Federal Court  Cour fédérale

Date: 20250625

Docket: IMM-5992-24

Citation: 2025 FC 1147

Ottawa, Ontario, June 25, 2025

PRESENT: The Honourable Justice Darren R. Thorne

BETWEEN:

HARPREET KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of a March 25, 2024 Immigration, Refugees and Citizenship Canada [IRCC] decision, which rejected her application for permanent residence under the Spouse or Common-Law Partner in Canada Class [Decision]. In the impugned Decision, the IRCC officer [Officer] held that the Applicant had failed to submit requested documentation relating to her application, which resulted in non-compliance with the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and the accompanying *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

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

II. Background

[3] The Applicant is a citizen of India, who resides with her spouse [Sponsor], a Canadian permanent resident, in Ontario. She possesses a valid work permit, and applied for permanent residence.

[4] On March 15, 2024, IRCC sent the Applicant a procedural fairness letter [PFL] in relation to her permanent residence application, stating that "[t]he proof of cohabitation/relationship you have submitted in the past has been deemed insufficient" and instructing that she was required to send in a series of documents to establish the relationship within seven days. The extensive list of documents included: copies of the Applicant and sponsor's driver's license or official Ontario photo ID card; copies of the Applicant and Sponsor's income tax returns filed from 2021 and 2022, including the Applicant's T1 and Notice of Assessment for both 2021 and 2022; proof of dissolution of all previous relationships and marriages; official lease or rental agreements of all residences where the Applicant and Spouse had resided in the past two years; copies of phone, hydro, cable, internet and other utility bills of the last three months; vehicle insurance listing both Applicant and Sponsor as residents of the insured's address; confirmation from the financial institution where the Applicant held a joint bank account, with accompanying statements for three months; documentary evidence of other financial commitments such as RRSP and life insurance; their marriage certificate; photos of the wedding ceremony; social media posts; photos of and communications between the Sponsor and Applicant from the last three months; a written explanation about the development of the

relationship; relationship attestations from family members; an updated Schedule A form, and updated contact information.

[5] On March 21, 2024, at 1:38 pm, the Applicant emailed a response to IRCC, which included 19 attached PDF documents. At 2:01 pm, she sent a follow-up email, asking if the documents had been received and if IRCC had been able to open them. At 5:11 pm she received a reply email from the Officer, stating that they were "still not satisfied with the evidence of relationship/cohabitation that you have submitted", that she had not submitted all of the documents noted in the PFL attachments, and that she was to do so. At 5:13 pm, the Applicant sent a responding email, which asked the Officer if all of the documentation was required, and if they could inform her of what was missing, as she was unrepresented. At 5:19 pm she wrote a follow-up email, once again asking the Officer to let her know if all of documents that she had attached to her initial email had been received, and specifying that she had provided 19 files. The following day, on March 22, 2024 at 11:02 am, IRCC sent an email stating that all of the documents previously listed in their letter were to be provided on or before March 24th at 10:00 pm EST. It further stated:

> Please be advised that if you are unable to produce these documents BY THE DUE DATE, a decision will be rendered based on the information currently on record and no further opportunities will be afforded to provide further details/clarification. This may result in your application being refused and no further consideration given to the request for permanent residence unless a new application, including fees, is submitted. [Emphasis original]

[6] On March 24, 2024 at 9:57 pm, the Applicant accordingly sent a further email that included 19 more documents, attached as PDFs.

[7] The next day, in a March 25, 2024 letter, the IRCC notified the Applicant that it had refused her permanent residence application. Under the heading “Reasons for Decision”, the letter stated:

> The PA (Principal Applicant) and paid representative have failed to furnish all the requested documentation within the stipulated 7-day deadline outlined in PFL initiated on 2024-03-15. The PA was then given a chance to submit the missing elements from her original submission and was given an extra 4 days to do so, however the PA did not follow the directives and submit the documentation in proper email attachment as requested. This constitutes non-compliance with the requirements mandated by the Immigration and Refugee Protection Act (IRPA) and its accompanying Regulations (IRPR).
>
> Therefore, your application for permanent residence is refused.

[8] The Officer’s Global Case Management System [GCMS] notes, which also form part of the reasons for the Decision, contained the same reasons as found in the Decision letter.

III. Issues

[9] In seeking to judicially review the denial of her permanent residence application, the Applicant argues that the Officer’s Decision was reached in a procedurally unfair manner, since it was rendered on the basis of a record which did not include several of the documents she had submitted on the request of IRCC.

IV. Analysis

[10] 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 56. Further, 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.

[11] For the reasons noted below, I find that Ms. Kaur's permanent residence application was incorrectly refused, as the evidence establishes that her application was indeed decided on the basis of an incomplete record.

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

[12] The substantive question before me is whether the Applicant's right to procedural fairness was breached. I find that it was. She has successfully demonstrated that the Decision was the product of a record that was incomplete, through no fault of her own.

[13] Again, this issue must be assessed on a correctness-like standard of review.

[14] The Applicant asserts that the Officer was not privy to all of the evidence that had been submitted in relation to her file, as they had an incomplete Certified Tribunal Record [CTR] before them when they decided her permanent residence application. She further argues that the determination of an application on an incomplete record is a breach of procedural fairness as it constitutes a denial of her right to be heard.

[15] In particular, the Applicant correctly notes that a review of the evidence in this matter establishes that there is no record of the Applicant's March 24, 2024 email (or any of the 19 documents attached to it) in the CTR. Upon my own further review of the record, I note that in addition to this, neither does the CTR include 10 of the PDF attachments that accompanied the 1:38 pm March 21, 2024 email that the Applicant originally sent to IRCC. Nor is there any mention of any of these missing documents, or for that matter the March 24, 2024 email, in the GCMS notes relating to this Decision.

[16] In the case of *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 [*Togtokh*] Justice Boswell summarized three scenarios where deficiencies in a tribunal record may arise. This situation corresponds with the second:

> [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:
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> …
>
> **2. A document is known to have been properly submitted by an applicant but is not in the CTR, and it is not clear whether that document, for reasons beyond an applicant's control, was before the decision-maker. In this situation, the case law suggests that the decision should be overturned** (see *Parveen v Canada (Minister of Citizenship and Immigration)* (1999), 1999 CanLII 7833 (FC), 168 FTR 103 at para 8 to 9, 88 ACWS (3d) 452 (Fed TD) [Parveen]; *Vulevic* at para 6; *Agatha Jarvis c Canada (Citoyenneté et de l'Immigration)*, 2014 FC 405 at paras 18 to 24, 240 ACWS (3d) 955 [*Jarvis*]).
>
> [Emphasis added]

[17] The Respondent concedes that the CTR is incomplete and does not include a number of documents submitted by the Applicant in relation to the Officer's queries regarding her permanent residence application.

[18] However, the Respondent argues that, in this case, even had those documents been before the Officer, they would not have altered the Decision. The Respondent states that this is because, even taking into account all of the missing CTR documents, it appears that the Applicant did not submit her T1 tax forms for 2021 and 2022**,** nor an additional lease agreement beyond the one she provided in her email. The Respondent notes this left approximately 18 months of the two-year period when the Applicant was leasing her residence unaccounted for. As a result, the Respondent states that the Applicant had therefore failed to submit all of the documents indicated in the original PFL letter. Given this, it is the submission of the Respondent that even if the Officer had been provided with all of the documents the Applicant had submitted, they still would have decided against the Applicant.

[19] I note that one of the submitted documents that is not in the CTR appears directly pertinent with respect to the missing lease agreement. This is the Applicant's "PFL Explanation" document, a three-page paper setting out her explanations and responses to the various documentary requests from IRCC. This document provides an explanation for the missing lease period, stating that prior to the time of the lease that was provided, the Applicant and Sponsor had been renting without official lease documents. With respect to the missing T1 forms, the PFL Explanation document does not provide a direct explanation, but says only that the

Applicant has instead submitted their Notices of Assessment for the requested years, as well as other financial documentation.

[20] It may be that the Officer would not have been satisfied with these explanations or would have held, regardless of the additional documentation, that the failure to include the T1s or the lease agreement meant that the permanent residence application would be rejected. However, the contents of the missing documents might equally have altered the Officer's conclusion that the Applicant had not adduced sufficient evidence in support of her application. 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 reviewing the unaccounted-for emails and documents. As the Court has repeatedly held, it is unknowable what impact such missing documents 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.

[21] While applicants for permanent residence are typically owed a relatively 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, this is sufficient to quash the Decision. The application for judicial review is therefore allowed.

V. Conclusion

[22] For these reasons, the decision in this case is set aside and the matter is returned for redetermination by a different IRCC officer. All of the documents attached to the Applicant's various March 21, 2024 and March 24, 2024 emails, along with those emails themselves, are deemed to comprise part of the record that will be considered in that proceeding.

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

JUDGMENT IN IMM-5992-24

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted.
2. The decision of the Officer dated March 25, 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

DOCKET:	IMM-5992-24
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