

Federal Court



Cour fédérale

Date: 20241127

Docket: IMM-10782-23

Citation: 2024 FC 1903

Ottawa, Ontario, November 27, 2024

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

ABD E MUNIB

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by Immigration, Refugees and Citizenship Canada [IRCC] to reject an application for permanent residence in Canada under the Québec Immigration Investor Program, on the basis that the Applicant failed to produce his daughter's Québec Selection Certificate [CSQ], birth certificate and passport, thereby also failing to apply for permanent residency before the expiry of his CSQ.

[2] On May 27, 2020, the Applicant, through his prior counsel, filed an application for permanent residence for himself and his family, under the Québec investor category. Unfortunately, a clerical error occurred when prior counsel for the Applicant failed to include the Applicant's daughter's CSQ, birth certificate and passport.

[3] On May 2, 2023, IRCC returned the application because of the missing documents, resulting in the Applicant's application failing to meet the requirements of section 10 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. It is important to note at this stage that the CSQs were valid until 2021, or until a decision is made on the application for permanent residence. The IRCC decision having been made after 2021, it resulted in the CSQ no longer being valid. Moreover, because the Québec Immigration Investor Program is no longer open, the Applicant cannot renew his CSQ.

[4] On June 3, 2023, counsel for the Applicant wrote to IRCC to request that the application for permanent residence be reopened, and explained that the Applicant's omission to include his daughter's documents was due to a clerical error by counsel. Counsel states in that letter having attached a copy of the Applicant's daughter's CSQ, birth certificate, and passport. However, the June 3, 2023, letter found as an exhibit to the affidavit of the Applicant's prior counsel in the Application Record does not include the Applicant's daughter's CSQ, birth certificate and passport as attachments. The Applicant's prior counsel does state in his sworn affidavit having sent all the documents.

[5] On July 13, 2023, IRCC acquiesced to the Applicant's request to reopen the file and asked that he provide his daughter's CSQ within seven (7) days. It is unclear why IRCC would require another copy of the CSQ if it had already been attached to the June 3, 2023, letter. Some documents must have been attached to the June 23, 2023, letter, however, because IRCC no longer required the filing of the Applicant's daughter's birth certificate and passport.

[6] On July 25, 2023, IRCC refused the application for permanent residence on the basis that the Applicant's CSQ expired in 2021, and that the application was incomplete, presumably because the Applicant failed to submit his daughter's CSQ as requested on July 13, 2023. There is no reference in that decision, however, on the issue of IRCC agreeing to reopen the file at the request of the Applicant's prior counsel, to allow the Applicant to submit the necessary documents and put him back into the same position as existed prior to the May 2, 2023 decision. There are also no reasons provided to the effect that IRCC indeed received the Applicant's daughter's birth certificate and passport, but not the CSQ, because only the CSQ was requested on July 13, 2023.

[7] The Applicant's prior counsel then resubmitted the Applicant's daughter's CSQ on July 26, 2023.

[8] On August 3, 2023, the Applicant's prior counsel requested the reopening of the file for a second time.

[9] On August 14, 2023, IRCC again refused the Applicant's application, for the same reasons set out on July 25, 2023, those being that the Applicant's CSQ expired in 2021, and that the application was incomplete. The fact that IRCC made another decision on August 14, 2023, instead of simply advising the Applicant that it was not reopening his file, is indicative that IRCC agreed to reopen the file a second time. By that point, IRCC was in possession of the CSQ, because it was sent on July 26, 2023. The Applicant's daughter's CSQ may be found at p. 89 of the Certified Tribunal Record [CTR]. It is important to note that the Applicant's daughter's birth certificate and passport may be found at pp. 200 and 202, respectively, of the CTR, indicating that documents were indeed sent by the Applicant's prior counsel in his letter of June 3, 2023. No reasons are provided as to why the Applicant's application remained "incomplete."

[10] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]). To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99; *Mason* at para 59). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125–126; *Mason* at para 73).

[11] The IRCC decision of August 14, 2023, is unreasonable for two main reasons.

[12] First, the reasons provided indicate that the refusal of the Applicant's application for permanent residence is because the Applicant's CSQ expired and his application was filed after its expiry. That conclusion is not reasonable on the basis of the facts of this case. IRCC accepted to reopen and reconsider the Applicant's application a second time in August 2023, putting the Applicant back into the same position as existed prior to the May 2, 2023, decision. No final decision having been made by the IRCC at that point, the Applicant's CSQ remained valid. As, the Applicant submitted his application on May 27, 2020, prior to the expiry of his CSQ, the Applicant remained eligible for consideration for permanent residence on August 14, 2023 (and on July 25, 2023).

[13] Second, the evidence demonstrates that the Applicant, through his prior counsel, filed at least the Applicant's daughter's birth certificate and passport on June 3, 2023, as there is no other way that these documents could find themselves at pp. 200 and 202 of the CTR. I also accept the affidavit evidence of the Applicant's prior counsel that the Applicant's daughter's CSQ was also attached to the June 3, 2023, letter (and probably simply misplaced by IRCC in its decision-making process). However, even if the Applicant's prior counsel omitted to include the CSQ, the issue is not determinative as the CSQ was in IRCC's possession when it made the August 14, 2023, decision, after having decided to reopen the Applicant's application following a second request made by counsel on August 3, 2023. The IRCC reason to deny the Applicant's application for permanent residency, on the basis that it is incomplete on August 14, 2023, is therefore also unreasonable on the facts of this case.

[14] The decision is therefore set aside and sent back for redetermination before a different decision maker, who must reconsider the Applicant's application on the basis of his existing CSQ, and the complete record already before the IRCC including the Applicant's daughter's CSQ, birth certificate and passport.

JUDGMENT in IMM-10782-23

THIS COURT’S JUDGMENT is that

1. The application for judicial review is granted.
2. The IRCC decision on the Applicant’s application for permanent residence is quashed and the matter is remitted back for reconsideration by a different officer, in accordance with these reasons.
3. There is no question for certification.

“Guy Régimbald”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10782-23

STYLE OF CAUSE: ABD E MUNIB v THE MINISTER OF CITIZENSHIP
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APPEARANCES:

Mohamed-Amine Semrouni

FOR THE APPLICANT

Zoé Richard

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bertrand Deslauriers Attorneys
Barristers and Solicitors
Montréal (Québec)

FOR THE APPLICANT

Attorney General of Canada
Montréal (Québec)

FOR THE RESPONDENT