Federal Court Cour fédérale

Date: 20250926

Docket: IMM-8021-24

Citation: 2025 FC 1592

Toronto, Ontario, September 26, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

OMAR SHIJIN PUTHIYARA MALIYEKKAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Omar Shijin Puthiyara Maliyekkal seeks judicial review of a decision rejecting his application for permanent residence, arguing that the decision is unreasonable and procedurally unfair. For the reasons set out below I will allow his application.

I. BACKGROUND

[2] Mr. Maliyekkal, a citizen of India and father of three, has been living and working in Canada for three years as a software developer on a closed work permit. On December 8, 2023, he was invited to apply for permanent residence in Canada under the Express Entry class. He submitted his application the following month, on January 17, 2024. He applied only for himself but provided all requested information about his spouse and three children in his application, identifying them as "non-accompanying dependents." He indicated in a covering letter that he planned to sponsor them in the family class category once he had received his permanent resident status and requested that he be contacted if any additional information was required, adding "I am more than willing to provide any requested documents promptly."

[3] By letter dated April 4, 2024, Immigration, Refugees and Citizenship Canada [IRCC] advised Mr. Maliyekkal that his application had been rejected because it did not meet "the requirements of a complete application as described in sections 10 and 12.01 of the Immigration and Refugee Protection Regulations." The letter, which was unsigned, explains:

> Specifically, your application does not include the following elements:
>
> - Copy of birth certificate for dependent(s): Birth certificate for [AM] was not provided.

[4] The letter notes that a full review was not conducted and that there may be other "elements" that are missing or incomplete. It advises that if Mr. Maliyekkal still wishes to immigrate to Canada can restart the process by creating a new Express Entry profile with updated documents as needed.

[5] A note of the same date included in the Global Case Management System (GCMS), apparently generated by a program assistant at IRCC, likewise states: “APPLICATION REJECTED File does not meet R10 requirements Dep 1 Birth Certificate – NOT Included.”

II. ISSUES

[6] Mr. Maliyekkal challenges the decision under review as unreasonable and procedurally unfair.

[7] Reasonableness review is a deferential standard that requires the reviewing court to determine whether the impugned decision as a whole is transparent, intelligible and justified in relation to the relevant factual and legal constraints that bear on the decision: (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 99, 100 [*Vavilov*]).

[8] Questions of procedural fairness, however, do not attract any curial deference. Instead:

> [54] A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, 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).

III. ANALYSIS

[9] Mr. Maliyekkal argues that he submitted all the required information in his application, and that it was both unreasonable and unfair of IRCC to simply reject his application because of the missing supporting document rather than first notifying him of the issue and giving him an opportunity to submit it, as he had explicitly requested in his covering letter.

[10] The Respondent argues that IRCC had no such obligation and the decision was reasonable. According to the Respondent, section 10 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations], read alongside departmental instructions for applicants, establishes a mandatory condition that applicants provide birth certificates with their applications for Express Entry. She argues that an application that does not include a dependent's birth certificate is incomplete pursuant to section 10 and requires that an officer reject it on that basis under section 12 of the Regulations.

[11] The relevant portions of section 10 provides as follows:

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;
Required information	
(2) The application shall, unless otherwise provided by these Regulations,	

(a) contain the name, birth date, address, nationality and immigration status of the applicant and of all family members of the applicant, whether accompanying or not, and a statement whether the applicant or any of the family members is the spouse, common-law partner or conjugal partner of another person;	**Renseignements à fournir** (2) La demande comporte, sauf disposition contraire du présent règlement, les éléments suivants : a) les nom, date de naissance, adresse, nationalité et statut d'immigration du demandeur et de chacun des membres de sa famille, que ceux-ci l'accompagnent ou non, ainsi que la mention du fait que le demandeur ou l'un ou l'autre des membres de sa famille est l'époux, le conjoint de fait ou le partenaire conjugal d'une autre personne;

[12] Section 12 requires:

Return of application **12** Subject to section 140.4, if the requirements of sections 10 and 11 are not met, the application and all documents submitted in support of it, except the information referred to in subparagraphs 12.3(b)(i) and (ii), shall be returned to the applicant.	**Renvoi de la demande** **12** Sous réserve de l'article 140.4, si les exigences prévues aux articles 10 et 11 ne sont pas remplies, la demande et tous les documents fournis à l'appui de celle-ci, sauf les renseignements visés aux sous-alinéas 12.3b)(i) et (ii), sont retournés au demandeur.

[13] The Applicant insists that section 12 of the Regulations does not apply on the facts of his case because he complied with the requirement to provide all the information (*renseignements*) required under section 10 of the Regulations.

[14] I agree with the Applicant. The decision, and the Respondent's argument defending it, rely on the mistaken conflation of an information requirement with a document requirement.

[15] To be sure, section 10(1)(c) of the Regulations, upon which the Respondent relies, stipulates that an application must "include all information and documents [renseignements et documents] required by these Regulations." But section 10(2)(a), also relied on by the

Respondent, requires only that applications include specific information (*renseignements*) about family members. Section 10(2)(a) does not reference documents.

[16] I am unable to read section 10(2)(a) of the Regulations as requiring applicants to provide birth certificates of dependents, and counsel for the Respondent was unable to point to any other regulation that did so require. Her argument is that the requirement to provide information about an applicant's non-accompanying dependents can only be met by adducing a birth certificate, but she provided no authority for this proposition.

[17] With respect, I find the Respondent's position mystifying. While a birth certificate might be required by an immigration officer to corroborate information included in an application, the birth certificate itself is not information, and I cannot read the provision otherwise, in English or in French, especially since both sections 10 and 12 distinguish between information and documents. I therefore cannot accept that it was reasonable for IRCC to find that the lack of a birth certificate in the application package was contrary to the requirements of section 10 of the Regulations. It follows that section 12 does not apply.

[18] *Gennai v Canada (Citizenship and Immigration),* 2017 FCA 29, upon which the Respondent seeks to rely, does not assist her. The decision confirms the findings of Justice Elizabeth Heneghan in *Gennai v Canada (Citizenship and Immigration),* 2016 FC 484. Justice Heneghan found that the applicant had submitted an incomplete application that was properly returned to him because he had failed to pay his application fee and thus had not complied with the requirement in section 10(1)(d) to provide "evidence of payment of the applicable fee." The

Federal Court of Appeal confirmed this determination, finding that the officer had reasonably refused to consider his application. But there is no analogous requirement to provide "evidence" regarding the identities of dependents under section 10 of the Regulations, much less a specific requirement for birth certificates.

[19] The Respondent also asserted in her written arguments that the applicant should have known that submission of the birth certificates was mandatory because this is stated in the online instructions for Express Entry applicants. While I agree that it was open to the Minister to demand copies of birth certificates in order to assess eligibility, it is well settled that such instructions or guidelines do not have the force of law, and they cannot be used to narrow access to the Express Entry program beyond what has been set out in the Act and its Regulations (*Singh v Canada (Citizenship and Immigration)*, 2025 FC 976 at para 8; *Bawa v Canada (Citizenship and Immigration)*, 2024 FC 1605 at para 9). Although there is nothing in the reasons to suggest that the program officer who returned the application was doing so, if as suggested by counsel for the Respondent the assistant was in fact relying on these instructions to find that the application was incomplete, then it would amount to impermissible fettering of discretion (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 53; *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 30, 32). It would also fall short of even the most basic requirements of transparency and justification.

[20] I conclude that IRCC's decision to return the application as incomplete rather than reviewing it and rendering a decision based on the information and evidence provided was unreasonable as it was not justified in relation to the relevant factual and legal constraints that

bear on the decision (*Vavilov* at para 99). Having made this finding, I need not determine whether it was also procedurally unfair. The decision must be set aside in any event.

[21] Neither party has proposed a question for certification, and I agree that none arises.

JUDGMENT in IMM-8021-24

THIS COURT'S JUDGMENT is that:

1. The application is granted.

2. The decision dated April 4, 2024, is set aside and the matter is returned for redetermination by a different officer in accordance with these reasons. The Applicant shall have an opportunity to update his application prior to the rendering of the redetermination decision.

3. No question is general importance is certified.

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8021-24
STYLE OF CAUSE:	OMAR SHIJIN PUTHIYARA MALIYEKKAL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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