

Federal Court



Cour fédérale

**Date: 20190117**

**Docket: IMM-2704-18**

**Citation: 2019 FC 66**

**Toronto, Ontario, January 17, 2019**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**MUHAMMAD ARSHAD KHAN  
AYESHA REHMAN  
MUHAMMAD UMAIR KHAN  
AMNA KHAN  
ALVINA KHAN**

**Applicants**

**and**

**MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

(Delivered orally from the Bench in Toronto, Ontario on January 16, 2019)

**I. Proceeding**

[1] This is an application for judicial review of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board, dated May 8, 2018, in which it refused the Applicants' application for an extension of time to appeal a removal order [the Decision].

This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. The Facts

[2] The Applicants are a family of parents and three children. They are citizens of Pakistan. The father, Muhammad Arshad Khan, is the Principal Applicant.

[3] On March 31, 2010, the Applicants arrived in Canada as permanent residents. However, they returned to Pakistan about one month after their arrival and remained there until they came back to Canada on February 26, 2015.

[4] The Principal Applicant states that upon arrival at the airport, he was questioned by an officer [the Officer] of the Canada Border Services Agency [the CBSA] regarding the family's residency obligations. The Applicant states that the Officer asked him to provide their contact address and phone number and "merely advised me that someone may contact me by mail or phone, should they require further information." The Principal Applicant states that "we were permitted to enter Canada without any issue as far as I understood it." He states that CBSA did not require him to update his address or contact information on an ongoing basis.

[5] The Respondent has provided a copy of the Officer's notes from the interview on February 26, 2015. They provide different information. The Officer states that he informed the Principal Applicant that the five year period following his landing would expire on March 31,

2015 and that since he and his family had spent approximately one month in Canada in the last five years, it was physically impossible for them to meet their residency obligations. The Principal Applicant was therefore asked whether he would voluntarily relinquish the family members' permanent resident status and he declined, which he had a right to do. The Officer states that he advised the Principal Applicant that he would be preparing a section 44(1) Enforcement Report against the family for not meeting their residency obligations and that an immigration officer would be in touch with them by mail or by telephone in the near future to arrange an interview regarding their status. The Officer asked the Principal Applicant to complete a questionnaire for permanent residents but he refused to do so. Before leaving, the Principal Applicant confirmed his then current address [the Old Address] and provided his telephone number [the Old Phone Number].

[6] The Principal Applicant acknowledges that in August 2015 the family's address and telephone number changed and that he did not inform CBSA of the changes.

[7] The fact that the Applicant failed to provide CBSA with the Applicants' new address and phone number meant that two letters calling them in for an interview and the letter advising them of the issuance of a departure order and their right of appeal were not received because they were all sent to the Old Address.

[8] There is controversy about whether the Applicants were obliged to update their contact information simply because they were told at the airport that enforcement proceedings would be started.

[9] However, this controversy need not be resolved because, on November 30, 2017, the Principal Applicant met with a CBSA officer and received a copy of the Removal Order which provided a 30 day appeal period.

[10] The IAD concluded that after the Applicants actually received the Removal Order on November 30, 2017, they demonstrated no continuing intention to appeal. They missed the 30 day deadline by 2 months and did not file the Notice of Appeal until March 1, 2018. No explanation was provided to the IAD for this delay. For this reason alone, the Decision is reasonable.

### III. Certification

[11] No question was posed for certification for appeal.

**JUDGMENT in IMM-2704-18**

**THIS COURT'S JUDGMENT is that** the application for Judicial Review is dismissed.

“Sandra J. Simpson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2704-18

**STYLE OF CAUSE:** MUHAMMAD ARSHAD KHAN ET AL v THE  
MINISTER OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 16, 2019

**JUDGMENT AND REASONS:** SIMPSON J.

**DATED:** JANUARY 17, 2019

**APPEARANCES:**

Nancy Lam FOR THE APPLICANTS

Laoura Christodoulides FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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