Federal Court  Cour fédérale

**Date: 20250314**

**Docket: IMM-1074-24**

**Citation: 2025 FC 482**

**Vancouver, British Columbia, March 14, 2025**

**PRESENT: The Honourable Madam Justice Furlanetto**

**BETWEEN:**

**NADIA ZUHAIR SHIHAB**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision [Decision] of an Immigration officer [Officer] with Immigration, Refugees and Citizenship Canada [IRCC] who refused to reconsider the Applicant's application for permanent residence in Canada under the Express Entry Canadian Experience Class (CEC) on the basis that there was no longer a pending application as it had already been returned after being deemed incomplete.

[2] For the reasons that follow, the application is dismissed as I find the Officer did not fetter their discretion nor was the Decision unreasonable.

## I. Background

[3] The Applicant, Nadia Zuhair Shihab, is a citizen of the United States and a temporary resident in Canada. On May 20, 2023, she applied for permanent residency under the Express Entry (CEC) by submitting an application for herself, her husband, and their daughter through IRCC's secure applicant portal.

[4] Shortly after applying, on August 22, 2023, the Applicant received correspondence requiring her to upload and submit an additional family information form within 7 days. While she uploaded the form to the online portal, she neglected to hit the "submit" button. The document was submitted only after receiving notice from the Officer more than a month later, on October 3, 2023, that the application had been rendered incomplete because the form had not been submitted by the deadline.

[5] The Applicant filed a request for reconsideration, including a joint affidavit with her husband explaining what had happened, including screenshots showing that the document had been uploaded in the portal but not submitted, and confirmation that the form was subsequently received by IRCC.

[6] On December 28, 2023, the Applicant received a letter from IRCC indicating that the request for reconsideration had been considered, but that the application would not be re-opened. The letter stated the following basis for the refusal:

> An application that is returned as incomplete is no longer deemed an application and processing fees are refunded.
>
> ***Please note: We do not accept updated and/or additional information after the application has been deemed incomplete.***

## II. Issues and Standard of Review

[7] The Applicant raises two interrelated issues in this application:

> 1) Did the Officer fetter their discretion? and
>
> 2) Was the Officer's refusal to reconsider their decision unreasonable?

[8] While there was some debate regarding the standard of review of the first issue, the parties ultimately agreed, as do I, that the Decision should be reviewed through the lens of reasonableness as a decision made through fettered discretion is *per se* unreasonable: *Arabzada v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 256 at para 11; *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 24.

[9] 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 that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 85. A decision will be reasonable if when read as a whole, and taking into account the administrative setting, it bears the hallmarks of justification, transparency, and intelligibility: *Vavilov* at para 99.

III. Analysis

[10] The Applicant does not contest that the application was incomplete when rejected by the Officer. However, she asserts that the Officer took too rigid a view to the reconsideration request and fettered their discretion in failing to consider the specific circumstances of the request. The Officer's decision to refuse the reconsideration request without showing consideration of these specific circumstances was therefore unreasonable.

[11] In this case, I agree with the Respondent that both the *Immigration and Refugee Protection Regulations* SOR/2002-227 [IRPR] and the jurisprudence are determinative.

[12] Sections 10 and 12.01 of the IRPR set out the requirements for a permanent residence application. As relevant to this proceeding, paragraph 10(1)(c) and section 12.01 state:

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|---|---|
| **Form and content of application** | **Forme et contenu de la demande** |
| **10 (1)** Subject to paragraphs 28(b) to (d) and 139(1)(b), an application under these Regulations shall | **10 (1)** Sous réserve des alinéas 28b) à d) et 139(1)b), toute demande au titre du présent règlement : |
| . . . | . . . |
| **(c)** include all information and documents required by these Regulations, as well as any other evidence required by the Act; | **c)** comporte les renseignements et documents exigés par le présent règlement et est accompagnée des autres pièces justificatives exigées par la Loi; |
| . . . | . . . |

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| **Invitation — application for permanent residence** | **Invitation — demande de résidence permanente** |
| **12.01** An application for permanent residence that is made in response to an invitation issued by the Minister under Division 0.1 of the Act must be made by the electronic means that is made available or specified by the Minister for that purpose. | **12.01** La demande de résidence permanente qui est présentée à la suite d'une invitation formulée par le ministre aux termes de la section 0.1 de la Loi est présentée par le moyen électronique que le ministre met à la disposition de l'intéressé ou qu'il précise à cette fin. |

[13] Pursuant to section 12 of the IRPR, if the application requirements are not met, the application, and all documents submitted in support of it, will be returned to the applicant.

[14] In *Gennai v Canada (Minister of Citizenship and Immigration)*, 2017 FCA 29 [*Gennai*], the Federal Court of Appeal confirmed that an incomplete application is not an application any longer within the meaning of the *Immigration and Refugee Protection Act*, SC 2001, c 27 and the IRPR. Once incomplete, an application "can no longer exist because the text of section 12 provides that the entirety of an application that has failed to meet the requirements under section 10 is returned to the applicant." (at para 6).

[15] This same reasoning was similarly followed in *Karami v Canada (Minister of Citizenship and Immigration)*, 2018 FC 846 at paragraphs 20-22 and *Asije v Canada (Minister of Citizenship and Immigration)*, 2024 FC 479 at paragraphs 16-20, and is binding on this Court.

[16] In this case, pursuant to section 12.01 of the IRPR, the application was submitted electronically. As such, there was no physical return of documents to the Applicant once the application was deemed incomplete. However, consistent with the objectives of section 12 of the IRPR, when the application was rendered incomplete on October 3, 2023 for being non-compliant with sections 10 and 12.01 of the IRPR, the Officer advised the Applicant that the application "was not put into processing", that IRCC would be refunding the fees the applicant paid, that the Applicant was no longer considered a candidate for Express Entry, and that her profile for Express Entry was no longer valid.

[17] The letter advised the Applicant that if she was still interested in applying for Express Entry as a skilled worker that she had to submit a new Express Entry profile through her secure account and that the documents submitted as part of her original Express Entry profile would remain in her secure account for 60 days to help facilitate this.

[18] As the Applicant's Express Entry profile was no longer in existence after the application was rendered incomplete, there was no active application to which a further document submitted afterwards could be applied.

[19] While the Applicant seeks to parallel this case to *Goel v Canada (Minister of Citizenship and Immigration)*, 2025 FC 275 [*Goel*], in my view *Goel* is readily distinguishable on its facts. In *Goel*, when reconsideration was sought there was a live debate over whether the application in question was incomplete (see paras 8 and 9). There is no such debate in his case.

[20] The further cases cited by the Applicant (*Marr v Canada (Citizenship and Immigration)*, 2011 FC 367; *Charles v Canada (Minister of Citizenship and Immigration)*, 2014 FC 772 and *Memon v Canada (Citizenship and Immigration)*, 2016 FC 182), which involved requests to reconsider the merits of the decisions in question are equally distinguishable as they did not involve section 12 of the IRPR.

[21] In this case, on December 3, 2023, the application was rendered incomplete and section 12 of the IRPR took effect pursuant to that determination.

[22] As such, I find no reviewable error in the Decision provided. Without an active Express Entry Profile, the Officer's discretion was constrained with respect to the Applicant's reconsideration request. As reasonably explained by the Officer, they could not accept updated or additional information after the application was deemed incomplete as there was no longer an active application. Taken together with the October 3, 2024 letter, in my view, these reasons were transparent, intelligible and showed sufficient justification.

[23] For these reasons, the application is dismissed.

[24] While the Applicant initially proposed a question for certification, she withdrew the proposed question after receiving the Respondent's submissions. I likewise agree, there is no question for certification.

**JUDGMENT IN IMM-1074-24**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

"Angela Furlanetto"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-1074-24 |
| **STYLE OF CAUSE:** | NADIA ZUHAIR SHIHAB v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | VANCOUVER, BRITISH COLUMBIA |
| **DATE OF HEARING:** | MARCH 12, 2025 |
| **JUDGMENT AND REASONS:** | FURLANETTO J. |
| **DATED:** | MARCH 14, 2025 |

**APPEARANCES:**

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| Randall K. Cohn | FOR THE APPLICANT |
| Robert L. Gibson | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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