

Federal Court



Cour fédérale

**Date: 20181023**

**Docket: IMM-611-18**

**Citation: 2018 FC 1068**

**Toronto, Ontario, October 23, 2018**

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

**BETWEEN:**

**SHEAB SALIMBHAI VORA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The present Application is a judicial review of the decision of an Immigration Officer (Officer) dated January 25, 2018, refusing the Applicant's application for permanent residence under the Spouse or Common-Law Partner in Canada class.

[2] The Applicant is a citizen of India who entered Canada as a visitor on November 2, 2013, married a Canadian citizen on October 12, 2015, and made the application for permanent residence on July 5, 2016.

[3] With respect to the Application, on April 6, 2017, the Officer found the marriage to be genuine (Certified Tribunal Record [CTR], p. 61). Following this finding, the Officer requested further documentation from the Applicant, including medical reports, a valid passport and a marriage certificate, in order to make a decision regarding admissibility.

[4] On July 7, 2017 and September 20, 2017, the Officer made further requests for the same documentation.

[5] On October 26 2017, the Officer considered a letter received from a paralegal and dealt with it as follows:

Received a letter from Paralegal Anika Patel indicating she has been retained by the clients – No IMM 5476 submitted with it so therefore the rep will not be added to the file. PA – provided Marriage Certificate, Bank statements and FIDO bills for the SPR. PA also provided a receipt from the consulate in Toronto for the passport from October 12, 2017 and indicated that he cannot do medicals until he receives his renewed passport. BF'ing the file for 45 days. [Emphasis added]

(CTR, p. 60)

[6] Counsel for the Applicant argues that the Officer's decision to not add the paralegal to the file without providing notice to the Applicant constitutes a breach of a duty of fairness owed to the Applicant. I agree.

[7] The next step taken by the Officer occurred on January 25, 2018 described as follows:

Application locked in on 2016/03/07. SPR eligibility Review Sponsor Eligibility Decision: Passed. PA eligibility Review PA Eligibility Decision: Failed. Request for Medical, Passport sent to PA on 2017/04/06 with a due date of 2017/05/06. Subsequently, a PFL was sent to the PA on 2017/07/07. After consultation with an SDS - PFL was reissued again September 20, 2017 and a response was received from a paralegal who was not on file and did not submit the IMM 5476. It indicated that the PA applied for a passport on October 12, 2017 and required his passport in order to complete medicals. File was BF'ed for 45 days and no additional response has been received regarding passport or medicals. Since PA did not provide the requested documentation, PA admissibility cannot be assessed under A41. Therefore PA is ineligible under A21(1), R72, and A41 Final case decision: refused.

[Emphasis added]

(CTR, pp. 59-60)

[8] Regarding the decision made, there was no evidence on the record with respect to why the decision was made at that certain point in time. It appears that the Officer had an expectation that enough time had passed for the Applicant to produce the necessary documentation and the Application was ready for decision.

[9] There was no evidence on the record to determine that the choice of 45 days after the Officer's note dated October 26, 2017 was anything but arbitrary. There was no evidence on the record to link the date to any reasonable expectation that the Applicant would have the documents by this time. In fact, to the contrary, during the course of the hearing of the present application, Counsel for the Applicant argued that the Court can take judicial notice that documents requested from India can be notoriously slow to arrive. Counsel for the Respondent accepted this fact.

[10] The Applicant argues that he should have been given notice that the Officer was about to make a decision based on an expectation that the Applicant had enough time to comply with the request. I accept this argument.

[11] As a result of the two breaches of the duty of fairness, the decision under review must be set aside.

**JUDGMENT IN IMM-611-18**

**THIS COURT'S JUDGMENT is that** for the reasons provided, the Decision dated January 25, 2018 is set aside and the matter is referred back to a different decision-maker for redetermination on the following two directions:

1. On the redetermination, the Officer's uncontested finding of April 6, 2017 that the marriage herein was genuine continues to be accepted as a fact.
2. The redetermination be conducted on an evidentiary record current as of the date of the redetermination.

There is no question to certify.

"Douglas R. Campbell"

Judge

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

**DOCKET:** IMM-611-18

**STYLE OF CAUSE:** SHEAB SALIMBHAI VORA V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATES OF HEARING:** OCTOBER 16, 2018

**JUDGMENT AND REASONS:** CAMPBELL J.

**DATED:** OCTOBER 23, 2018

**APPEARANCES:**

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