

Federal Court



Cour fédérale

Date: 20250619

Docket: IMM-1564-24

Citation: 2025 FC 1101

Ottawa, Ontario, June 19, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

ISMAIL HOSSAIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This application for judicial review was dismissed from the bench on June 18, 2025, with reasons to follow. These are those reasons.

[2] The Applicant seeks judicial review of a decision [the Decision] made by Immigration, Refugees and Citizenship Canada [IRCC], on February 1, 2022, and communicated to the Applicant on January 5, 2024.

[3] The Decision rejected the Applicant's Pre-Removal Risk Assessment [PRRA] application. The determinative issue for the PRRA Officer was that the Applicant would not be subject to risk of harm as enumerated under subsection 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 [IRPA] if returned to Bangladesh. The Applicant asks this Court to set aside the Decision and remit the matter to a different decision maker. No admissible argument was made in support of the application by the Applicant.

[4] The Respondent argues that this proceeding was commenced out of time and is not properly before this Court, and, that the Decision is in any event reasonable. I agree with the Respondent.

I. **No Admissible Argument by the Applicant**

[5] The Applicant served and filed a Notice of Change of Solicitor in the 24 hours that preceded the hearing of this matter. No objection was raised to the change of solicitor.

[6] The Court informed the new solicitor of record at the outset of the hearing that the Applicant had neither served nor filed a memorandum of argument in his Applicant's Record as is required by Rule 10(2) (iv) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [the *FCCIRPR*], or a further memorandum of argument as was contemplated by the Order that granted leave. This led to the result that the Applicant had no argument to make during the hearing that would not take the Respondent by surprise due to the lack of disclosure in accordance with the *FCCIRPR*. The Applicant's new solicitor agreed that no argument could be advanced on behalf of the Applicant at the hearing without taking the

Respondent by surprise. The Court did not allow the Applicant to make any argument as a result of the Applicant's default in complying with the *FCCIRPR* and Orders of this Court. Proceeding otherwise would have been unjust and unfair to the Respondent.

[7] Considering that the Applicant has not advanced any admissible argument regarding the reasonableness of the decision under review that would not take the Respondent by surprise, and considering that the Respondent had alerted the Applicant to this issue in its Further Memorandum served and filed on May 26, 2025, and considering that Madam Associate Judge Sylvie M. Molgat had noted in her June 12, 2024, Order that "the Applicant's Record was irregular and accepted for filing in error by the Registry", and considering that the Applicant took no steps to serve and file a memorandum argument since the commencement of this proceeding despite the multiple notices from the Court and the Respondent that no memorandum of argument had been served or filed, it is apparent that the Applicant has no argument to make and cannot meet its burden to establish that the Decision is unreasonable. This application for judicial review was dismissed from the bench as a result.

[8] Although this was enough to dispose of this matter, there are other issues raised by the proceeding that merit the Court's consideration.

II. **This Application Was Commenced Out of Time**

[9] The Respondent made a number of procedural arguments attacking the Applicant's proceeding, materials and arguments, the least of which is that the Applicant appears to have commenced this application after the time for doing so expired without obtaining an Order

extending the time to commence this proceeding. The Respondent raised this argument in his Further Memorandum filed on May 26, 2025. The Applicant has taken no steps to respond to it.

[10] Paragraphs 72(1) and 72(2)(b) of the *IRPA* provide that:

Application for Judicial Review

72 (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is, subject to section 86.1, commenced by making an application for leave to the Court.

Application

(2) The following provisions govern an application under subsection (1):

(a) [...]

(b) subject to paragraph 169(f), notice of the application shall be served on the other party and the application shall be filed in the Registry of the Federal Court (“the Court”) **within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;**

Demande d’autorisation

72 (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est, sous réserve de l’article 86.1, subordonné au dépôt d’une demande d’autorisation.

Application

(2) Les dispositions suivantes s’appliquent à la demande d’autorisation :

a) [...]

b) elle doit être signifiée à l’autre partie puis déposée au greffe de la Cour fédérale — la Cour — **dans les quinze ou soixante jours, selon que la mesure attaquée a été rendue au Canada ou non, suivant, sous réserve de l’alinéa 169f), la date où le demandeur en est avisé ou en a eu connaissance;**

[11] A timely application for leave and for judicial review must be served and filed within 15 days “after the day on which the applicant is notified of or otherwise becomes aware of the

matter”. None of the allegations made in Application for Judicial Review [the ALJR] or in its amended version [the AALJR], or in the Applicant’s affidavit evidence filed in his Application Record, set out the date on which the Applicant was notified of the Decision or the date on which he became aware of the Decision.

[12] The issue is important because if the ALJR was filed out of time and no extension of time was granted by the Court, then the ALJR is not properly before this Court. No adjudication is required for a proceeding that is commenced out of time.

[13] As properly notes Justice John Norris in *Nava Aguilar v. Canada (Citizenship and Immigration)*, 2024 FC 1714, at para 15 (“*Nava Aguilar*”), the date on which a decision is “communicated” to an applicant is a question of fact and, when it is a matter of dispute, that date must be established by evidence. A statement contained in the notice of application as to the date of notification or of awareness of the decision is, as held by Justice Norris “not evidence of anything” (*Nava Aguilar*, at para 15). I agree with Justice Norris.

[14] In this case, the Applicant alleged in his ALJR that the Decision was made on February 1, 2022, but was “communicated” to him on January 12, 2024 (“*La décision [...] rendue le 1 février 2022 et communiquée au demandeur le 12 janvier 2024 [...]*”).

[15] The Applicant sought leave to amend his ALJR on consent and was granted leave to amend his ALJR by serving and filing his AALJR by February 22, 2024. The Applicant failed to comply with the Order granting him leave to amend. Instead, the Applicant included his AALJR

in his Applicant's Record filed on February 26, 2024. The Respondent objected to the Applicant's Record and sought an appropriate Order from the Court.

[16] On June 12, 2024, Madam Associate Judge Sylvie Molgat made an Order in which she noted that the Applicant's Record had been accepted for filing in error by the Registry on February 26, 2024, and that the Applicant had taken no steps to remedy his non-compliance despite letters to such effect from the Respondent. Associate Judge Molgat nevertheless made an Order extending the time for the Applicant to serve and file his AALJR, with proof of service. Nothing in Associate Judge Molgat's June 12, 2024, Order extended the time or could have extended the time for the initial commencement of this proceeding: pursuant to paragraph 72(2)(c) of the IRPA the jurisdiction for an extension of time to commence a proceeding lies with the judges rather than the associate judges of this Court.

[17] In his AALJR, the Applicant alleged that the Decision was made on February 1, 2022, but was "communicated" to him on January 5, 2024 (*"La décision [...] rendue le 1 février 2022 et communiquée au demandeur le 5 janvier, 2024 [...]"*).

[18] The Order granting leave does not suggest that the Applicant was granted an extension of time to commence this proceeding or that an Order extending the time is implicit in the Order granting leave as no extension of time to commence this proceeding had been sought by the Applicant. The circumstances here are not the same as in those cases helpfully considered by Justice Norris in *Nava Aguilar* at para 12, or by Justice Christine Pallota in *Pingault v Canada*

(*Citizenship and Immigration*), 2021 FC 1044 at paras 14-23, in that no extension of time was ever sought by the Applicant here.

[19] The change in the alleged date upon which the Decision was “communicated” to the Applicant is material. The “communication” date of January 12, 2024, alleged in the ALJR, could suggest that the proceeding was commenced in a timely manner and within the 15 days prescribed by paragraph 72(2)(b) of the IRPA on January 26, 2024. Conversely, the “communication” date of January 5, 2024, as later alleged in the AALJR, could suggest that the proceeding was not commenced in a timely manner and was commenced on January 26, 2024, beyond the 15 days prescribed by paragraph 72(2)(b) of the IRPA.

[20] The Court notes that the word “communicate,” or “*communiqué*” is not used in subsections 72(1) or (2) of the IRPA or elsewhere in the IRPA or the FCCIRPR in connection with the notion of transmitting a decision to someone. The word “communicate” can take its meaning from the context in which it is used. For example, as the Applicant’s solicitors of record practice in Quebec, we can consider how the word “communicate,” or “*communiqué*” is used in Quebec’s *Code of Civil Procedure* [the CCP]. The word “*communiqué*” is used in the French language version of article 145 CCP while its English language version uses “send to”. The word is also used in the French language versions of article 169 paragraph 2, article 170, article 174 2 and article 248 CCP while their English language versions use the expression “disclose a document”. The Canadian Oxford Dictionary defines “communicate” as meaning “transmit or pass on information by speaking, writing or other means” (Katherine Barber editor, 2nd Edition, Don Mills (Oxford University Press, 2004). “Communicating” a document on one date does not

necessarily mean that the recipient of the communicated document was “notified” of the document, or “became aware of” the document on the date of its “communication”.

[21] Considering that the certified tribunal record in this proceeding reflects that a Decision transmittal letter dated January 5, 2024, was issued in British Columbia by the decision-maker at IRCC for delivery to the Applicant’s contact address in Montreal, Quebec, and that there is nothing in the record that suggests that the letter was received by or came to the Applicant’s attention on the date it was sent, it is my view that in the context of this proceeding the word “communicate” as used in the AALJR refers to the alleged act of transmitting the Decision to the Applicant on January 5, 2024, but not necessarily that the Applicant had been “notified” or “made aware of” the Decision on January 5, 2024. There is no reason to retain to the January 12, 2024, date alleged in the ALJR as the “communication” date because the AALJR modified the communication date and must be considered as the Applicant’s desired corrected allegation of material fact in his originating document.

[22] There is no allegation in either the ALJR or the AALJR of when the Applicant was actually notified of or otherwise became aware of the Decision after its January 5, 2024, transmission date. This absence of factual evidence from the Applicant combined with the January 5, 2024, Decision transmittal letter led me to conclude that the Applicant has not met his burden of establishing that he commenced this proceeding within the 15-day time period set out in paragraph 72(2)(b) of the IRPA (*Nava Aguilar*, at para 16).

[23] The Applicant's application is not properly before the Court and must be dismissed (*Nava Aguilar*, at para 17).

III. **The Decision is Reasonable**

[24] Notwithstanding the foregoing, it remains worthwhile to consider whether the Decision is reasonable.

[25] The Decision is reviewable on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para 16 (*Vavilov*)). Pursuant to this standard, this Court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the Court asks whether the decision bears the hallmarks of reasonableness — justification, transparency, and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the Decision (*Vavilov*, at para 99).

[26] As specified in *Vavilov*, at para 100, the burden is on the Applicant to show that the Decision under review is unreasonable. This Court must be satisfied that there are sufficiently serious shortcomings in the Decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility, and transparency before setting the Decision aside on this basis. Any alleged flaws or shortcomings in the Decision must be more than merely superficial or peripheral to the merits of the decision.

[27] As referred to above, the Applicant has neither filed, nor served, nor made any submissions that could suggest that the Decision is unreasonable. The submissions filed by the Applicant are titled “Submissions on Pre-Removal Risk Assessment Application”. The submissions do not resemble a memorandum of argument as required by Rule 10(2)(iv) of the *FCCIRPR*, or further memorandum of argument as was permitted by the Order granting leave, in either form or content. The submissions are addressed to the CIC Backlog Reduction Office located in Vancouver, British Columbia, and not to this Court. The Applicant’s submissions do not identify the applicable standard of review. They omit any reference to jurisprudence that might perhaps apply on judicial review. They set out only that the Applicant disagrees with the Decision and disagrees with the decision-maker’s conclusions. The decision-maker referred to is the “Board” while the decision-maker who made the Decision under review is a PRRA officer. Leaving aside the inadmissible character of these submissions, their content are clearly insufficient to establish that the Decision is unreasonable in any way.

[28] It follows that the Applicant has not met his burden to show that the Decision is unreasonable even his submissions were to be considered as admissible or substantively equivalent to a memorandum of argument.

[29] The Court has in any event reviewed the Decision and finds it to be reasonable in light of the law and the evidence in the record.

JUDGMENT in IMM-1564-24

THIS COURTS JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.
2. No costs are awarded.

"Benoit M. Duchesne"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1564-24

STYLE OF CAUSE: ISMAIL HOSSAIN c. MCI

PLACE OF HEARING: MONTRÉAL, QUÉBEC

DATE OF HEARING: JUNE 18, 2025

ORDER AND REASONS: DUCHESNE, J.

DATED: JUNE 19, 2025

APPEARANCES:

Sohana Sara Siddiky

FOR THE APPLICANT

Patricia Nobl

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Siddiky Law
Montreal, Quebec
Attorney General of Canada
Montreal, Quebec

FOR THE APPLICANT

FOR THE RESPONDENT