

CANADA / JUDGMENT

D'Souza v. Canada (Citizenship and Immigration)

2025 FC 682

COURT

Federal Court

DECIDED

14 April 2025

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D'Souza v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-04-14 Neutral citation 2025 FC 682 File numbers IMM-6223-24 Decision Content Date: 20250414 Docket: IMM-6223-24 Citation: 2025 FC 682 Toronto, Ontario, April 14, 2025 PRESENT: Mr. Justice Diner BETWEEN: JOWSY SURAJ D'SOUZA Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] Mr. D'Souza seeks judicial review of a decision made by an immigration officer [Officer] refusing his permanent residence application on humanitarian and compassionate grounds [H&C], which I will grant for the following reasons. I. Background [2] Mr. D'Souza is a single, 50-year-old man from India who has been living and working in Canada since 2007. Upon arrival, Mr. D'Souza made a refugee claim which was refused by the Refugee Protection Division in 2009. Since then, he has submitted six unsuccessful H&C applications.
- [3] Mr. D'Souza comes from a poor Catholic family in India. His late father was a rickshaw driver, while his mother (now 74 years old) tended to the family. Mr. D'Souza has six sisters who all have their own families in India and cannot support him. Mr. D'Souza has held work permits, and worked in Canada, including establishing his own tiling business. Recently, he bought a condominium in Hamilton, Ontario. In this, his latest refused H&C application, Mr. D'Souza sought permanent residency based on his establishment, and the adverse conditions in India.
- [4] Mr. D'Souza provided numerous letters of support that both spoke to his professional and personal qualities. Some of these letters were from friends and community members, one of which describes him as a "a very good friend and like an elder brother," and another, as a "pillar in the local community." Mr. D'Souza also adduced evidence that the Canada Border Services Agency [CBSA] has been unable to enforce his removal due to difficulties in obtaining his travel documents.

- [5] Mr. D’Souza emphasized that he has complied with all CBSA instructions and reporting obligations, and other requirements. He attempted to aid in the process of obtaining paperwork from consular officials, including meeting with the Indian Embassy officials, and communicating information to Indian Police to obtain travel documents to facilitate his removal. Indeed, the fact that he has not been removed is the very reason for which he has been able to obtain work authorization from the Respondent.
- [6] Turning to the H&C refusal and the first factor considered, the Officer placed positive weight on some aspects of the establishment factor, and neutral or little weight on others. The Officer acknowledged Mr. D’Souza’s time spent in Canada but noted that time alone is insufficient for a positive result. The Officer also acknowledged Mr. D’Souza’s relationships with friends, colleagues, and community members, but provided them little weight because according to the Officer, Mr. D’Souza did not explain how he is interdependent on these relationships. The Officer gave no weight to the fact that Mr. D’Souza has always been compliant with Canadian laws and CBSA rules, finding this was expected of those in Canada. The Officer did, however, give positive weight to one component of the establishment factor – namely his self-employment and financial establishment.
- [7] On hardship, the second H&C factor considered, the Officer noted that his entire family resides in India. The Officer concluded that because family members tried to assist him to obtain his travel documents, he could rely on them to assist him once back in India. Furthermore, the Officer noted Mr. D’Souza failed to provide sufficient evidence “on what hardships he would face outside of the 96 or 97(1) if he were to return to India,” including on account of the claimed discrimination he would face as a practising Christian. Ultimately the Officer did not feel that poor economic conditions and a “less robust” health care system would result in significant hardship returning to India. II. Parties’ Positions and Analysis [8] Mr. D’Souza submits that the Officer committed several errors. Most notable among these was that the Officer attributed little weight to significant factors relating to his many years of establishment in Canada. Further, the Officer failed to consider crucial evidence related to Mr. D’Souza’s prospective economic and discrimination-based hardship in India.
- [9] The Respondent retorts that the Officer’s decision was reasonable, in that establishment alone is not sufficient to support a positive H&C application, and hardship factors in returning to India were justified and transparent. In asking this Court to intervene now, Mr. D’Souza is improperly asking the Court to reweigh the evidence.
- [10] In light of these submissions, I must decide whether the Officer’s decision was reasonable (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 16–17, 23–25) [Vavilov]; Kanthasamy v Canada (Citizenship and Immigration), 2015 SCC 61 at para 44 [Kanthasamy]). An unreasonable decision will fail to demonstrate “rationality internal to the reasoning process” or is “untenable in light of the relevant factual and legal constraints that bear on it” (Vavilov at para 101). Errors must be “sufficiently central or significant to render the decision unreasonable” (Vavilov at para 100; see also Musa v Canada (Citizenship and Immigration), 2025 FC 367 at para 8).

- [11] I begin my analysis with two initial observations. First, as noted by the parties, this Court last provided reasons for a prior H&C application over eight years ago in *D'Souza v Canada* (Citizenship and Immigration), 2017 FC 264. I note that Mr. D'Souza has now set down more significant roots in Canada from a financial and community perspective. At the time of Mr. D'Souza's current H&C under review in this application, he was 48 years of age, having spent half of his adult life in Canada.
- [12] Second, while the H&C regime is not intended to be an alternative immigration scheme (Kanthasamy at para 23), delegated H&C officers must engage in a global assessment and weigh the relative considerations cumulatively to determine if relief is justified under the circumstances (*Galindo Caballero v Canada* (Citizenship and Immigration), 2024 FC 642 at para 9). According to the prevailing Supreme Court of Canada case law, Mr. D'Souza is required to establish that their circumstances "would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another" (Kanthasamy at para 21, citing *Chirwa v Canada* (Minister of Immigration) (1970), 4 IAC 338 at p 350).
- [13] H&C officers are afforded deference in their decisions. However, if elements raised are overlooked or tainted by error, the Court will not be able to judge if the decision is reasonable. As stated in *Asu v Canada* (Citizenship and Immigration), 2022 FC 661 at para 5 [Asu]: While H&C decisions are exceptional and highly discretionary, warranting significant deference (*Miyir v. Canada* (Citizenship and Immigration), 2018 FC 73, at para 12), officers must "substantively consider and weigh all the relevant facts and factors before them" (Kanthasamy at para 25, emphasis in original). Where elements are overlooked or tainted by error, particularly central compassionate planks, the Court's balancing exercise will necessarily be deficient because the Court cannot know whether, if properly considered, the officer would have assigned positive, negative, or neutral weight (*Bhalla v. Canada* (Citizenship and Immigration), 2019 FC 1638 [Bhalla] at paras 21 and 28).
- [14] I agree with the Applicant that in this case, the Officer made reviewable errors with respect to parts of the analysis of each of the two factors considered. First, regarding establishment, the Officer did not properly consider the evidence submitted, thus failing the duty to substantively consider and weigh all the relevant facts and factors. That gap included undertaking a fresh analysis of the new H&C application, rather than making findings based on an obscured view focused on the muddled waters of Mr. D'Souza's previous negative H&C outcomes.
- [15] Rather than taking a fresh approach to his application with all its new evidence, which should have been done given the passage of time, the Officer viewed the application through the clouded lens of the prior failed H&C applications. The very extensive submissions – perhaps the most detailed and lengthy of any H&C application that I have seen – included a plethora of new evidence ranging from community establishment to financial backing to property to business growth, which had all recently developed or increased in strength since his previous applications. The Officer was duty-bound to consider the establishment with an open mind, something that was not apparent given the failure to engage with central

evidence (see, for instance, *Gayle v Canada (Citizenship and Immigration)*, 2024 FC 29 at para 24).

- [16] I note, in addition, that Mr. D’Souza’s inability to obtain documentation to return to India was through no fault of the Applicant. This Court has held that “[p]ositive consideration may be warranted when the applicant has been in Canada for a significant period due to circumstances beyond his or her control” [emphasis in original] (*Ngiao v Canada (Citizenship and Immigration)*, 2025 FC 265 at para 32 citing *Legault v Canada (Minister of Citizenship and Immigration)* (C.A.), 2002 FCA 125 at para 27).
- [17] On the second factor (hardship), the Officer also erred in overlooking and misconstruing evidence. The Officer began by stating that even though Mr. D’Souza had explained the lack of finances of his siblings and mother in India, that “[i]t is of note the applicant provides little explanation as to why he cannot be a financial burden on his family in India.” The Officer went on to speculate that: the applicant’s family must know of his situation in Canada, and he even states he has approached his family for help in assisting with his return to India stating that his “sister and aunt in India have been compliant in providing information to the Indian police.” It is reasonable to conclude that his family members although distant are still assisting the applicant with his endeavours. While conceding that Mr. D’Souza stated in sworn evidence placed before the Officer that he was not close with any of his siblings, the Officer speculated that the Applicant “must be in frequent communication with [his family].”
- [18] These speculative statements, including assuming his family will be able to assist him, fly in the face of the Applicant’s affidavit. Speculating that his family in India would assist him financially, and placing significant weight on his family ties in India despite his direct evidence to the contrary, are other examples of unjustified reasoning, demonstrating a failure to have regard to the evidence filed (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1554 at para 36). This evidence was a central part of the personal hardship in returning to India after so many years away. The Officer’s reasons failed to take a contextual approach to the case presented (*Rubio v Canada (Citizenship and Immigration)*, 2025 FC 609 at paras 13–14).
- [19] Finally, I note that the outcome was not intelligible because it failed to demonstrate rationality in the reasoning process as to what lead to the negative decision (*Vavilov* at para 101). Indeed, there were no negative findings on establishment: the Officer placed positive weight on Mr. D’Souza’s work and financial establishment, “little weight” on his relationships, and neutral weight to time alone in Canada. On hardship, the Officer considered (though without properly grappling with the evidence, as explained above) that Mr. D’Souza would not face hardship in India, and thus I infer that neutral weight was given to this factor. In arriving to an overall negative decision, the Officer provided no explanation as to how an apparent finding that there was no hardship in returning, outweighed the many years of establishment in Canada, which in sum appeared to have positive weight. Overall, the lack of justification and intelligibility does not bear the hallmarks of a rational reasoning

(Vavilov at para 101). It simply does not “add up.” III. Conclusion [20] For the reasons above, this application for judicial review is granted. The matter will be sent back for redetermination by a different officer. JUDGMENT in IMM-6223-24 THIS COURT’S JUDGMENT is that: The application for judicial review is granted. The matter is remitted for redetermination by a different officer to be assessed in accordance with these reasons. No question of general importance is certified. There is no order as to costs. “Alan S. Diner” Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-6223-24 STYLE OF CAUSE: JOWSY SURAJ D'SOUZA v MCI PLACE OF HEARING: TORONTO, ONTARIO DATE OF HEARING: aPRIL 3, 2025 JUDGMENT AND REASONS: DINER J. DATED: April 14, 2025 APPEARANCES: Lorne Waldman For The Applicant Lorne McClenaghan For The Respondent SOLICITORS OF RECORD: Waldman & Associates Barristers and Solicitors Toronto, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

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