Federal Court Cour fédérale

Date: 20250402

Dockets: IMM-6869-24
IMM-6766-24
IMM-6812-24
IMM-6872-24

Citation: 2025 FC 612

Toronto, Ontario, April 2, 2025

PRESENT: The Honourable Justice Battista

Docket: IMM-6869-24

BETWEEN:

GARY BABETIAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-6766-24

AND BETWEEN:

MARIANA TCHILINGUIRIAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-6872-24

AND BETWEEN:

ADRIANA BABETIAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-6812-24

AND BETWEEN:

TATIANA BABETIAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS
(delivered orally from the Bench on April 2, 2025)

[1] The Principal Applicant, Gary Babetian, was found inadmissible for misrepresentation after false, misleading, and inaccurate information was provided in his work permit application that raised the potential of an error in the administration of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The parties agree, as I do, that his former representatives, immigration consultants from Green Light Canada Global Mobility Solutions Ltd., were negligent. The parties also agree that the immigration consultants were given notice of these allegations and notice of this proceeding pursuant to this Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings*, dated June 24, 2022, amended October 31, 2023.

[3] The parties disagree on the final criterion for establishing a breach of fairness based on incompetent representation, which requires a miscarriage of justice.

[4] A miscarriage of justice can be demonstrated by establishing that, but for the negligent conduct, there is a "reasonably probability that … the result would have been different", or that the negligent conduct compromised the "fairness of the adjudicative process" (*El-Khatib v Canada (Citizenship and Immigration)*, 2025 FC 49 at paras 47-48; the test is described generally at paras 39-56).

[5] I am satisfied that a miscarriage of justice occurred due to the negligent conduct of the Principal Applicant's former immigration consultants.

[6] First, I am satisfied that, but for the negligent conduct, the result would have been different. The Principal Applicant was negligently advised by his former immigration consultants to file a work permit application based on obtaining a Labour Market Impact Assessment (LMIA) as the owner/operator of a Canadian business in December 2022. However, the owner/operator category was eliminated in April 2021 long before the advice was given and the work permit application was filed.

[7] The Principal Applicant has provided sworn evidence that if he knew he was not eligible for the work permit, he would not have filed the application. If he had not filed the application, he would not find himself inadmissible for misrepresentation. Therefore, but for the negligent conduct of his former immigration consultants, the result would have been different.

[8] Second, I am satisfied that the negligent conduct of the Principal Applicant's former immigration consultants compromised the fairness of the process. As recently held by Justice Angus Grant, the right to be heard is contingent upon an accurate completion of application documents (*Singh v Canada (Citizenship and Immigration)*, 2024 FC 576 at para 51). The parties and I agree that the Principal Applicant's application was negligently prepared, and this compromised his right to be heard, and the fairness of the process.

[9] For these reasons, the application for judicial review is granted based on the breach of fairness resulting from the negligent conduct of the Principal Applicant's former immigration consultants.

JUDGMENT in IMM-6869-24, IMM-6766-24, IMM-6812-24 and IMM-6872-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. The refusal of the Principal Applicant's application based on inadmissibility for misrepresentation is quashed, as are the decisions made on the dependent Applicants' applications, and the applications are remitted for reconsideration by a different officer in accordance with these reasons.

3. There is no question for certification and no order regarding costs.

"Michael Battista"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-6869-24, IMM-6766-24, IMM-6812-24 AND IMM-6872-24
STYLE OF CAUSE:	GARY BABETIAN and others v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 2, 2025
JUDGMENT AND REASONS:	BATTISTA J.
DATED:	APRIL 2, 2025

APPEARANCES:

Shameika Hue	FOR THE APPLICANTS
Giancarlo Volpe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Matkowsky Immigration Law Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT