

Federal Court



Cour fédérale

**Date: 20170328**

**Docket: IMM-3645-16**

**Citation: 2017 FC 324**

**Ottawa, Ontario, March 28, 2017**

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

**BETWEEN:**

**ANWAR HAQ GOULD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is a judicial review of a decision of an immigration officer [the Officer] dated July 26, 2016, refusing the Applicant's application for permanent residence as a member of the spouse or common-law partner in Canada class. After having received information which raised concerns about the Applicant having a criminal history and after requesting information related to this history, the Officer was not satisfied and that the Applicant was not inadmissible and that

he met the requirements of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[2] As explained in more detail below, this application is dismissed, because the Applicant has not demonstrated that the Officer followed a procedurally unfair process, or made an unreasonable decision, in refusing his application without affording the Applicant a further opportunity to provide information to address concerns about his potential criminal inadmissibility.

## II. Background

[3] The Applicant, Mr. Anwar Haq Gould, is an American citizen. He married a Canadian citizen, Ms. Zainabai Salyani, on December 2, 2009. On December 12, 2013, he applied for permanent residence, sponsored by Ms. Salyani, through an in-Canada sponsorship application. In a declaration accompanying his application, Mr. Gould answered no to a question which asks whether an applicant has been convicted of a crime or is currently charged with, or the subject of, any criminal proceedings in any other country. He also answered no to a question which asks whether an applicant has ever been detained, incarcerated, or put in jail.

[4] On April 16, 2015, Mr. Gould received a letter from Citizenship and Immigration Canada [CIC] requesting a divorce certificate and the application for divorce order related to his previous marriage. On June 29, 2015, Mr. Gould's immigration consultant responded to the letter, stating that Ms. Salyani had made various attempts to obtain the divorce documents but was unable to do so. Mr. Gould's consultant indicated that Mr. Gould had been hospitalized for the past six weeks,

and included a Statutory Declaration in lieu of the divorce documents, indicating that he could no longer locate them. CIC's Global Case Management System [GCMS] notes dated July 24, 2015 indicate that this declaration was accepted as sufficient to satisfy the request.

[5] The GCMS notes of that same date further reveal that a determination was made that the Applicant's sponsor met the requirements, that eligibility was passed, and that there was sufficient evidence to satisfy the Officer of the genuineness of the marriage. On July 23, 2015, CIC sent Ms. Salyani a letter advising that she met the requirements for eligibility as a sponsor.

[6] CIC also sent Mr. Gould another letter on the same date, asking him to submit an original FBI clearance certificate and medicals. CIC requested the FBI clearance certificate by November 1, 2015. Mr. Gould's consultant submitted the document on December 21, 2015. No action was taken by CIC as a result of the delay in submitting this document.

[7] The FBI clearance certificate revealed that Mr. Gould had prior arrest data in the FBI database and that this did not preclude the possibility that he had further criminal history at the state or local level. On February 15, 2016, CIC (then renamed Immigration, Refugees and Citizenship Canada [IRCC]) sent a letter requesting additional information related to Mr. Gould's criminal charges. The letter requested the relevant court judgments and other documents, indicating the statutes under which Mr. Gould was charged, the final disposition of each charge, and the completion of any penalty imposed. The letter also requested Mr. Gould's written explanation of the events that led to the charges and a written explanation why he had not indicated on his application forms that he had a previous criminal history. The letter

indicated that this information was to be provided by March 15, 2016. This letter stated that, if Mr. Gould was unable to provide any or all of the requested documents or information, he should explain why they were not available, and that no other reminder would be sent to him. The letter also stated that, if Mr. Gould failed to provide the requested information, his application would be assessed based on the information that IRCC had, which could result in the refusal of his application.

[8] On March 11, 2016, Mr. Gould requested an extension of time, and in a letter dated April 15, 2016, IRCC granted this extension until June 15, 2016. This letter again stated that, if Mr. Gould was unable to provide any or all of the requested documents or information, he should explain why they were not available, and that no other reminder would be sent to Mr. Gould. Again, the letter also stated that, if Mr. Gould failed to provide the requested information, his application would be assessed based on the information that IRCC had, which could result in the refusal of his application.

[9] Also on April 15, 2016, Mr. Gould provided IRCC with documentation through the online portal in response to the February 15, 2016 request, including a covering letter from his consultant stating that he was submitting the requested documents. This documentation consisted of a Court Records Search Form from the Superior Court of California, which listed several violations, as well as a letter from the Scarborough Hospital indicating that Mr. Gould's health had deteriorated. The letter from the hospital advised that Mr. Gould was admitted on March 23, 2016, that he was receiving life sustaining treatment of hemodialysis three times per week, and that he was suffering moderate cognitive impairment. It also gave examples of this impairment.

[10] This documentation did not include the Court judgments or information regarding the disposition of the charges or completion of any penalty imposed. Mr. Gould also failed to provide an explanation of the events leading to the charges or why he had not indicated on his application forms that he had a previous criminal history.

[11] On June 29, 2016, Mr. Gould requested an update on his file, and on July 26, 2016, the Officer issued the impugned decision indicating that the sponsorship application was refused.

### III. Issue and Standard of Review

[12] The sole issue raised by the Applicant in his written submissions is whether the Officer made an unreasonable finding. However, at the hearing of this application, the Applicant also argued that he had been denied procedural fairness. The Respondent acknowledged that the Applicant's position can be characterized as a procedural fairness argument. The parties agree, and the Court concurs, that the standard of review applicable to the Officer's substantive decision is reasonableness but that the question whether the Applicant was denied procedural fairness is reviewable on a standard of correctness.

### IV. Analysis

[13] Mr. Gould's position is that to deny his application on a solely administrative ground was unfair and nonsensical in the context of this case. He argues that IRCC had full knowledge of his ongoing medical concerns, which were brought to their attention through the documentation provided in April 2016. He submits that IRCC had only made the request for information once,

by letter dated February 15, 2016, and it was apparent from Mr. Gould's response that he believed he had satisfied their request for documentation through his correspondence in April 2016.

[14] Mr. Gould refers to *Hameed v Canada (Minister of Citizenship and Immigration)*, 2008 FC 271, at para 50, for the principle that the failure of an administrative decision maker to use rationality or common sense in a decision can be characterized as a patently unreasonable error. He submits that the law is not to be read and interpreted in a robotic, mindless manner (see *Taei v Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 293; *Hajariwala v Canada (Minister of Employment and Immigration)*, [1989] FC 79).

[15] Mr. Gould further submits that an officer errs when insisting on a mechanical application of a rule without applying common sense (see *Castro v Canada (Minister of Citizenship and Immigration)*, 2005 FC 659 [*Castro*]) and that the above principles take on special import when the consequences to the applicant are grave (see *Lim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 657 [*Lim*]). His position is that this is such a situation, as there are no automatic appeal rights for a refused application, and his only recourse is to submit an application for leave for judicial review or a new application for permanent residence from outside Canada.

[16] In reliance on this jurisprudence, Mr. Gould argues that IRCC must apply common sense and not simply apply a rule mechanically, especially when the consequences of refusal are dire. He submits that in his case, it is non-sensical to deny a sponsorship application based on a purely

technical ground over three years after it had been submitted, without providing the applicant an opportunity to rectify the error. Mr. Gould submits that it was obvious he was under the mistaken belief that he had provided what was needed of him, and that he was suffering from major health conditions. Flexibility was shown to him in processing other decisions on this file, in terms of deadlines and in the type of documentation that was found to be acceptable. He argues that a more common sense based approach would have allowed him an opportunity to provide the required evidence.

[17] Mr. Gould further submits that the Officer's decision is inconsistent with the goal of IRPA to facilitate family reunification. He notes that IRCC had already reached the conclusion that the Applicant and sponsor were in a genuine spousal relationship.

[18] At the hearing of this application for judicial review, the Applicant characterized the crux of his argument as being that the Officer had an onus, after receiving Mr. Gould's April 15, 2016 submission, to clarify what the Officer had requested and to request that information again. He argues that the Officer's failure to do so represents a breach of procedural fairness. The Respondent takes the position that the Officer had no such obligation.

[19] I find no merit to Mr. Gould's position. His application was not refused based solely on an administrative or technical ground as he argues. Rather, the concern that the Officer was seeking to address in the February 15, 2016 request for documentation and information was whether Mr. Gould was criminally inadmissible to Canada. Under s. 21(1) of IRPA and s. 72(1)

of IRPR, the Officer could not grant Mr. Gould permanent resident status unless satisfied that Mr. Gould was not inadmissible.

[20] After receiving the FBI clearance certificate which raised concerns about a criminal history, and indeed a criminal history which had not been disclosed, the Officer gave Mr. Gould an opportunity to address those concerns. Following receipt of the submissions from Mr. Gould on April 15, 2016 in response to the Officer's request, the Officer remained unsatisfied that Mr. Gould was not inadmissible. Given that Mr. Gould failed to provide the documentation, information and explanations requested by the Officer, I find no basis to conclude that this decision was unreasonable.

[21] Nor do I find the Officer to have breached the obligation of procedural fairness. In the February 15, 2016 request, the Officer requested specific documentation and information, including explanations from Mr. Gould. Mr. Gould requested an extension of time to provide this information, and the Officer granted that request. Mr. Gould was advised in both the February 15, 2016 request and the April 15, 2016 extension that, if he was unable to provide any or all of the requested documents or information, he should explain why they were not available, and that no other reminder would be sent to him. These letters also stated that, if Mr. Gould failed to provide the requested information, his application would be assessed based on the information that IRCC had, which could result in the refusal of his application. These communications met the Officer's procedural fairness obligations.



[22] Mr. Gould's position is not enhanced by the fact that his April 15, 2016 submission stated that he was submitting the requested documents. He argues that this indicates his belief he had complied with the Officer's request and that the Officer therefore had an obligation to seek clarification. While Mr. Gould's submission attaches documentation identifying his medical condition, and the Officer references this in the GCMS notes, there is no indication that Mr. Gould intended to submit anything further. Having received this submission from Mr. Gould, it was both reasonable and procedurally fair for the Officer to proceed on the basis that Mr. Gould had submitted what he intended to provide in response to the Officer's request and to reach a decision on that basis. As noted by the Respondent, the principle of procedural fairness does not require officers to provide applicants with a "running score" of the weaknesses in their applications (see *Rahim v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1252 [*Rahim*], at para 14).

[23] Mr. Gould argues that *Rahim* is distinguishable, as it was decided in the context of an application that did not meet statutory requirements, while his case involved requests by the Officer in which the Officer could have shown flexibility. I disagree, as the Officer in the present case was assessing whether Mr. Gould's application met the statutory requirement that he not be inadmissible. I find no basis for a conclusion that Mr. Gould was entitled to a running score or further reminders surrounding his satisfaction of this requirement, particularly as he had been advised expressly what the Officer required.

[24] Nor do I find Mr. Gould's position enhanced by the fact that the Officer had previously shown flexibility as to the evidence required surrounding Mr. Gould's divorce or the timing of

provision of that evidence. Mr. Gould has cited no jurisprudential support for the position that the Officer's previous actions would give rise to additional procedural fairness obligations on the facts of this case. Nor are the facts supportive of such a position. After requesting the information on Mr. Gould's criminal history, the Officer again demonstrated flexibility in timing by granting the requested extension of time. Unlike the Statutory Declaration which represented an alternative basis for the Officer to reach a satisfactory conclusion surrounding Mr. Gould's marital history, Mr. Gould did not submit documentation or information which might have represented an alternative basis for the Officer to resolve the concerns surrounding his criminal history.

[25] Finally, I find the jurisprudence relied upon by Mr. Gould to be distinguishable and of little application to the facts of this case. Noting his particular emphasis upon *Castro* and *Lim*, I do not find the Officer's decision to have been made in a mechanical or robotic manner, or to be lacking in common sense. Rather, it represents a reasonable decision on substantive requirements of the IRPA and the IRPR, based on the evidence before the Officer, after having met the requirement of procedural fairness to give Mr. Gould an opportunity to address the Officer's concerns.

[26] This application for judicial review must therefore be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

“Richard F. Southcott”

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Judge

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

**DOCKET:** IMM-3645-16

**STYLE OF CAUSE:** ANWAR HAQ GOULD V THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 22, 2017

**JUDGMENT AND REASONS:** SOUTHCOTT J.

**DATED:** MARCH 28, 2017

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