Federal Court  Cour fédérale

Date: 20250522

Docket: IMM-12558-24

Citation: 2025 FC 928

Toronto, Ontario, May 22, 2025

PRESENT: The Honourable Mr. Justice Thorne

BETWEEN:

HADIL ISMAIL MOHAMED KARSOU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Applicant, Ms. Karsou, seeks judicial review of a decision made by an Immigration, Refugees and Citizenship Canada officer [the Officer] on July 11, 2024, that denied her application for permanent residence as a member of the Canadian Experience Class, via Express Entry [the Decision]. Among other requirements, this scheme requires that successful applicants must have acquired at least one year of qualifying work experience in the last three years, under subsection 87.1(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Officer was not satisfied that Ms. Karsou had met this requirement.

[2] For the reasons that follow, I grant the application.

II. Overview

[3] Ms. Karsou is Palestinian. Though officially stateless, she grew up, studied and worked in Jordan, prior to coming to Canada, where her brother is a Canadian citizen and operates a company. Ms. Karsou then worked in Canada as a Finance Officer at this company, as a temporary foreign worker.

[4] On January 11, 2024, she was accepted into the Express Entry pool of candidates and was later invited to apply for permanent residence as a member of the Canadian Experience Class. She did so under the National Occupation Classification [NOC] 12200, which corresponds to the job class of a Finance/Accounting Officer.

[5] By way of background, the Express Entry system invites individuals to apply for permanent residence based on eligibility criteria which vary according to their employment class, and on a point system that prioritizes certain personal characteristics. The Canadian Experience Class is part of the Express Entry system. It allows individuals to be granted permanent residence if they have at least one year of full-time qualifying work experience in Canada and meet a set language proficiency threshold in either official language.

[6] In the Decision, the Officer found that they were not satisfied that Ms. Karsou had performed the main duties of her declared NOC, and that she had thus acquired the one year of qualifying Canadian work. In particular, the Global Case Management System [GCMS] notes highlight that Ms. Karsou had failed to provide “a Letter of Employment with applicable job

duties nor an explanation of the duties that they performed during this employment experience period. Furthermore, job duties for this period of employment were not provided on any other submissions provided with the application." The GCMS notes did flag that a January 30, 2024 summary of employment letter had been submitted, which stated that Ms. Karsou had been employed since June 19, 2022, and that she was being offered a promotion, pending the outcome of her permanent residence application. However, the GCMS notes stated that this letter also failed to list the specific job duties performed by the Applicant.

[7] On July 30, 2024, Ms. Karsou sought reconsideration of the Decision, asserting that she had indeed originally set out her specific job duties, as she had submitted as part of her initial application an offer of employment letter which enumerated this information. She ultimately stated that she did not know why this letter was not considered, and attached a copy of the letter to her reconsideration request. She never received a response to the reconsideration request, which was apparently still pending as of the date of the hearing in this matter.

[8] Ms. Karsou now seeks judicial review of the original permanent residence Decision.

III. Issues

[9] In seeking to judicially review the denial of her permanent residence application, Ms. Karsou argues that the Officer's Decision was reached in a procedurally unfair manner, since it was rendered without consideration of her initial offer of employment letter (which contained the desired list of job duties central to the Decision). In order to make this argument, Ms. Karsou submits new evidence, including the offer of employment letter, which she further argues is admissible before this Court.

IV. Analysis

[10] The parties both submit, and I agree, that though a presumptive reasonableness standard of review would apply to the merits of the decision, it is a correctness-like standard that applies to issues of procedural fairness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121 at paras 54–56 [*CPR*]. In short, a reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision-maker was fair, in that it gave the parties the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted: *CPR* at para .

[11] For the reasons noted below, I find that Ms. Karsou's application was incorrectly refused, as she has demonstrated that, on a balance of probabilities, her application was decided on the basis of an incomplete record, through no fault of her own.

A. *The Admissibility of the New Evidence*

[12] In support of her contention that the employment offer letter was not properly put before or considered by the Officer, the Applicant relies on an affidavit from her brother. In this sworn statement, he asserts that he personally helped her file her application and its attached evidence, namely:

- The offer of employment letter dated December 9, 2021;
- A screenshot of the computer folder 'Hadil PR', which contains the documents submitted for Ms. Karsou's application;
- The request for reconsideration dated July 30, 2024; and

- A reproduction of the brother's company website.

[13] As a general rule, new evidence is not admitted on a judicial review, as it runs counter to the role of a reviewing court: to assess whether the decision was reasonably rendered in light of the arguments and evidence put before the decision-maker.

[14] Ms. Karsou asserts that the new evidence is admissible, as it falls under the exceptions set out at paragraph 20 of *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [*Access Copyright*]. She argues that this new evidence is necessary to meet her onus to demonstrate that the tribunal record was incomplete. The Respondent concedes the admissibility of the new evidence.

[15] I, however, find that only certain of the submitted items of new evidence are admissible. In particular: paragraphs 1 to 11 of the brother's affidavit; the screenshot of the application folder; and the offer of employment letter dated December 9, 2021. These items are permissible as they seek "to bring to the attention of the judicial review court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker", which is one of the exceptions set out by the Federal Court of Appeal: *Access Copyright*, at para. 20. I find that the remainder of the new evidence does not qualify under the *Access Copyright* exceptions, and cannot be admitted.

B. *The Applicant's Right to Procedural Fairness Was Breached*

[16] The substantive question before me is whether Ms. Karsou's right to procedural fairness was breached. I find that it was. In my view, she has successfully demonstrated, on a balance of

probabilities, that the Decision was the product of a record that was incomplete, through no fault of her own.

[17] Again, this issue must be assessed on a correctness-like standard of review. The Court must ask itself whether the procedure was fair in light of all the circumstances, with a particular emphasis on the completeness of the record: *CPR* at para 54.

[18] Ms. Karsou argues that the determination of an application on an incomplete record is a breach of procedural fairness as it is a denial of the right to be heard, citing *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 at paras 16–19, 23 [*Togtokh*].

[19] She concedes that there is a presumption that tribunal records are complete, but adds that this is rebuttable through evidence that the missing information was properly submitted and should be part of the record: *Toor v Canada (Citizenship and Immigration),* 2019 FC 1143 at paras 11–12. She stresses that case law also makes clear that if the record produced to the Court is incomplete, a visa officer's decision may be set aside.

[20] The case law holds that applicants cannot demonstrate the incompleteness of a CTR through a "bare assertion": *Guo v Canada (Citizenship and Immigration)*, 2022 FC 883 at para 21, citing *El Dor v Canada (Citizenship and Immigration)*, 2015 FC 1406 at para 32. Interestingly however, there appears to be little to no case law addressing evidence of incompleteness in the context of document uploads to an IRCC portal.

[21] Ms. Karsou accordingly submits that her sworn affidavit, with screenshots showing the documents that were included in the application package, and the affidavit of her brother should be found to meet her onus, especially in the absence of contradicting evidence. She argues that the Respondent has chosen not to cross-examine her brother with respect to his sworn assertion that he filed the documents for the Applicant, and that the Respondent itself also filed no other evidence, such as an affidavit from the IRCC employee responsible for uploading the documents from the portal. Therefore, Ms. Karsou argues that her uncontradicted evidence has probative value.

[22] The Respondent argues that the claim that the tribunal record is incomplete is not probative. They baldly state that while the Applicant's brother probably intended to upload the employment offer letter, and may honestly believe that he did so, since the document was not in the Officer's package, it could not possibly have been submitted to the IRCC.

[23] In *Togtokh*, Justice Boswell summarized three scenarios where deficiencies in a tribunal record may arise. This situation corresponds with the first:

> [16] As noted above, the determinative issue in this case is whether the deficiencies in the CTR constitute a breach of procedural fairness. The case law in this Court has dealt with at least three distinct types of scenarios raised by a deficient CTR, including the following:
>
> **1. A document does not appear in the CTR and it is unknown whether it was submitted by an applicant. In cases such as these, the Court will presume that the materials in the CTR were the materials before the immigration officer, barring some evidence to the contrary** (see *Adewale v Canada (Citizenship and Immigration*), 2007 FC 1190 at para 11; 161 ACWS (3d) 790; *Varadi v Canada (Citizenship and Immigration*), 2013 FC 407 at paras 6 to 8, 431 FTR 198; *El Dor c Canada (Citoyenneté et de l'Immigration)*, 2015 FC 1406 at

> para 32, 263 ACWS (3d) 187; and *Ogbuchi v Canada (Citizenship and Immigration*), 2016 FC 764 at paras 11 to 12, 268 ACWS (3d) 420). [Emphasis added]

[24] Ms. Karsou therefore bears the onus of adducing "some evidence" to rebut the presumption of completeness.

[25] As counsel for Ms. Karsou noted, the difficulty lies in the availability of "some evidence" to rebut the presumption, when an applicant uses the IRCC online portal to submit their documents. They point out that other means of communications typically leave a trail: for example, emails are logged in a "sent inbox", which can be used by parties to prove they had submitted a particular piece of evidence in other circumstances, such as in the case of *Murara v Canada (Citizenship and Immigration)*, 2024 FC 1599. In this situation, Ms. Karsou argues that her new evidence should be held to meet her onus.

[26] Both in their written materials and oral submissions, the Respondent did little to address Ms. Karsou's submissions or assist the Court in this assessment. They did not cross-examine the Applicant's brother. They have also not explained or addressed, for example, whether a full copy of the application package is invariably available to an applicant after they submit their application on the online portal, whether documents have been known to go missing, or provided any information whatsoever as to how the portal functions, much less specifically as to the flow and appending of information that has been entered into it. Nor have they provided submissions more generally as to what they believe the Court should reasonably expect Ms. Karsou to produce in order to adduce "some evidence" that she did submit the letter. In these specific circumstances, and on the evidence provided, I am satisfied that, on a balance of probabilities,

there was an error, and that Ms. Karsou's letter was not put before the Officer despite being input into the portal.

[27] I accept that Ms. Karsou has now produced the evidence that was reasonably available to her in the circumstances – that is, an affidavit from her brother asserting that the letter was filed, which included a screenshot of her application folder and a copy of the employment offer letter.

[28] I find that the employment offer letter was material to the Officer's Decision, as it went to the heart of the sole rationale provided for the refusal, namely the lack of evidence identifying the duties that Ms. Karsou performed in her capacity as Finance Officer.

[29] The Respondent also argues that the job offer letter would not have changed the outcome of the Decision, even had it been before the Officer. They state that this is so because while the offer of employment letter states that the Applicant had been hired, and does list the duties she would be performing during her employment, the Officer's decision had asserted that he had not been satisfied that she had performed the main duties of her NOC employment category. The Respondent contends that even had the job offer letter been available, since this December 9, 2021 letter only states that Ms. Karsou was being hired to undertake those duties, it could not be taken as proof that she actually did so during her subsequent tenure at the company. In the submission of the Respondent, the letter of employment would therefore have been immaterial.

[30] I note that this argument appears to run counter to the clear language of the Decision, as the associated GCMS notes appear to directly focus on the missing letter of employment and the duties performed. It reads:

> I am not satisfied that the PA meets the skilled work experience requirement because [*sic*]
>
> In support of their employment at OFOK Holdings dated January 30 2024, and paystubs dated 01/13/2023 to 10/20/2023. The submissions confirm they were employed by OFOK Holdings from June 19 2022 to the date of the letter of January 30 2024, as well as lists their salary, their hours worked, an [*sic*] that they are employed as a finance/accounting officer (NOC 12200).
>
> **However, the PA has not provided a Letter of Employment with applicable job duties nor an explanation as to the duties that they performed during this employment experience period. Furthermore, job duties for this period of employment were not provided on any other submissions provided with the application.** The letter does state that the PA will be offered a promotion of Finance/Accounting Manager (NOC 00012) pending the outcome of her PR application or open work permit. **However, the letter dated January 30 2024 does not list any specific job duties that the PA has performed. As a result, I am not satisfied on a balance of probabilities that the PA has performed the lead statement and main duties of their declared NOC 12200, for this period of employment.** [Emphasis mine]

[31] The Respondent also contends that even having a combination of the December 9, 2021 letter of employment, which listed the job duties, and the later January 30, 2024 summation letter that recorded that Ms. Karsou had been employed and working with the company as a full time Finance/Accounting Officer since June 19, 2022, would have been immaterial in satisfying the Officer. They suggest that what would have been required is a summation letter akin to the January 30, 2024 letter, which also directly reiterated the list of job duties performed by Ms. Karsou.

[32] In my view, if this were the case, it begs the question of why the Officer's notes would then have specifically identified and focused on the absence of a letter of employment containing the applicable job duties. This was a question that Respondent's Counsel had no answer to, when

asked during the proceedings. As counsel for Ms. Karsou pointed out, the entry in the GCMS gives insight into what was found wanting by the Officer. Further, as a matter of logic, the combination of the two letters make clear the duties that were performed by Ms. Karsou during her tenure at the company: the letter of employment sets out the duties of the Finance Officer position that she was being hired into, while the later summation letter records that she had been employed as a Finance/Accounting Officer at the company during her tenure there. I agree that it would be an unreasonable interpretation to hold that, in these circumstances, the second letter would also need to again reiterate the list of job duties for that position, as maintained by the Respondent.

[33] In any event, it is not the role of this Court to speculate on what the findings of the Officer would have been, had they had the benefit of the letter of employment in the record before them. It is unknowable what impact the missing document could have had on the Decision: *Agatha Jarvis v Canada (Citizenship and Immigration)*, 2014 FC 405 at para 23; *Togtokh* at paras 20, 23; see, in a credibility context, *Akram v Canada (Citizenship and Immigration)*, 2018 FC 1105 at para 21.

[34] What is known is that while applicants for permanent residence are typically owed a low degree of procedural fairness by visa officers, the flaw in this matter strikes at the most basic aspect of procedural fairness – the right to be heard: *Vulevic v Canada (Citizenship and Immigration)*, 2014 FC 872 at para 6. When a decision has clearly been made without considering all of the materials submitted by the Applicant, this right has been compromised. As such, it is sufficient to quash the Decision. The application for judicial review will therefore be allowed.

V. Conclusion

[35] For these reasons, the decision in this case is set aside and the matter is returned for redetermination by a different IRCC officer. The offer of employment letter, dated December 9, 2021, is deemed to be part of the record that will be considered in that proceeding.

[36] The parties proposed no question for certification, and I agree that none arises.

JUDGMENT IN IMM-12558-24

THIS COURT'S JUDGMENT is that

1. The judicial review application is granted.
2. The decision of the Officer dated July 11, 2024, is set aside and the matter is returned for redetermination by a different immigration officer in accordance with the reasons for this judgment.
3. No question of general importance is certified.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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