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

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IAD File Number: VA6-02693
Client ID: 42389000

STATEMENT THAT A DOCUMENT WAS PROVIDED

On February 5, 2008 I provided the **Reasons and Decision**

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IAD File No. / N° de dossier de la SAI : VA6-02693

Client ID no. / N° ID client : 4238-9000

Reasons and Decision – Motifs et décision

SPONSORSHIP

Appellant(s)	Manpreet Kaur SIDHU / GREWAL	**Appelant(s)**
and		**et**
Respondent	The Minister of Citizenship and Immigration Le ministre de la Citoyenneté et de l'Immigration	**Intimé(e)**
Date(s) and Place of Hearing	15 November 2007 Vancouver, BC	**Date(s) et lieu de l'audience**
Date of Decision	1 February 2008	**Date de la décision**
Panel	Erwin Nest	**Tribunal**
Counsel for the Appellant(s)	Khushpal Taunk Barrister Solicitor	**Conseil(s) de l'appelant(e) / des appellant(e)(s)**
Counsel for the Minister	Steve Bulmer	**Conseil du ministre**

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Représentant de la CISR

Canada

Reasons for Decision

[1] Manpreet Kaur SIDHU (the "appellant") appeals from the refusal to approve the sponsored application for a permanent resident visa for her parents, Jaswinder Singh BHABBA, Gurdev Kaur BHABBA and her sister Jaspreet Kaur BHABBA (the "applicants"), from India. The application was refused on the basis that the appellant did not meet the minimum necessary income (MNI) requirements pursuant to paragraph 133(1) (j) of the *Immigration and Refugee Protection Regulations* (the "*Regulations*").[1]

[2] Counsel for the appellant did not challenge the legal validity of the refusal and requested the Appeal Division consider its discretionary jurisdiction.
The appellant bases her appeal on paragraphs 67(1(c) of the *Immigration and Refugee Protection Act* (the "*Act*"),[2] which provides as follow:

> **67(1)** To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time the appeal is disposed of,
>
> (c) other than in the case of an appeal by the Minister, 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.

BACKGOUND

[3] The appellant is 26 years old. She immigrated to Canada in March, 2002 (Record, page 2) after being sponsored by her first husband. The appellant's marriage did not last and the divorce was finalized in 2003. In September 2003, she submitted sponsorship application and undertaking of support for her parents and sister. In 2004, the appellant re-married in India and on October 20, 2005 a son was born out of this union in Canada. Since May 2006, the appellant lives with her second husband (the "husband"), in Surrey, B.C. In October 2006 the appellant's husband traveled to India with the couple's son and he left the child in the care of his parents before returning to Canada.

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1 *Immigration and Refugee Protection Regulations*, SOR/2002 – 227.
2 *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[4] In December 2005 the appellant was interviewed by the representative of the Citizenship and Immigration, Canada in Vancouver. Given the change in the size of the appellant's family composition the appellant's income was assessed for the period of calculation from December 14, 2004 to December 14, 2005. Based on the information provided by the appellant, which included computerized notices of assessment , pay stubs and statement of business activities she did not meet the MNI requirements for six persons and the applicants' application was refused, pursuant to paragraph 133(1)(j) of the *Immigration and Refugee Protection Regulations.*

DECISION

[5] In looking to the circumstances in their entirety, the appellant did make out a case for discretionary relief. She met the onus on her of demonstrating that, 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 this case.

ANALYSIS

[6] I have considered all the testimony adduced at the *de novo* hearing, the contents of the Record, the appellant's disclosure and written submissions from the appellant's and Minister's counsels.

[7] The appellant and her husband testified in person at the hearing.

[8] The respondent submitted that insufficient compassionate or humanitarian factors existed and asked that the appeal be dismissed in law and equity.

[9] Following *Jugpall,*[3] I assess this appeal in light of the three criteria mentioned in the case.

1. Do the current circumstances of the appellant indicate that the test for financial solvency under the amended Regulations is met as of the date of the hearing? This includes determining whether the appellant has a track record of meeting the Low Income Cut-Off [now "Minimum Necessary Income "] criteria in the 12 months preceding the date of hearing.

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3 *Jugpall, Sukhjeewa Singh v. M.C.I.* (IAD T98-00716), Aterman, Goodman, Townshend, April 12, 1999.

2. If the answer to the first question is in the affirmative, are there any other positive factors which warrant the granting of special relief? Are there negative factors which weigh against the granting special relief? A lesser standard than that required by Chirwa may be sufficient to justify granting special relief.

3. If the answer to the first question is negative, are there nonetheless sufficient compassionate or humanitarian considerations to warrant the granting of special relief, in accordance with the test in Chirwa, given that the appellant can not in substance meet the requirements of the Act? The number and nature of those factors will vary, depending upon the extent to which the appellant fails to meet the requirements of the Act.

[10] The leading decision which provides guidance as to what constitute "the humanitarian or compassionate considerations present which warrant special relief" is found in the case of *Chirwa*.[4] The *Chirwa* test describes humanitarian and compassionate considerations as "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".

[11] Also, I regard the following factors to be the appropriate considerations in the exercise of discretionary jurisdiction in the context of an appeal based on financial inadmissibility. The relevant factors include the nature and degree of legal impediment, reason for sponsorship, the nature and degree of relationship between the appellant and the applicant/s, hardship and impact on the appellant, hardship to and impact to the applicant and best interest of a child directly affected by the decision. The relevant factors are set out in *Ribic*[5] and have been confirmed by the Supreme Court of Canada in *Chieu*[6] and *Al Sagban.*[7] The Supreme Court of Canada stated that the factors set out in *Ribic* remain the proper ones for the Immigration Appeal Division to consider during an appeal under paragraph 67(1)(c) of the *Act*. These factors are not exhaustive and the weight given to each may vary depending on the circumstances in each individual case.

[12] I note that at the time of the financial evaluation of the appellant's financial situation for the sponsorship purposes the appellant did not provide the Citizenship and Immigration, Canada with the Notice of reassessment from the Canada Revenue Agency of her income for the tax year

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4 *Chirwa* v. *Canada* (*Minister of Manpower and Immigration*) (1970), 4 I.A.C. 338 (I.A.B.).

5 *Ribic, Marida* v. *M.E.I.* (I.A.B. 84-9623), D. Davey, Benedetti, Petryshyn, August 20, 1985 (See CLIC No. 86, May 14, 1986).

6 *Chieu* v. *Canada* (*Minister of Citizenship and Immigration*) [2002] S.C.J. No. 1 2002 SCC 3.

7 *Al Sagban* v. *Canada* (*Minister of Citizenship and Immigration*), [2002] S.C.J. No. 2, 2002 SCC 4.

2005[8] which indicate that the appellant's income was $49,926.00. Given that the MNI for six persons in 2005 was $44,789.00 I find that the appellant met and exceeded the minimum necessary income requirements during the period under consideration. While I agree with the Minister's argument that based on the decision in *Chahal* there is no legal obligation of the Citizenship and Immigration, Canada to make further enquiries where it is faced with clearly deficient application, I find that the credible evidence of the appellant's meeting the requirements of the *Act* during the period of calculation can be considered as a positive factor in the panel's consideration of the discretionary relief in light of all circumstances of this case.

[13] Based on the notice of assessment of the appellant's income for the tax year 2006[9] I find that the appellant continues to meet and exceeds the necessary minimum income for six persons by $4360.00 and I find this to be a positive factor in this appeal.

[14] I find the documentary evidence pertaining to the appellant's and her husband's employment to be persuasive. It includes among other documents the appellant's pay stubs from Brar Super Labour Contracting,[10] letter of employment from Purewall Holdings Ltd. confirming that the appellant works as a subcontractor for cleaning and maintenance services since July 2006, earning $5000.0 per month,[11] letter of employment from the Sea to Sky Precision Construction Ltd stating that the appellant's husband's income is about $3000.00 in gross wages per month. I find trustworthy the appellant's and her husband's consistent testimony that the appellant provides baby sitting services to her uncle by looking after his child while his wife works in a restaurant. I note that the witnesses' testimony in this area is corroborated by evidence of the copies of the cheques received from Joginder Bhabba.[12] I find credible the appellant's explanation that her husband is supportive of her reunification with the applicants in Canada. I am satisfied based on the totality of evidence that at the time of this hearing combine income from the appellant's three places of employment and her husband's income exceed the minimum necessary income for six persons.[13] I find the appellant's ability at the time of the

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8 *Chalal, Balwinder Singh* v. *M.C.I.* (F.C., no. IMM-1423-07), Barnes, September 24, 2007, 2007 FC 9.
9 Exhibit A-2, page 59.
10 Exhibit A-2, pages 33-49.
11 Exhibit A-2, page 69.
12 Exhibit A-2, page 24, page 41, page 50, and pages 108-109.
13 Record, page 116.

hearing to meet the current Minimum Necessary Income (the "MNI") for a family of 6 a positive factor in this case

[15] I found the appellant credible with respect to her employment. She testified in a straightforward manner. She was spontaneous and detailed in her responses to the questions. The appellant appears to be a hard working individual who has been employed steadily since shortly after landing often holding three jobs at one time. She has never been on social assistance. The appellant has shown that she is becoming established in Canada, that she is progressing in her employment and I expect that that will continue. I am satisfied that she continues to maintains three jobs in Brar Super Labour Contracting as a sub-contractor for Purewall Holdings Ltd and as baby sitter for her uncle's child. There is evidence that the appellant accumulated $39,996.91 in a Canada Trust saving account. I find credible the appellant explanation that she plans to work in her current jobs to be able to afford to buy a house. I note that the appellant's husband testified about his plans to establish a construction company specializing in framing. I consider the appellant's employment history in Canada and her ability to save her earnings indicative of a degree of establishment in Canada. I find this to be a positive factor in this case.

[16] The appellant testified that she did not see her parents, sister and a brother in India since 2004, when she married her second husband. I find credible her explanation that since her return to Canada after her second marriage she focused all her efforts on work and her pregnancy. I find the evidence supports the conclusion that after the failure of her first marriage the appellant was determined to establish herself in Canada and worked hard as a single and subsequently as a married woman to meet minimum necessary income requirements in order to reunite with her parents and sister. It is unusual and commendable that she has several jobs and only sleeps about four hours per night. The circumstances are such here that there is a very motivated couple who want to make a better life for themselves and their respective families in Canada. I find this to be positive factor in this case.

[17] I find that the appellant has no family members in Canada beside her husband, and her uncle's family. The appellant testified that she wants her parents and sister to come to Canada so they can be reunited as a family. The appellant testified that she expects her father to open a

restaurant specializing in Indian food and both of her parents will help with raising and transmitting cultural values to her child. There is evidence that the appellant's parents have assets in India which they are planning to use for the purpose of settlement in Canada. Given the evidence that the appellant's father, age 48 and her mother age 49, who are in a general good health have employment plans I am satisfied that the applicants are not expected to become financial burden given the appellant's and her husband's financial circumstances. I am satisfied that there is evidence of the appellant's and her husband's self sacrifice in the sponsorship of the appellant's parents and sister from India.

[18] Documentary material was submitted evidencing the alleged contact between the appellant and the applicants in 2006. The appellant provided copies of telephone bills, which indicate a number of telephone calls to India. Based on the evidence before me, and on the balance of probabilities I am satisfied that the contact between the appellant and the applicants is meaningful and is of the extent and nature to be expected in the context of close family ties.

[19] The appellant's testimony confirmed that her parents achieved a degree of establishment in India; they own property, they are financially independent and are able to support the appellant's sister's studies towards MA. The appellant has one married brother in India. Given the applicants' general situation I find no evidence of hardship and the impact to the applicants in their present circumstances.

[20] There were discrepancies in the appellant's and her husband's oral evidence. With respect to the timing of the sponsorship application for the appellant's husband's parents to Canada, the appellant claimed that the couple plans to sponsor them in January 2008, while the appellant's husband testified that he needs time to settle and his parents will be sponsored after he starts his business. Furthermore, he confirmed that he did not discuss the timing of sponsorship of his parents with the appellant. The appellant's husband testified that his parents will continue to care for the couple's two year old child until he will reach the school age, contradicting the appellant claim that she wanted her parents in Canada to help to raise her child and they will bring the appellant's child with them when allowed to come to Canada. While I agree with Minister's counsel that these discrepancies were not adequately explained, however I disagree that the lack of adequate explanation detracts from the appellant and her husband's

credibility in other areas. I find the evidence on the balance of probabilities supports the conclusion that the appellant and her husband want to reunite with their child and respective families in Canada, but they have not discussed and decided on the timing of the sponsorship of the appellant's husband's parents. Given that they are currently are primary care givers to the couple's son, the issues of the timing of their sponsorship may affect the couple's plans with respect to their child's return to Canada. There was no evidence adduced at the hearing with respect to other children except the appellant's child whose best interests will be affected by the decision in this case.

[21] The appellant testified that her parents visit her child regularly. While in my view it is in the best interests the appellant's son to be in the primary care of his parents, given the choice the appellant and her husband made to focus on the settlement in Canada in order to reunite with the couple's respective families here and leave their child in the care of the appellant's husband's parents, I find that that the couple's child will greatly benefit from love and affection of his paternal and maternal grandparents on a frequent basis if the families will be reunited in Canada as planned.

[22] Family reunification is an important objective of the *Act* and I am satisfied that the family reunification is still a priority for the appellant and her husband and that the close family relationship has been clearly demonstrated in this case.

[23] Accordingly, the concerns of the visa officer and the Minister's counsel were met at this hearing by the evidence from and demeanor of the appellant. Any concerns that remain outstanding are not significant in light of the panel's impressions of the witnesses at the hearing and its overall assessment of the evidence.

[24] I find that the fact that as of this date of the appeal the obstacle to admissibility had been, in effect overcome, a lower threshold for granting special relief is appropriate. Based on the evidence of strong positive factors and some negative factors which do not undermine any justification in granting the relief I am satisfied that a dismissal of this appeal would be pointless and unnecessarily harsh.

[25] Given that in considering the evidence as a whole, I find the evidence, on balance, is supportive of the exercise of the discretionary relief.

CONCLUSION

[26] The appellant has met the onus of proof. Based on the evidence before me and on a balance of probabilities, taking into account the best interests of a child directly affected by the decision, there are sufficient humanitarian and compassionate considerations that warrant special relief in light of all the circumstances of the case. The appeal is allowed.

NOTICE OF DECISION

The appeal is allowed. The officer's decision to refuse a permanent resident visa is set aside, and the officer must continue to process the application in accordance with the reasons of the Immigration Appeal Division.

(signed) **"Erwin Nest"**

Erwin Nest

1 February 2008

Date (day/month/year)

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.

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IRB Representative
Représentant de la CISR