

Federal Court



Cour fédérale

Date: 20090615

Docket: IMM-4677-08

Citation: 2009 FC 633

Ottawa, Ontario, June 15, 2009

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

VIKAS RAKHEJA

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by an Immigration Officer dated October 9, 2008, denying the applicant's application under section 25 of the *Immigration Refugee Protection Act, 2001, c.27* (IRPA) for permanent residence under the spouse or common-law partner in Canada class. The Immigration Officer found that the applicant did not meet the requirements of this class as outlined in Section 5.14 of the Operational Manual for Inland Processing 8 (IP8) - Spouses or Common Law Partner in Canada Class. Specifically, the Immigration Officer found that the applicant did not meet the requirement of possessing a valid

non-expired passport, and did not qualify for the discretionary exemption available where a passport has expired during the processing of an application.

FACTS

[2] The applicant is a citizen of India. He left India in 1997 and lived in the United States until he entered Canada at an unofficial border crossing in 2003, whereupon he made a refugee claim. His refugee claim was denied in 2004.

[3] The applicant participated in a traditional Hindu wedding ceremony with Madhu Rani, a Canadian permanent resident, on September 8, 2002. The couple failed to obtain a marriage license at this time, and were therefore not legally married until they obtained a license in May 2008. Their son, Ram Rakheja, was born in Edmonton on December 18, 2003.

[4] In July 2005, the applicant failed to appear for a pre-removal interview and an arrest warrant was issued. The applicant was arrested in April 2008. After legally marrying his wife in May 2008, the applicant submitted the permanent residence application that is the subject of this application for judicial review.

[5] The applicant's Indian passport expired in January 2008. At that time, the applicant had not yet made his application for permanent residence.

[6] The applicant was interviewed by the Immigration Officer in October 2008. During his interview, the applicant stated that he would not be able to obtain a new passport because there is an outstanding arrest warrant against him in India.

Decision under review

[7] The Immigration Officer denied the application on the basis that it did not comply with the requirement hold a valid passport. The Officer stated (Applicant's Application Record, p. 7):

In order to become a permanent resident under the spouse or common-law partner in Canada class, you must comply with requirements as specified in the Immigration and Refugee Protection Regulations.

Since you or your sponsor have not provided evidence that you have or may obtain a valid passport or travel document, you do not meet the requirements of the class. Your application for permanent residence as a member of the spouse or common-law partner class is, therefore, refused.

[8] The Immigration Officer's Report to File states (Applicant's Application Record, p. 12):

I have reviewed the information and the facts of this case. Based on the evidence, I am not satisfied that the applicant meets the requirements of the spouse or common-law partner in Canada class as outlined in Section 5.14 of IP8. It has not been established that the applicant has or will acquire a valid passport or travel document. As outlined in the Public Policy under 25(1) of IPRA to Facilitate Processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class, applicants under this public policy are not eligible for a passport waiver. This application is refused.

[9] The applicant submits that the Immigration Officer erred in concluding that he was ineligible for a passport waiver and that, under the guidelines, he should have been given an opportunity to obtain a passport before his application was refused.

RELEVANT LEGISLATION

[10] The applicant applied for permanent residence from within Canada under s. 25 of the *Immigration and Refugee Protection Act*, which provides:

Humanitarian and
compassionate considerations

25. (1) The Minister shall, upon request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative or on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

Séjour pour motif d'ordre
humanitaire

25. (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, de sa propre initiative ou sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger et peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des circonstances d'ordre humanitaire relatives à l'étranger — compte tenu de l'intérêt supérieur de l'enfant directement touché — ou l'intérêt public le justifient.

[11] The requirements to obtain permanent resident status are set out in the section 72 of the *Immigration and Protection Regulations*, SOR/2002-227 (the Regulations). Section 72(1)(e)(ii) describes the documents that an applicant must possess:

Obtaining status

72. (1) A foreign national in Canada becomes a permanent resident if, following an examination, it is established that

- (a) they have applied to remain in Canada as a permanent resident as a member of a class referred to in subsection (2);
- (b) they are in Canada to establish permanent residence;
- (c) they are a member of that class;
- (d) they meet the selection criteria and other requirements applicable to that class;
- (e) except in the case of a foreign national who has submitted a document accepted under subsection 178(2) or of a member of the protected temporary residents class,
 - (i) they and their family members, whether accompanying or not, are not inadmissible,
 - (ii) they hold a document described in any of paragraphs 50(1)(a) to (h), and
 - (iii) they hold a medical certificate, based on the

Obtention du statut

72. (1) L'étranger au Canada devient résident permanent si, à l'issue d'un contrôle, les éléments suivants sont établis :

- a) il en a fait la demande au titre d'une des catégories prévues au paragraphe (2);
- b) il est au Canada pour s'y établir en permanence;
- c) il fait partie de la catégorie au titre de laquelle il a fait la demande;
- d) il satisfait aux critères de sélection et autres exigences applicables à cette catégorie;
- e) sauf dans le cas de l'étranger ayant fourni un document qui a été accepté aux termes du paragraphe 178(2) ou de l'étranger qui fait partie de la catégorie des résidents temporaires protégés :
 - (i) ni lui ni les membres de sa famille — qu'ils l'accompagnent ou non — ne sont interdits de territoire,
 - (ii) il est titulaire de l'un des documents visés aux alinéas 50(1)a) à h),
 - (iii) il est titulaire d'un certificat médical

most recent medical examination to which they were required to submit under these Regulations within the previous 12 months, that indicates that their health condition is not likely to be a danger to public health or public safety and, unless subsection 38(2) of the Act applies, is not reasonably expected to cause excessive demand; and

(f) in the case of a member of the protected temporary residents class, they are not inadmissible.

Classes

(2) The classes are

(a) the live-in caregiver class;

(b) the spouse or common-law partner in Canada class; and

(c) the protected temporary residents class.

attestant, sur le fondement de la plus récente visite médicale à laquelle il a été requis de se soumettre aux termes du présent règlement dans les douze mois qui précèdent, que son état de santé ne constitue vraisemblablement pas un danger pour la santé ou la sécurité publiques et, sauf si le paragraphe 38(2) de la Loi s'applique, ne risque pas d'entraîner un fardeau excessif;

f) dans le cas de l'étranger qui fait partie de la catégorie des résidents temporaires protégés, il n'est pas interdit de territoire.

Catégories

(2) Les catégories sont les suivantes :

a) la catégorie des aides familiaux;

b) la catégorie des époux ou conjoints de fait au Canada;

c) la catégorie des résidents temporaires protégés.

[12] Section 72(1)(e)(ii) refers to Section 50(1), which sets out the documents that a person seeking to become a permanent resident must hold:

Documents — permanent residents

50. (1) In addition to the permanent resident visa required of a foreign national who is a member of a class referred to in subsection 70(2), a foreign national seeking to become a permanent resident must hold

- (a) a passport, other than a diplomatic, official or similar passport, that was issued by the country of which the foreign national is a citizen or national;
- (b) a travel document that was issued by the country of which the foreign national is a citizen or national;
- (c) an identity or travel document that was issued by a country to non-national residents, refugees or stateless persons who are unable to obtain a passport or other travel document from their country of citizenship or nationality or who have no country of citizenship or nationality;
- (d) a travel document that was issued by the International Committee of the Red Cross in Geneva, Switzerland, to enable and facilitate emigration;
- (e) a passport or travel

Documents : résidents permanents

50. (1) En plus du visa de résident permanent que doit détenir l'étranger membre d'une catégorie prévue au paragraphe 70(2), l'étranger qui entend devenir résident permanent doit détenir l'un des documents suivants :

- a) un passeport — autre qu'un passeport diplomatique, officiel ou de même nature — qui lui a été délivré par le pays dont il est citoyen ou ressortissant;
- b) un titre de voyage délivré par le pays dont il est citoyen ou ressortissant;
- c) un titre de voyage ou une pièce d'identité délivré par un pays aux résidents non-ressortissants, aux réfugiés au sens de la Convention ou aux apatrides qui sont dans l'impossibilité d'obtenir un passeport ou autre titre de voyage auprès de leur pays de citoyenneté ou de nationalité, ou qui n'ont pas de pays de citoyenneté ou de nationalité;
- d) un titre de voyage délivré par le Comité international de la Croix-Rouge à Genève (Suisse) pour permettre et faciliter l'émigration;

document that was issued by the Palestinian Authority;	<i>e)</i> un passeport ou un titre de voyage délivré par l'Autorité palestinienne;
<i>(f)</i> an exit visa that was issued by the Government of the Union of Soviet Socialist Republics to its citizens who were compelled to relinquish their Soviet nationality in order to emigrate from that country;	<i>f)</i> un visa de sortie délivré par le gouvernement de l'Union des républiques socialistes soviétiques à ses citoyens obligés de renoncer à leur nationalité afin d'émigrer de ce pays;
<i>(g)</i> a British National (Overseas) passport that was issued by the Government of the United Kingdom to persons born, naturalized or registered in Hong Kong; or	<i>g)</i> un passeport intitulé « <i>British National (Overseas) Passport</i> », délivré par le gouvernement du Royaume-Uni aux personnes nées, naturalisées ou enregistrées à Hong Kong;
<i>(h)</i> a passport that was issued by the Government of Hong Kong Special Administrative Region of the People's Republic of China.	<i>h)</i> un passeport délivré par les autorités de la zone administrative spéciale de Hong Kong de la République populaire de Chine.

[13] Section 124 of the *Immigration and Refugee Protection Regulations* sets out the requirements of the spouse or common-law partner in Canada class:

<u>Member</u>	<u>Qualité</u>
<p>124. A foreign national is a member of the spouse or common-law partner in Canada class if they</p> <p><i>(a)</i> are the spouse or common-law partner of a sponsor and cohabit with that sponsor in Canada;</p> <p><i>(b)</i> have temporary resident status in Canada; and</p>	<p>124. Fait partie de la catégorie des époux ou conjoints de fait au Canada l'étranger qui remplit les conditions suivantes :</p> <p><i>a)</i> il est l'époux ou le conjoint de fait d'un répondant et vit avec ce répondant au Canada;</p> <p><i>b)</i> il détient le statut de</p>

(c) are the subject of a sponsorship application.

résident temporaire au Canada;
c) une demande de parrainage a été déposée à son égard.

Ministerial Policy Guidelines

[14] The Operation Manual IP8 sets out the public policy of Citizenship and Immigration Canada (CIC) to facilitate processing of applications made under the spouse or common-law partner in Canada class under section 25 of IRPA in accordance with the Regulations. The policy exempts applications under this class from the requirement under section 124 of the Regulations to be “in status” and the requirement in section 72(1)(e)(i) of the Regulations to not be inadmissible due to a lack of status. Section 5.14 of the Operational Manual IP8 provides, inter alia:

A foreign national becomes a permanent resident if they meet the requirements of R72

L'étranger devient résident permanent s'il satisfait aux exigences énoncées au R72

...

...

- a. if the foreign national has a valid passport or travel document by the time CIC seeks to grant permanent residence. See details below.

- b. s'il détient un passeport ou un titre de voyage valide au moment où CIC accorde la résidence permanente. Voir les détails ci-dessous.

...

...

Passport requirements

Exigences relatives au passeport

Clients who have entered Canada without a passport

Clients qui sont entrés au Canada sans passeport

Clients are eligible for consideration under the public policy, and thus under the

Les clients peuvent faire l'objet d'un examen en vertu

class, notwithstanding the fact that they are under a removal order or face enforcement proceedings for failure to enter Canada with a valid passport or required travel document as they still meet the remaining criteria under R124.

However, clients cannot be granted permanent residence under R72 if they do not obtain a valid passport or travel document by the time CIC seeks to grant permanent residence. Accordingly, clients should be given the opportunity to obtain a passport or travel document before the application for permanent residence is refused. However, cases considered under this public policy are **not eligible** for a passport waiver. Persons seeking this waiver must apply through the regular H&C route.

Requirement to have a valid passport in order to become a permanent resident

As a general rule, CIC should accept only valid and non-expired passports to grant permanent residence [R72]. This being said, the use of a passport that has expired during the processing of an application may be appropriate in some instances to fulfill the requirements of

de la politique d'intérêt public, et par le fait même en vertu de la catégorie des époux ou conjoints de fait au Canada, même s'ils sont visés par une mesure de renvoi ou doivent faire face à une procédure d'exécution de la loi parce qu'ils ne sont pas entrés au Canada munis d'un passeport ou d'un titre de voyage valide, car ils répondent aux autres exigences énoncées au R124.

Ils ne peuvent toutefois pas obtenir la résidence permanente au titre du R72 s'ils n'ont pas acquis de passeport ou de titre de voyage valide au moment où CIC accorde la résidence permanente. Par conséquent, on doit leur offrir la possibilité d'obtenir un passeport ou un titre de voyage avant de refuser leur demande de résidence permanente. Toutefois, les personnes dont le cas est examiné aux termes de cette politique publique **ne peuvent pas bénéficier** d'une dispense de passeport. Les personnes qui demandent cette dispense doivent présenter leur demande dans le cadre du processus CH habituel.

Obligation de posséder un passeport valide pour obtenir le statut de

R72. Therefore, while not ideal, officers should feel free to use their judgment in accepting passports that have expired during processing when no identity issues remain.

résident permanent

En règle générale, CIC ne devrait accepter que les passeports valides et non périmés pour octroyer la résidence permanente [R72]. Cela dit, l'utilisation d'un passeport qui est arrivé à expiration au cours du traitement de la demande peut être appropriée dans certaines circonstances pour répondre aux exigences du R72. Par conséquent, bien que cela ne soit pas idéal, les agents ne devraient pas hésiter à se servir de leur jugement pour accepter des passeports qui sont arrivés à expiration au cours du traitement de la demande lorsque l'identité de l'intéressé a été établie avec certitude.

ISSUES

[15] The issue raised by this application is whether the Immigration Officer erred in her application of Section 5.14 of Operation Manual IP8. The applicant submits that the Immigration Officer erred by:

1. Finding the applicant did not meet the requirement to possess a valid and non-expired passport in Section 5.14 by failing to give the applicant an opportunity to obtain a passport before refusing his application;
2. Breaching the duty of fairness by ignoring evidence relating to the *bona fide* nature of the relationship; and

3. Failing to find that the applicant was entitled to a passport waiver under Section 5.14.

STANDARD OF REVIEW

[16] Decisions of a visa officer are entitled to a substantial degree of deference. Decisions of a visa officer relating to applications for permanent residence under the spouse and common-law partner in Canada class are subject to a standard of review of reasonableness: *Dios v. Canada (MCI)*, 2008 FC 1322, 76 Imm. L.R. (3d) 195, per Russell J. at paras. 25-28; *Skobodzinska v. Canada (MCI)*, 2008 FC 887, 331 F.T.R. 295, per Tremblay-Lamer J. at paras. 91-3.

[17] Recently, the Supreme Court revisited the ambit of the reasonableness standard of review in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, confirming that a high degree of deference is warranted where a decision is reviewed for findings of fact or mixed fact and law.

Justice Binnie stated at paragraph 17:

This appeal provides a good illustration of why the adjustment made by *Dunsmuir* was timely. By switching the standard of review from patent unreasonableness to reasonableness *simpliciter*, the Federal Court of Appeal majority felt empowered to retry the case in important respects, even though the issues to be resolved had to do with immigration policy, not law. Clearly, the majority felt that the IAD disposition was unjust to Khosa. However, Parliament saw fit to confide that particular decision to the IAD, not to the judges.

[18] In reviewing the Board's decision using a standard of reasonableness, the Court will consider "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are

defensible in respect of the facts and law.” (*Dunsmuir v. New Brunswick* [2008] S.C.J. No. 9, 2008 SCC 9, at paragraph 47).

[19] The applicant also submits that the Immigration Officer ignored relevant evidence. This engages procedural fairness and is reviewable on a standard of correctness: *Chertyuk v. Canada (MCI)*, 2008 FC 870, per Frenette D.J. at para. 19.

ANALYSIS

Issue No. 1: Did the Immigration Officer err in finding that the applicant did not meet the requirement to have a valid passport?

[20] The applicant submits that although he did not have a valid passport at the time of his interview, he was not barred from obtaining permanent resident status under the policy requirements of IP8. The applicant submits that the officer should have given the applicant an opportunity to apply for a new passport before refusing his application on these grounds.

[21] However, the Immigration Officer questioned the applicant during his interview about his ability to obtain a new passport. The applicant states in his affidavit (Applicant’s Application Record, p. 14-15):

Ms. Galloway [the Immigration Officer] has asked me in depth about my Indian passport and whether I have tried to renew it as well as if I anticipated any problems with a renewal of my passport. I have answered her questions truthfully based on the belief that I had on my experience that I have made on or about the end of 2005 when I inquired together with my wife about the possibility of extending our

passports with the Indian High Commission in Vancouver. At that time we were advised that because we do not have our passports in our possessions, we would not be able to obtain new passports nor would we be able to extend our current ones.

[22] In the Immigration Officer's Report to File, she stated (Applicant's Application Record, p. 12):

During the interview the applicant advised that he does not have a valid passport and the he is certain he cannot obtain one. The applicant advised that the Indian High Commission does not entertain refugee claimants. He further advised that he was charged with a criminal offence in India and that a warrant for his arrest was consequently issued. The applicant stated it will not be possible to extend his passport since there is a warrant for his arrest in India.

[23] The evidence before the Immigration Officer was that the applicant could not obtain a new passport or renew his expired passport. The applicant stated in his interview that he was certain that this was the case. The Immigration Officer was entitled to rely on this information. The applicant states the he has subsequently learned that he was mistaken and that he may in fact be able to renew his passport. However, this information was not before the Immigration Officer. The Immigration Officer acted reasonably with respect to this issue.

Issue No. 2: Did the Officer breach the duty of fairness by ignoring relevant evidence?

[24] The applicant submits that the Immigration Officer ignored evidence about the bona fide nature of his relationship with his spouse, and that the Officer should have made a finding about whether the relationship was genuine before proceeding to the passport requirements for permanent residence. The applicant submits that the Immigration Officer ignored evidence that he has

purchased a home with his wife, that they have a child together, and that the child suffers from a medical condition.

[25] The requirement that an individual must have a valid passport is not contingent on any finding as to the bona fide nature of the relationship. Had the Immigration Officer made a finding that the applicant's relationship was genuine, it would not have affected her factual finding based on the evidence before her that the applicant did not meet the requirement to have a valid passport. It is not a breach of procedural fairness that the Immigration Officer did not make a finding on the bona fide nature of the relationship when the applicant was barred for failing to meet a discrete statutory requirement. Moreover, the child's medical condition does not go to the genuineness of the relationship and is a matter properly considered under an application for a humanitarian and compassionate exemption (H&C). The applicant may still apply for an H&C exemption.

Issue No. 3: Did the Immigration Officer err in failing to find that the applicant was entitled to a passport waiver?

[26] The applicant submits that the Immigration Officer erred in not finding the applicant was entitled to the passport waiver in Section 5.14. This waiver provides that individuals whose passports have expired during processing may submit their expired documents. For ease of reference this subsection is reproduced below:

Requirement to have a valid passport in order to become a permanent resident

As a general rule, CIC should accept only valid and non-expired passports to grant

Obligation de posséder un passeport valide pour obtenir le statut de résident permanent

En règle générale, CIC ne devrait accepter que les

permanent residence [R72]. This being said, the use of a passport that has expired during the processing of an application may be appropriate in some instances to fulfill the requirements of R72. Therefore, while not ideal, officers should feel free to use their judgment in accepting passports that have expired during processing when no identity issues remain.

passeports valides et non périmés pour octroyer la résidence permanente [R72]. Cela dit, l'utilisation d'un passeport qui est arrivé à expiration au cours du traitement de la demande peut être appropriée dans certaines circonstances pour répondre aux exigences du R72. Par conséquent, bien que cela ne soit pas idéal, les agents ne devraient pas hésiter à se servir de leur jugement pour accepter des passeports qui sont arrivés à expiration au cours du traitement de la demande lorsque l'identité de l'intéressé a été établie avec certitude.

[27] This subsection clearly states that passports that have expired during the processing of an application may nonetheless be accepted by an Immigration Officer. First, this provision does not apply to the applicant, whose passport expired on January 26, 2008, before the applicant submitted his application in May 2008. Second, the provision is clearly discretionary: it provides that officers “should feel free to use their judgment” in accepting these documents. In reviewing the officer’s decision on a standard of reasonableness, then, it was clearly open to the officer to not apply this waiver to the present application. The applicant was not a member of the group contemplated by the provision, i.e. those who had valid passports when they applied, which then expired during processing.

The Guidelines contained in IP8 are not law

[28] The Immigration Officer did not err in law in following the policy, or unreasonably interpret the Ministerial guidelines in finding that the applicant did not meet the Department's requirements for processing under the exemption for the spouse and common-law partner class under s. 25 of IRPA set out in the Operational Manual IP8.

[29] The Operational Manuals for Inland Processing sets out the policy of the CIC on how it interprets IRPA and the Regulations. These ministerial guidelines are not law. See *Balasingham v. Canada (MCI)* (1998) 157 F.T.R. 143, 84 A.C.W.S. (3d) 744, per Teitelbaum J., as he then was, at para. 10; *Agot v. Canada (MCI)*, 2003 FCT 436, 232 F.T.R. 101, per Layden-Stevenson J. at para. 8; *Wong v. Canada (MCI)*, 2006 FC 1410, 304 F.T.R. 129, per myself at para. 20; *Kisana v. Canada (MCI)*, 2008 FC 307, 167 A.C.W.S. (3d) 162, per Mosley J. at para. 10.

[30] Section 72(1)(e)(ii) and section 50(1)(a) of the *Regulations* require that an individual must provide a passport or travel document. One reason for the passport requirement is to prove the identity of the applicant. Under the policy, individuals whose passports expire during processing may submit their expired passports if there is no question as to their identity. The Court finds on the facts that the Minister accepts that the applicant is a citizen of India and that he entered Canada in 2003. The Court finds that the applicant entered Canada with a valid passport which expired on January 26, 2008, four months before the applicant submitted his application for permanent residence.

[31] The guidelines in the Operational Manual IP8 do not provide that an Immigration Officer may accept an expired passport where the expiry date pre-dates the application for permanent residence. However, the intent of the public policy is to facilitate family reunification of spouses under section 25 of IRPA, even where the applicant is not in status as required by the Act. In my view, it may be arbitrary to exempt individuals whose passports expire during processing, but not those whose valid passports expired after entry into Canada, where identity is not at issue.

[32] Counsel for the respondent advised the Court that the applicant, while disqualified under the “spouse in Canada class” under section 25 of IRPA, may still apply under section 25 for exemption from the passport requirement with another H&C application. This is confusing. If the applicant is already considered for exemption on the H&C grounds under section 25 of IRPA as a member of the “spouse in Canada class”, it is logical that an exemption for the valid passport requirement under the Regulations, also be considered at the same time by the immigration officer, or at least be referred to another H&C officer if the immigration officer is satisfied that the reason for the valid passport requirement is to establish the true identity of the applicant, and in this case, the applicant’s identity is not in doubt. However, there may be other policy reasons why the respondent requires the applicant have a valid passport such as security concerns. The Court must be deferential to the respondent’s policy.

[33] Accordingly, the Immigration Officer’s decision in this matter was reasonably open to her and this application for judicial review must be dismissed. An application for permanent residence under the spouse or common-law partner in Canada class is a discretionary exemption by the

respondent under section 25 of IRPA. The respondent has set out a policy for situations granting that exemption which include that the applicant have a valid passport at the time the application is made. According to the respondent the applicant can now make another application under section 25 of IRPA for an exemption from the requirement that he have a valid passport, and then the applicant can make another application for permanent residence under the spouse or common-law partner in Canada class. While this two-step process seems illogical, the Court acknowledges that it was reasonably open to the respondent to require that the applicant have a valid passport before bringing his current application.

{34} The parties have advised the Court that they do not consider that this application for judicial review raises a serious question of general importance which should be certified for an appeal. The Court agrees so that no question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

This application for judicial review is dismissed.

“Michael A. Kelen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4677-08

STYLE OF CAUSE: VIKAS RAKHEJA v. MCI

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: June 8, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** KELEN J.

DATED: June 15, 2009

APPEARANCES:

Mr. Simon Trela FOR THE APPLICANT

Mr. Rick Garvin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Simon Trela FOR THE APPLICANT
Edmonton, Alberta

Mr. John H. Sims, Q.C. FOR THE RESPONDENT
Deputy Attorney General of Canada