

Federal Court



Cour fédérale

**Date: 20240123**

**Docket: IMM-10764-22**

**Citation: 2024 FC 107**

**Ottawa, Ontario, January 23, 2024**

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

**BETWEEN:**

**BHARAT BHUSHAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is an application for judicial review of a decision of a visa officer [Officer] of Immigration, Citizenship and Refugees Canada [IRCC], conveyed by letter dated October 24, 2022 [Decision], refusing the Applicant's application for a temporary resident visa (visitor visa) and finding him inadmissible to Canada for misrepresentation.

[2] As explained in greater detail below, this application is allowed, because the Decision is not transparent and intelligible and is therefore unreasonable.

## II. Background

[3] The Applicant is a citizen of India who applied for a temporary resident visa (visitor visa), in connection with which he submitted an Indian income tax return [ITR] for assessment year 2021-2022.

[4] On September 8, 2022, IRCC sent the Applicant a procedural fairness letter [PFL], advising him of concerns that he may be inadmissible to Canada for misrepresentation, under sections 16 and 40 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. This letter stated that the ITR the Applicant submitted in support of his application had been verified and confirmed fraudulent and therefore afforded him an opportunity to respond to this allegation.

[5] The Applicant responded to the PFL, asserting that the ITR was genuine and providing documentation intended to support that assertion.

[6] On October 24, 2022, IRCC sent the Applicant the letter conveying the Decision that refused the Applicant's visa application and found him inadmissible to Canada for misrepresentation. Global Case Management System [GCMS] notes, which contain reasons for the Decision, include the following analysis:

PA submitted an Indian Income Tax Return (ITR) in order to substantiate their financial status in India. This ITR was verified and confirmed fraudulent/non-genuine. A Procedural Fairness

Letter (PFL) was sent to the PA advising of our misrepresentation concerns. The PA was given 10 days to provide us with a response regarding these concerns. The PA's response to the PFL was thoroughly and carefully considered; however, I am not satisfied that the concerns regarding misrepresentation identified have been satisfactorily disabused. In their response, the PA stated that the ITR they submitted with their application was genuine. They also submitted a letter from their chartered accountant in order to support their claim that the ITR they submitted his genuine. However, this response did not alleviate my concerns regarding the previously submitted ITRs failing standard fraud detection checks, which was material towards my decision. ...

### III. Issues and Standard of Review

[7] The Applicant's submissions articulate the following issues for consideration by the Court:

- A. Was the Decision reasonable?
- B. Did the Officer breach the duty of procedural fairness?

[8] The parties agree, and I concur, that the merits of the Decision are reviewable on the reasonableness standard, and the procedural fairness issue is subject to the standard of correctness.

### IV. Analysis

[9] In support of his procedural fairness argument, the Applicant takes the position that the PFL's reference to the ITR having been verified and confirmed fraudulent did not provide him with sufficient detail to know the case he had to meet and therefore to be able to respond. The

Applicant submits that, even now, with the benefit of the Decision, he does not understand the basis for the Officer's concern about the genuineness of the ITR.

[10] In response to the Applicant's procedural fairness argument, the Respondent takes the position that the Applicant is suggesting, without supporting authority, that IRCC had an obligation to disclose its investigative techniques. The Respondent argues that such an obligation would compromise IRCC's ability to detect fraudulent documentation. The Applicant responds that he is not seeking investigative techniques, but simply enough information to allow him to address IRCC's concerns.

[11] It is not necessary for the Court to address the question of how much disclosure would be required to meet the applicable procedural fairness obligations, or whether there is a manner in which those obligations can be met without disclosing investigative techniques, because the Applicant did not ask IRCC for such disclosure before responding to the PFL. As explained in *Hassan v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1550, an applicant is precluded from raising a procedural fairness issue of this nature when the applicant had an opportunity to do so before the administrative decision maker and failed to take that opportunity (at paras 42-44).

[12] However, in my view, the absence of an explanation in the GCMS notes or other documentation identifying the reasons for the Decision, as to how the Officer arrived at the conclusion that the ITR was fraudulent or non-genuine, compromises the reasonableness of the Decision. This is particularly so, given that the Applicant's submissions in response to the PFL

included a link to the Indian government's income tax department's online portal, as well as the Applicant's user ID and password, to allow IRCC to verify through the Indian government's online records whether the ITR was genuine.

[13] The Respondent argues that visa officers are not required to follow up in such a manner on information provided in response to a PFL. The Respondent relies on *Singh v Canada (Citizenship and Immigration)*, 2018 FC 72 [*Singh*], citing the following passage (at para 24):

24. A decision-maker is under no obligation "to make further inquiries if the applicant's response to the Fairness Letter was deficient" (*Hosseini Sedeh v Canada (Citizenship and Immigration)*, 2012 FC 424 at para 46; *Ramezanpour v Canada (Citizenship and Immigration)*, 2016 FC 751 at para 21). In this case the Officer highlighted the concerns in a PFL and received representations from applicants' counsel in response to those concerns. To require an officer to seek further clarification in these circumstances would create an unacceptable burden on decision-makers. This Court has repeatedly held that applicants have no entitlement to a "running score" of deficiencies in an application for permanent residence ...

[14] I agree with the principle explained in *Singh*, but that principle does not assist the Respondent in the circumstances of the present case. In *Singh*, the applicant had provided email correspondence in response to the relevant PFL, and that correspondence contained references to hidden text which caused the immigration officer to conclude that some correspondence had been removed. The Court disagreed with the applicant's argument that the Officer had a duty to issue a second PFL to provide an opportunity to respond to that concern (at para 23). In the case at hand, the Applicant's provision of user ID and password, to enable IRCC to verify his ITR through the Indian government website, does not represent an expectation that the decision-maker would make further inquiries to follow-up on a deficient response to a PFL.

[15] The Respondent also argues that, although the GCMS notes do not reference the Indian government portal or whether the Officer accessed it, this does not suggest that this evidence was ignored. Taking that point, I appreciate that it is possible that the Officer did access the portal, using the ID and password provided by the Applicant, and that the result of that process somehow confirmed the Officer's concern that the ITR was fraudulent. It is perhaps also possible that there is a reason why accessing the ITR on the government portal would not serve to address the particular concern that the Officer had about the genuineness of the ITR. The difficulty is that the record provides no information that would assist the Court in understanding whether, or how, that process might have figured in the Decision. Without the Officer having provided any explanation as to the basis for the conclusion that the ITR was fraudulent or non-genuine, it is simply not possible for the Court to understand the Officer's reasoning.

[16] The Decision therefore suffers from a lack of the transparency and intelligibility that is necessary to support reasonable administrative decision-making (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100).

[17] Having concluded that the Decision is unreasonable, this application for judicial review will be allowed, the Decision set aside, and the matter returned to a different visa officer for redetermination. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-10764-22**

**THIS COURT'S JUDGMENT is that** this application for judicial review is allowed, the Decision is set aside, and this matter is returned to a different visa officer for redetermination. No question is certified for appeal.

"Richard F. Southcott"

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Judge

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

**DOCKET:** IMM-10764-22

**STYLE OF CAUSE:** BHARAT BHUSHAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** BY VIDEOCONFERENCE USING ZOOM

**DATE OF HEARING:** JANUARY 18, 2024

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** JANUARY 23, 2024

**APPEARANCES:**

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