

Federal Court



Cour fédérale

Date: 20240122

Docket: IMM-4563-23

Citation: 2024 FC 95

Ottawa, Ontario, January 22, 2024

PRESENT: Mr. Justice Norris

BETWEEN:

JUNCHEN RAO

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The applicant has applied for leave to proceed with an application for judicial review of a decision dated March 17, 2023, refusing his application for a pre-removal risk assessment (PRRA). The negative decision was delivered to the applicant on March 22, 2023.

[2] On September 11, 2023, I issued a Production Order requiring Immigration, Refugees and Citizenship Canada (IRCC) to provide a certified copy of the tribunal record (CTR) to the parties and to the Registry within 21 days of receipt of the order.

[3] On September 28, 2023, IRCC produced a CTR for this matter. However, IRCC subsequently determined that the version of the CTR that had been produced was incomplete. In particular, two sets of supplementary submissions (dated respectively March 10 and 17, 2023) provided by the applicant in support of his PRRA application had been omitted inadvertently. What the respondent characterizes on this motion as an addendum to the original decision was also omitted. The addendum is dated March 27, 2023. It purports to address the applicant's March 17, 2023, supplementary submissions. The decision maker was not aware of these submissions when the original decision was rendered (as it happened, also on March 17, 2023).

[4] On October 11, 2023, IRCC produced a supplementary CTR including these three items. The respondent now seeks an Order directing that the supplementary CTR be accepted for filing.

[5] The applicant does not oppose the filing of an amended CTR including the two sets of supplementary submissions. However, the applicant opposes the filing of an amended CTR containing the March 27, 2023, addendum. He does so on the basis that this motion is the first time he has learned of the existence of the addendum, there are many unanswered questions concerning the sudden appearance of the addendum (which undercuts to at least some extent the procedural fairness arguments he has advanced in his leave application), and, in any event, the

addendum cannot be considered part of the March 17, 2023, decision because by the time it was written, the decision maker was *functus*.

[6] The September 11, 2023, Production Order was issued pursuant to the Court's settlement procedure: see *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings*, paragraph 40. As such, the Order directed the production of a CTR within the meaning of Rule 17 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22. Rule 17 provides that a CTR must include, among other things, "the decision or order in respect of which the application for judicial review is made and the written reasons given therefor" and "all relevant documents that are in the possession or control of the tribunal." The missing documents clearly fall within one or the other of these categories.

[7] The applicant agrees that two of the missing items should be included but objects to the inclusion of the March 27, 2023, addendum. The applicant's objection in the latter regard is noted. However, his arguments are more pertinent to whether the respondent should be permitted to rely on the March 27, 2023, addendum in responding to the application for judicial review on its merits as opposed to whether that addendum should be part of the CTR.

[8] Accordingly, the respondent's motion will be granted without prejudice to the applicant's right to object to the respondent's reliance on the March 27, 2023, addendum in responding to the application for judicial review on its merits. The issuance of the Production Order signals that leave to proceed with the application for judicial review will likely be granted in due course. The filing of the supplementary CTR does not affect this. Once leave to proceed is granted,

should the applicant maintain his objection to the respondent's reliance on the addendum, it will be for the judge who hears the application for judicial review to determine the merits of that objection.

ORDER IN IMM-4563-23

THIS COURT ORDERS that

1. The motion is granted.
2. The supplementary certified tribunal record uploaded to the Federal Court SharePoint platform on October 11, 2023, shall be accepted for filing.
3. This Order is without prejudice to the right of the applicant to object to the respondent's reliance on the March 27, 2023, addendum when the merits of the application for judicial review are determined.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4563-23

STYLE OF CAUSE: JUNCHEN RAO v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: NORRIS J.

DATED: JANUARY 22, 2024

WRITTEN REPRESENTATIONS BY:

Naseem Mithoowani

FOR THE APPLICANT

Kevin Spykerman

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mithoowani Waldman
Immigration Law Group
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT