

Federal Court



Cour fédérale

Date: 20260225

Docket: IMM-22355-24

Citation: 2026 FC 261

Toronto, Ontario, February 25, 2026

PRESENT: The Honourable Justice Thorne

BETWEEN:

MAHMUDA BEGUM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This matter involves a judicial review of a refused application for permanent residence on humanitarian and compassionate [H&C] grounds, brought by the Applicants, Mrs. Begum and her spouse [Decision]. The Decision was rendered by an Immigration, Refugees and Citizenship Canada [IRCC] officer [Officer] on July 30, 2024. The Applicants seek to have the refusal quashed and the matter redetermined by a different officer.

[2] I granted the judicial review from the bench, holding that the matter will be remitted for redetermination by a different decision maker, and further that the Applicants shall be permitted to update their H&C application. I also noted that there is no question for certification and indicated that a formal written judgment would follow, outlining the events in the hearing which led to this result.

[3] By way of background, I note that Mrs. Begum, the Principal Applicant, is a citizen of Fiji. At the time of the Decision, she was 74 years old and was receiving post-transplant monitoring, medication and treatment in Canada following a kidney transplant in 2020. She and her spouse, who live with and are being fully supported by their adult child in Canada, requested H&C relief on the grounds that Mrs. Begum required ongoing post-transplant care and medical treatment in order to maintain the health of her transplanted kidney, and that such treatment is not available in Fiji.

[4] In the Decision, the Officer accepted the evidence of Mrs. Begum's medical condition, and further that she requires ongoing post-transplant treatment, including monitoring and medication. However, the Officer refused the H&C application, stating that insufficient evidence had been provided to support the claim that the required post-transplant treatment, monitoring and medication are not available in Fiji. The Officer explained that while the Applicants had submitted a physician's letter which directly stated that the required care is not available in Fiji, the author, Dr. Gill of the University of British Columbia's Kidney Transplant Program, had failed to explain the basis for this belief and further had not attested to having any particular expertise or knowledge about healthcare resources and capacity in Fiji.

[5] On February 17th, 2026, I issued a Direction to the parties noting that, in the record, there appeared to be a series of documents which had been submitted by the Applicants to the decision maker that were not in the Certified Tribunal Record [CTR]. I alerted the parties that, at the hearing, they should be prepared to make submissions as to whether this raised an issue of procedural fairness, as neither party had identified or spoken to this subject in their written submissions.

[6] Accordingly, at the outset of the hearing, I noted that the CTR was missing at least four documents contained in the Applicants' Record, most notably a letter by the Applicants' family physician, Dr. Hassan, which also stated that the transplant medical care required by the Principal Applicant was not available in Fiji and that this would seriously endanger her health. I further sought the parties' submissions on the application of the case of *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 [*Togtokh*] to this matter.

[7] At the hearing, to his credit, counsel for the Respondent forthrightly acknowledged that the issue of the missing CTR records had been overlooked. However, they argued that this was best considered a situation that accorded to the first identified scenario in *Togtokh* – which holds that where documents are missing from the CTR and it is unknown whether they were submitted by the Applicant, the Court will presume that the materials in the CTR were the materials before the immigration officer, barring evidence to the contrary. The Respondent relied on *Khanhosseinpoor v Canada (Citizenship and Immigration)*, 2025 FC 1497 at para 11 which states: “When a party takes the position that documents not included in the CTR were before a decision-maker but not considered, that party has the onus of demonstrating the documents were in fact before the

decision-maker” (citations omitted). The Respondent argued that the Applicants have failed to discharge this burden.

[8] However, the Respondent further submitted that it was nevertheless prepared to proceed on the assumption that the missing CTR documents had been submitted by the Applicants and were before the decision maker, since they argued that the missing documents were not determinative in any event, and would not have altered the Officer’s finding that there was insufficient evidence to support that the care was not available in Fiji. The Respondent essentially posited that the second Doctor’s letter, which was not mentioned in the Decision, also lacked an explanation from its author of why they had concluded that the required medical care was not available in Fiji.

[9] Among other arguments, the Applicants’ written submissions had posited that the Officer’s decision was unreasonable because it failed to give due consideration to the two doctors’ letters submitted by the Applicants. The submissions erroneously stated that the letter quoted in the Decision had been the letter of Dr. Hassan, and that the Officer did not consider the letter of Dr. Gill at all. The letter of Dr. Gill is contained in the CTR.

[10] At the hearing, it was brought to the attention of Applicants’ counsel that the letter quoted by the Officer in the Decision was in fact the letter of Dr. Gill, not Dr. Hassan. But in any event, the Applicants argued that all documents submitted as part of the H&C application should have been considered by the Officer, and that it is not clear from the Decision whether the Officer had considered Dr. Hassan’s letter or the other documents missing from the CTR. Counsel argued

that now speculating on how the Officer might have treated this letter would constitute reweighing the evidence and supplementing the Officer's reasons. On this count, I agree.

[11] The Applicants eventually submitted that the situation before the Court rather reflects the second scenario in *Togtokh*, where: “[a] document is known to have been properly submitted by an applicant but is not in the CTR, and it is not clear whether that document, for reasons beyond an applicant's control, was before the decision-maker” (at para 16). *Togtokh* suggests that in such a situation, the decision should be overturned.

[12] Again, I agree. I note that in the course of their reasonableness arguments, the written submissions of the Respondent had directly conceded that the letter of Dr. Hassan in the Applicants' Record had been submitted by the Applicants to the decision-maker, as part of the H&C application. The Respondent cannot now, at hearing, argue that was not the case and assert there is no breach of procedural fairness because it is unclear whether the documents were submitted – and that this is rather a ‘*Togtokh* one’ scenario.

[13] In the somewhat similar matter of *Asmal v Canada (Citizenship and Immigration)*, 2025 FC 1554, my colleague Madam Justice Fuhrer relied on *Togtokh* to find a breach of procedural fairness based on a deficient CTR. In that matter, as here, it emerged that the situation before the Court involved a document known to have been submitted by an applicant that was not in the CTR, and it was not clear whether the document was before the decision maker.

[14] I similarly find that this case falls within the scope of scenario two of *Togtokh*; the documents in the Applicants' Record appear to have been submitted by the Applicants, but are not in the CTR, and it remains unclear whether they were before the decision maker. Further, it is unknowable and not for the Court to speculate what the Officer's decision could have been, had the Officer considered the missing documents, and particularly the letter of Dr. Hassan.

[15] For these reasons, I find that there has been a breach of procedural fairness, and I grant the judicial review application. The matter is returned for redetermination by a different IRCC officer. Prior to the redetermination, the Applicants shall be given an opportunity to provide updated submissions and documentation in support of their H&C application.

[16] I note that as I have found there to be a breach of procedural fairness, it is unnecessary to also proceed to consider the parties' arguments with respect to the reasonableness of the Decision.

[17] Finally, the parties have not proposed any question for certification under paragraph 74(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, and I agree that none arises.

JUDGMENT in IMM-22355-24

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted.

2. The decision of the Officer dated July 30, 2024, is set aside and the matter is returned for redetermination by a different IRCC officer. Prior to the redetermination, the Applicants shall be given an opportunity to provide updated submissions and documentation in support of their application.

3. No question of general importance is certified.

4. No costs are awarded.

"Darren R. Thorne"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-22355-24

STYLE OF CAUSE: MAHMUDA BEGUM v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VIA VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 18, 2026

JUDGMENT AND REASONS: THORNE J.

DATED: FEBRUARY 25, 2026

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