

**Date: 20080421**

**Docket: IMM-1513-07**

**Citation: 2008 FC 515**

**Ottawa, Ontario, April 21, 2008**

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

**BETWEEN:**

**MOHAMED MOUSSA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] This is an application for judicial review brought by the Applicant, Mohamed Ibrahim Youssef Moussa, challenging the February 1, 2007 decision by a Visa Officer (the “Officer”), denying his application for permanent residence.

**II. Background**

[2] In June 2000, the Applicant submitted an application for permanent residence to the Canadian High Commission in London, England. He was seeking to come to Canada from Saudi

Arabia as a member of the Skilled Worker Class, specifically as a Civil Engineer. His application was denied because he failed to provide requested supporting documentation.

[3] The following is a chronology of events which unfolded after the Applicant attended his personal interview in Riyadh on March 16, 2006:

- April 18, 2006: the Applicant was required to produce a translated Saudi police clearance document, recent photographs of him and his family along with updated Immigration (IMM8) forms.
- On June 27, 2006, the Immigration Division of the High Commission received from the Applicant a police certificate for Saudi Arabia; the certificate was not accompanied by an official translation. The Immigration Division returned the document to the Applicant and requested an “official translations” as well as the updated photos and IMM8 forms. The Applicant was given 60 to comply.
- October 30, 2006: The Applicant was reminded by letter from the Immigration Division that the requested documents had not been received, that they were required in order to complete the assessment and warned that failure to provide the documents could result in the refusal of his application.
- November 9, 2006: The Applicant’s law firm by fax to the Immigration Division acknowledged that they had received the October, 2006, “final notice” and stated they had not received the April 18 and June 27, 2006 requests. The lawyers requested an extension until December 30 2006 to submit the requested documents since the Applicant was working in a remote region and could not be reached. The fax was received by the Immigration Division on November 13, 2006.
- November 16, 2006: The Officer’s CAIPS notes indicate that the previous requests were all sent to the address “as given on current letter from consultant”. Nevertheless, the requested extension was granted.
- January 5, 2007: The requested documents were not yet received. The Immigration Division extended the deadline a further 30 days.
- January 26, 2007: The Officer noted that the Applicant had sufficient time to comply with the requests, prepared the refusal letter and refund.

- January 29, 2007: The Applicant's lawyer informed the Immigration Division by e-mail that they did speak with the Applicant a week earlier and stated that he would comply as soon as possible and requested a further three month extension.
- February 1, 2007: A refusal letter was signed and mailed to the Applicant.

[4] On April 12, 2007, the Applicant filed the within application for judicial review of the Officer's decision.

### III. Issue

[5] The only issue before the Court is whether or not the visa officer breached his duty of procedural fairness by not further extending the time limit for filing.

[6] On questions of procedural fairness, there is no need to conduct a pragmatic and functional analysis in order to determine a standard of review: *Ha v. Canada (Minister of Citizenship and Immigration)* 2004 FCA 49, [2004] 3 F.C.R. 195 at paras. 42-45. A reviewing court will intervene if it is satisfied that a breach of procedural fairness, material to the outcome, is established in the making of an administrative decision.

### IV. Analysis

[7] The Applicant argues that the Respondent breached his duty of fairness: first, by refusing to consider the Applicant's documents which had been delivered to the Immigration Division by the Postal Service via Express Post; second, by failing to consider the Applicant's explanation for the delay in providing the additional documents and refusing to grant an extension of time based on the

explanation; and third, by failing to take into account the failure of the Postal Service to deliver the documents and again grant an extension by reasons of this failure.

[8] The Applicant further alleges that the Respondent may have sent the requests to the wrong address. In support of this contention, the Applicant points to a letter from the Immigration Division with an incomplete address of the Applicant's lawyer. On the face of that letter, the lawyer's office suite number was missing.

[9] Finally, the Applicant states that because he did not receive the April 18 and June 27, 2006 requests, he did not know that an "official" translation of the Saudi police clearance document was requested. The Applicant argues that he was under the impression that a translated copy had been produced and delivered.

[10] In support of his arguments, the Applicant produced the affidavit of Wanda Enman, law clerk to the Applicant's lawyer. This affidavit essentially confirms the difficulties the law firm had in communicating with the Applicant. The affidavit also confirms that the Applicant had received a request in May of 2006, directly from the Officer, asking for the production of the impugned documents. The law clerk attests that she was informed by the Applicant that the requested documents were sent by him to the Immigration Division on June 14, 2006 via Express Post. There is no evidence to indicate that this parcel was ever received by the Immigration Division.

[11] The Applicant did not file an affidavit, nor was any other evidence in support of his arguments filed on this application.

[12] Even if I were persuaded that the Applicant had indeed sent the requested documents on June 14, 2006, and that he was unaware the Officer was looking for an “official” translation of the Saudi police clearance document, and I make no such determinations, I remain unconvinced, for the reasons that follow, that the Officer breached his duty of fairness to the Applicant.

[13] The certified record, which contains the Applicant’s CAIPS Notes, was sent to the Applicant on November 8, 2007. The Applicant was therefore aware of the information contained in the Notes. These make clear that the Saudi police clearance document sent in June 2006 was not accepted because its translation was not official and that updated photos and forms were never received. These facts are not addressed in the Applicant’s evidence on this application nor in his written submissions. At the hearing, counsel for the Applicant argued that the Applicant was unaware of the nature of the request, that is, the problem with the “official” translation since he had not received the April 18 and June 27, 2006 requests.

[14] In any event, there is no dispute that the Applicant was aware since November 9, 2006, of the precise nature of the issues that remained outstanding in his application. At that time he was aware of the contents of the April 18 and June 27, 2006 requests by the Officer. He knew then that an official translation of the police certificate was required and had not been received and that the updated IMM8 forms and photos had not been received. He also knew that these documents had

been first requested by the Officer in April 2006. Notwithstanding these delays, the Officer afforded the Applicant two further extensions to produce the documents: first until December, 30, 2006 and then, until the end of January, 2007. The requested documents were never received from the Applicant. In the circumstances, the Applicant should have realized that there was some urgency in complying with the request. On January 29, 2007, the Immigration Division did receive a request from the Applicant's lawyer for a further three month extension. The Applicant's lawyers explained their inability to reach the Applicant and nonetheless stated they had spoken with him a week earlier. No further specific evidence was adduced explaining the nature of the Applicant's inability to communicate with his lawyers or the Immigration Division. His whereabouts are unknown to the Court. All we know is from the law clerk's affidavit that the Applicant is working in a remote area and could not be reached.

[15] In these circumstances, the Officer did not breach his duty of fairness owed to the Applicant. The Applicant had been given ample opportunity to comply with the Officer's request to produce the documents. I am satisfied that the documents requested were relevant to the application and that it was reasonable for the Officer to require them pursuant to subsection 16(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. The Applicant was under an obligation to produce the requested documents. Since they were not produced, it was therefore open to the Officer to refuse the application for the reasons he did. In so doing, the Officer did not breach his duty of fairness owed to the Applicant.

[16] For the above reasons, the application for judicial review will be dismissed.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that**

1. The application for judicial review of the Immigration Officer's decision rendered on February 1, 2007 is dismissed.

“Edmond P. Blanchard”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1513-07

**STYLE OF CAUSE:** MOHAMED MOUSSA v. MINISTERS OF  
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**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 7, 2008

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

**DATED:** April 21, 2008

**APPEARANCES:**

Ms. Zahara Khedri  
416.690.3444

FOR THE APPLICANT

Ms. Asha Gafar  
416.973.3151

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Ms. Zahara Khedri  
Toronto, Ontario

FOR THE APPLICANT

John H. Sims, Q.C.  
Deputy Attorney General of Canada

FOR THE RESPONDENT