

Federal Court



Cour fédérale

**Date: 20120301**

**Docket: IMM-3766-11**

**Citation: 2012 FC 283**

**[UNREVISED CERTIFIED ENGLISH TRANSLATION]**

**Montréal, Quebec, March 1, 2012**

**PRESENT: The Honourable Madam Justice Bédard**

**BETWEEN:**

**MAROUANE EL YAHYAOUI**

**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 Citizenship and Immigration Canada (CIC), which refused to process the application for the restoration of the applicant's temporary resident status because it was filed beyond the 90 day time limit provided under section 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations).

[2] For the following reasons, the application is dismissed.

[3] The applicant had a temporary resident permit that was valid until September 30, 2010. Section 182 of the Regulations provides that a visitor may file an application for restoration of temporary resident status within 90 days following the loss of status. This is a strict time limit (*Nzegwu v Canada (Minister of Citizenship and Immigration)*, 2010 FC 107 (CanLII)). The CIC's Operational Bulletin 195 provides that applications for work permits must be submitted to the Case Processing Centre in Vegreville, but that in some identified emergency situations, work permits may also be sent to a CIC local office.

[4] Section 13 of the Regulations provides the methods used for the purpose of producing documents required under the *Immigration and Refugee Protection Act*, SC 2001 c 27, or by the Regulations:

**13.** (1) Subject to subsection (2), a requirement of the Act or these Regulations to produce a document is met

- (a) by producing the original document;
- (b) by producing a certified copy of the original document; or
- (c) in the case of an application, if there is an application form on the Department's website, by completing and producing the form printed from the website or by completing and submitting the form on-line, if the website indicates that the form can be submitted on-line.

Exception

**13.** (1) Sous réserve du paragraphe (2), la production de tout document requis par la Loi ou le présent règlement s'effectue selon l'une des méthodes suivantes :

- a) la production de l'original;
- b) la production d'un double certifié conforme;
- c) dans le cas d'une demande qui peut être produite sur un formulaire reproduit à partir du site Web du ministère, la production du formulaire rempli, ou l'envoi de celui-ci directement sur le site Web du ministère s'il y est indiqué que le formulaire peut être rempli en ligne.

Exception

(2) Unless these Regulations provide otherwise, a passport, a permanent resident visa, a permanent resident card, a temporary resident visa, a temporary resident permit, a work permit or a study permit may be produced only by producing the original document.	(2) Sauf disposition contraire du présent règlement, les passeports, visas de résident permanent, cartes de résident permanent, visas de résident temporaire, permis de séjour temporaire, permis de travail et permis d'études ne peuvent être produits autrement que par présentation de l'original.
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[5] The CIC Web site contains a guide that describes how applications to change or extend a stay in Canada can be done. The guide provides the information required for submitting an application for restoration of status and explains how and where the applications can be submitted. At the time in question, the guide provided that an application for restoration of status could be sent by mail to the Case Processing Centre in Vegreville, Alberta, at the address indicated in the Guide, or electronically by an unrepresented applicant. It should be noted that at that time, CIC did not allow representatives to access a client's online accounts. This means that a person who was not represented could make an electronic request, while a person who was represented could not use this sending method and had to send his or her request by mail. This situation has since been rectified.

[6] The 90 day time limit for submitting the application for restoration expired on December 29, 2010. The applicant was represented by Hugues Langlais. The applicant's record was prepared by Mr. Langlais and it was completed on December 23, 2010, when the applicant had paid the fees required by CIC for processing an application for restoration. Mr. Langlais' office was closed for the holidays from December 24 to 28, 2010, inclusive.

[7] On December 29, 2010, Mr. Langlais' assistant sent the applicant's application for restoration to the Case Processing Centre in Vegreville by fax, to the attention of an office manager. It was agreed that the applicant's application for restoration could not have been filed at a CIC local office because it did not meet the scope of Operational Bulletin 195. Mr. Langlais sent the application by fax because he knew that it was the last day to file the application within the 90 day time limit and that the original of the application, which he sent on the same day by Express Post, would not be received the same day at the Case Processing Centre in Vegreville. CIC refused to consider the application for restoration received by fax and deemed that the application received by mail on December 30, 2010, had been filed outside the 90 day time limit provided under section 182 of the Regulations. The application for restoration of the applicant's status was therefore dismissed.

[8] The applicant made two main criticisms with regard to the CIC's decision.

[9] First, he submits that the CIC's administrative policy that was in force at the time and that prevented a represented applicant to submit an application electronically was unfair, unreasonable and violated the rules of natural justice because it disadvantaged applicants who chose to be represented in their cases with the CIC. Accordingly, an unrepresented applicant's application for restoration of status could be sent electronically one minute before midnight within the limitation period, whereas a represented applicant's application had to be mailed with sufficient time to allow the application to reach the Case Processing Centre in Vegreville before the expiry of the 90 day time limit.

[10] Second, the applicant alleges that, given the urgency of the situation, his counsel had no other way to send his application within the time limit than to send it by fax. Therefore, it was unreasonable for CIC not to accept the fax submission.

[11] The applicant's arguments cannot succeed and, in my opinion, CIC's decision to refuse the applicant's submission of his application for restoration contains no reviewable error.

[12] I agree that CIC's policy in force at the time disadvantaged clients who chose to be represented as part of an application for a temporary residence permit or restoration of status and that is probably why CIC has since changed its policy. However, I find that this policy did not prevent applicants from being represented in their cases, but it imposed on them to act expeditiously, taking into account time frames for mail delivery. In this sense, I do not share the opinion of the applicant that the administrative policy violated the rules of natural justice.

[13] Further, the application for judicial review in this case attacks the CIC's decision to refuse to receive the applicant's application for restoration that was sent by fax and is not intended to cancel the administrative policy in force at that time. Therefore, I find that there is no cause for the Court to rule on the lawfulness of this administrative policy.

[14] However, the applicant submits as a second argument that, in his case, CIC should not have applied the administrative policy and allowed his application to be submitted by fax. The applicant acknowledges that his application, sent by mail, was received by CIC after the expiry of the 90 day time limit and that his application sent by fax did not comply with CIC's administrative policy. This

policy is clearly set out in the guide prepared for applicants and posted on the CIC Web site. The applicant submits, however, that given the urgent situation that he found himself in, it was unreasonable that CIC did not accept the fax submission.

[15] With respect, I do not share this view. The applicant had a 90 day time limit to file his application and other than the payment of fees required by CIC, his file was ready on December 9, 2010. But he waited until December 23, 2010, before giving his lawyer the amount required to pay the fees required by CIC. I find that the applicant did not act diligently. I further understand that Mr. Langlais' office was closed from December 24 to December 28, 2010, but it is unfortunate that Mr. Langlais did not take the necessary measures to mail the applicant's application for restoration on December 23, 2010, or at least before December 29, 2010. I therefore find that the reasons that the applicant's application was not sent before December 29, 2010, are not reasons that can be described as an "urgent situation" or that the alleged "urgency" was brought on by events that were out of the control of the applicant and/or his lawyer.

[16] Moreover, it is up to CIC, in accordance with legislation and regulations, to decide on the administrative procedures relating to submitting documents, and it was not unreasonable to decide that the applications for restoration of status could not be sent by fax. Moreover, submitting an application for restoration by fax would not have met the requirements of section 13 of the Regulations since a document sent by fax is not an original document.

[17] For all of these reasons, I find that there is no cause for the Court to intervene.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review is dismissed. The parties did not propose a question for certification and there is none in this matter.

“Marie-Josée Bédard”

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Judge

Certified true translation

Catherine Jones, Translator

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

**DOCKET:** IMM-3766-11

**STYLE OF CAUSE:** MAROUANE EL YAHYAOUI and MCI

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 29, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** BÉDARD, J.

**DATED:** March 1, 2012

**APPEARANCES:**

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Ian Demers FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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