

Federal Court



Cour fédérale

Date: 20230127

Docket: IMM-866-22

Citation: 2023 FC 130

Ottawa, Ontario, January 27, 2023

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

**AKHIL GOPALAKRISHNAN, VANI
ELIZABETH GEORGE, AND MADHAV
AKHIL**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision of an immigration officer (“Officer”), dated January 19th, 2022, refusing the Applicants’ application for permanent residence on the basis that the application was incomplete pursuant to sections 10 and 12.01 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[2] For the reasons that follow, I find that the Decision is reasonable and will dismiss this application for judicial review.

II. **Background**

[3] The Applicants are citizens of India. The Principal Applicant (PA) applied for permanent residence on November 16, 2021 under the Provincial Nominee Program (PNP) using Express Entry.

[4] The Application was accompanied with a Document Checklist populated by Immigration, Refugees and Citizenship Canada (IRCC). Per the checklist, the Applicants were required to submit police clearances for all countries they resided in for six months or more in a row.

[5] Having resided in Victoria, Australia for more than two years, they provided police clearances issued by the Australian Federal Police.

[6] By way of letter dated January 19, 2022, the Officer refused the application as being incomplete, finding that the Applicants failed to provide acceptable police clearances from Australia.

III. **Preliminary Issue**

[7] In this application, the Applicant submitted an affidavit containing new evidence that post-dates the Decision. As such, that evidence is not admissible and has not been considered:

Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22 , at para 19.

IV. **Decision under Review**

[8] The Officer determined that the application for permanent residence did not meet the requirements of a complete application as described in sections 10 and 12.01 of the *Immigration and Refugee Protection Regulations*.

[9] The Officer stated that:

Specifically, your application does not include the following elements:

- Police Certificate:

The Police certificate from Australia that you provided with your application is not acceptable as it does not include the Full Licence History Search (for residents of Victoria only). This document is required based on your address/background history from 2016/02/11 to 2018/04/17. It appears you resided six months or more in that region. Please consult our website in order to determine the required document.

<https://www.canada.ca/en/immigration-refugees-citizenship/services/application/medical-police/police-certificates/how.html>

V. **Issues and Standard of Review**

[10] The Applicants state that the Officer breached the requirement of procedural fairness in failing to provide a reasonable opportunity to address the issue with the Australian police certificate before rejecting the application.

[11] The Applicants also contend that they provided the required Australian police clearances that met the criteria found within the personalized IRCC document checklist. They submit that they had a legitimate expectation to be directed to all relevant instructions, and that alternatively, they ought to have been provided an opportunity to address the issue.

[12] Whether the duty of procedural fairness has been met does not require a standard of review analysis, although it is often referred to as a correctness review. The ultimate question to be answered by a reviewing Court is whether the Applicants knew the case to be met and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56.

VI. Analysis

A. *Procedural Fairness*

[13] The Applicants state this case is analogous to *Doron v Canada (Citizenship and Immigration)* 2016 FC 429 [*Doron*], where Justice Southcott concluded that IRCC had failed to advise the Applicants of the requirement to submit a specific type of Philippines police clearance certificate and therefore breached procedural fairness.

[14] The Respondent submits that the requirement for a full license history search was clearly set out on the website of Immigration, Refugees and Citizenship Canada [IRCC]. As such, the Applicants had sufficient notice of all the required documents under Express Entry.

[15] As Justice Pentney noted in *Joseph v Canada (Citizenship and Immigration)* 2018 FC 268 at paragraph 7, the law is clear. The onus lies on the Applicants to submit a complete application. There is no duty on the officer to remind applicants of the need to submit all of the documents required for a complete application package: *Wu v Canada (Citizenship and Immigration)*, 2015 FC 594; and *Doron* at paras 24-25.

[16] What differentiates the case of the Applicants from *Doron* is that Justice Southcott found in *Doron* that the Applicant had not received the usual checklist identifying the required documents. As a result, it was not clear that they had been advised of the particular requirement to obtain a police certificate from the National Bureau of Investigations in the Philippines and instead they had submitted one from the National Police Commission.

[17] In that respect, *Doron* is very similar to the present case but, in the instant case, the checklist was readily available to the Applicants. It was listed in the “Welcome to Express Entry” letter sent to the Applicants which provided a link to the IRCC webpage “Apply for permanent residence Express Entry – Canada.ca”. That page contained the instruction “Make sure you submit all of the required documents” and contained hyperlinks to a webpage listing those documents, by country.

[18] If the Applicants had clicked on Australia, they would have been directed to “How to get a police certificate – Canada.ca.” That page included special information and instructions for an applicant who had lived in Victoria to provide: a full licence history search going back to the

requester's 18th birthday or back to the day they were first issued a driver's licence. There was also a hyperlink to "How to get a police certificate – Australia".

[19] In addition to being able to apply online for the police certificate the option to apply on paper was provided. Clearly indicated is the instruction that "you **must** provide the reason why you need a police certificate" (emphasis in the original). The correct response to the questions "Purpose type" and "Purpose of check" were also provided.

[20] Finally, the webpage states: "Note: if you're **not able to provide a traffic history or a full licence history search**, you must provide a letter issued by the Queensland and/or Victoria roads authority with your police certificate to confirm that you've never held a driver's licence in that state." (emphasis in original)

[21] My review of the webpages satisfies me that the Applicants had all the necessary information and hyperlinks to enable them to submit the required police certificate.

[22] Though the circumstances of this case are unfortunate, I cannot find there was breach of procedural fairness.

[23] Flowing from the above analysis, it follows that the Applicants' argument that they had a legitimate expectation to be directed to all relevant instructions fails as they were in fact directed to all relevant instructions.

VII. **Conclusion**

[24] For all the foregoing reasons this application must be dismissed.

[25] No question was posed for certification, nor does one arise on these facts.

JUDGMENT in IMM-866-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question to certify.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-866-22

STYLE OF CAUSE: AKHIL GOPALAKRISHNAN, VANI ELIZABETH
GEORGE, AND MADHAV AKHIL v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: JANUARY 12, 2023

JUDGMENT AND REASONS: ELLIOTT J.

DATED: JANUARY 27, 2023

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