

Federal Court



Cour fédérale

**Date: 20231123**

**Docket: IMM-11061-22**

**Citation: 2023 FC 1551**

**Toronto, Ontario, November 23, 2023**

**PRESENT: The Honourable Mr. Justice Southcott**

**BETWEEN:**

**AFROZ KHAYAL MOHAMMED  
KHAYAL MOHAMMED  
NOOR MOHAMMED  
MOHAMMED ARSALAN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision dated September 15, 2022, in which a Senior Immigration Officer [Officer] rejected the Applicants' Pre-Removal Risk Assessment [PRRA] application [Decision].

[2] As explained in more detail below, this application for judicial review is allowed, because the Applicants were deprived of procedural fairness, as the Officer failed to consider their requests for extensions of time to make additional PRRA submissions and dismissed their PRRA application without taking the Applicants' additional submissions into account.

I. Background

[3] The Applicants are citizens of India who entered Canada in March 2018 and subsequently claimed refugee status. Their claims were rejected by the Refugee Protection Division and the Refugee Appeal Division. In October 2021, the Applicants submitted a PRRA application, asserting fear of risk due to their religious profile as Muslims, alleging that members of the Bharatiya Janata Party, Rashtriya Swayamsevak Sangh, and Bureau of Investigation are seeking them out, and raising what their counsel described as India's new discriminatory citizenship policy targeting and persecuting Muslims.

[4] The Applicants' PRRA application was denied on April 1, 2022, and they sought judicial review of that decision. The Respondent agreed to reopen the PRRA application, and the application for judicial review was discontinued.

[5] On August 8, 2022, September 7, 2022 and September 30, 2022, the Applicants requested extensions of time to make additional PRRA submissions and, on October 11, 2022, they provided those submissions. However, in the meantime, the Officer made the Decision on September 15, 2022, rejecting the Applicants' PRRA application. The Decision does not reference any of the Applicants' requests for an extension of time and, as the Decision was made

prior to the Applicants' October 11, 2022 submissions, it does not take those submissions into account.

II. Issues and Standard of Review

[6] The Applicants' Written Representations in support of this application for judicial review raise the following issues for the Court's determination:

A. Whether the Applicants were denied the right to procedural fairness; and

B. Whether the Decision is reasonable.

[7] Procedural fairness issue is reviewable on a standard of correctness. As suggested by the articulation of the second issue, the merits of the Decision are reviewable on a standard of reasonableness.

III. Analysis

[8] The first procedural fairness issue raised by the Applicants relates to the Officer's failure to consider their requests for an extension of time to make additional PRRA submissions and the resulting dismissal of their PRRA application without taking the Applicants' October 11, 2022 submissions into account. The Respondent concedes that this represents a breach of procedural fairness and that, as a result, this application for judicial review should be allowed, the Decision set aside, and the PRRA application re-determined by a different officer.

[9] However, the parties were not able to resolve this judicial review application on that basis, and it therefore proceeded to a hearing before the Court. The Applicants take the position that the Court should also adjudicate their position that the Officer erred in making a veiled credibility finding and in failing to hold an oral hearing. The Applicants also take the position that the Court should order that the process for re-determining their PRRA application include holding an oral hearing.

[10] The Respondent opposes these positions, arguing that the new officer who re-determines the PRRA application will have the discretion to make credibility findings and, on that basis, to assess whether an oral hearing is required. The Respondent also disputes that the Officer made any credibility findings in the Decision.

[11] I agree with the parties' positions that this application for judicial review should be allowed, because of the breach of procedural fairness argued by the Applicants and conceded by the Respondent. As such, my Judgment will set the Decision aside and return the matter to a different PRRA officer for re-determination.

[12] I do not agree with the Applicants' position that that the Court should also adjudicate their arguments to the effect that the Officer made veiled credibility findings and was therefore required to hold an oral hearing. As the Respondent submits, upon the re-determination of the Applicants' PRRA application, a new officer will be seized with the assessment of the application, including the exercise of discretion whether to hold an oral hearing in the event that credibility figures in the officer's assessment.

[13] The analyses and processes in the re-determined PRRA application (which will include consideration of the Applicants' October 11, 2022 submissions that were not considered by the Officer) may or may not include credibility assessments and may or may not include a decision to hold an oral hearing. Moreover, the PRRA application may succeed, or it may fail, depending upon the new officer's analysis. Against the backdrop of that range of possibilities, and conscious of the principle of judicial restraint, there is no practical utility in the Court adjudicating the Applicants' arguments that the Officer erred in this aspect of the Decision that is being set aside on other grounds.

#### IV. Certified Questions

[14] In addition to arguing that the Court should adjudicate the above referenced arguments surrounding veiled credibility and whether to hold an oral hearing, the Applicants submit that the Court should certify for appeal questions related to those arguments. The Respondent opposes the certification request.

[15] As I have declined to adjudicate the arguments to which the Applicants' proposed questions relate, it is not appropriate for the Court to certify those questions (see *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46).

**JUDGMENT IN IMM-11061-22**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed, the Decision is set aside, and the Applicants' PRRA application is returned to a different officer for re-determination. No question is certified for appeal.

"Richard F. Southcott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-11061-22

**STYLE OF CAUSE:** AFROZ KHAYAL MOHAMMED ET AL v MCI

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 22, 2023

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** NOVEMBER 23, 2023

**APPEARANCES:**

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