Federal Court  Cour fédérale

Date: 20250611

Docket: IMM-12369-24

Citation: 2025 FC 1053

Ottawa, Ontario, June 11, 2025

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SHARIF VALIBHAI MAREDIA
YASMIN SHARIF MAREDIA
SALIL SHARIF MAREDIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Sharif Valibhai Maredia [Principal Applicant], Yasmin Sharif Maredia [Associate Applicant], and Salil Sharif Maredia [Sponsoring Applicant], bring this application for judicial review concerning a decision dated May 15, 2024, wherein an immigration officer [Officer] returned the Principal and Associate Applicants' application for permanent residence [PR] under the Parents and Grandparents Program [PGP] for incompleteness, pursuant to

sections 10 and 12 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 and in accordance with the *Ministerial instructions with respect to the processing of applications for a permanent resident visa made by parents or grandparents of a sponsor as members of the family class and the processing of sponsorship applications made in relation to those applications* [MI64].

[2] The Principal and Associate Applicants are citizens of India. Their son, the Sponsoring Applicant, is a citizen of Canada. On December 16, 2023, the Applicants submitted a PGP application.

[3] At that time, the MI64 provided that, if "some documentation required by these Instructions or the Regulations is missing, the Department shall ordinarily grant the sponsor an extension of an additional 30 calendar days…to submit the missing documentation."

[4] Following that instruction, on March 26, 2024, the Officer sent the Applicants a letter via email, which stated that the "application does not meet the requirements for processing as [several items are] missing or incomplete." The Officer provided the Applicants with 30 days to submit the missing documents.

[5] When no response was received from the Applicants, on May 15, 2024, the Officer returned the PGP application for incompleteness.

[6] On May 17, 2024, the Sponsoring Applicant contacted the Officer, stating that the Applicants had not received the request letter or "any email or letter or…update on the portal on

March 26, 2024" as the Officer alleged. The Sponsoring Applicant requested that the Officer reopen the PGP application and allow the Applicants an opportunity to provide the missing documentation. The Officer denied the request on May 28, 2024.

[7] The Respondent submits that there is no reviewable decision before the Court. Citing *Sadeghian v Canada (Citizenship and Immigration)*, 2024 FC 1144 [*Sadeghian*] at para 7; *Filippiadis v Canada (Citizenship and Immigration)*, 2014 FC 685 [*Filippiadis*] at paras 23, 33; *Sheikh v Canada (Citizenship and Immigration)*, 2020 FC 199 [*Sheikh*] at para 54; *Zhou v Canada (Citizenship and Immigration)*, 2021 FC 1424 [*Zhou*] at paras 55-58, the Respondent says that this Court has consistently found that "[r]efusing to process a non-compliant application does not constitute a decision to refuse that application" [emphasis removed].

[8] I find that these authorities are factually different from the matter before me, and thus easily distinguishable.

[9] In *Sadeghian*, the applicant's husband, not the applicant herself, had been invited to apply for sponsorship. Since the applicant had not been invited to apply, the application was returned for failing to meet the requirements for processing. A letter of explanation was submitted explaining that the applicant had used her husband's computer to file the application, and it inserted his name automatically and in error. Unlike the present case there was no letter or follow-up from the Respondent asking the applicant to correct that error before the application was returned. It was simply returned for failure to comply with the administrative requirement that the application be made by the person selected by IRCC.

[10] *Filippiadis* involved the return of an application for a visa under the skilled worker category. It was returned as it did not include one of the documents listed in the application kit. It was not processed, and the applicant was not informed prior to the return that there was a missing document. As in *Sadeghian*, the Court held that the refusal to process the application for failure to comply with an administrative requirement was not a justiciable issue.

[11] *Sheikh* was decided on facts similar to those in *Sadeghian*. The applicant had submitted a sponsorship request after having been invited to do so. The officer returned the sponsorship application because the applicant's date of birth on the application did not match that on his expression of interest forms. Because of this difference, the officer refused to process the application, and it was returned. The application for judicial review was dismissed based on the finding that the refusal to process an application is not a justiciable matter.

[12] *Zhou* was a constitutional challenge to the lottery nature of the ability to make a sponsorship application. It was held at paragraph 58 that the Court has no jurisdiction to conduct a juridical review of the administration of that process:

> Therefore, having not yet made a sponsorship application, there is no right of the Applicants that has been affected. The opportunity to be sponsored in accordance with any future Sponsorship Program scheme remains intact. No legal obligations have been imposed on the Applicants, and while they may have been disappointed that they were not invited to submit a sponsorship application under the Sponsorship Program, the Applicants have not established that this is a matter that affects their rights, imposes legal obligations upon them, or prejudicially affects them directly. Consequently, this matter is not judicially reviewable under section 18.1 of the *Federal Courts Act* and section 72 of *IRPA*.

[13] None of these authorities are helpful or authoritative given the facts here. Significantly, in none of them did the officer advise the applicant of the noted deficiency and offer time to address it.

[14] I find that the facts here are closer to those in *Abboud v Canada (Citizenship and Immigration)*, 2010 FC 876 [*Abboud*] and *Asoyan v Canada (Citizenship and Immigration)*, 2015 FC 206 [*Asoyan*] and, like those cases, the application must be allowed for breach of procedural fairness.

[15] In *Abboud*, an immigration officer rejected the visa application on the ground that the applicant had not provided the information that had been asked of her. The officer also later dismissed the applicant's request to have this decision reassessed.

[16] During the processing of the application the officer requested that the applicant submit certain additional documents within a fixed period or risk having her application rejected. Both the applicant and her counsel claimed they never received this message. The officer stated that he received an automated message that his "message ha[d] been successfully relayed to the following recipients, but the requested delivery status notifications may not be generated by the destination." The officer resent the email and received the same automated response.

[17] It was agreed by the parties that the automated response showed that the message was successfully relayed but this was not proof that the message had reached its destination. As was noted by the Court at paragraph 12, "[a]t most, this type of notification indicates that the e-mail

was sent to the server, which does not necessarily mean that the message was in fact accessible in the counsel's e-mail inbox."

[18] In allowing the judicial review application, Madame Justice Tremblay-Lamer at paragraphs 15-20 stated:

> In the case at bar, the onus was on the officer to ensure that the e-mail had in fact been properly sent to the applicant's counsel. The automated reply that had been received twice after the e-mail had been sent should have raised doubts in the officer's mind that the communication had failed.
>
> Furthermore, when counsel was informed that the application had been rejected because the requested information had not been sent in time, she immediately contacted the visa office in Warsaw, more than once, to explain that neither she nor the applicant had ever received the e-mail in question.
>
> In such a situation, the officer should have given the applicant the opportunity to provide the required documents in order to be able to assess her application on the merits.
>
> This is a flagrant violation of the requirements of procedural fairness due to the fact that, as a result of this communication problem, the applicant did not have the opportunity to provide the officer with all of the evidence required to make an informed decision.
>
> If the decision were to be upheld, the consequences of this communication problem would be extremely prejudicial to the applicant and her family who, after having waited several years, would have to file a new immigration application and who, moreover, would in all likelihood no longer qualify due to recent regulatory changes to the federal skilled worker program.
>
> I would also add that, in order to prevent similar incidents happening in the future, it would be helpful if officers were issued clearer guidelines with regard to their responsibilities in managing electronic communications where problems sending e-mails can lead to such dire outcomes in immigration applications.

[19] A similar result occurred in *Asoyan* which involved an application for permanent residence. Material was missing from the application and the officer advised by email that this information was required for the application to be processed and that, if the applicant did not respond or comply with the request within the time allowed, the application might be refused.

[20] In the interim, when the applicant had not received an Acknowledgement of Receipt [AOR] for the application, she contacted the Sydney Centralized Intake Office [CIC Sydney] on March 4, 2013 by email. She then received an email from CIC Sydney on March 19, 2013, forwarding her the AOR that had been sent on January 7, 2013, but which she alleged to have never received.

[21] The officer returned the application for failure to send the missing documents and refused a request for reconsideration.

[22] In allowing the application for judicial review, Justice Annis noted that the applicant's query about the AOR should have put the respondent on notice that there were problems with her receiving its emails, shifting the risk of non-delivery to the respondent. The respondent "thereby breached its duty of procedural fairness in refusing the application without making inquiries to ensure that the applicant had received its email requesting additional information": *Asoyan* at para 19.

[23] Here, the Respondent became aware two days after the deadline it set that the Applicants were saying that they had not received the email request. The Officer had no evidence that the message was delivered or read by the Applicants.

[24] I accept that the emailed letter was sent by the Officer to the correct email address, as is recorded in the Officer's notes: "Incomplete E-mail has been sent to request the outstanding item(s). Application is pending receipt of requested documentation. Due Date: 2024/04/25."

[25] However, there is nothing in the Respondent's file or the Officer's notes that this email was received by the Applicants. The acceptance that it was sent must be weighed against the affidavit of the Sponsoring Applicant filed in this application:

> On or about 16 December 2023, my parents and I submitted this PGP application via the IRCC online Permanent Residence Portal.
>
> Until 15 May 2024, I did not receive any correspondence from IRCC regarding this application, nor did my father.
>
> …
>
> I further explained that we had never received said letter allegedly sent on 26 March 2024 and that we had checked both my email inbox, spam, and junk folders as well as those of my father (the Principal Applicant). I explained that we had been patiently waiting for an update from IRCC since submitting the PGP application on 16 December 2023 and that, had we received a request for further documentation, we would have submitted all of the required documents. I requested that IRCC reopen the application and send us a copy of the alleged request letter sent on 26 March 2024 so that we could have the opportunity to submit the requisite documentation to IRCC.

[26] The Respondent did not cross-examine the Sponsoring Applicant, nor did it file any affidavit attesting that email messages sent by it to applicants are invariably received. This is hardly surprising.

[27] It would be a simple matter for the Respondent's officials, when sending such important letters via email, to request a delivery receipt which confirms that the email was delivered to the addressee and a read receipt that confirms that it has been read by the addressee.

[28] As it is, the Court has uncontested evidence that the email and attached letter were not received by the Applicants. In the face of that evidence, the refusal to reconsider constitutes a justiciable decision and the failure to do so is a breach of procedural fairness.

[29] This application must succeed. The Applicants shall submit to the Respondent the "missing" information together with the returned application, within three weeks of the date hereof, and the Respondent shall process the sponsorship application forthwith.

[30] No question was proposed for certification.

JUDGMENT in IMM-12369-24

THIS COURT'S JUDGMENT is that this application is allowed. The Applicants' application for permanent residence under the Parents and Grandparents Program is to be reconsidered in accordance with the Directions given at paragraph 29 of the Reasons. No question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12369-24
STYLE OF CAUSE:	SHARIF VALIBHAI MAREDIA, YASMIN SHARIF MAREDIA, SALIL SHARIF MAREDIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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