

Federal Court



Cour fédérale

Date: 20251110

Docket: IMM-11405-24

Citation: 2025 FC 1808

Ottawa, Ontario, November 10, 2025

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

TARIQ MAHMOOD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Mahmood, lost his residency obligation appeal at the Immigration Appeal Division (“IAD”). The IAD’s denial of his appeal meant that Mr. Mahmood lost his permanent resident status. The IAD found that Mr. Mahmood had not been physically present for the required 730 days in a five-year period as the legislation requires. The IAD also found insufficient humanitarian and compassionate factors to overcome Mr. Mahmood’s breach of his residency obligation.

[2] Mr. Mahmood challenges the IAD's refusal of his appeal on judicial review.

Mr. Mahmood principally argues that the IAD breached his right to a fair hearing by refusing to adjourn the proceeding so his counsel could represent him.

[3] I agree with Mr. Mahmood that his fairness rights were breached. I find that given the circumstances of this case – the combination of the interests at stake, the complexity of the issues, and Mr. Mahmood's ability to meaningfully know and respond to the case - the hearing should not have proceeded without the opportunity for Mr. Mahmood to be represented by his counsel. This is a sufficient basis to allow the judicial review and send it back to the IAD for redetermination.

II. Background and Procedural History

[4] Mr. Mahmood became a permanent resident of Canada in November 2002. Since that time, he has regularly travelled to and lived in Pakistan, his country of citizenship. In January 2023, he applied for a permanent resident travel document to travel back to Canada from Pakistan. A visa officer found that he had not met the 730-day requirement for physical presence in Canada for the last five years (section 28 of the *Immigration and Refugee Protection Act* ("IRPA")). The visa officer found that he was approximately 90 days short of meeting the requirement. Mr. Mahmood appealed the decision.

[5] The IAD heard the appeal. Prior to the hearing before the member at the IAD, Mr. Mahmood went through the IAD's Alternative Dispute Resolution (ADR) process. The matter was not resolved at the ADR meeting held on January 15, 2024. Mr. Mahmood advised at the

conclusion of the ADR meeting that he would attempt to retain a lawyer to represent him at the hearing because he realized the issues were more complex. The hearing before the IAD member was set to take place on March 28, 2024, approximately seven weeks after the ADR.

[6] Mr. Mahmood retained a lawyer. On March 15, 2024 the lawyer wrote to the IAD and requested the hearing date be changed because there was insufficient time for him to prepare for the case. The Minister did not oppose the request to change the date of the hearing.

[7] On March 21, 2024, a coordinating member at the IAD denied the request, finding that: the matter was straightforward, the lawyer had not stated that he was unavailable but only that he needed time to prepare, and there was sufficient time to prepare because the disclosure package was small and the date for providing documents had passed. On March 26, 2024, the lawyer again wrote to the IAD to explain that they were unavailable on March 28, 2024 and offered other availabilities in the coming months.

[8] Mr. Mahmood attended his hearing on March 28, 2024 by video conference from Pakistan, without counsel. The Minister was represented by two counsels. At the start of the hearing, Mr. Mahmood again asked for an adjournment because he required counsel to be present at his hearing. The Minister did not oppose the request to adjourn the hearing.

[9] The Member denied the request to adjourn. The Member found, relying on Chairperson Guideline 6, that they could only reverse an earlier decision to deny an adjournment where there were “exceptional circumstances.” The Member found that the matter was “straightforward.”

The Member also found there was no new evidence or exceptional circumstances that would warrant postponing the hearing. The Member advised the parties at the outset that in these circumstances, there would be a wide latitude for accepting post-hearing evidence.

[10] At the outset of the hearing, the Minister advised that they did not agree with the visa officer's finding that Mr. Mahmood was short of his residency obligation by approximately 90 days. The Minister's position was that Mr. Mahmood was in Canada for 357 days as opposed to the 638 days he was claiming.

[11] On the nature of Mr. Mahmood's breach of residency obligation, the central focus at the hearing became about his presence in Canada in 2018 – Mr. Mahmood claimed being in Canada for at least 281 days (as was accepted by the visa officer) while the Minister claimed he was not present in Canada at all in 2018. The Minister principally based this position on the Integrated Customs Enforcement System ("ICES") traveller history document that did not show Mr. Mahmood entering Canada in 2018. This document, the ICES traveller history, was filed by the Minister three days before the hearing.

[12] At the close of the first sitting, the Member provided Mr. Mahmood with two weeks to provide further evidence on his physical presence in Canada in 2018. Mr. Mahmood did so – providing a passport stamp into Pakistan in November 2018 and an Airbnb receipt for a stay in Toronto in 2018.

[13] The second sitting of the hearing took place on April 19, 2024. Mr. Mahmood was asked a few questions about his documents before both he and the Minister's counsel made submissions. Mr. Mahmood made no submissions about any humanitarian factors.

[14] Following the second sitting of the hearing, Mr. Mahmood emailed two further submissions to the IAD and the Minister which offered further responses to the Minister's submissions at the last hearing. Although the Minister asked the IAD to not accept the further submissions, the Member allowed them.

[15] On June 12, 2024, the IAD issued its decision denying Mr. Mahmood's appeal. The Member found that Mr. Mahmood's submissions regarding his physical presence in Canada were not credible. The IAD found that Mr. Mahmood had not shown he had been present in Canada in 2018. The Member determined that instead of the 638 days alleged by Mr. Mahmood, and found by the visa officer, he had been physically present in Canada for 357 days in the relevant five-year period.

[16] The Member also found that there were insufficient humanitarian and compassionate factors to overcome the significant breach of the residency obligation.

III. Issue and Standard of Review

[17] The sole issue on judicial review is whether Mr. Mahmood's right to a fair hearing was breached by the IAD requiring him to proceed without counsel. Both counsel framed and argued the issue as one about procedural fairness. Both agreed, as do I, that the general presumption of a

reasonableness standard of review does not apply to procedural fairness issues (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at paras 23, 77).

[18] Though certainly the Member's reasons and the IAD's Rules regarding adjournments are relevant to the issue I am considering, ultimately I have to be satisfied that Mr. Mahmood was provided with a fair hearing in all the circumstances of the case (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[19] Further, as I explain briefly below, the outcome of the judicial review would not have been different had I considered the IAD's decision on a reasonableness standard. I would have also found the case needed to be redetermined because the Member's decision to deny Mr. Mahmood's request for an adjournment was unreasonable.

IV. Analysis

[20] The IAD is a "court of record" that has "all the powers, rights and privileges vested in a superior court of record" (section 174 of *IRPA*). An appeal hearing at the IAD is an adversarial process where there are two parties: the person concerned and the Minister (Canada Border Services Agency): *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at para 82. The interests at stake are significant – the outcome can mean the loss of permanent residence. There is no appeal from a decision of the IAD, only judicial review to this Court. Accordingly, considering these factors – the nature of the tribunal process, the type of decision at issue and the interest at stake - the duty of procedural fairness owed at an IAD residency

obligation appeal hearing is on the high end of the spectrum (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras 22-28).

[21] Rule 91 of the *IAD Rules* provides that an application to change the hearing date can only be allowed where there are exceptional circumstances, taking into account the following factors: timeliness of the request, previous changes to timing, nature and complexity of the matter and the operational requirements of the tribunal. Rule 92 further requires that where an adjournment request has already been denied, a member considering a subsequent request must consider the reasons for the initial denial and only allow the adjournment if there are exceptional circumstances based on new evidence.

[22] The Member found there were no exceptional circumstances and no new evidence since the coordinating member at the IAD refused the initial request for adjournment. The Member also noted that they agreed with the coordinating member that the case was straightforward and that they could accommodate Mr. Mahmood by providing a wide latitude for accepting post-hearing evidence.

In *Mervilus v. Canada (Minister of Citizenship and Immigration)* 2004 FC 1206 at paragraph 25, this Court considered the IAD's denial of a postponement request and distilled the key factors in evaluating whether the right to a fair hearing had been breached due to proceeding without counsel: ... although the right to counsel is not absolute in an administrative proceeding, refusing an individual the possibility of retaining counsel by not allowing a postponement is reviewable if the following factors are in play: the case is complex, the consequences of the decision are serious, the individual does not have the resources – whether in terms of intellect or legal knowledge - to properly represent his interests

(see also *Singh v. Canada (Citizenship and Immigration)*, 2023 FC 1078 at para 15; *Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 274 at para 37).

[23] The parties agree that the consequences of an IAD decision on a residency obligation appeal are serious. The core points of dispute are two interrelated issues: i) whether the case was indeed “straightforward”; and ii) whether Mr. Mahmood had the resources to properly represent himself given the issues involved and the steps taken by the Member.

[24] The Respondent argues that the case was not complex because it was about the facts – how many days Mr. Mahmood was in Canada and whether there were sufficient humanitarian and compassionate factors to overcome the breach of the residency obligation. Further, the Member went to great lengths to explain the relevant issues to Mr. Mahmood and allowed post-hearing evidence and submissions because he did not have counsel.

[25] Simply because an issue is a factual one does not necessarily mean it is “straightforward”. In my view, Mr. Mahmood’s case is a good illustration of how factual questions can be complex.

[26] Mr. Mahmood’s appeal was initially about demonstrating that there were sufficient humanitarian factors to overcome approximately a 90-day breach of his residency obligation. But at the outset of the hearing, the IAD and Mr. Mahmood learned that the nature of what was at issue had changed significantly. The Minister did not accept the visa officer’s or Mr. Mahmood’s account of his days of physical presence in Canada. The hearing was therefore not just about

whether there were sufficient humanitarian grounds to overcome the residency obligation breach. The hearing was now also about Mr. Mahmood's credibility and the nature of the residency obligation breach – approximately 90 days versus over 300 days.

[27] The Minister relied heavily on the ICES traveller's history document to argue that the lack of a notation indicating Mr. Mahmood's entry into Canada in 2018 demonstrated that he was not in the country that year. When Mr. Mahmood was presented with this document at the hearing, he was confused by it and its significance in relation to the information that he had provided in his immigration application. It is not clear to me in reviewing the transcript that Mr. Mahmood grasped the significance of this evidence for the Minister's argument.

[28] The Member explained to Mr. Mahmood that the key issue in dispute was physical presence in Canada in 2018 and allowed time for further evidence. Mr. Mahmood explains in his affidavit in this Court that he thought the evidence he provided would be sufficient to show that he was in Canada in 2018 – the passport stamp and the Airbnb receipt. He further explained that, after obtaining legal advice from counsel, he now understands the importance of collecting a wide variety of evidence to demonstrate his presence – and has done so, including bank statements from a closed account, boarding passes, plane tickets and photographs from the relevant years in Canada.

[29] The Respondent argues that Mr. Mahmood should have known that he had to present all of the aforementioned documents to demonstrate he was in Canada in 2018. The problem is, as Mr. Mahmood explained, without counsel he thought the evidence he had provided was

sufficient to dispel any doubt that he was not in Canada in 2018. He failed to appreciate that the tribunal would not view the evidence he provided as being probative of the question of his presence in Canada in 2018.

[30] In his concluding submissions at the hearing, Mr. Mahmood said nothing about the overriding key issue on appeal: whether there were sufficient humanitarian factors to overcome his residency obligation breach. This further demonstrates Mr. Mahmood's failure to comprehend the primary issue of his appeal.

[31] I agree that the Member made positive efforts to explain the process and what was at issue to Mr. Mahmood and was flexible with allowing for post-hearing evidence and submissions. Nonetheless, taking into account the complexity of this matter, the serious interests at stake and Mr. Mahmood's abilities, I find that his right to fair hearing was breached.

[32] I also find that the Member's decision to deny the postponement request was unreasonable. The Member found that there was no new evidence since the initial adjournment denial nor any exceptional circumstances. In making this finding, the Member failed to consider two factors: i) the further letter of Mr. Mahmood's retained counsel that addressed the initial denial of the coordinating member; and ii) the new issue – a dispute on the number of days of physical presence - raised by the Minister at the hearing.

[33] Before the Member there was a new letter from Mr. Mahmood's retained counsel, clarifying that it was not only about lack of time to prepare but he was also not available on the

hearing date and providing dates of availability. Further, as discussed above, the nature of what was at issue at the hearing also changed, with Mr. Mahmood's credibility now being an issue. I find the Member failed to account for these new circumstances in considering the adjournment request at the hearing.

[34] Further, some of the factors that "must" be considered by a member under Rule 91 of the *IAD Rules* were not canvassed by either the coordinating member or the Member deciding Mr. Mahmood's appeal. This Court has set aside decisions in the RPD context where a member has failed to discuss the relevant factors favouring a postponement (see *Gallardo v. Canada (Citizenship and Immigration)*, 2021 FC 441 at paras 14-17; *Tung v. Canada (Citizenship and Immigration)*, 2015 FC 1296 at paras 7-10). Factors favouring granting an adjournment not discussed by the IAD included: the lack of prejudice to the Minister who did not oppose the request, the timeliness of the request, that counsel had already been retained and had provided dates of availability, and that the proceeding had never been rescheduled previously.

[35] The decision to deny Mr. Mahmood's appeal must be set aside and sent back to be redetermined. The application for judicial review is granted. Neither party raised a question for certification, and I agree none arises.

JUDGMENT in IMM-11405-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed;
2. The decision dated June 12, 2024 is quashed and sent back to be redetermined by a different decision-maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11405-24

STYLE OF CAUSE: TARIQ MAHMOOD v. MCI

PLACE OF HEARING: VIDEOCONFERENCE

DATE OF HEARING: MAY 12, 2025

**REASONS FOR JUDGMENT
AND JUDGMENT:** SADREHASHEMI J..

DATED: NOVEMBER 10, 2025

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