

Federal Court



Cour fédérale

**Date: 20241022**

**Docket: IMM-11863-23**

**Citation: 2024 FC 1663**

**Ottawa, Ontario, October 22, 2024**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**MARYAM RIAZI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant Maryam Riazi is a citizen of Iran who was refused a temporary resident visa [TRV] to visit her grieving sister-in-law (i.e. her husband's sister), following the death of her husband's and his sister's father. The visa officer was not satisfied that Maryam would leave Canada at the end of her stay [Decision].

[2] Maryam seeks to have the Decision set aside. Having read the parties' material and listened to their oral representations, I determine that the judicial review application will be granted for lack of procedural fairness. More detailed reasons follow. In the circumstances, I decline to address whether the Decision was unreasonable, which was the main focus of the parties' written representations.

## II. Analysis

[3] As I explain, this case took an unusual twist at the oral hearing, resulting in my conclusion that the Decision must be set aside for procedural unfairness.

[4] Maryam's sister-in-law, Elena Thibaut, prepared the TRV applications for her brother, Reza Tayeh, Maryam, and the couple's son, Nick. Elena submitted the applications as a family group, with Reza as the main applicant and the other two as dependents.

[5] The TRV applications of Maryam and Reza were refused for virtually identical reasons, but for the age of each of them that was stated in the Global Case Management System notes applicable to each application.

[6] A separate application for leave and judicial review [ALJR] was filed for Maryam and for Reza, but the matters were not consolidated, with counsel's inadvertence offered as the reason. I note that it would not have been evident to the Court from the style of cause that the matters were related given the different surnames of Maryam and Reza. It is not surprising, therefore, that the ALJRs were assigned to different judges of the Court for disposition, resulting in the

dismissal of Reza's ALJR at the leave stage, while leave was granted in the case of Maryam's ALJR.

[7] Maryam's evidence in the judicial review includes a further affidavit of her sister-in-law, explaining Elena's role in the preparation and filing of the TRV applications. She deposes that some of the documents, such as financial and employment documentation, that she submitted with Reza's application, she did not re-upload for Maryam and Nick. An exhibit to Elena's affidavit is a copy of Reza's complete application. Neither party disputes that the evidence submitted in support of the family group of TRV applications should have been considered cumulatively in the normal course.

[8] When I asked the Respondent Minister's counsel about the impact, if any, of Reza's dismissed ALJR on the proceeding before me, the answer included a concession that the officer's reasons do not make clear whether they are limited to an analysis of what was in the wife's application or that of the whole family. This raises, in my mind, the unanswered question of whether the evidence in fact was considered cumulatively.

[9] While both parties initially argued the judicial review as though the information evidenced by Elena's affidavit was before the officer, the Court cannot assess, in a meaningful way, whether that was the case because of the apparent deficiency or ambiguity in the certified tribunal record [CTR]. Had Reza's ALJR been granted at the leave stage, rather than dismissed, this would have resulted in a CTR against which such an assessment might have been made by

comparing the two records (assuming the CTR in Reza's case were put into evidence in Maryam's case, such as through consolidation of the matters).

[10] Regardless, because of the admitted uncertainty of what the officer considered in respect of Maryam's TRV application, I find that this situation falls within, or closely aligns with, the second of three types of scenarios raised by a deficient CTR described by this Court in *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 [*Togtokh*] at para 16. See also *Rasasoori v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 207 [*Rasasoori*] at para 13. Here, documentation is known (or at least not disputed) to have been submitted with Reza's application as part of the family group of TRV applications, but is not part of the CTR for Maryam's application and, thus, it is not clear, for reasons beyond her control, whether that documentation was before the officer in her case. As observed in both *Togtokh* and *Rasasoori*, this type of situation suggests that the decision of the administrative decision-maker should be overturned.

[11] This Court previously has observed, "[w]hen a decision has been made based on an erroneous belief that an application was complete, the right to be heard has been compromised": *Akram v Canada (Citizenship and Immigration)*, 2018 FC 1105 at para 22.

[12] Further, the Federal Court of Appeal guides that, in cases like this where the written record is quite ambiguous, it behooves the administrative decision-maker to take steps to resolve the ambiguity, in keeping with the principles of fundamental justice: *Pangli v Canada (Minister of Employment & Immigration)* (1987), 4 Imm LR (2d) 266 at 272-73, 81 NR 216 (FCA).

III. Conclusion

[13] For the above reasons, the judicial review is granted. The Decision will be set aside, with the matter remitted for redetermination to a different officer who will take steps to resolve the ambiguity about the evidence considered in Maryam's TRV application.

[14] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

**JUDGMENT in IMM-11863-23**

**THIS COURT'S JUDGMENT is that:**

1. The Applicant's judicial review application is granted.
2. The decision of the immigration officer dated July 24, 2023 is set aside, with the matter remitted for redetermination by a different decision-maker who must take steps to resolve the ambiguity in the Applicant's evidence.
3. There is no question for certification.

"Janet M. Fuhrer"

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Judge

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

**DOCKET:** IMM-11863-23

**STYLE OF CAUSE:** MARYAM RIAZI v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 7, 2024

**JUDGMENT AND REASONS:** FUHRER J.

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