IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2026] NZIPT 507156**

RŌPŪ TAKE MANENE, TAKE WHAKAMARU AOTEAROA

Appellant:	**BX (India)**
Respondent:	**The Chief Executive of the Ministry of Business, Innovation and Employment**
Before:	A N Molloy (Member)
Counsel for the Appellant:	A McClymont
Counsel for the Respondent:	No appearance
Date of Decision:	20 February 2026

DEPORTATION (NON-RESIDENT) DECISION

---

[1] The appellant is a 61-year-old citizen of India. She brings this humanitarian appeal against her liability for deportation, which arose when she became unlawfully in New Zealand after the expiry of her interim visa on 2 May 2025.

THE ISSUE

[2] The appeal turns upon whether there are exceptional circumstances of a humanitarian nature by virtue of the appellant's likely isolation in India in the context of her health conditions, following the death of her son, husband and father, in the last five years. It also takes into account the impact of deportation upon her daughter, a New Zealand resident since 2014, and the daughter's family in New Zealand.

[3] The Tribunal finds that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported, and that it would not be contrary to the public interest to allow her to

remain in New Zealand on a permanent basis. The appeal is allowed, and the Tribunal directs that the appellant be granted a resident visa.

BACKGROUND

[4] The appellant was born in Jalandhar and has lived all her life in the state of Punjab in India. She had two children, a son (now deceased) and a daughter. The daughter has lived in New Zealand since 2010, has been resident here since 2014, and a permanent resident since 2016.

[5] In September 2018, the appellant travelled to New Zealand on a visitor visa, with her husband, to visit their daughter. They remained in New Zealand for approximately seven months.

[6] In 2019, the appellant experienced a series of adverse health events including a cardiac event, requiring admission to hospital in Jalandhar for six days, and the amputation of a lower limb. In March 2021, her son had a fatal stroke in India. In May 2022, her husband died.

[7] In January 2023, the appellant returned to New Zealand alone, on a visitor visa, and remained here for six months, until July 2023.

[8] On 4 April 2023, the appellant lodged an expression of interest under the Family (Parent) category.

[9] The appellant entered New Zealand again on 30 December 2023 and remained here lawfully until she returned to India on 6 March 2024, after just over two months. Most recently, she arrived in New Zealand on 2 May 2024, on a visitor visa.

[10] On 26 October 2024, the appellant lodged an application for a further visitor visa, before the expiry of her existing visa. She was issued with an interim visa the same day, pending the expiry of her visitor visa on 2 November 2024.

[11] In December 2024, the appellant's elderly father, with whom she had been living in India, also died.

[12] Immigration New Zealand wrote a series of letters to the appellant's counsel, seeking comment on propositions that she may not meet instructions for the issue of a further visa on various grounds. These included that she had not

provided a police certificate, may not have an acceptable standard of health, would have spent more time in New Zealand than permissible under Immigration instructions and may not genuinely intend to remain in New Zealand on a temporary basis.

[13] On 31 March 2025, the appellant's expression of interest expired after remaining in the ballot for two years.

[14] On 11 April 2025, Immigration New Zealand issued a decision declining the appellant's application for a further visitor visa. It was not satisfied that the appellant was *bona fide* in her intent to remain in the country for a temporary stay. In addition to that, were the appellant to be granted a further visa, she would exceed the maximum period of nine months in New Zealand during an 18-month period. Immigration New Zealand was not satisfied that the appellant met the requirements of immigration instructions V2.1.a.ii or V2.5.1.

[15] The appellant's visa expired on 2 May 2025, after which she became unlawfully in New Zealand and liable for deportation.

[16] The appellant lodged this appeal on 11 June 2025.

STATUTORY GROUNDS

[17] The grounds for determining a humanitarian appeal are set out in section 207 of the Immigration Act 2009 ("the Act"):

> (1) The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that—
>
> (a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and
>
> (b) it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.

[18] When interpreting an earlier equivalent to section 207(1)(a) (section 47(3) of the Immigration Act 1987), the Supreme Court held that, to meet the test, three ingredients must be established, in sequence: (i) exceptional circumstances; (ii) of a humanitarian nature; (iii) that would make it unjust or unduly harsh for the person to be removed from New Zealand; *Ye v Minister of Immigration* [2009] NZSC 76, [2010] 1 NZLR 104 at [34].

THE APPELLANT'S CASE

[19] The appellant's case is set out in the appeal form and in submissions dated 11 June 2025. In summary, it is submitted that there are exceptional circumstances of a humanitarian nature arising from the combined impact of the appellant's health conditions, her likely isolation and vulnerability to a decline in her mental health if she returns to India as a woman living alone following the relatively recent deaths of her son, husband and father in India, the extent to which her grandchildren benefit from her presence in their household, and the disruption to the daughter's life if the appellant had to return to India.

[20] As to whether deportation would be unjust or unduly harsh, it is submitted that the appellant has not breached any immigration instructions or conditions, that she requires ongoing care and monitoring for her health issues, that the family unit in New Zealand provides the appellant with physical assistance and emotional stability, and that the family in New Zealand has planned for her long-term care.

[21] With respect to the public interest, it is submitted that the appellant poses no risk in the sense that she is law abiding and compliant with visa conditions, and that it is in the public interest that a family with established roots in New Zealand should be permitted to stay together.

Materials and Documents

[22] In addition to written submissions, the appellant provides a bundle of documents in support, including further copies of medical reports (some previously provided to Immigration New Zealand), including patient assessment reports dated August 2019 from a hospital in Jalandhar, regarding the appellant's amputation and prosthetic, similar reports from June and October 2019 regarding cardiology and heart care following the insertion of a stent in June 2019, and radiology; a report dated 25 February 2025 from Dr Manish Khanolkar, specialist physician and endocrinologist in Auckland; a letter dated 25 February 2025 Anthony Kueh, cardiologist in Auckland; a letter from the appellant's daughter and letters in support from Manpreet Kaur, friend of the appellant's daughter and from the Supreme Sikh Society of New Zealand.

ASSESSMENT

[23] The Tribunal has considered the submissions and documents provided by the appellant. It has also considered the appellant's Immigration New Zealand file in relation to her temporary visa application and its relevant electronic records.

Whether there are Exceptional Circumstances of a Humanitarian Nature

[24] Exceptional circumstances of a humanitarian nature "must be well outside the normal run of circumstances" and, while they do not need to be unique or very rare, they do have to be "truly an exception rather than the rule"; *Ye v Minister of Immigration*, at [34].

The appellant's circumstances in India

[25] The appellant is a 61-year-old widow. She has lived in Punjab all her life. She had two children, one of whom, her daughter, is resident in New Zealand, having lived here since 2010 when she (the daughter) was 22 years old. The appellant's son died prematurely in 2021, following a stroke, aged in his 30s. Her husband died in 2022 after being diagnosed with cancer and her father died in India in December 2024, when the appellant was in New Zealand.

[26] Before coming to New Zealand most recently the appellant lived with her own father. It is not clear where they lived, but there is no evidence to suggest that, if the appellant were to return to India now, she would have nowhere to live or that she would be unable to support herself (whether from her own resources or with the support of her daughter, or both). However, her father died, aged 90, in December 2024. She would therefore return to an otherwise empty household.

[27] It is unlikely that the appellant would be completely isolated. Whatever support she may have had to help her cope with looking after her father is likely to still be available. For example, she has sisters in India who likely also took an interest in the welfare of her (their) father. However, they have families of their own. The appellant would not have immediate family to care for or to care for her, and the impact of her grief from the successive deaths of her son, husband and father is likely to be amplified. The daughter writes of her mother's grief and of the comfort she has found from living with her daughter and grandchildren in New Zealand. The Tribunal has no difficulty in accepting that.

The appellant's physical and mental health

[28] The appellant has various health challenges which she has managed over the years. She has coped with type 2 diabetes for 30 years, and more recently with cardiovascular challenges. Her lower leg was amputated in around 2019, and she was subsequently fitted with a prosthetic. She requires insulin injections, cardiovascular medication and regular monitoring from specialists, all of which she is receiving in New Zealand. These have been well treated and managed in India, where she received specialist healthcare at a hospital in Jalandhar. There is no reason why she would not receive equally adequate care if she returned.

[29] The Tribunal has been provided with a report from Anthony Kueh, cardiologist, who stated, in early 2025:

> … to summarise, [the appellant] has important cardiovascular disease and risk factors with previous coronary event [in 2019]. She has recovered well, event free and clinically stable while on medical therapy for years. She is compliant with her medical therapy. She has limited function due to her leg amputation; however, she has no cardiac symptoms to report. My assessment is therefore that [the appellant] has been actively and aggressively managed appropriately from a cardiac perspective and should continue to do well on medical therapy.

[30] The Tribunal also has a letter dated 25 February 2025 from Dr Manish Khanolkar, specialist physician and endocrinologist. He noted that the appellant had "longstanding type 2 diabetes with full set of microvascular complications" and notes her amputation. He states that she is on appropriate risk-reducing medication and that her glycaemic control is satisfactory. He also observes that "she does not smoke, and neither does she consume any alcohol". She is independent with her activities of daily living. As to her mobility, he noted that she had a prosthetic fitted following her amputation and "usually can walk short distances of around 50 to 100 metres. For longer distances, she may use the aid of a walker". She was "independently mobile to the clinic without any assistance being needed".

The appellant's circumstances in New Zealand

[31] In New Zealand, the appellant lives with her daughter, son-in-law and two grandchildren, in the daughter's family home. The daughter is a New Zealand permanent resident aged in her late 30s. She arrived in New Zealand on a student visa in 2010, subsequently obtained work visas and was granted residence in 2014 as a skilled migrant. The son-in-law is also a New Zealand permanent resident. They have been married for many years and have two

New Zealand-born and New Zealand-citizen children, both of primary school age. The children have never lived in India.

[32] The daughter and son-in law are both working full time. The daughter owns her own hair and beauty salon which she purchased in 2019, not long before the COVID-19 pandemic. It takes little imagination to understand the impact this had on the business. The son-in-law is currently a team leader with a transport company. They own their own property in Auckland, and an investment property which is currently rented. There is no information about their ratio of equity to debt, but they are working hard and managing their circumstances.

[33] The appellant provides testimonials from friends of the daughter, and the Tribunal accepts that the appellant's New Zealand-based family are embedded in their local community and schools. New Zealand is their home and the only home the children have known.

[34] The daughter works long hours and derives support and comfort from the appellant's presence in the home and her care for her grandchildren. Contact with the grandchildren has had a positive impact on the appellant's mental health and benefits the children, who enjoy her attention and affection.

[35] If the appellant were to remain in New Zealand, she would continue to live with her family. She would continue to receive care. The daughter does not know how any of them will cope if the appellant returns to India. She worries about the impact on the appellant's mental health, where her isolation and the impact of the recent family deaths, particularly those of her son and husband, will be starkly realised. She would worry about the appellant constantly, yet she cannot imagine uprooting her own children, born and raised in New Zealand, and relocating to Punjab. She would have to wind up her business and believes that neither she nor her husband would be able to find work nearly equivalent to their current employment. Given the duration of time the daughter and son-in-law have been in New Zealand and the level of their family's settlement here, the Tribunal accepts that relocation to India would be challenging for them.

The best interests of the appellant's grandchildren

[36] In considering this appeal, the Tribunal must take account of the best interests of the appellant's grandchildren. They must be given "important and genuine assessment"; see *O'Brien v Immigration and Protection Tribunal* [2012] NZHC 2599 at [32]. However, these are neither paramount nor *the* primary

consideration in the deportation context, where private and public interests must be balanced; see Article 3(1) of the 1989 *Convention on the Rights of the Child*, *Puli'uvea v Removal Review Authority* [1996] 3 NZLR 538 (CA) and *Ye v Minister of Immigration* (*supra*).

[37] While the Tribunal has no reason to doubt that the presence of the appellant brings a benefit to the children (as well as to the appellant and the daughter), it need not be overstated. When the appellant has visited in the past, and returned home to India, the children would have adjusted back to daily life without her presence. They are both at an age where they would do so again (eight and six years old). They are living in a house with stable and loving parents. Their material needs are adequately covered, and their best interests will be met by remaining in the care of their parents whether the appellant is in New Zealand or returns to India.

Conclusion on exceptional humanitarian circumstances

[38] The appellant is a woman in her early 60s who has spent almost all her life in India. Notwithstanding this, if she were to return there now, she would be alone with no immediate family to return to. While she has sisters in India, they have their own family commitments.

[39] In New Zealand, the appellant currently lives with her daughter, son-in-law and two grandchildren, in the daughter's family home. Her daughter and son-in law are both working full time, the daughter in her own business.

[40] The appellant is able to support her daughter, who works long hours, and her contact with her grandchildren has had a positive impact on her mental health. It is accepted that this has been significantly compromised in recent years, as the result of layers of grief brought upon first by the premature and sudden death of her son, the death of her husband of many years and latterly the death of her father, for whom she cared, and who has died while she has been in New Zealand. Were she to return to India now, the impact of her isolation would be amplified, compromising her mental health. The loss of those three most significant members of her family in India have undermined her nexus to India, notwithstanding that it is where she has always lived.

[41] The appellant also has complex physical health challenges. It is apparent from the material provided that the appellant received excellent care in Jalandhar for her diabetes, in respect of the amputation, and for her ongoing coronary care.

There is no reason to believe that she would not have access to such care in future if she were to return. However, while she is mobile, she does face challenges given her amputation. In light of the appellant's general health, it is likely that her need for family support and to be in proximity to her daughter will become more significant as she ages.

[42] While the best interests of the appellant's grandchildren do not strictly require her to remain in New Zealand, the Tribunal acknowledges that it would be better for them if she does. This is so both directly, in that they will continue to benefit from her love, attention and affection and indirectly, in that their mother (the appellant's daughter) will be spared the inevitable increase in worry and stress should the appellant have to return to India. While the daughter will be torn by the choice to return to India to care for her mother, or remain in New Zealand, the option of returning is not realistic. She has lived in New Zealand for 16 years. She runs a business, which has survived the challenges of the COVID-19 pandemic, and cares for her two young children. They are New Zealand citizens who have never lived in India. The challenges and realities of the daughter and her family relocating to India makes such a possibility highly unlikely.

[43] The combination of the appellant's vulnerable physical and mental health, her grief, and the isolation she would face in India as a result of the recent deaths of three family members, and the circumstances of her family in New Zealand are well outside the normal run of circumstances and an exception rather than the rule in the sense intended by the Supreme Court in *Ye v Minister of Immigration*.

[44] The Tribunal finds that there are exceptional circumstances of a humanitarian nature.

Whether it would be Unjust or Unduly Harsh for the Appellant to be Deported

[45] To determine whether it would be unjust or unduly harsh for an appellant to be deported from New Zealand, the Supreme Court stated, in *Ye*, at [35], that they must show a level of harshness more than a "generic concern" and "beyond the level of harshness that must be regarded as acceptable in order to preserve the integrity of New Zealand's immigration system". It must be assessed in light of the reasons why the appellant is liable for deportation and involves a balancing of those considerations against the consequences of deportation; *Guo v Minister of Immigration* [2015] NZSC 132, [2016] 1 NZLR 248, at [9].

[46] Here, the appellant became liable for deportation after she became unlawfully in New Zealand following the expiry of her last visa in May 2025. She has not acted in bad faith or a cynical fashion. She has visited her daughter on several occasions since 2018, returning home to India after each visit within the timeframe lawfully permitted.

[47] To be weighed against that are the exceptional humanitarian circumstances already outlined. She has remained in New Zealand because her physical frailty is now augmented by cumulative grief for her closest family members in India and her substantive isolation on return. There is no sense that the appellant has sought to flaunt or undermine immigration instructions. She has a support network here that she would lack, to her physical and psychological detriment, in India.

Conclusion on injustice or undue harshness

[48] Weighing these matters, the Tribunal finds it would be unjust or unduly harsh for the appellant to be deported from New Zealand.

Public Interest

[49] Where the Tribunal has determined that there are exceptional humanitarian circumstances that make it unjust or unduly harsh for the appellant to be deported, it must also be satisfied that it would not be contrary to the public interest to allow the appellant to remain in New Zealand. This involves the weighing of those factors which would make it in the public interest for the appellant to remain against those which make it in the public interest that she leaves; *Garate v Chief Executive of Department of Labour* (HC Auckland, CIV-2004-485-102, 30 November 2004) at [41].

[50] There is a public interest in maintaining the integrity of the immigration system and in the holders of temporary visas complying with their terms, including departing from New Zealand prior to the expiry of their visa.

[51] However, the appellant's actions in remaining here to pursue this humanitarian appeal do not amount to a significant breach of the integrity of the immigration system. She lodged this appeal promptly after becoming unlawful.

[52] Turning to the relevance of the appellant's health to the public interest, it is likely that she will require medical services as she ages. However, she is a valued part of her daughter's household, and they offer her practical support. She is still

physically independent, with the aid of her prosthetic, and her diabetes and coronary conditions are well-managed with medical therapy. Having considered the comprehensive health information provided on appeal, the Tribunal is satisfied that she is not likely to impose significant costs or demands on New Zealand health system in the near future.

[53] To the extent that the appellant might present a burden to New Zealand's health system further into the future, this is outweighed by the public interest in her remaining in New Zealand with her family and in the compassionate treatment of a highly vulnerable person whose wellbeing would be significantly undermined by returning her to her home country.

[54] There is a general public interest in avoiding unjust or unduly harsh outcomes; *Helu v Immigration and Protection Tribunal* [2015] NZSC 28, [2016] 1 NZLR 298 at [169]. The Tribunal has found that the deportation of the appellant in this case would be unjust or unduly harsh.

[55] There are no negative character issues in the appellant's case. The Tribunal has obtained a clear Ministry of Justice conviction history check for her (19 February 2026), and she has provided a police clearance certificate from the Consulate General of India. It is dated 5 February 2025, but the appellant has not left New Zealand or returned to India since that date.

Conclusion on public interest

[56] Weighing the various public interest factors identified, the Tribunal finds that it would not be contrary to the public interest to allow the appellant to remain in New Zealand.

DETERMINATION

[57] For the reasons given, the Tribunal finds that there are exceptional circumstances of a humanitarian nature which would make it unjust or unduly harsh for the appellant to be deported from New Zealand.

[58] The Tribunal also finds that it would not in all the circumstances be contrary to the public interest for her to remain in New Zealand on a permanent basis.

Order for Grant of a Visa

[59] Pursuant to section 210(1)(a) of the Act, the Tribunal orders that the appellant be granted a resident visa.

[60] The appeal is allowed.

Order as to Depersonalised Research Copy

[61] Pursuant to clause 19 of Schedule 2 of the Act, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and particulars likely to lead to the identification of the appellant. This is because the decision contains sensitive health information relating to the appellant.

"A N Molloy"
A N Molloy
Member

Certified to be the Research Copy released for publication.

A N Molloy
Member