

Federal Court



Cour fédérale

Date: 20250303

Docket: IMM-8471-24

Citation: 2025 FC 378

Toronto, Ontario, March 3, 2025

PRESENT: Mr. Justice Pentney

BETWEEN:

**ATIQULLAH LALI, MARIAM ARIAN,
AMANULLAH ARIAN, DAWOOD ARIAN,
MABEL OZARAGA PERLAS, MARY GAY
COROZA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants seek judicial review of a decision refusing Atiqullah Lali's (the PA) request for an exemption from the statutory requirement to produce a Refugee Status Determination (RSD) document for the processing of his permanent residence sponsorship. The PA admitted that he did not have an RSD document, but sought humanitarian and compassionate

(H&C) relief from this requirement. The Applicants also seek a writ of *mandamus* to compel a redetermination of the decision within 15 calendar days of this Court's decision.

[2] The Applicants are the PA and five Canadians who submitted a private sponsorship application to sponsor the PA for permanent residence as a *Convention Refugee* under the Group of Five (G5) sponsorship program. The PA is a citizen of Afghanistan and fled the Taliban in that country in 2021. He has been in Türkiye without status since 2021 and is currently subject to a deportation order.

[3] Since the initial sponsorship application was submitted in June 2022, a series of procedures and steps were taken by Applicants' counsel to advance the application. A final decision refusing the G5 sponsorship application was rendered on May 3, 2024 (the "Decision"). Following notification of this refusal, the Applicants commenced the present application for judicial review of that Decision.

[4] The judicial review was scheduled to take place on February 26, 2025, in Toronto. Prior to the hearing, Applicants' counsel informed the Court that the Certified Tribunal Record (CTR) filed on October 9, 2024, was missing approximately 700 pages. Applicants' counsel had requested that the Respondent have the decision-maker file an amended and complete CTR before the hearing, if doing so was feasible. In the alternative, Applicants' counsel requested the opportunity to raise the matter with the Court at the outset of the hearing.

[5] The hearing proceeded as scheduled on February 26, 2025. As a preliminary matter, Applicants' counsel raised the issue of the incomplete CTR and indicated that they believed that many of the missing documents were included in the Applicants' Record. The Respondent indicated that Immigration, Refugees and Citizenship Canada (IRCC) confirmed that at least 600 pages were missing from the CTR, but it was not able to identify precisely which documents were missing prior to the hearing. IRCC stated that it was simply not able to process the request on short notice; Respondent's counsel provided email correspondence with IRCC to that effect.

[6] The email correspondence indicates that owing to an administrative error, documents that were before the decision-maker were inadvertently excluded from the CTR. At the hearing, there was agreement between the parties that between 600 to 700 pages were missing from the CTR and that it was unclear which specific documents were missing. In the time available prior to the hearing, the Respondent was not able to identify which documents were received by the Officer and omitted from the CTR. Given the incomplete CTR, it is not possible for the Court to determine whether the Officer reasonably took the record into account when rendering their decision, as required by *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

[7] In *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 [*Togtokh*], Justice Boswell found that an incomplete CTR may constitute a breach of procedural fairness. In rendering his decision, Justice Boswell summarized three distinct types of scenarios raised by a deficient CTR: (1) where a document does not appear in the CTR and it is unknown whether it was submitted by an applicant; (2) where a document is known to have been properly submitted

but is not in the CTR and it is not clear whether it was before the decision-maker; and (3) where a document is known to have been before the tribunal but is not before the Court and cannot be reviewed (*Togtokh* at para 16).

[8] This case may fall within the second or third category noted above, but it is impossible to know at this stage. However, what is perfectly clear is that there are hundreds of pages, their contents unknown, that were before the decision-maker and omitted from the CTR. It is important to underline that it is acknowledged on all sides that this is due solely to an inadvertent administrative error on the part of IRCC officials, related to the size of the Applicants' record and the limitations of the internal IRCC computer system used to record the various steps in processing applications.

[9] Both parties acknowledged and agreed at the hearing that there is a need for a timely decision by this Court given the Applicant's uncertain status in Türkiye and risk of deportation to Afghanistan. Given the Applicant's circumstances, and this Court's inability to render a decision without examining the complete record that was before the Officer, the application for judicial review will be granted.

[10] Considering both parties' recognition of the urgency in this matter, owing to the Applicant's particular circumstances, the Court exercises its discretion to remit the Decision with a direction that it be redetermined within a specific timeframe for the Applicants to submit an updated record in a single package, and for the Respondent to make its decision on the reconsideration, as outlined in the judgment below.

[11] Finally, there is no question of general importance for certification.

[12] In closing, I want to thank counsel for their professionalism in dealing with the unusual and difficult situation relating to the CTR. Their approach reflects the best traditions of the Bar, and their understanding of their role as officers of the Court.

JUDGMENT in IMM-8471-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted.
2. The H&C decision of the IRCC Officer dated May 3, 2024, is hereby quashed and set aside. The matter is remitted back for reconsideration by a different officer.
3. Pursuant to paragraph 18.1(3)(b) of the *Federal Courts Act*, RSC 1985, c F-7, this redetermination shall be in accordance with the following directions:
 - a. Within 10 days of the date of this Judgment, the Applicants shall provide any new evidence and arguments to the IRCC in one final and complete application package.
 - b. IRCC shall make a determination of the H&C request within 30 days of the date it receives the final and complete application package from the Applicants.
 - c. IRCC shall inform the Court and seek directions if it is unable to make its reconsideration decision within the timeframe set out above.
4. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8471-24

STYLE OF CAUSE: ATIQULLAH LALI, MARIAM ARIAN,
AMANULLAH ARIAN, DAWOOD ARIAN, MABEL
OZARAGA PERLAS, MARY GAY COROZA v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 26, 2025

JUDGMENT AND REASONS: PENTNEY J.

DATED: MARCH 3, 2025

APPEARANCES:

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Ian Hicks	FOR THE RESPONDENT

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