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: TB6-08790
Client ID No. / N° ID client: 4656-6311

Reasons and Decision – Motifs et décision

RESIDENCY OBLIGATION

Appellant(s)	PARABHJIT KAUR SIDHU	**Appelant(e)(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration Le ministre de la Citoyenneté et de l'Immigration	**Intimé(e)**
Date(s) of Hearing	June 12, 2018	**Date(s) de l'audience**
Place of Hearing	Toronto, Ontario	**Lieu de l'audience**
Date of Decision	July 19, 2018	**Date de la décision**
Panel	Isoken Osunde	**Tribunal**
Counsel for the Appellant(s)	Jeremiah A Eastman 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	Rosalyn Chu	**Conseil du ministre**

Canada

REASONS FOR DECISION

INTRODUCTION

[1] These are the reasons for decision in the residency obligation appeal of Parabhjit Kaur Sidhu (the appellant). The appellant was determined by a visa officer to be in violation of her residency obligations to Canada pursuant to section 28 of the *Immigration and Refugee Protection Act*[1] (*IRPA*).

BACKGROUND

[2] The appellant is a seventy-year-old citizen of India. She became a permanent resident (PR) of Canada on July 27, 2002 after being sponsored by her son to Canada. She has three children in total and currently resides in India. She participated at the hearing *via* telephone. Three of her children also testified at the hearing in support of her appeal.

ANALYSIS

[3] Subsection 28(2) of the *IRPA* requires that permanent residents be physically present in Canada for at least 730 days in a five-year period or otherwise meet the residency obligation. The appellant does not challenge the legal validity of the visa officer's decision but asks that her appeal should be allowed because there are sufficient humanitarian and compassionate (H&C) grounds to warrant the granting of special relief. In assessing H&C considerations, I am guided by various **factors** that have been set out in case law.[2] They include but are not limited to: the extent of the non-compliance, the reasons for leaving Canada and the extended stay abroad, attempts made to return at the first available opportunity, ties to and establishment in Canada and abroad, hardship and the best interests of a child directly affect by my decision. The weight granted to each criterion varies depending on the circumstances of each case.

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[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended.
[2] *Bufete Arce, Dorothy Chicay v. Minister of Citizenship and Immigration* (IAD VA2-02515).

Extent of non-compliance

[4] The relevant period in this appeal is the five-year period immediately before April 7, 2016. During this period, the appellant was physically present in Canada for nineteen days. This level of non-compliance is, therefore, significant and requires a very high level of H and C to overcome.

Reasons for initial departure

[5] It was the appellant's testimony that she left Canada in April 2011 with her son back to India to look after her agricultural lands in India and to look for a wife for her second son Yuvraj who was recently divorced. Prior to that time, she lived with her son in Canada since 2002 and visited India twice between 2002 and 2011 when she returned to India. It was her testimony that her intention was to return in four or five months. I find that the appellant's reason for her initial departure from Canada is reasonable given that she had lived primarily in Canada since 2002 and her intention was to remain in India for about four or five months. I find the appellant's reason for her initial departure from Canada is a positive factor in my assessment.

Reason for extended stay abroad and efforts made to return to Canada

[6] It was also the appellant and her second son Yuvraj's testimony that prior to their departure from Canada, Yuvraj divorced his wife in Calgary and upon arriving in India, his ex – wife's parents filed a lawsuit against him and the appellant on December 29, 2011.[3] She testified that they subsequently attended a bail hearing and they were granted bail by the court on certain conditions including surrendering their passports to the court and payment of an amount. It was her testimony that the case against them was a case of dowry wherein Yuvraj's ex-wife's family demanded a repayment from the appellant and Yuvraj of the dowry of ten *lakhs* paid by her family to the appellant and Yuvraj at the time of their marriage. It was also her testimony that their passports were released to them on December 23, 2013[4] with conditions including paying an amount of seven *lakhs* and not to remain outside of India for longer than six months at a time.

[3] The court documents were entered at Exhibit A-1, pp. 1-16.
[4] Exhibit A-1, pp. 9-10.

On September 1, 2014, the matter was settled between both families[5] after a payment of ten *lakhs* and on July 1, 2015, by order of the court in India, the case against them was quashed.[6] The appellant testified that in 2012, her PR card expired and she was also sick from lung disease and as a result, she could not return to Canada. While her application for a travel document indicates that she was ill of lung disease and was advised by her doctor not to travel until she had completed treatment,[7] it does not mention anything about the pending court case. Her son, Yuvraj, was asked about this at the hearing and it was his testimony that they were not fully aware of what to write on the form and that when they mentioned to their representative that the appellant's reason for not returning was illness, he stated that it was good enough. I find the appellant's reason for not mentioning the court case on her forms reasonable and I accept it. Given that her son who filled out the form for her acted on the advice of their representative, I do not find it unreasonable that they would follow the advice of their representative and not mention the court case on the forms.

[7] It was the appellant's testimony that in 2012, she started to experience a lot of chest pains and upon having a CT scan in June 2012, she was diagnosed with shrinking lungs and was recommended treatment through pills. It was her testimony that she was told to take three pills daily for a year and at some point upon referral to a specialist hospital, her medication was increased to twelve pills daily for a month. She is still on the medication but now takes six pills daily. It was also Yuvraj's testimony that upon the release of his passport, he returned to Canada in 2014 and that although they were legally allowed to travel outside of India after the release of their passports by the court, his mother was not able to return to Canada because her PR card had expired for more than two years unlike his case where his PR card had expired for about fifteen to twenty days. I do not find there is sufficient persuasive evidence before me to demonstrate that the appellant could not have travelled to Canada after 2013 despite her illness. While there are medical documents to support her illness in 2012,[8] the documents do not indicate that she was not advised to travel to Canada during the period. There is also no evidence before me that she could not have received treatment for the lung disease in Canada. The evidence before me is also

[5] Exhibit A-1, p. 13.
[6] Exhibit A-1, p. 15.
[7] Exhibit R-1, Record, p. 7.
[8] Exhibit A-1, pp. 18-22.

insufficient to demonstrate that she could not have made attempts to renew her PR card like her son Yuvraj despite it having expired for two years. While it is reasonable that the appellant could not have travelled outside of India before December 2013, I find, given the release of her passport in December 2013, it would have been reasonable for her to make attempts to return to Canada even if for short periods of time. I find on this basis that she has failed to demonstrate that she make reasonable attempts to return to Canada at the first available opportunity and it is a negative factor in my assessment.

Establishment in India

[8] The appellant testified that she owns a piece of agricultural land in India which is about ten to fifteen acres in size but she was uncertain as to the value of the land. She testified that she currently lives in a house that she owns which is situated on the land. She also does not have a bank account in India and is able to support herself from the proceeds from her agricultural land. I find her establishment in India is significant when compared to her establishment in Canada and it is a negative factor in my assessment.

Establishment in Canada

[9] The appellant testified that she does not own any property or bank accounts in Canada. She is also not involved with any organizations in Canada. I find the evidence indicative of no establishment in Canada and it is a negative factor in my assessment.

Ties to India

[10] The appellant has two sons and one daughter who are all Canadian citizens. Her daughter Harkiran currently resides in India with her family and it was the appellant's testimony that she lives about two hundred to two hundred and fifty kilometers away from her. She moved back to India from Canada about seven or eight years ago. It was also the appellant and her daughter's testimony that she plans to return to Canada with her family in about two or three years. Her daughter also has two children one of whom is a minor. Her second son, Yuvraj has a minor child from his first marriage residing in India. She does not have any siblings in India. While I agree that the appellant's daughter is a Canadian citizen and plans to return to Canada in a few

years, I find her plans are speculative at this time and not concrete. I find her ties to India is a neutral factor given that she also has children and grandchildren living in Canada.

Ties to Canada

[11] The appellant's two sons are married and reside in Canada. While her second son has a child from his first marriage, the child does not reside in Canada. Her first son has two adult children residing in Canada. I find her ties to Canada is also a neutral factor in my assessment.

Hardship

[12] I find the most compelling factor in this appeal is the hardship to the appellant if her appeal is dismissed. After the loss of her husband in 2001, she was sponsored to Canada by her older son and she lived in Canada with him from 2002 until 2011when she returned to India. While in India, she lived with her second son Yuvraj until 2014 when he returned to Canada after his second marriage. Since his return to Canada, she lived with his second wife until March 2018 when his second wife was able to join him in Canada. I find the evidence indicative of the fact that the appellant has been dependent on her children and daughter in law since the passing of her husband. It was also the appellant's daughter's testimony that it is not customary for mothers to live with their daughters but rather with their sons and that her mother-in-law currently resides with her and she is ninety years old. It was also the appellant's testimony that she has no one to call in an emergency and that people can only help her for a day or two and leave. The Minister submits that arrangements can be made for her to move closer to her daughter if the appeal is dismissed. While I agree that this may on the face of it be an option open to the appellant, I however find, given the her particular circumstance that it is not a reasonable option for two reasons: first, she currently resides in a house that she owns situated on an agricultural land from which she is able to sustain herself from the proceeds. To suggest that she moves closer to her daughter will result in her losing the benefit of sustaining herself from the proceeds from her agricultural land and likely having to pay rent which in my view amounts to financial hardship as her testimony is that she does not own any other property in India. Second, moving closer to her daughter is not the same as residing in the same house with her children and given her age and health condition and the fact that she has not lived by herself since at least a year after the

passing of her husband, I find suggesting to her to move from her current familiar environment to an unfamiliar location where she will reside alone will amount to undue hardship. I also agree that her sons can visit her in India and spend time with her. However, the evidence before me does not demonstrate that they can visit her in India for long periods of time because of their employment in Canada. In fact, it was her older son's testimony that he can only visit her in India for two to three weeks at a time. When I put all these together, I find there is sufficient evidence before me to demonstrate that there will be significant hardship to the appellant if she does not reside in Canada permanently with her children and it is a positive factor in my assessment.

Best interests of the appellant's grandchildren

[13] The appellant's only two minor grandchildren reside in India. All her other grandchildren are adults. She maintains a relationship with her minor grandchildren in India. I find the best interests of her grandchildren is a negative factor in my assessment.

CONCLUSION

[14] I agree that the appellant's breach of her residency obligations was serious and requires a high level of H and C to overcome. I also agree that the residency requirements are certainly not onerous and require only a 730-day physical presence in Canada in a given five-year period. However, in arriving at a decision in this case, I have taken into consideration the appellant's particular circumstance. She is a seventy-one-year-old widow who, since a year after the death of her husband until March 2018, has lived primarily with either of her sons or her daughter-in-law. She also has health conditions and her two sons reside in Canada. While her daughter resides in India, it is not customary for her mother to reside with her. I also agree that there are more negative factors in this appeal than positive factors. However, as indicated above, the weight granted to each criterion varies based on the circumstance of each case. In this case, I have given significant weight to the hardship to the appellant if she continues to reside in India permanently

away from her two sons. I have also taken into consideration, case law[9] guidance in cases of this nature:

> "compassion" [is defined] as 'sorrow or pity excited by the distress or misfortunes of another, sympathy' […] 'compassionate considerations' must […] be taken to be 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 - so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the *Immigration Act*.
>
> 'Humanitarianism' [is defined] as 'regard for the interests of mankind, benevolence.'

[15] I find in the circumstance of this case that sufficient grounds exist to warrant the granting of special relief.

[16] The appeal is 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.

Isoken Osunde
Isoken Osunde

July 19, 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.

[9] *Chirwa v. Canada (Minister of Manpower and Immigration)* (1970), 4 IAC 338 (IAB).