Federal Court Cour fédérale

Date: 20250221

Docket: IMM-11814-23

Citation: 2025 FC 354

Ottawa, Ontario, February 21, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

SINA SAEEDY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of an August 30, 2023, decision [Decision] of an officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] rejecting the Applicant's application for permanent residence under the *Temporary Public Policy: Temporary Resident to Permanent Resident Pathway* (TR to PR Pathway): International Graduates [Policy].

[2] The Policy allows temporary residents who have earned certain educational credentials in Canada to apply for permanent residence. The Policy accepted applications from May 6, 2021, to November 5, 2021, or until the maximum of 40,000 applications was reached.

[3] As set out further below, I find the Decision was reached in a procedurally unfair manner and is unreasonable. As such, I allow the judicial review.

I. Background

[4] The Applicant is a citizen of Iran who entered Canada as an international student on a study permit on September 5, 2019. He enrolled at University of New Brunswick in Saint John.

[5] On April 14, 2021, the IRCC introduced the Policy and on the next day, April 15, the Applicant registered to take the approved language test, CELPIP-General. He registered to take the test on the first available date in New Brunswick. The Applicant submits that at that time, his province of residence, New Brunswick offered limited testing capacity which was further exacerbated by the COVID-19 social distancing requirement. Due to the unavailability of vaccines, inter-provincial travel would have subjected him to a mandatory two-week quarantine. He, therefore, relied on the following guideline provided to him by IRCC on their website to book for the first date available in Saint John:

> "**You haven't applied yet**
>
> If you apply, you still need to submit a complete application. This means you must include all the supporting documents we ask for. If you can't get a document because it's delayed due to the COVID-19 pandemic, you can send proof that you're trying to get it (like a receipt). Include a letter to tell us why you don't have the document and when you'll get it. Send us the document as soon as you have it to avoid more delays.

> **Don’t travel to another city or country to get supporting documents. We’ll consider extending your deadline if you have a reasonable explanation that shows you’re affected by COVID-19**” (emphasis added)].

[6] The day TR to PR Pathway opened, on May 6, 2021, the Applicant applied for permanent residence under the Policy. He had already registered for the language test and took the test in New Brunswick on the first available date of June 3, 2021. He submitted the results on the day he received them, June 8, 2021, using the option on the IRCC Webform page to update his application. There is no dispute that the Applicant met and exceeded the level of proficiency contemplated by the Policy.

[7] The Applicant repeatedly followed up with IRCC through inquiries made on their Webform, and on December 8, 2022, IRCC confirmed that the CELPIP test report had been added to his file.

[8] On July 19, 2023, IRCC wrote the Applicant a procedural fairness letter [PFL], explained the requirements of the program and stated the following:

> You do not appear to have met the following selection criteria:
>
> **Language test was taken on 2021/06/08 and TRPR application was submitted on: 2021/05/07 Your language test was taken after date of application which does not meet the criteria.**
> (emphasis in original)

[9] Within the 30-day deadline, the Applicant responded to the PFL and included screenshots of the relevant IRCC direction on COVID-19 restrictions and receipt of his registration for the

language test on April 15, 2021, some three weeks before he had applied under the Policy. He also provided the screenshots of IRCC website that he had used to update his application:

> Fist of all, I reside in New Brunswick, where the number of language test centers is limited compared to more populous provinces. The situation was further exacerbated by the ongoing challenges posed by the COVID-19 pandemic, which resulted in these centers operating at half capacity, so that in mid April when the new policy was introduced, they were already full for the next couple of months.
>
> Thus, to meet the May 6th deadline, I would have had to travel to another province like Quebec or
>
> Ontario, where there were still test spots available for early May. However, due to the absence of the COVID-19 vaccine at that time, traveling between provinces required a mandatory two-week quarantine. Regardless of the potential health threats, such a prolonged absence from work would have posed a significant risk to my employment, while being employed at the time of application was an other requirement of the TR to PR program.
>
> I extensively consulted the IRCC website, which recommended PR applicants affected by the COVID-19 situation to avoid travels for the sake of supporting documents, and provided an option to extend the deadlines and update documents later. Given the extraordinary circumstances caused by the pandemic, I believed this would in general apply to my case as a PR applicant as well.
>
> Screenshots from IRCC reads:
>
> Don’t travel to another city or country to get supporting documents. We’ll consider extending your deadline if you have a reasonable explanation that shows you’re affected by COVID-19.
>
> If you get your language test results or educational credential assessment report by email or electronically, we’ll accept them as part of your application.
>
> Therefore, in mid April 2021, I registered for a test in early June, and as an indication of my commitment to fulfilling the language requirement, I included my test registration receipt at the time of initial application submission. This action was taken to demonstrate that I was actively on track to providing the language test transcript at the earliest opportunity.

> In addition, when I submitted my application, I was not confident that all documents had to be submitted at the time of application, as the application guidelines (Guide 5069) did not explicitly state this requirement. While, the TR to PR application website included a link that stated, "If you need to update your application, contact us". Consequently, I assumed that updating and providing documents later would be acceptable. This link redirected to the Webform page through which I promptly submitted my language test results as soon as I received them.
>
> [followed by screenshots of the actual Webform]
>
> In spite of being underemployed throughout the past two years, I patiently waited for my application's progress and fully believed that my valid and well-matching documents would qualify me for the new program. Especially, the receipt of an application number last year led me to believe that my case was proceeding without impediments. In fact, my dedication and hard work during the challenging COVID-19 situation to serve Canada have been in anticipation of a positive outcome to my application.
>
> Besides, TR to PR is actually my sole viable opportunity for permanent residency in Canada. A refusal at this stage would result in leaving the country, possibly forever, so that I would lose a crucial chance that could significantly impact my future, and that would be in total contrast with the gist of the new policy.

[10] As the Applicant pointed out in the last paragraph above, the stakes are quite high and the consequence is quite severe for him in this case.

[11] On August 30, 2023, approximately 28 months after the Applicant applied under the Policy, IRCC sent him a rejection letter. In summary, they stated that the rejection was due to the fact that he had not met the requirements at the time of applying for the program:

> I am not satisfied that you meet the requirement(s):
>
> e. Have attained a level of proficiency of at least benchmark 5 in either official language foreach of the four language skill areas, as set out in the *Canadian Language Benchmarks* or the *Niveaux de compétence linguistique canadiens*. This must be demonstrated by

> the results of an evaluation by an organization or institution designated by the Minister for the purpose of evaluating language proficiency under subsection 74(3) of the Regulations; and the evaluation must be less than two (2) years old when the permanent residence application is received;
>
> because your CELPIP official score report – general test date was 2021/06/03, which is after the date the application for permanent residence was received.
>
> Based on the information you provided in your response to the procedural fairness letter, it does not dissuade my decision.
>
> For the above reasons, I am not satisfied that you meet the eligibility criteria for the TR to PR pathway. Therefore, I refuse your application for permanent residence under section 25.2 of the Immigration and Refugee Protection Act.

[12] The GCMS notes, that form part of the reasons, follow below. Nowhere in the GCMS notes, is evidence that the IRCC officer has grappled with the Applicant's submissions on his response to the PFL to any extent.

Officer Decision Notes	***OFFICER REVIEW*** TR-PR PATHWAY APPLICATION E002638319 PA NAME: Saeedy, Sina PA UCI: 1112715121 PA is single, no dependents declared GCMS/FOSS: NAI for PA CBSA: Verified – No Concerns IDENTITY: Satisfied (valid passport provided) ***ELIGIBILITY*** Eligibility failed. LANGUAGE PROFICIENCY: Min. CLB met: Yes Language test less than two years old: No CELPIP official score report – general test date 2021/06/03 which is after the date the application for permanent residence was received. ***ADMISSIBILITY*** BIOMETRICS: PA: Received – NRT Previous biometrics within past 10 years were associated to this application. Under special COVID-19 measures, the applicant is exempt from providing a new biometric enrolment. UCNs have been verified in GCMS and biometric enrolments have been re-screened against M5 immigration databases. INFO SHARING: PA: Complete – Not reviewed due to eligibility not being met and refusal of the application. Medical, Security and Criminality verification lines were cancelled due to eligibility not being met and refusal of the application. ***FINAL DECISION*** After reviewing all of the information before me, I am not satisfied on balance of probabilities that the principal applicant has demonstrated per IRPA 25.2 that they meet the eligibility requirements for the TR-PR Pathway public policy. Language proficiency requirements not met. CELPIP official score report – general test date 2021/06/03 which is after the date the application for permanent residence was received. Application refused as per A25.2. A refusal letter will be sent and RPRF refund will be initiated.	2023/08/30 12:10:53 PM	C7318D	Whitehorse IRCC

II. Issues and Standard of Review

[13] The Applicant, who is self-represented, raised a central issue being whether the Decision is reasonable.

[14] The Applicant's arguments also engaged with how he relied on IRCC's instructions and continued communication in the course of processing his application for 28 months. When the refusal came, it was ultimately for a deficiency that existed on day one. As such, I sought further submissions from the Respondent on whether there was a breach of procedural fairness.

[15] Reasonableness review is a deferential standard, and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12–15 and 95 [*Vavilov*]). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law" (*Vavilov* at para 85).

[16] In conducting reasonableness review, the Court must determine whether the decision is "justified in relation to the facts and law that constrain the decision maker"(*Vavilov* at paras 85-86; *Canada Post Corp* v *Canadian Union of Postal Workers*, 2019 SCC 67 at paras 2, 31). A reasonable decision, when read as a whole and taking into account the administrative setting, bears the hallmarks of justification, transparency, and intelligibility (*Vavilov* at paras 91-95, 99-100).

[17] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

[18] I must also add that *Vavilov* has moved the focus of judicial review from a primarily deferential approach based on the decision-maker's expertise to a more context-specific inquiry that considers the effects of a decision on the individual. This shift means that administrative decision-makers must now demonstrate they have considered the consequences of their decisions. While reasonableness is a deferential standard, the *Vavilov* decision focuses more on the justification of a decision. The decision must be justifiable, transparent, and intelligible. This is particularly true when the consequences for the affected individual are severe (*Vavilov* at para 133 citing *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at para 25 [*Baker*]). This means a failure to address such consequences may render the decision unreasonable.

[19] With respect to issues of procedural fairness, the standard of review is not deferential. It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]). Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct". Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision maker was fair and gave the parties concerned the right

to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case heard (*CPR* at para 56). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 at para 16).

[20] Questions of procedural fairness ask whether the procedure was fair having regard to all of the circumstances with the ultimate question being whether the applicant knew the case it had to meet and had a full and fair chance to respond (*CPR* at paras 54, 56).

III. Legal Framework

[21] Subsection 25.2(1) of the IRPA enables the Minister to grant permanent residence pursuant to public policy considerations:

Public policy considerations	**Séjour dans l'intérêt public**
25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.	**25.2 (1)** Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.

[22] The Policy states as a requirement for eligibility that an applicant must have submitted an application for permanent residence using the forms provided by the Department for the public policy and must include at the time of application all proof necessary to satisfy an officer that the applicant meets the conditions (eligibility requirements) of the public policy. The TR to PR had the following eligibility requirement (summarized here, for full requirement see the "Temporary public policy to facilitate the granting of permanent residence for foreign nationals in Canada, outside of Quebec, with a recent credential from a Canadian post-secondary institution", (14 April 2021), online: Canada.ca):

> a. Have completed a program of study at a designated learning institution in Canada; b. Have been granted a degree or diploma from that institution;
>
> c. Have been authorized to study in Canada under IRPA;
>
> d. Be employed in a manner pursuant to the *Regulations*;
>
> e. Have attained a sufficient language proficiency;
>
> f. Be resident and physically present in Canada at the time of the application;
>
> g. Intend to reside in Canada outside of Quebec;
>
> h. Have submitted an application using the required forms, and which includes at the
>
> time of application all proof necessary to satisfy an officer that the applicant meets the eligibility requirements;
>
> i. Have submitted the application form online; and
>
> j. Not be otherwise inadmissible under the *Act* and *Regulations*.

IV. Analysis

A. *Was there a breach of procedural fairness?*

[23] Given that the Applicant was self represented, many of the issues he discussed related to procedural fairness despite not using the term. *Baker* outlines several factors that are relevant in determining the content of the duty of fairness, including the nature of the decision, the statutory scheme, the importance of the decision to the individual, the legitimate expectations of the person affected, and the choices of procedure made by the agency. In this case, the importance of the decision to the Applicant is high, since the program under which they applied no longer exists. This suggests a stricter requirement for procedural fairness.

[24] The Respondent argues that in May 2021 when the Applicant submitted his TR to PR application under the Policy, he did not possess eligible language proficiency, which was a requirement for filing. Since there was no statement in the TR to PR eligibility requirements that language test results could meet the eligibility requirements if provided after an application was submitted or received, it was a condition precedent without which the application could not proceed. The Policy offered no wiggle room for late submission, and as such the officer's decision to reject was reasonable. In fact, it was the only possible outcome under the circumstance because the Officer did not have the discretion to disregard of modify the eligibility requirements.

[25] The Respondent's argument that the decision was reasonable and procedurally fair because the Applicant did not meet the checklist requirement on day one ignores the fact that he

relied on the COVID-related instruction on IRCC's website, and IRCC actively engaged with him for over two years, including back-and-forth communication on updating his file with the language test results. They also wrote him a procedural fairness letter inviting him to provide an explanation. By doing so, they signaled that there was, at the very least, a possibility of discretion being exercised in his favor. If, as they now claim, they had no discretion from the outset, then the procedural fairness process was nothing more than an empty formality, serving no real purpose and offering the applicant false hope.

[26] The TR to PR program no longer exists, and but for the ongoing behaviour of the IRCC, the Applicant would not have found himself two years later with no other options. In fact, by following the Respondent's strict interpretation of the program, a fair system would not have allowed the Applicant to file what they considered an incomplete application, or at the very least, they would have brought a deficiency they deemed to amount to a condition precedent to his attention much sooner. Not only did they not do it, but they also provided contradictory guidance on the IRCC website and engaged with him in the various correspondence seen on the GCMS notes and confirmed receipt of their language test. *Baker* indicates that the purpose of procedural fairness is to ensure that those affected can present their case fully and fairly (*Baker* at para 22). In this case, the Applicant was deprived of the opportunity to reapply because of the delay in processing and the messaging he received seemed contrary throughout. This created a legitimate expectation, the breach of which resulted in a breach of procedural fairness.

[27] *Baker* confirms that legitimate expectations are part of the doctrine of fairness, and that they do not create substantive rights. The doctrine is based on the idea that it can be unfair to act against representations about procedure and that the expectation will affect the content of the

duty of fairness (*Baker* at para 26). *Baker* suggests that if a claimant has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness (*Baker* at para 26).

[28] In *Agraira v Canada* (Public Safety and Emergency Preparedness), 2013 SCC 36 [*Agraira*], Mr. Agraira was found to be inadmissible to Canada due to his membership in a terrorist organization. Mr. Agraira applied for ministerial relief under s 34(2) of the IRPA, but the Minister denied the application. The case examines whether the Minister's decision was reasonable and whether there was a breach of procedural fairness, particularly regarding the doctrine of legitimate expectations.

[29] The Court set the following principles on legitimate expectation:

- The doctrine of legitimate expectations is a facet of procedural fairness;
- It arises when a public authority makes representations about the procedure it will follow or has consistently followed certain practices in the past;
- It can also be created when there are representations about the substantive outcome;
- The representations must be "clear, unambiguous and unqualified";
- A legitimate expectation cannot create substantive rights, only procedural remedies (*Agraira* at paras 94-97).

[30] In Mr. Agraira's case, the Court determined that the Guidelines used by the officers created a legitimate expectation that the process described in them would be followed. The Guidelines were publicly available and used by both Citizenship and Immigration Canada [CIC] and the Canada Border Services Agency [CBSA], which created a reasonable expectation that the application would be dealt with according to the process laid out in them. However, the Court found that this expectation was met because Mr. Agraira's application was processed according

to the *Guidelines*. There was a legitimate expectation that certain factors, including humanitarian and compassionate factors, would be considered in determining the application for relief, but this expectation was also fulfilled by the Minister. The Minister reviewed all the material and evidence before him, and the website considered the relevant factors.

[31] In this case, the Applicant was dealing with the institutional Respondent. Therefore, I assess the conduct of the institution and not the individual officers involved in whether they created a legitimate expectation.

[32] In *Baker*, the Court found that there was no legitimate expectation that a specific procedure beyond those normally required would be accorded. The written documentation was deemed sufficient (*Baker* at para 29). However, here, the website, the ongoing engagement over two years and the fact that the program ended during that period make it distinguishable from *Baker*. Even if I were to find that the Applicant applied without fully meeting the requirement, the IRCC's conduct over two years, which included posting website instructions on the flexibility of deadlines due to COVID-19, their acceptance of the application and continued communication and permission to update, their PFL with the expectation that they would grapple with his evidence and submissions, all created the expectation that the application would be processed under the program. At the very least, all of these created a legitimate expectation that the ultimate rejection would not for something that they would later claim was apparent on the face of the application upon its submission on day one, that they had no discretion to offer a more flexible approach.

[33] To this Court, it was clear, unambiguous and unqualified that the Applicant's application was being evaluated for substance and that some level of flexibility was being offered due to the unprecedented times of COVID-19. The argument that the only reasonable and fair outcome under the circumstances was to reject the application some 28 months later fails to engage with what happened in the interim:

- **Clear Representation**: The ongoing engagement and responses from the decision-maker over two years constituted a clear and unambiguous representation that the application was under serious consideration for its substance. This creates a legitimate expectation that the application would be processed under the program. The rejection was ultimately on form rather than substance;
- **Detrimental Reliance**: The Applicant relied on this representation to his detriment. Had the decision been made earlier, while the program was still in existence, he could have reapplied if they were initially rejected;
- **Procedural Fairness**: The delay and ultimate rejection after the program's end deprived the Applicant of a procedural benefit, namely, the chance to reapply under the program which was initially available to them.

[34] I must add that it was the Respondent that was in charge of the system designed to accept the Application. If the rejection was simply because the Applicant did not meet a checklist-like requirement of the forms on day one, the delay of 28 months with ongoing communication to the contrary cannot be discounted completely.

[35] I am mindful that the doctrine of legitimate expectation only leads to procedural remedies and not substantive rights. However, it does call for the Applicant's application to be reevaluated with the inclusion of the language assessment.

[36] In their post-hearing submissions, the Respondent argued that IRCC's receipt of the Application on May 6, 2021, and their acceptance of late language test results, were procedurally

fair. The PFL was also procedurally fair. The Respondent argues that IRCC faces unavoidable administrative challenges mainly due to delegation of authority and resource constraints.

[37] I find that the Respondent's arguments solely focus on how the case is viewed from IRCC's perspective without engaging with how the overall conduct, is perceived to the users of IRCC services, such as the Applicant. While I agree with the Respondent that the mere receipt of the application in and of itself may not have generated legitimate expectation, what followed in the next 28 months, together with at best vague and at worst contrary guideline on IRCC's website on COVID-19 related flexibility with deadlines, did.

[38] I find that the siloed arguments of the Respondent on how the fairness of the individual action of the IRCC, such as in accepting the application, in accepting the language test and in generating the PFL, demonstrate the fairness of the system. First, I disagree that the mere act of accepting the documents as a repository, because the IRCC lacked the capacity to reject what they should not have accepted, is evidence of a fair process. I also disagree that generating documents, such as the PFL, when the argument is that the decision-maker had no discretion, is evidence of fairness. As stated already, if as the Respondent now claim, they had no discretion from the outset, then the procedural fairness process was nothing more than an empty formality, serving no real purpose and offering the applicant false hope. This is not compatible with my understanding of procedural fairness. A PFL is generated in expectation that the responding party, i.e. the Applicant, has a fair opportunity to make submissions that could potentially convince the decision-maker to depart from their initial position. To generate a letter when the only logical extension of the Respondent's argument is that no such possibility ever existed is neither necessary nor fair.

[39] I also disagree with the Respondent's characterization that the Applicant did not suffer significant prejudice. The contradictory or mixed messages sent by the IRCC prolonged the process until after the termination of the program under which the Applicant had applied. The Respondent's speculation that the Applicant may be able to apply under different streams misses the point that he was treated unfairly under this program.

[40] The Respondent also argues that the delay of 28 months was neither unreasonable nor inordinate. Again, this argument misses the point. My finding is not about whether a 28-month processing time in and of itself is unreasonable or inordinate. It is that the continued processing of the application while accepting the updated documents, while the IRCC has already sent a message on COVID related flexibility, sends a clear message that directly contradicts an eventual rejection of the application for a shortcoming that existed on day one. As outlined in *Baker*, the duty of procedural fairness is flexible, variable and depends on an appreciation for the statutory, institutional and social context under which the decision is being made (*Baker* at para 22). Provided the nature of the COVID-19 pandemic guidance on the IRCC website, and the delayed but continued involvement from IRCC towards the Applicant, a more fulsome level of fairness ought to have been provided.

[41] For these reasons, I find the Decision to be made in a procedurally unfair manner.

B. *Was the Officer's decision reasonable?*

[42] The final reasons for the decision, including the rejection letter and the GCMS notes, did not grapple with the Applicant's response to the procedural fairness letter in any shape or form.

It was indeed treated as an empty formality. In the Applicant's reply to the PFL, he provided evidence that contradicted the Officer's narrow interpretation and could be determinative in his case. This was done in the form of screenshots from IRCC's website on deadline for documents in light of COVID-19 restrictions. In case the Officer had not thought about the consequence, the Applicant had taken the time to bring the severe consequence of rejection to their attention which should have signaled a duty to engage with the response, as discussed in relation to procedural fairness. The Applicant also provided evidence of how he had applied the IRCC website instruction by showing his efforts to act before submitting his application, namely registering for the language test as early as April 15, 2021, for the earliest available date. The Officer's rejection letter and GCMS notes do not reflect any appreciation for any of this.

[43] The Respondent now argues that he could have travelled outside New Brunswick to take an earlier test, but he chose not to so because of the COVID self-isolation requirements at the time. With respect, this is the gap in the reasons that the Respondent's counsel is attempting to fill by speculating for what the Officer may or may not have thought. The fact remains that the Officer did not address the Applicant's submissions on why they rejected them. The submissions included evidence contrary to the Officer's interpretation of the deadline. By not engaging with the contrary evidence in any way, the Officer made an arbitrary decision (*Seyedsalehi v Canada (Citizenship and Immigration)*, 2022 FC 1250).

[44] The Applicant relies on *Kaur v Canada (Minister of Citizenship and Immigration)*, 2022 FC 1690 [*Kaur*] to argue that the decision was unreasonable. In *Kaur*, the applicant also did not provide a completed application when she applied as she had not provided language test results. She had uploaded a different document by mistake. She made the correction at a later date

through the Webform. In *Kaur*, the respondent argued that at the time of filing on September 29, 2022, the application was not complete and that the submission of the educational documents on October 6, 2021, was too late to redeem the application. What mattered was, that at the time the application was filed, there was incomplete documentation to meet the criteria for permanent residence.

[45] The Court in *Kaur* disagreed with the Respondent's rigid interpretation of the timing, which is now largely repeated before me. In fact, the Court observed that, at the time the application was assessed, the education documents were present, and the application was, therefore, complete. In other words, the determinative date was deemed to be the date of the decision:

> [20] However, as a determination with reasons was not provided in the GCMS notes and a decision letter was not sent until October 14, 2022, it is my view that a decision was not made until October 14, 2021. Indeed, I note that it was a different officer that reviewed the file on September 29, 2021 than the officer that authored the Decision on October 14, 2021. The Officer that authored the Decision did not review the file until October 14, 2022, when the education documents were present (*Kaur* at para 10).

[46] I find that in *Kaur*, to the extent that the file was incomplete on the day it was filed, it was due to the applicant's unexplained lack of diligence that was explained as a mistake. In this case, the Applicant did not lack diligence. He reasonably relied on IRCC guidance to prioritize the COVID related restrictions. He demonstrated his diligence by to providing evidence of his reasonable efforts, his registration for the test as early as in April 2021 and provided evidence of his successful test result well before the date of decision. The IRCC engaged with him as if his application was being processed all along.

[47] The Respondent relies on *Rohani v Canada (Citizenship and Immigration)*, 2024 FC 1037 [*Rohani*] and *Kumar v Canada (Citizenship and Immigration)*, 2024 FC 1613 [*Kumar*] to argue that there was no discretion in rejecting the Applicant's case when his language test results were not submitted in time. First, in *Kumar*, the applicant did not include the requested paystubs and conceded that he did not meet the requirements and requested an exemption (*Kumar* at para 12). The Officer grappled with the applicant's arguments in response to the PFL and explained why they were rejected. We are, therefore, not dealing with a similar situation. In *Rohani*, the applicant's language score was below the level required by the program when the applicant filed her application. In other words, there was clear evidence that she did not meet the requirement. She later retook the language test and scored in the acceptable range. COVID-19 was not a relevant factor. By contrast, in this case, there is no reason to believe that the Applicant's language proficiency was below the required level on the day he filed his application. He provided evidence of why the COVID-19 restrictions restricted his access to the test before a certain date. He took the test at the first opportunity and provided the evidence that he had surpassed the cut off score. Most importantly, there was no engagement with his explanation or his explained circumstances in the reasons. I find that these cases are distinguished and Respondent's reliance on these cases is misplaced.

[48] I find that the Respondent made an decision that was not transparent and justifiable in the circumstances because it was not responsive to the evidence the Applicant had provided in response to the PFL letter. In fact, the Respondent's entire behaviour throughout this case was as if they were processing it by accepting and considering all the documents. They issued a PFL when they did not engage with the response, even though it provided evidence to the contrary of their interpretation. *Vavilov* urges courts to consider both the reasoning process and the outcome

of a decision when assessing reasonableness (*Vavilov* at para 83). By the Officer not engaging with the Applicant's reply to the PFL, the decision lacks the rational chain of reasoning and is therefore not reasonable.

V. Conclusion

[49] I find that the decision made by the IRCC in this case was both unreasonable and procedurally unfair. The application should, therefore, be sent back to another officer for redetermination.

[50] While *Baker* does not guarantee a specific outcome, it provides a framework that supports the conclusion that there was a breach of procedural fairness in this case. The ongoing communication and engagement by the decision-maker for two years created a legitimate expectation that the application would be processed while the program was still available. The delay and ultimate rejection after the program's end effectively deprived the Applicant of a meaningful opportunity to pursue his application, which was a breach of his procedural rights.

[51] Following the principles provided for in both *Baker* and *Agraira*, combined with the details of this case, there is a highlight on the potential breach of procedural fairness. The core issue is that a technicality, easily identified at the outset, followed by a two-year delay that ultimately prejudiced the applicant by rendering him ineligible to reapply to the program. This situation resulted in a failure on the part of IRCC to implement an effective system and raises serious concerns regarding procedural fairness.

[52] Following *Kaur*, and given the totality of my reasons, this matter is remitted back to be redetermined by a different officer with the full file documents before the officer, including the result of the language testing documents.

[53] There was no question for certification proposed by the parties, and I agree that none arise in this case.

JUDGMENT IN IMM-11814-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, the decision of the Officer set aside, and the matter is remitted back to be redetermined by a different officer with the full file documents before the officer, including the result of the language testing documents.

2. No question of general importance is certified.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET	IMM-11814-23
STYLE OF CAUSE:	SINA SAEEDY V. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	DECEMBER 11, 2024
JUDGMENT AND REASONS:	AZMUDEH J.
DATED:	FEBRUARY 21, 2025

APPEARANCES:

Sina Saeedy	ON HER OWN BEHALF
Erin Kennedy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Department of Justice Canada Halifax, Nova Scotia	FOR THE RESPONDENT