

CANADA / JUDGMENT

Monga v. Canada (Citizenship and Immigration)

2026 FC 564

COURT

Federal Court

DECIDED

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Monga v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2026-04-29 Neutral citation 2026 FC 564 File numbers IMM-7252-24 Notes A correction was made on April 30, 2026 Decision Content Date: 20260429 Docket: IMM-7252-24 Citation: 2026 FC 564 Ottawa, Ontario, April 29, 2026 PRESENT: Madam Justice Azmudeh BETWEEN: PRASHANT MONGA KANU MONGA VIRAAJ MONGA YUVRAAJ MONGA Applicant and MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Overview [1] The Applicants are a family of four consisting of the parents and their two sons. They seek a judicial review of the rejection of their permanent resident application on humanitarian and compassionate grounds (H&C). I allow the application for the following reasons.

- [2] The Applicants are citizens of India who originally come from Haryana. They sought an exemption from the ordinary requirements of the Immigration and Refugee Protection Act, SC 2001 c 27 [IRPA] on H&C grounds. Prior to their application, they had made a refugee claim, and both the RPD and the RAD accepted their allegations to be credible but rejected their claim on the availability of a viable internal flight alternative (IFA) in Kolkata, in West Bengal. The Applicants based their H&C application on the degree of establishment in Canada, the hardship they would face if they needed to return to India and the best interest of the children (BIOC).
- [3] This is the second time the Applicants' H&C application is being judicially reviewed by this Court. The first time they filed an H&C application, another senior immigration officer refused it. However, after Justice Southcott of this Court allowed the judicial review, it was sent back for redetermination (Monga v Canada (Citizenship and Immigration), 2023 FC 848). This is the judicial review of the redetermination.
- [4] The Applicants speak Hindi, the majority language in Haryana, and English. Mr. Prashant Monga's activities in Haryana against the ruling party, the Bhartiya Janata Party (BJP), got him and the family into trouble with Hindu nationalists supporting the BJP. In their H&C application, they argued that they do not speak the language used in West Bengal, namely Bengali, and as such, they would face undue hardship to establish themselves there. They

also argued that the majority of the Hindi speakers in Kolkata are pro-BJP, which would make their integration into that community difficult. They also argued that their children, both of whom were minors at the time of the Application, but only the younger one was still a minor at the time of decision-making, could not pursue their education in the language of instruction in public schools, namely Bengali. They provided evidence that they would not be able to afford private school fees that would give them the option to study in English. They also provided evidence of their establishment in Canada.

- [5] The senior immigration officer who decided their case (Officer) on redetermination found that the Applicants are working, supporting themselves, hardworking and law abiding, with friends and community support. The Officer gave positive consideration to their establishment: I give positive consideration to the applicants' establishment in Canada and acknowledge that they worked during the pandemic. However, I would also like to note that it is not uncommon for individuals to establish some roots while awaiting the outcome of their refugee claims and appeal process. Overall, I am satisfied that the applicants are currently working and supporting themselves in Canada and I give some positive weight to their efforts towards establishing themselves in Canada.
- [6] On the hardship the family would face, the Officer acknowledged that they are Hindi-speaking and that the majority language in West Bengal is Bengali. The Officer also acknowledged the Applicant's argument that the Hindi speaking community in West Bengal is predominately pro-BJP, and that as an anti-BJP activist, Mr. Monga and his family would face difficulty establishing themselves. However, the Officer referred to the RPD and RAD reasons for the lack of Haryana police interest and motivation to track them down to New Delhi. The Officer suggested that this lack of interest would also allow them to relocate to Kolkata, and suggested that, just as easily as they could move and integrate into the Canadian society after their move to Canada, they could do the same in Kolkata. The Officer also noted that their research revealed that the President of Haryana Association of North America, an association to which the Applicants belong in Canada, met with the Chief Minister of Haryana. It is unclear how this fact is relevant to the Officer's analysis of the Applicants' establishment in Canada or the hardship they had alleged they would face in West Bengal.
- [7] On the best interest of the children, the Applicants had also led evidence on their inability to pay the fees associated with private education, and evidence that the children did not speak the language of instruction in public West Bengal schools, Bengali. They had also provided a psychological report for the younger child, Yuvraaj, on his high levels of anxiety and depression, his fear of not knowing the language or any friends, and the negative impact of these factors on his development into adulthood. The Applicants also led evidence of Yuvraaj's severe allergies that required him to receive immunotherapy, and how Kolkata's pollution would make it worse.

- [8] The Officer found that since the Applicants were able to enroll their children in English school in Haryana, they can probably continue to do so in Kolkata. Also, since the parents' accompanying the children would mitigate the hardship the children would face: Overall, I have considered the best interest of the children and accept that the applicants may believe that their children will have a better education and life in Canada. However, based on the information before me it is reasonable to conclude that the negative aspects of the move to India will be mitigated by the fact that the children will be with their parents, who have demonstrated that they have the best interest of their children at heart. I note that the children will be returning to India with their primary caregivers and their primary source of support. The culture and language in India is familiar to the adult applicants. Though I acknowledge general conditions in India may impact the children's interests to some extent, I find their best interests are served by remaining with their primary caregivers, their parents, who would reasonably be able to mitigate the difficulty of relocating to India and continue to support them. II. Issues and Standard of Review [9] The only issue before me is whether the Officer's decision was reasonable.
- [10] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paras 12-13 and 15 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21, at paras 8, 63 [Mason].
- [11] I have started by reading the reasons of the decision-maker in conjunction with the record that was before them holistically and contextually. As the reviewing judge, I have focused on the decision-maker's reasoning process (*Vavilov* at paras 83–84, 87). I have not considered whether the decision-maker's decision was correct, or what I would do if I were deciding the matter itself: *Vavilov*, at para 83; *Canada (Justice) v DV*, 2022 FCA 181 at paras 15, 23. It is not this Court's role to reweigh the evidence: (*Vavilov* at para 125).
- [12] A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision-maker (See *Vavilov* at paras 85, 91–97, 103, 105–106, 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 28–33, 61; *Mason* at paras 8, 59–61, 66). For a decision to be unreasonable, the applicant must establish that the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. III. Legislative Overview [13] Section 25(1) of IRPA governs foreign nationals' requests for H&C applications: Humanitarian and compassionate considerations — request of foreign national 25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35, 35.1 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35, 35.1 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption

from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected. Séjour pour motif d'ordre humanitaire à la demande de l'étranger 25 (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35, 35.1 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35, 35.1 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché. IV. Analysis A. The Officer's decision is unreasonable [14] H&C applications are exceptional in the sense that an applicant requests the Minister to exercise Ministerial discretion to relieve them from requirements in the IRPA. The Supreme Court of Canada confirmed that the purpose of this humanitarian and compassionate discretion is “to offer equitable relief in circumstances that ‘would excite in a reasonable [person] in a civilized community a desire to relieve the misfortunes of another’” (Kanthasamy v Canada (Minister of Citizenship and Immigration), 2015 SCC 61 at paras 13, 21 [Kanthasamy], citing Chirwa v Canada (Minister of Citizenship and Immigration), (1970) 4 IAC 338, p 350).

- [15] The purpose of humanitarian and compassionate discretion is to “mitigate the rigidity of the law in an appropriate case,” and that no limited set of factors warrants relief (Kanthasamy at para 19). As such, I agree with my colleague, Madam Justice Sadrehashemi in Tuyebekova v Canada (Citizenship and Immigration), 2022 FC 1677 at para 11: The factors warranting relief will vary depending on the circumstances, but ‘officers making humanitarian and compassionate determinations must substantively consider and weigh all the relevant facts and factors before them’ (Kanthasamy at para 25 citing Baker v Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 74-75 [Baker]).
- [16] In this case, like with other H&C cases that turn on the facts, context matters. As part of the context, here are the facts before the Officer: a)The Applicants speak Hindi and English. They do not speak Bengali. The evidence before the Officer showed that of the 8 million people living in West Bengal, 85% spoke Bengali, and only 15,000 English. The Officer did not question the Applicant's allegation that the majority of the Hindi speakers are BJP supporters. On Hindi, the Applicants had submitted the Government of India's Commissioner for Linguistic Minorities that stated only 7.7 percent (ie, around 570,000) spoke Hindi in West Bengal. However, the Officer based their decision that the family would face no hardship on a Wikipedia article that 22% spoke Hindi. The Officer did not acknowledge the different government figures and did not explain why they preferred the Wikipedia figures. b)The Officer accepted that the RPD and the RAD found the Applicants to be credible in that Mr. Monga is an anti-BJP activist who faced a serious possibility of

persecution in Haryana, but that he and his family could reasonably relocate to West Bengal. c)The Officer accepted that the Applicants are well-established in Canada and gave it “positive weight”, but found that this was not uncommon for those awaiting the outcome of their outstanding immigration matters. d)While the Officer had evidence that the family could not afford private education in West Bengal and that free public education was held in Bengali, the Officer found that the Applicants could probably enrol their children in English language education. At the hearing, counsel for the Respondent pointed to a Wikipedia article before the Officer on how education in Bengal was funded publicly and privately and that it was also available in English, and that the tuition fee of some of the private institutions were not particularly high. e)Viraaj suffers from anxiety and depression and that he feared his lack of linguistic abilities and friends in West Bengal. The psychological report found that his removal to West Bengal could adversely affect his future as an adult. f)Viraaj has severe allergies that require immunotherapy. There is undisputed evidence of high levels of pollution in Kolkata. The Officer found that there is not evidence to suggest Viraaj cannot obtain immunotherapy in Kolkata.

- [17] In this case, the Officer gave the Applicants’ establishment probative value by giving it “positive weight”. However, they also found that it is “not uncommon” for people awaiting their immigration process to “establish some roots while awaiting the outcome of their refugee claims and appeal process”. There are two distinct ways to interpret the Officer’s reasoning, which in and of itself, speaks to the unintelligibility and the lack of transparency of the reasons.
- [18] The first is that the Officer gave establishment an unqualified positive weight. Then, one would reasonably expect that the Officer’s analysis would point to some negative factors that would mitigate or cancel the positive findings. However, the Officer’s analysis on the negative factors that would reasonably neutralize their positive finding on establishment was deficient. Most importantly, on the BIOC analysis, the Officer acknowledged that the children did not speak Bengali. However, the Officer found they can attend school in English, which was determinative to their conclusion that it would not be against the Applicants’ best interest to relocate to Kolkata.
- [19] The Officer reaches this conclusion but ignores the Applicants’ evidence to the contrary. The Applicants explicitly led evidence that free public education in West Bengal is offered in Bengali and that they could not afford the fees of private English schools. While Respondent’s counsel pointed to different tuition fees in different English schools, there was no evidence before the Officer to suggest that the parents could afford any of those, nor did the Officer’s analysis engage with the different options in light of the evidence concerning the family’s finances. Based on the Officer’s speculation and unfounded assumption that the parents could probably afford the private school fees for education in English, the Officer found that the children could attend English school.

- [20] By not engaging with the contrary evidence and by basing the decision on their own speculation, the Officer's decision did not engage with central arguments that might have affected their conclusion, failing to shield against arbitrariness (Vavilov at paras 79, 128). The Officer did not explain how the Applicants' ability to pay for English education in their home state of Haryana before facing persecution and coming to Canada was relevant to the conclusion that the children could attend English school when the entire family would return to a state where they do not speak its main language.
- [21] The second possible interpretation for the Officer's statement was that the Applicants' positive establishment is similar to what others in their circumstances would also attain. If this is the case, the Officer applied the veiled "exceptionality" test. The Officer expected to see a level of establishment that would be unusual compared to others without indicating what more the Applicants could have reasonably done. This Court has repeatedly found that it is unreasonable to expect an exceptional or extraordinary level of establishment to justify establishment (See *Galindo Caballero v. Canada (Citizenship and Immigration)*, 2024 FC 642 para 20, citing *Wahyudini v Canada (Citizenship and Immigration)*, 2024 FC 350 at para 24; *Farhat v Canada (Citizenship and Immigration)*, 2023 FC 1427 at para 31; *Subar v Canada (Citizenship and Immigration)*, 2022 FC 340 at paras 17, 23; *Zhang v Canada (Citizenship and Immigration)*, 2021 FC 1482 at paras 22-25).
- [22] For either of these reasons, I find that the Officer's reasons are not responsive to the evidence before them. The break in the chain of reasoning renders the decision unreasonable. V. Conclusion [23] The Officer's decision lacks the requisite degree of justification, intelligibility, and transparency. The application for judicial review is therefore granted.
- [24] Neither party proposed a question for certification. I agree that none arises. JUDGMENT IN IMM-7252-24 THIS COURT'S JUDGMENT is that The Judicial Review is granted and is sent back to the Respondent to be decided by a different Officer. There is no question to be certified. blank "Negar Azmudeh" blank Judge FEDERAL COURT SOLICITORS OF RECORD Docket: IMM-7252-24 STYLE OF CAUSE: PRASHANT MONGA ET AL. v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: TORONTO, ONTARIO DATE OF HEARING: APRIL 15, 2026 REASONS FOR JUDGMENT AND JUDGMENT: AZMUDEH J. DATED: APRIL 29, 2026 WRITTEN SUBMISSIONS BY: David Orman For the Applicant Mariam Shanouda For The Respondent SOLICITORS OF RECORD: David Orman Orman Immigration Law Toronto, Ontario For the Applicant Mariam Shanouda Department of Justice Canada Toronto, Ontario For The Respondent

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