

Federal Court



Cour fédérale

**Date: 20250408**

**Dockets: IMM-7302-23  
IMM-7293-23  
IMM-7470-23  
IMM-7562-23**

**Citation: 2025 FC 645**

**Ottawa, Ontario, April 8, 2025**

**PRESENT: The Honourable Madam Justice Blackhawk**

**Docket: IMM-7302-23**

**BETWEEN:**

**HIVA SAFFAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**Docket: IMM-7293-23**

**AND BETWEEN:**

**HANA SAFFAR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**Docket: IMM-7470-23**

**AND BETWEEN:**

**RAHMAN GHAFARI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**Docket: IMM-7562-23**

**AND BETWEEN:**

**MANDANA MAHMOUDI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] These are the reasons in respect of four judicial review applications that were heard together in Court File Nos. IMM-7302-23, IMM-7293-23, IMM-7470-23, and IMM-7562-23.

[2] On April 10, 2023, a visa officer (“Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”) denied the Havi Saffar’s (“Essential Applicant”) application for permanent

residency under the start-up visa program (“Program”) because she failed to pay the required permanent residence fee, and was therefore inadmissible pursuant to sections 16(1) and 41(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] (“Decision”).

[3] On May 5, 2023, the applications for Hana Saffar, Rahman Ghaffari, and Mandana Mahmoudi (“Remaining Applicants”) were denied because of the Decision, pursuant to subsection 98.08(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Each Remaining Applicants’ denial letter stated that since the Essential Applicant was refused, the Remaining Applicants were no longer members of the class (*IRPR*, s 98.01(2)).

[4] For the reasons that follow, the applications are dismissed.

## II. Background

[5] The Applicants are all citizens of Iran. Each Applicant represents a family where one primary applicant is involved in a proposed start-up business in Canada.

[6] On October 28, 2019, the Applicants applied as a group for permanent residency under the Program. The Essential Applicant was identified in the application as essential to the proposed start-up business (*IRPR*, s 98.04(3)(b)). The Remaining Applicants’ applications were dependent upon the application of the Essential Applicant (*IRPR*, s 98.08(2)).

[7] On August 10, 2022, the IRCC requested additional documentation from the Essential Applicant, including business-related records, financial records, educational records, and personal and family information. The IRCC made additional requests for information and documentation on September 12 and October 6, 2022.

[8] On February 21, 2023, the Officer sent a letter to the Essential Applicant and her representative requesting payment of the Right of Permanent Residence Fee (“RPRF”) and proof thereof for herself, her spouse, and her dependant child, pursuant to section 303 of the *IRPR*. The letter advised these must be received by February 28, 2023.

[9] On March 1, 2023, the Officer sent the Essential Applicant and her representative a second request for payment of the RPRF (together, the letters are referred to as the “Request Letters”). The March 1, 2023 letter advised that payment must be received by March 31, 2023.

[10] On April 10, 2023, the Officer issued the Decision that refused the Essential Applicant’s application and found her inadmissible based on non-compliance (*IRPA*, ss 16(1), 41(a)).

[11] On April 11, 2023, the Essential Applicant’s representative requested the Decision be reconsidered because a previous employee of hers “did not calendarize the deadline to submit payment of the RPRF.” The Essential Applicant’s representative paid the RPRF at 11:06 a.m. the same day and enclosed proof of payment to the Officer.

[12] The reconsideration request was refused on May 5, 2023, because there was no proof that payment was made by the Essential Applicant before the date of the Decision. That same day, the Officer also issued their decisions refusing the Remaining Applicants. These refusals were based on the Decision, not the substantive merits of the proposed start-up business nor of the individual Remaining Applicants (*IRPR*, s 98.08(2)).

[13] On May 11, 2023, the Essential Applicant’s representative sent a second reconsideration request and argued that the Decision did not consider the Program, that the requisite application fees had been fully paid in time, and that the Essential Applicant met all Program requirements.

The second reconsideration request was denied on June 9, 2023, because “no payment or correspondence” was received by the provided due date.

[14] The Applicants filed their applications for leave and judicial review on June 9, 2023. They allege that the Officer failed to observe a principle of natural justice/procedural fairness; erred in making erroneous findings of fact without regard to the evidence properly before them; and erred in failing to consider the relevant evidence before them.

[15] The Court granted leave on November 7, 2024. The parties filed a notice of non-settlement on December 17, 2024.

### III. Relevant Legislation

[16] The following provisions from the IRPR are relevant to this matter:

| <b>Multiple applicants</b>  | <b>Demandeurs multiples</b>   |
|---|---|
| <b>98.04 (3)</b> If there is more than one applicant in respect of a commitment, the commitment must            | <b>98.04 (3)</b> Dans les cas où il y a plus d'un demandeur relativement à un même engagement, celui-ci doit :                    |
| <b>(a)</b> include information on each applicant; and   | <b>a)</b> comprendre des renseignements sur chaque demandeur;   |
| <b>(b)</b> identify those applicants that the entity making the commitment considers essential to the business. | <b>b)</b> préciser quels sont, parmi les demandeurs, ceux que l'entité qui prend l'engagement juge indispensables à l'entreprise. |
| ...   | [...]   |
| <b>Multiple applicants</b>  | <b>Demandeurs multiples</b>   |
| <b>98.08 (2)</b> If there is more than one applicant in respect of the same business and one of the             | <b>98.08 (2)</b> S'il y a plus d'un demandeur relativement à la même entreprise et que l'un                                       |

applicants who was identified in the commitment as being essential to the business is refused a permanent resident visa for any reason or withdraws their application, the other applicants must be considered not to have met the requirements of subsection 98.01(2) and their permanent resident visa must also be refused.

...

### **Fee — \$500**

**303 (1)** A fee of \$500 is payable by a person for the acquisition of permanent resident status.

...

### **Payment**

**(3)** The fee referred to in subsection (1) is payable

**(a)** in the case of an application by or on behalf of a person for a permanent resident visa, before the visa is issued; and

...

### **Remission**

**(4)** The fee referred to in subsection (1) is remitted if the person does not acquire permanent resident status, in which case the fee shall be repaid by the Minister to the person who paid it.

d'entre eux, qui est indispensable à l'entreprise selon l'engagement, se voit refuser la délivrance d'un visa de résident permanent pour quelque raison que ce soit ou retire sa demande, les autres demandeurs sont considérés comme ne satisfaisant pas aux exigences prévues au paragraphe 98.01(2) et ne peuvent se voir délivrer un visa de résident permanent.

[...]

### **Frais de 500 \$**

**303 (1)** Des frais de 500 \$ sont à payer par toute personne pour l'acquisition du statut de résident permanent.

[...]

### **Paielement**

**(3)** Les frais doivent être acquittés :

**a)** dans le cas de la demande de visa de résident permanent, avant la délivrance du visa;

[...]

### **Remise**

**(4)** Remise est accordée des frais prévus au paragraphe (1) si la personne n'acquiert pas le statut de résident permanent; le ministre rembourse alors les frais à la personne qui les a acquittés.

#### IV. Issues and Standard of Review

[17] The issues in this application are:

1. Was the Decision reasonable?
2. Was the Decision procedurally fair?

[18] The standard of review applicable to an officer's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 10, 23).

[19] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (Vavilov at paras 12–15, 95).

[20] The starting point for a reasonableness review is judicial restraint and respect for the distinct role of administrative decision makers. 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). The Court must find an error in the decision that is central or significant, which renders the decision unreasonable (Vavilov at para 100).

[21] The standard of review for procedural fairness issues is correctness, or akin to correctness (Vavilov at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). The reviewing court must consider what level of procedural fairness is necessary in the circumstances and whether the “procedure followed by the administrative decision maker respect[s] the standards of fairness and natural justice” (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13).

[22] The central question is: did the applicant understand the case to be met and did they have an opportunity to respond?

V. Analysis

A. *Remaining Applicants*

[23] The Applicants acknowledge that the Essential Applicant's application was refused due to non-payment of the RPRF. The Applicants also agree that the Essential Applicant was designated as an essential individual in the proposed start-up business.

[24] The legislation is clear, when an applicant who is designated as essential is refused, the other applicants applying as part of the same start-up business class must be refused (*IRPR*, s 98.08(2)).

[25] Therefore, the outcome of the judicial review of the refusal of the Essential Applicant is determinative of the other applications.

B. *Was the Decision reasonable?*

[26] The Respondent submitted that the Officer refused the Essential Applicant on the basis that she was inadmissible for non-compliance, pursuant to sections 16(1) and 41(a) of the *IRPA*.

[27] A review of the Officer's reasons supports the conclusion that the missing documentation requested was payment of the RPRF for the Essential Applicant, her spouse, and their dependent child. The Request Letters clearly indicate that proof of payment of these fees should be provided to the Officer by a specified date.



[28] The record for this application is clear, the RPRF had not been paid and proof of payment had not been submitted to the Officer by the specified date and in advance of the Officer's Decision. The Officer found that the Essential Applicant was inadmissible because she did not comply with subsection 16(1) of the *IRPA*.

[29] The Applicants submitted that this Decision was not reasonable because the Essential Applicant was entitled to a decision on her admissibility under the start-up Program. They argued she filed all necessary documentation and paid the requisite fees. They argued that the RPRF was not required.

[30] The Respondent submitted that the Applicants' argument appears to confuse certain fundamental aspects of the application process. While the Respondent agreed that the Essential Applicant is entitled to a decision on her admissibility under the *IRPA*, they submitted she was also required to comply with all provisions, including the provisions of general application.

[31] The Respondent argued that the RPRF is an unambiguous requirement applicable to all applicants for permanent residence. The RPRF must be paid prior to the issuance of a permanent residence visa (*IRPR*, ss 303(1), 303(3)). The Essential Applicant was under a clear statutory obligation to pay this fee, and the Officer was prohibited from issuing her a visa unless and until the fee was paid.

[32] The Respondent submitted that the Applicants' arguments ignore the distinction found in the legislation between application fees and the RPRF, and I agree.

[33] The Applicants' argued that it was open to the Officer to send a conditional decision letter requiring payment of the RPRF. With respect, this would not have created any practical

distinction in result. Had the Officer conditionally approved the application, they would have been barred from doing anything with that decision, either issuing a permanent residence visa or conferring permanent residence status, until such time as the fee was paid. If the RPRF was not paid, the Officer would then have to reverse the previous approval (*IRPR*, s 303(3)).

[34] The Applicants' have not persuaded me that the Officer ought to have employed a procedure different from that applied in processing of the Essential Applicant's application. The Applicants' provided no support, authority, or provision in the *IRPR* for the proposition that an officer is required to determine an application before requesting fee payment. A request for payment made prior to a decision has raised no issues before this Court (*Patel v Canada (Citizenship and Immigration)*, 2014 FC 856 at para 6; *Lada v Canada (Citizenship and Immigration)*, 2020 FC 270 at para 23; *Trivedi v Canada (Citizenship and Immigration)*, 2014 FC 766 at para 3).

[35] It was reasonable for the Officer to request payment and proof of payment of the RPRF by the Essential Applicant. It is uncontested that the Officer made this request in two separate Request Letters. When the Essential Applicant did not provide this or otherwise substantively respond to the requests, the Officer reasonably found she had failed to comply with subsection 16(1) of the *IRPA* and was therefore inadmissible (*IRPA*, s 41(a)).

[36] The Officer's request was reasonable, and the consequences of non-compliance are legally sound. The Officer's reasons were clear, intelligible, and justified. There is no basis for this Court to intervene.

C. *Was the Decision procedurally fair?*

[37] The Applicants argued that there was a breach of procedural fairness as the Essential Applicant's right to natural justice and to a fair hearing was not respected. In particular, the Applicants argued that correspondence was not sent to the Applicants' authorized representative nor to the addressed Essential Applicant.

[38] In addition, the Applicants argued that the Decision is a breach of natural justice because the Essential Applicant complied with the procedures for applications in the Program, the RPRF is not required, the consequences for re-application are harsh due to changes with the Program, and the Decision is does not promote key objectives of the *IRPA*, namely consistent processing for applications.

[39] The Respondent argued that Applicants' argument does not set out what steps in the process were procedurally unfair nor what the Officer ought to have done to ensure procedural fairness was maintained. They noted that procedural fairness is a right to fair process, not a specific outcome.

[40] Further, the Respondent argued that the allegation that the correspondence was not sent to the Essential Applicant or the Applicants' representative is without merit.

[41] A review of the record for these applications illustrates that the Essential Applicant's original application provided "info@tabatabaee.com" as the address for correspondence. That address was used by IRCC officials to correspond with the Essential Applicant until November 2019. In November 2019, instructions were sent to the Essential Applicant to associate their application with an online portal account and further correspondence was then sent to them

through that account. Correspondence sent to the Essential Applicant using this online portal account triggered a notification to the email address linked with that account. Either the Essential Applicant or their authorized representative provided the following email address for that account: “shermineh@tabatabaee.com.”

[42] The Respondent acknowledged that they changed the email address that they sent information to. However, they argued that the change followed the linking of the Essential Applicant’s application with an online portal account, based on information the Essential Applicant provided to the Respondent.

[43] The record for this proceeding and the evidence of the affiant Martin Legault, Director - Product Solutions Support & Release Readiness in the Application Development department of IRCC dated December 17, 2024, are clear that following the Essential Applicant linking their application to the online portal account, correspondence was consistently sent to the new email address as provided via the online portal account. Further, there is clear evidence that the Essential Applicant received communication and correspondence through this account, responded to messages, and uploaded information concerning her application through the online portal.

[44] The affidavit evidence of Mehran Tabatabaee, Immigration Consultant and authorized representative of the Applicants, indicates that an employee “received correspondence from IRCC on February 21, 2023 and March 1, 2023 requesting proof of payment” of the RPRF. Ms. Tabatabaee goes on to indicate that the deadlines for completion of this step were improperly diarized. Ms. Tabatabaee’s evidence supports a finding that the correspondence was received by her office.

[45] Considering the record for this proceeding and the evidence provided by the Applicants and Respondent, I am not persuaded that there has been a breach of procedural fairness.

[46] The duty of procedural fairness is contextual. Jurisprudence from this Court has clarified that the procedural fairness owed by officers is at the low end of the spectrum (*Asl v Canada (Citizenship and Immigration)*, 2016 FC 1006 at para 23; *Grewal v Canada (Citizenship and Immigration)*, 2017 FC 955 at para 16. In this case, the Essential Applicant was provided with notice and information that clearly set out that payment of the RPRF was due on certain dates to complete processing of her application. The Essential Applicant missed the first deadline and was then provided a reminder and given a new date to complete this necessary step. The Essential Applicant was provided the necessary information and was provided an opportunity to respond.

[47] Ultimately, the actions of the Applicants' representative led to the missed deadline. "Factors such as... administrative errors such as a simple failure of a consultant to advise his client are not the responsibility of immigration officials" (*Sawnani v Canada (Citizenship and Immigration)*, 2007 FC 206 at para 7). While this Court acknowledges that a breach of procedural fairness may result from incompetent representation, that is not the issue that was before me in these applications (see *Yang v Canada (Citizenship and Immigration)*, 2015 FC 1189 at para 16 and *Jeffrey v Canada (Minister of Citizenship and Immigration)*, 2006 FC 605 at para 9). The Officer did not breach of the duty of procedural fairness in rendering the Decision.

[48] With respect to the other issues raised by the Applicants, it is not clear how these equate to a breach of procedural fairness.

[49] I agree with the Respondent's submissions. While the Essential Applicant may have completed her application and paid all requisite fees for the Program, she did not complete all necessary steps and pay all required fees for the right of permanent residence. This is also a requirement. The Essential Applicant did not pay the RPRF until after her application had been refused. This is not a breach of procedural fairness.

[50] The Applicants have acknowledged that they have the right to reapply; however, they argued that the time required to reapply and changes to the Program militate for a higher degree of procedural fairness. I am not persuaded by this argument. It is not clear to me what steps in the processing of the Applicants' applications were not fair. I understand that a fresh application will place the Applicants at the back of a long line, and they will have to comply with the new requirements to the Program. This does not render the Decision procedurally unfair.

[51] The record for this application does not support that the Essential Applicant was deprived of an opportunity to respond to the Officer's request. Rather, the record illustrates she was given a full and fair opportunity to respond and failed to respond in a timely manner. Compliance after the Decision was issued is not responsive.

[52] The Officer's Decision in respect of the Essential Applicant's application did not breach procedural fairness. The Decision was reasonable and fair.

## VI. Conclusion

[53] The Officer's Decision on the Essential Applicant's application is reasonable and fair.

[54] As noted above, pursuant to the *IRPR*, the Decision concerning the Essential Applicant is determinative of the Remaining Applicants'. Accordingly, the decisions to denying the Remaining Applicants' applications are reasonable.

[55] The Applicants also requested their costs of this application. The general and longstanding practice is that costs follow the event for a successful party (*Whalen v Fort McMurray No 468 First Nation*, 2019 FC 1119 at paras 2–4, 7–9).

[56] The principal objectives of an award of costs are to provide indemnification to the successful party; penalize a party refusing a reasonable settlement; and sanction behavior that increases the expense of litigation or is otherwise unreasonable or vexatious (*Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at paras 19–20).

[57] The Applicants were not successful; accordingly, it is not appropriate to order costs in this application.

**JUDGMENT in IMM-7302-23, IMM-7293-23,  
IMM-7470-23, and IMM-7562-23**

**THIS COURT’S JUDGMENT is that:**

1. The applications are dismissed.
2. There is no question for certification.
3. There is no order as to costs.

“Julie Blackhawk”

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Judge



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

|                              |   |
|------------------------------|---|
| <b>DOCKETS:</b>              | IMM-7302-23<br>IMM-7293-23<br>IMM-7470-23<br>IMM-7562-23          |
| <b>DOCKET:</b>               | IMM-7302-23   |
| <b>STYLE OF CAUSE:</b>       | HAVI SAFFAR v THE MINISTER OF<br>CITIZENSHIP AND IMMIGRATION      |
| <b>DOCKET:</b>               | IMM-7293-23   |
| <b>STYLE OF CAUSE:</b>       | HANA SAFFAR v THE MINISTER OF<br>CITIZENSHIP AND IMMIGRATION      |
| <b>DOCKET:</b>               | IMM-7470-23   |
| <b>STYLE OF CAUSE:</b>       | RAHMAN GHAFARI v THE MINISTER OF<br>CITIZENSHIP AND IMMIGRATION   |
| <b>DOCKET:</b>               | IMM-7562-23   |
| <b>STYLE OF CAUSE:</b>       | MANDANA MAHMOUDI v THE MINISTER<br>OF CITIZENSHIP AND IMMIGRATION |
| <b>PLACE OF HEARING:</b>     | TORONTO, ONTARIO  |
| <b>DATE OF HEARING:</b>      | JANUARY 30, 2025  |
| <b>JUDGMENT AND REASONS:</b> | BLACKHAWK J.  |
| <b>DATED:</b>                | APRIL 8, 2025   |

**APPEARANCES:**

|               |                    |
|---------------|--------------------|
| Sadaf Tahriri | FOR THE APPLICANTS |
| Brendan Stock | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

M. Tabatabaee Immigration  
Services Inc.  
Barristers and Solicitors  
Toronto, Ontario

Attorney General of Canada  
Toronto, Ontario

FOR THE APPLICANTS

FOR THE RESPONDENT