offence. The Appellant provided credible testimony at the hearing. He provided candid answers generally consistent with the documentary evidence on file. He acknowledged the role of alcohol and drugs in his criminal offences. He described the negative repercussions of his behaviour on his own life and for his family, especially his wife, children, and mother. He voiced a desire to apologize to his wife (which he cannot do yet, because of a no-contact order). The Appellant voluntarily relocated from Manitoba to British Columbia soon after his conviction in October 2022. He did so in order to remove himself from negative peer influences in Winnipeg and to reside with his mother and brother, who support his efforts to quit using drugs and avoid further criminal charges. I find that the Appellant is remorseful for his criminal activity, and he has shown insight into the negative impacts on himself and others. This weighs in favour of granting a stay of the removal order.

There is a significant potential for rehabilitation of the Appellant

[10] The Appellant demonstrates a significant potential for avoiding future criminal behavior in Canada. He has not been charged for about a year and a half since the index offence in June 2022. Prior

to that he had been crime-free for more than three years. He has complied with the terms of his probation since completing his custodial sentence, and remains on probation until the end of March 2024. He is once again employed full time. He has support in the community, particularly from his mother and brother. In 2023 he successfully completed courses related to domestic violence and anger management, and at the hearing articulated some of the skills he learned therein. He takes prescribed medication to control his cravings and receives drug-related counselling. This includes drug testing to confirm he is not using illicit drugs. Changes to his diet and exercise are part of his commitment to a healthier lifestyle. He has removed himself from negative peer associations and is instead involved with his gurdwara. At the appeal hearing, he expressed a strong motivation to "get clean" in order to become a better father, see his children grow up, help them pay for university, and potentially reconcile with his wife.

[11] It is concerning that in the past the Appellant has relapsed after previous attempts to stop using drugs. Even now, it has been just a few months since he last used opiates in October 2023. However, he did not have then, as he does now, such a strong program of monitoring, counselling, prescription medication, familial and professional support.

[12] Overall, the evidence in this case indicates that the Appellant is in the process of rehabilitating himself and has a significant potential for rehabilitation. A stay of his removal for a period of two and a half years will allow him to continue on this path. This weighs in favour of granting a stay of the removal order.

The Appellant has moderate establishment in Canada

[13] The Appellant has moderate establishment in Canada. The Appellant has been in Canada approximately half his life. His initial establishment was substantial. He started a family of his own here. At one time he owned his own roofing company. He and his wife bought a home, though his name is no longer on the title. Due to his drug use and criminal offences much of this initial establishment was lost. The Appellant is separated from his wife and subject to a no-contact order until the end of his probation. He remains involved in his children's lives, mostly long distance. They were visiting him at the time of the hearing. The Appellant is again employed full-time. He has some social connections in the

community and volunteers at his gurdwara. He resides with other immediate family, as mentioned earlier. The Appellant's moderate establishment in Canada weighs somewhat in favour of granting a stay of the removal order.

Best interests of the child impacted by the decision

[14] The Appellant has three children in Canada, ages 13, 12, and 9. The children live with their mother in Winnipeg and had not seen the Appellant in person for about a year and a half until their visit the week of the hearing. The Appellant provided documentary evidence of text messages with his oldest child.[2] A support letter from the oldest child was also provided in disclosure.[3] The oldest child attended the hearing with the intention to testify, but the parties reached a joint recommendation without needing to hear from her.

[15] Although the children have the support of other relatives, it is in their best interests for the Appellant to remain in Canada, as long as he continues on his path of rehabilitation. The Appellant has been present for his children most of their lives. More recently, despite his marital separation and the physical separation from living in a different province, the Appellant has maintained an ongoing relationship with them. Now that he is working again, the Appellant can assist in his children's financial support. Although he is not their primary caregiver, his presence in Canada allows him to be involved in their lives to a greater degree than would be possible if he were removed to India. The closer distance facilitates real-time communication and travel.

The Appellant's removal from Canada would likely cause some hardship

[16] The Appellant and his family in Canada may suffer some hardship if he is required to leave Canada. The Appellant testified that he has no family left in India. He said he has no social connections or support in that country. He said he has no job there. The Appellant spent his early years in India and received his education there. He speaks Punjabi and is familiar with the culture. It is expected that he

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[2] Exhibit A-1, pp. 6-19.
[3] Exhibit A-1, p. 4.

could readjust to life in India. Nonetheless, doing so would be somewhat challenging given the length of time he has been away and the lack of a support network there. His removal from Canada would also be challenging for his family in Canada. Aside from his role in his children's lives, the Appellant also helps care for his elderly mother, who has seizures and mobility limitations. Since the Appellant resides with his mother and brother, he is able to help meet her basic needs. If he were removed, a greater burden would fall on his brother and his brother's family. Given these factors, the degree of hardship that would likely be caused by the Appellant's removal from Canada is relatively minor, but still weighs to some degree in favour of granting a stay of removal.

CONCLUSION

[17] Having considered the recommendation of the Minister's representative, and on the basis of the evidence before me, I find that the Appellant has established that there are sufficient humanitarian and compassionate considerations to grant a stay of the removal order for a period of two and a half years subject to the attached conditions jointly recommended by the parties.

CONDITIONS OF STAY OF REMOVAL ORDER

You have been given a two and a half years stay. A stay means that your removal order is put on hold. You will be able to remain in Canada during this time. Your stay includes conditions which are listed below.

You must obey all your conditions until a final decision is made on your removal order appeal.

If you do not, you may lose your permanent resident status. Your stay could be cancelled, and your removal order appeal dismissed. This means you could be removed from Canada.

INFORMATION TO BE PROVIDED

You must always include your Unique Client Identifier (UCI) and IAD File number when you provide any information to the CBSA and to the IAD.

[1] Before you change your address, you must tell the Canada Border Services Agency (CBSA) and the Immigration Appeal Division (IAD). You must also advise if you change your phone number or email address. You must do this in writing.

[2] You must give CBSA a copy of your passport or other travel document. If you do not have a passport or other travel document, you must apply for one and provide a copy of your application to CBSA.

[3] You must make sure your passport or travel document is valid during the stay period. If it will expire during the stay period, you must apply to extend it. Provide a copy of the extended document to CBSA.

Where to send your information

[4] You must send these documents and updates to the following addresses:

For the Canada Border Services Agency

Hearings and Appeals Unit
Canada Border Services Agency
Suite 700, 300 West Georgia Street
Vancouver, BC V6B 6C8
Email: CBSA.AppealsPAC-AppelsPAC.ASFC@cbsa-asfc.gc.ca

For the Immigration Appeal Division

Western Region – Vancouver
Immigration Appeal Division
Immigration and Refugee Board of Canada
Suite 1600, 300 West Georgia St
Vancouver, BC V6B 6C9
Email: IRB.IAD-WO-SAI.CISR@irb-cisr.gc.ca
Fax: 604-666-3043

[5] You must meet the deadline for sending any document to CBSA and the IAD that is part of the conditions of your stay.

STAY CRIME-FREE AND OBEY THE COURT

[6] You must not commit an offence under Canadian federal law. If you are charged with any such offence, you must tell CBSA immediately, in writing. You must also write immediately to the CBSA and the IAD if you are convicted of any such offence.

[7] You must not commit an offence outside Canada that would be considered an offence under Canadian federal law. If you are charged with such an offence, you must tell CBSA immediately, in writing. You must also write immediately to the CBSA and the IAD if you are convicted of the offence.

[8] You must avoid people you know to have a criminal record or who are involved in crime unless they are:

- Your close family members
- People you live or work with
- People you meet as part of your drug treatment program or probation

REPORT TO THE CBSA

[9] Report to the Canada Border Services Agency by email or regular mail on or before

- June 30, 2024
- December 31, 2024
- June 30, 2025
- December 31, 2025
- June 30, 2026

[10] When you report, you **must provide a completed Stay Reporting form** to CBSA. A copy of the form is sent with this decision.

[11] Complete the **Roshni Clinic drug treatment program**, continue to use medications as prescribed by a physician, and continue attending one-on-one counselling with an emphasis on recovery and relapse prevention for the period of the stay.

CHANGING A CONDITION

[12] You must obey all the conditions of the stay. You must apply to the IAD to have any condition changed or removed.

[13] The CBSA can also apply to the IAD to have a condition changed or removed.

WARNING

Your stay will be cancelled and your appeal will be terminated by the IAD if you are convicted of:

- a criminal offence under Canadian federal law and you receive a term of imprisonment of more than 6 months;

- a criminal offence under Canadian federal law that can be punished by a term of imprisonment of 10 years or more; or

- a criminal offence outside of Canada that, if committed in Canada, would be an offence under Canadian federal law that can be punished by a term of imprisonment of 10 years or more.

This means that your appeal will be ended and you may be removed from Canada.

RECONSIDERATION OF YOUR APPEAL

The **IAD** will do a final review of your case **on or about September 1, 2026**. At that time, the **IAD** may also change or cancel some of the conditions. Your appeal may also be allowed or dismissed.

The **IAD** may contact you before the review to ask you to confirm that you have complied with the conditions of your stay. It is important for you to advise the **CBSA** and the **IAD** in writing before any change in your contact information so that you can be reached for these reviews.

(signed by) Geoff Rempel

Geoff Rempel

February 6, 2024

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.