

Federal Court



Cour fédérale

Date: 20180820

Docket: IMM-3541-17

Citation: 2018 FC 846

Ottawa, Ontario, August 20, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MEHRDAD KARAMI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Nature of the Case

[1] The Applicant, Mehrdad Karami, seeks judicial review of a decision issued on July 24, 2017 by officer Jennifer Williams of Immigration, Refugees and Citizenship Canada (IRCC).

The officer denied the Applicant's application for permanent residence, under the Federal Skilled Worker Class, because the officer found the application to be incomplete, pursuant to sections 10 and 12.01 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR).

[2] The Applicant is 47 years old and a citizen of Iran. He applied for permanent residence in Canada under the Federal Skilled Worker Class on July 21, 2016. He was to be accompanied by his wife and 11-year-old son.

[3] On July 21, 2016, the Applicant's consultant, Gerd Damitz, uploaded a copy of the applicant's expired passport with his application for permanent residence, along with information about the Applicant's current passport.

[4] On July 24, 2017 the IRCC sent a rejection letter via MyCIC advising the Applicant that his application was rejected for being incomplete. Specifically, the application did not include a copy of a valid passport/travel documents. The letter advised the Applicant that he must hold a valid regular passport. The GCMS notes indicate the passport was expired.

[5] The letter also advised the Applicant that his fees were to be refunded and he could apply again by submitting a new Express Entry profile through his MyCIC account.

[6] The Applicant received notice of the rejection of his application on August 2, 2017.

[7] On August 16, 2017 the consultant provided a copy of the Applicant's current passport.

II. The Applicant's Submissions

[8] The Applicant says that the relevant information from his current passport was submitted but an expired passport was initially uploaded. When the consultant subsequently submitted the up to date passport, it was rejected as the application was closed.

[9] The Applicant says that the Officer had all the necessary information, including the passport number, issue date and expiry date. In addition, within the record at page 265 of the Certified Tribunal Record, is a Medical Information Sheet which contains the same passport information and a photo of the Applicant.

[10] The Applicant submits that uploading a copy of the current passport would have added nothing further. The Officer already had the information in the record. Therefore it was unreasonable for the Officer to conclude the application was incomplete.

[11] The Applicant also says it was procedurally unfair that the Officer did not provide him with an opportunity to reconcile the conflicting evidence of a valid passport and an expired passport. Relying on *Ma v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1283 [*Ma*] to say that the Officer failed to consider all relevant evidence and should have provided the Applicant with the opportunity to address the contradictory evidence of the passport information and the expired passport. He also relies on it to say that where directly contradictory evidence is not addressed by the decision-maker the Court may conclude the decision is unreasonable.

III. Analysis

A. *Standard of Review*

[12] Decisions regarding applications for permanent residence under the *IRPR* involve questions of mixed fact and law, and are subject to review against the standard of reasonableness: *Verma v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 488 at para 8.

[13] In this instance, the Applicant's procedural fairness allegation is reviewable against a standard of correctness: *Gugliotti v Canada (Citizenship and Immigration)*, 2017 FC 71 at para 23 [*Gugliotti*].

[14] *Ma* does not help the Applicant. In *Ma* there was an abundance of clearly contradictory evidence before the decision-maker which was not addressed. Here, the Applicant failed to submit an essential document – a valid passport. It should not be necessary to say that an expired passport, by its very nature, is not valid. It cannot be used as a passport.

[15] The form and contents of applications is governed by s 10 of the *IRPR*. The most relevant portion of s 10 in this matter is s 10(1)(c):

Form and content of application

10 (1) Subject to paragraphs 28(b) to (d) and 139(1)(b), an application under these Regulations shall

Forme et contenu de la demande

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;

[16] The documentary proof submitted by the Applicant in support of the application data - his passport number, date of issue and date of expiry – was simply not supported by the submission of the expired passport which contains different information.

[17] Section 12.01 of the *IRPR* discusses the effect and requirements of an application submitted through the electronic system. When the Applicant's consultant subsequently submitted the valid passport it was too late, it had to be submitted at the time of the original application as stipulated in paragraph 12.01(3)(a):

Electronic application — requirements

(3) When an application referred to in subsection (1) is made by means of the electronic system

(a) the information, documents and evidence referred to in paragraph 10(1)(c) must be submitted by means of that electronic system at the time the application is made;

(my emphasis)

Demande électronique — exigences

(3) Lorsque la demande visée au paragraphe (1) est présentée au moyen du système électronique :

a) les renseignements, documents et autres pièces justificatives visés à l'alinéa 10(1)c) doivent être soumis au moyen de ce système au moment de la présentation de la demande;

(Non souligné dans l'original.)

[18] The Applicant also submits, in essence, that the Officer is required to accept his e - Medical Information Sheet [e-Medical] as evidence of his passport. It contains his photograph and the unexpired passport details. It indicates that an original passport was the source of the information.

[19] If an e -Medical could be substituted for a valid passport then the document checklist instructions would include it as another document that could be provided for that purpose. It is not so stipulated.

[20] As to whether the application ought to have been rejected because the information was incomplete, the Federal Court of Appeal has found that an incomplete application does not exist because s 12 of the *IRPR* provides that if the requirements of s 10 (and 11) are not met, then the entire application and all documents shall be returned to the Applicant: *Gennai v Canada (Citizenship and Immigration)*, 2017 FCA 29 [*Gennai*], leave to appeal denied on July 13, 2017.

[21] Section 12 of the *IRPR* relied upon in *Gennai* states:

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 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 sont retournés au demandeur.

[22] While in *Gennai* it was the payment of the applicable fee that was missing, the critical factor was that something required by s 10 of the *IRPR* was not submitted with the application.

Gennai holds that non-compliance with s 10 of the *IRPR* triggers s 12 which in turn means that the application is not complete. On that basis it was certainly reasonable for the Officer to determine that the application submitted by the Applicant was incomplete when an unexpired passport was not submitted.

[23] The Applicant responds that *Gennai* is distinguishable because his application was determined to be incomplete pursuant to paragraph 12.04(4)(f) of the *IRPR*. However, that provision is inapplicable. It only applies to an application for a Travel Authorization, not to an application for permanent residence submitted by electronic submission of an application.

[24] Alternatively, the Applicant also says that if the Officer had concerns about the passport data in the file the Officer should have asked the Applicant to resolve those concerns. The Applicant argues that all the relevant information was before the Officer and a finding that the passport was not valid is unreasonable as the record contained all the information.

[25] Mr. Justice Brown has recently confirmed in *Gugliotti* that an Officer is not required to alert an Applicant to a requirement of which they have already been notified (see para 31). In *Gugliotti* the requirement was communicated by way of a statement in a text box in an online form that applicant used.

[26] In the Applicant's case the requirements were communicated by way of the document checklist instructions contained within the invitation to apply for permanent residence under the Federal Skilled Worker Class (found in the Applicant's Record at page 23). It clearly states in

the list of documents that most people need to include that one is a “valid passport (we don’t accept expired passports or other travel documents)”.

IV. Conclusion

[27] For the foregoing reasons, the decision that the incomplete application was to be rejected is neither unreasonable nor unfair. It is correct based on the legislation and the caselaw.

[28] The application is dismissed for these reasons.

[29] There is no question for certification.

JUDGMENT IN IMM-3541-17

THIS COURT'S JUDGMENT is that the application is dismissed and there is no question for certification.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3541-17

STYLE OF CAUSE: MEHRDAD KARAMI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 8, 2018

JUDGMENT AND REASONS: ELLIOTT J.

DATED: AUGUST 20, 2018

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