Federal Court  Cour fédérale

Date: 20251114

Docket: IMM-10138-24

Citation: 2025 FC 1828

Ottawa, Ontario, November 14, 2025

PRESENT: Madam Justice Conroy

BETWEEN:

TANISHA TANISHA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Tanisha, seeks judicial review of a decision that denied her request for reconsideration of a refusal to restore her temporary status in Canada.

[2] This judicial review is grounded on allegations that Ms. Tanisha's former counsel was incompetent.

[3] The *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings* at paragraphs 46 to 63 [Immigration Practice Guidelines] set out a

protocol [the Protocol] that must be followed prior to making allegations of ineffective assistance against former representatives in proceedings under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[4] The Applicant's current lawyer initially failed to comply with the Protocol.

[5] The judicial review was scheduled to be heard in May, 2025. I adjourned the May hearing so the Applicant's current counsel could comply with Protocol, subject to certain adjustments set out in my Order dated May 29, 2025, and an Amended Order dated June 6, 2025 [the Procedural Order].

[6] Following the Applicant's substantial compliance with the Procedural Order, this matter was rescheduled for a hearing on November 10, 2025.

[7] At the November 10, 2025 hearing, counsel advised that they had come to an agreement that the reconsideration decision should be set aside.

[8] I provide these reasons so the Applicant is not prejudiced in any future application she may make under the *IRPA* by her loss of temporary resident status due to the unfortunate events described below.

I. Background

[9] The Applicant is a citizen of India. She applied for and obtained three temporary visas to Canada as follows:

a. Study Permit valid from 30 August 2019 – 31 July 2020;
b. Post-Graduate Work Permit valid from 23 June 2020 – 23 June 2021; and
c. Open Work Permit valid from 29 March 2021 – 29 September 2022.

[10] The Applicant provided an affidavit outlining the ineffective legal assistance alleged to have been provided by her former counsel in relation to the extension of her most recent Work Permit. This evidence was not challenged.

[11] In August 2022, she met with a lawyer [Former Counsel], to make an application on her behalf to extend her temporary status in Canada. On August 31, 2022, the Applicant transferred the retainer funds to Former Counsel as well as various documents to support her application. On September 16, 2022, Former Counsel advised her in a WhatsApp message that the application had been submitted. Unbeknownst to the Applicant, no application had been submitted.

[12] Throughout the remainder of 2022 and into the spring of 2023, the Applicant repeatedly sought updates from Former Counsel, who at first provided various excuses and delays, before ceasing to respond to her entirely.

[13] The Applicant has lodged a complaint against Former Counsel with the Law Society of Ontario [LSO]. In February, 2025, the LSO advised the Applicant by letter that it had completed

its investigation into Former Counsel and the file was transferred to LSO Discipline Counsel for review.

[14] After discovering that Former Counsel had not submitted the application to the IRCC, the Applicant applied for a work permit and to restore her temporary status on July 7, 2023.

[15] By letter dated November 20, 2023, her application was refused. The refusal letter stated: "You are not eligible for restoration of your temporary resident status because your application was submitted after the regulated 90-day period." The Global Case Management System notes, also dated November 20, 2023, read as follows:

> Client entered Canada April 21, 2022 and was authorized to remain in Canada as a temporary resident until September 29, 2022. Client has remained in Canada without authorization. Client has failed to comply with the conditions imposed under R185(a) to leave Canada by September 29, 2022. As per A47(a) temporary resident status is lost. Client has applied for restoration consideration under R182. Client is also requesting a Work Permit
>
> Client is beyond the 90-day time period for restoration and is no longer restorable. Application refused. Advised to leave.

[16] On December 15, 2024, the Applicant requested a reconsideration of her restoration application. The Applicant's reconsideration request included written submissions which, amongst other things, explained the alleged negligence of Former Counsel.

[17] By letter dated May 27, 2024, the reconsideration request was denied. The letter reads, in part:

> Your application was considered on its substantive merits and has been refused. You were provided with the reasons for refusal by letter dated November 20, 2023, thereby fully concluding your

> application. After considering the additional submissions, the initial decision to refuse your application remains unchanged.

II. Analysis

[18] The Applicant argues there was a breach of procedural fairness that resulted from her Former Counsel's negligence or incompetence.

[19] The standard of review for a breach of procedural fairness is a standard akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

[20] In extraordinary circumstances, the incompetence or negligence of an applicant's former representative may result in a decision under the *Immigration and Refugee Protection Act* being set aside on judicial review: *Kandiah v Canada (Citizenship and Immigration)*, 2021 FC 1388 at para 47, and the cases cited therein.

[21] To demonstrate that the incompetence of counsel resulted in a breach of procedural fairness, an applicant must establish that: (a) the former lawyer was given notice and a reasonable opportunity to respond; (b) the former lawyer's representation was incompetent; and (c) this resulted in a miscarriage of justice, in that, but for the alleged conduct, there is a reasonable probability that the result would have been different (*El Khatib v Canada (Citizenship and Immigration)*, 2025 FC 49 at paras 10-11; *Rendon Segovia v Canada (Citizenship and Immigration)*, 2020 FC 99 at para 22).

[22] The Applicant has met this three-part test.

[23] First, Former Counsel was notified of the Applicant's allegations and had an opportunity to respond. No response was filed by Former Counsel with the Court.

[24] Second, despite the strong presumption in favour of counsel (*R v GDB*, 2000 SCC 22 at para 27), the Applicant has established that Former Counsel's conduct fell below what would reasonably be expected of a lawyer and was incompetent. Specifically, in August 2022, Former Counsel was retained to file an application to extend the Applicant's Work Permit and he failed to do so. Moreover, the evidence shows that on September 16, 2022, Former Counsel told the Applicant he had submitted her application when in fact no application was filed.

[25] Third, the Applicant has established that Former Counsel's conduct resulted in a miscarriage of justice. As a result of Former Counsel's failure to file the extension application before the Work Permit expired on September 29, 2022, the Applicant lost her temporary resident status: *IRPA* s. 47(a); *Avi Adroh v Canada (Citizenship and Immigration)*, 2012 FC 393 at paras 4–5 [*Avi Adroh*]. Furthermore, former Counsel's failure to disclose that he had not filed an application in a timely way, or at all, resulted in the Applicant missing the 90-day window to restore her temporary resident status under s. 182(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[26] Section 182(1) of the *IRPR* provides as follows:

Restoration of Temporary Resident Status	**Rétablissement du statut de résident temporaire**
Restoration	**Rétablissement**
182 (1) On application made by a visitor, worker or student within 90 days after losing temporary resident status as a result of failing to comply with a condition imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c), an officer shall restore that status if, following an examination, it is established that the visitor, worker or student meets the initial requirements for their stay, has not failed to comply with any other conditions imposed and is not the subject of a declaration made under subsection 22.1(1) of the Act. [Emphasis added]	**182 (1)** Sur demande faite par le visiteur, le travailleur ou l'étudiant dans les quatre-vingt-dix jours suivant la perte de son statut de résident temporaire parce qu'il ne s'est pas conformé à l'une des conditions prévues à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c), l'agent rétablit ce statut si, à l'issue d'un contrôle, il est établi que l'intéressé satisfait aux exigences initiales de sa période de séjour, qu'il s'est conformé à toute autre condition imposée à cette occasion et qu'il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi. [italiques ajoutés]

[27] Section 182(1) of the *IRPR* provides no discretion: if an application for restoration is brought more than 90 days after the applicant lost status, the officer must refuse the application: *Avi Adroh,* citing *Novak v Canada (Minister of Citizenship and Immigration),* 2004 FC 243 at para 30; *Lawrence v Canada (Citizenship and Immigration),* 2021 FC 607 at para 32.

[28] I am satisfied that but for Former Counsel's incompetence, there is a reasonable possibility that the Applicant would not have lost her temporary status, with an inability to

restore it under s. 182(1) of the *IRPR*. This has resulted in a breach of procedural fairness. The judicial review is granted and the reconsideration decision dated May 27, 2024 is set aside.

III. Remedy

[29] The usual remedy would be to remit the matter back for redetermination in accordance with the Court's reasons. However, based on the oral submissions of counsel I understand that the Applicant may prefer not to have her earlier application reconsidered but intends to pursue another avenue. The Applicant's primary concern is that her loss of status that resulted from her Former Counsel's incompetence does not prejudice her future *IRPA* applications.

[30] Accordingly, my judgment will be limited to setting aside the impugned decision below.

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The May 27, 2024 reconsideration decision is set aside;
3. No question for certification is proposed and none arises.

"Meaghan M. Conroy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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