Federal Court  Cour fédérale

Date: 20250203

Docket: IMM-4671-24

Citation: 2025 FC 222

Ottawa, Ontario, February 3, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

RASEL AHMED
RABEL AHMED
SAIDA BEGUM

Applicants

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision by an Immigration Officer [Officer] finding that they do not qualify as dependents for the purposes of their mother's permanent resident visa application. I am allowing the application because the Officer breached procedural fairness in failing to provide the Applicants an opportunity to address concerns about the veracity

of medical evidence submitted to establish dependency in accordance with the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Based on this disposition, there is no need to address the other issues raised by the Applicants.

II. Background

[2] The Applicants' father became a permanent resident in 2023 and sought to sponsor the Applicants and their mother. The mother's permanent resident application included the Applicants as her dependent children. At the time of the mother's application, the Applicants were all 22 years of age or older. Individuals older than 21 only qualify as a dependent child if they have relied substantially on the financial support of the parent and are "unable to be financially self-supporting due to a physical or mental condition": *IRPR*, s 2.

[3] In reviewing the application, the Officer noted that there was no evidence that the Applicants had any medical conditions and that they had, in response to a question in the required Schedule A form, all answered that they did not have "any serious disease or physical or mental disorder".

[4] The Officer sent a procedural fairness letter [PFL] to the Applicants' mother advising that there was no information on file to demonstrate that the Applicants were unable to support themselves financially due to a physical or mental condition. The Officer advised that the Applicants would be removed from their mother's permanent residence application given they did not meet this criterion. The Officer gave them 15 days to respond to their concern.

[5] In response to the PFL, letters were submitted for each Applicant, from their psychiatrist, explaining the conditions he was treating them for and how they had been his patients for time periods ranging from 3 to 10 years. Each letter was accompanied by what appears to be annotations of medical visits each Applicant had with the psychiatrist after the PFL was issued. The Officer refers to each of these annotations as a "prescription", in the Global Case Management System [GCMS] notes accompanying their decision. These annotations set out the psychiatrist's diagnoses, medications prescribed, results of a physical examination, and tests ordered.

[6] In the GCMS notes, the Officer acknowledged the psychiatrist's statement that all three Applicants have suffered from depression and anxiety "for years". However, the Officer did not give much weight to the Applicants' medical evidence, raising "concerns on the veracity of the documents" because each was dated after the issuance of the PFL. As a result, the Officer concluded that the medical evidence "does not sufficiently prove" that the Applicants are unable to be self-supporting due to any medical conditions.

III. Analysis

[7] The only issue for determination is whether the Officer breached procedural fairness in failing to provide the Applicants an opportunity to address the concerns about the veracity of their medical evidence.

[8] While no standard of review is applied for questions of procedural fairness, the Court's reviewing exercise is "best reflected on a correctness standard": *Canadian Hardwood Plywood*

and Veneer Association v Canada (Attorney General), 2023 FCA 74 at para 57; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]. When assessing whether procedural fairness was met, a reviewing court must "ask whether the procedure was fair having regard to all of the circumstances": *CPR* at para 54.

[9] For the reasons set out below, I find that procedural fairness required the Officer to raise their veracity concerns with the Applicants and give them an opportunity to respond.

[10] The duty of procedural fairness owed to applicants applying for permanent residence is at the lower end of the spectrum: *Sayekan v Canada (Citizenship and Immigration)*, 2025 FC 97 at para 12; *Mohammadzadeh v Canada (Citizenship and Immigration)*, 2022 FC 75 at para 22; *Lv v Canada (Citizenship and Immigration)*, 2018 FC 935 at para 22.

[11] Indeed, an officer has no obligation to seek clarification on deficient applications, to provide a "running score" of an application's weaknesses, or to advise applicants about concerns with the sufficiency of supporting materials: *Haghshenas v Canada (Citizenship and Immigration)*, 2023 FC 464 at para 21; *Al Aridi v Canada (Citizenship and Immigration)*, 2019 FC 381 at para 20; *Sulce v Canada (Citizenship and Immigration)*, 2015 FC 1132 at para 16.

[12] However, this Court has consistently held that if an officer questions the credibility, veracity, or genuineness of documentary evidence submitted, the applicant must be given an opportunity to respond: *Obasi v Canada (Citizenship and Immigration)*, 2024 FC 746 at para 17; *El Ayachi v Canada (Citizenship and Immigration)*, 2022 FC 609 at para 17; *Patel v Canada*

(Citizenship and Immigration), 2020 FC 77 at para 10; *Uwitonze v Canada (Citizenship and Immigration)*, 2017 FC 245 at para 18; *Mursalim v Canada (Citizenship and Immigration)*, 2016 FC 264 at paras 18, 23 [*Mursalim*]; *Kuhathasan v Canada (Citizenship and Immigration)*, 2008 FC 457 at para 37; *Olorunshola v Canada (Citizenship and Immigration)*, 2007 FC 1056 at paras 33–34.

[13] As set out above, the Officer noted the absence of any evidence in the Applicants' permanent residence applications establishing that they met the legislative definition of "dependent child", namely that they "are unable to be financially self-supporting due to a physical or mental condition": *IRPR*, s 2. Before removing them from their mother's application, the Officer gave the Applicants an opportunity to submit documentary evidence demonstrating that they met this criterion. In response, the Applicants submitted letters from their psychiatrist, as well as notes from a related medical visit.

[14] The Officer acknowledged that the psychiatrist's letters stated that he had been treating the Applicants for depression and anxiety. However, as the GCMS notes make clear, the Officer doubted the "veracity" of the evidence and thus did not assign it much weight. As a result, the Officer determined there was insufficient proof that the Applicants are unable to be self-supporting due to any medical conditions:

> As stated in the GCMS notes dated 20 Nov 2023, there was no evidence on file to show that the children have any physical or mental condition. They did not declare any such condition in their Schedule A as well. However, following a PFL, the Rep has submitted a medical note and a prescription for all three dependents stating that they have depression and anxiety for the last couple of years. I am not giving much weightage to this as both the letter and prescription was issued after the PFL was sent

> which raises concerns on the veracity of the documents. There is no evidence of treatment/prescription prior to the PFL. This does not sufficiently prove that dependents are unable to be self-supporting due to physical or mental condition.
>
> [Emphasis added]

[15] As the passage above demonstrates, the Officer's insufficiency finding was based solely on veracity concerns with the psychiatrist's evidence. Because of this, the Officer never assessed the substance of the evidence on its merits. In other words, the Officer did not consider whether the evidence, if accepted at face value, was sufficient to establish that the Applicants are unable to support themselves financially on a forward-looking basis as required by the *IRPR*.

[16] The Respondent argues that there was no obligation to provide the Applicants an opportunity to address the Officer's concerns. They assert that the PFL advised the Applicants of the case to meet and that applicants are not entitled to unlimited opportunities to make their case. In the circumstances of this case, I do not accept this argument.

[17] Similar to *Mursalim*, the Applicants could not have anticipated the Officer's credibility concerns. Simply raising the general concern in the PFL about the lack of information about any medical conditions was not sufficient to put the Applicants on notice that, once this information was provided, "the Officer would have concerns about the genuineness of that diagnosis": *Mursalim* at para 22. As Justice Southcott concluded, the duty of procedural fairness requires an officer to raise "fresh concern[s] about credibility, accuracy, veracity or genuineness that an applicant has not previously had an opportunity to address": *Mursalim* at para 23. It was thus

incumbent on the Officer to raise their concerns with the Applicants in this case and give them an opportunity to respond.

IV. Conclusion

[18] For these reasons, the application is allowed. The Officer's decision is set aside and the matter must be redetermined by another officer. The Applicants must be afforded an opportunity to address any concerns about the veracity of their medical evidence.

[19] The parties did not propose any certified questions and I agree that none arise.

JUDGMENT in IMM-4671-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. The decision dated February 8, 2024, is set aside and the matter is remitted to another officer for redetermination.
3. No question is certified for appeal.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4671-24
STYLE OF CAUSE:	RASEL AHMED, RABEL AHMED, SAIDA BEGUM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 29, 2025
JUDGMENT AND REASONS:	TURLEY J.
DATED:	FEBRUARY 3, 2025

APPEARANCES:

Naga Obazee	FOR THE APPLICANTS
Nicholas Dodokin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Obazee Law & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT