

CANADA / JUDGMENT

## Aksoy v. Canada (Citizenship and Immigration)

2026 FC 566

COURT

Federal Court

DECIDED

29 April 2026

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Citation: 2026 FC 566

Ottawa, Ontario, April 29, 2026

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

YUSUF AKSOY

Applicant

and

## THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

**JUDGMENT AND REASONS**

I. Overview [1] The Applicant alleges a breach of procedural fairness based on the ineffective assistance of his former counsel in his underlying Pre-Removal Risk Assessment [PRRA] application. In raising this allegation, however, Applicant's current counsel failed to comply with the Court's protocol regarding Allegations against former counsel or another authorized representative in Citizenship, Immigration and Refugee Cases before the Federal Court [Protocol]. Specifically, current counsel never served the perfected application on former counsel, as required by the Protocol.

[2] Notwithstanding this non-compliance, I have considered the allegations of ineffective assistance of former counsel on their merits. The Applicant has failed to establish the threshold requirement of a solicitor-client relationship between himself and former counsel on the PRRA application. Furthermore, the Applicant has failed to satisfy the performance component of the legal test for ineffective assistance of counsel.

[3] For these reasons, I am dismissing the application for judicial review.

II. Background [4] The Applicant, a citizen of Türkiye, sought asylum in October 2023. He retained former counsel to represent him on the asylum claim with a legal aid certificate. An interpreter assisted former counsel with the preparation of that claim. The claim was, however, deemed to be ineligible and the Applicant was issued a deportation order in February 2024.

[5] The Applicant was given an opportunity to apply for a PRRA, which was submitted by the interpreter on the Applicant's behalf in April 2024. That application did not provide any supporting reasons, simply stating: "Please see my affidavit and my lawyer's submissions": PRRA application, Certified Tribunal Record [CTR] at 17. Nothing was, however, appended to the PRRA application and no further information was filed in support. As a result, the PRRA application was dismissed in October 2024 because of the Applicant's failure to identify any risk factors: PRRA Decision at 4, CTR at 7.

[6] The Applicant seeks judicial review of the PRRA refusal. Applicant's current counsel notified former counsel that "an allegation of incompetence and negligence" was being made against him in this application. More particularly, the Applicant alleged that former counsel and the interpreter he "enlists to assist" were retained in relation to his PRRA application and that they failed to submit any evidence: Letter dated January 1, 2025, Applicant's Record [AR] at 55.

[7] Former counsel responded to this allegation, denying that he had been retained to act for the Applicant on his PRRA application, and stating that the interpreter did not file the PRRA application on his behalf or with his authority: Letter dated January 8, 2025, AR at 66–69.

III. Analysis A. The Applicant has failed to establish ineffective assistance by former counsel [8] The Court's approach to assessing allegations of ineffective assistance of counsel in a judicial review application under the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA] is well-established. First, as a prerequisite for the Court to consider the allegations, applicant's current counsel must give former counsel notice of, and a reasonable opportunity to respond to, the allegations. This procedure is set out in the Court's Protocol.

- [9] Second, on the merits of the allegation, an applicant must demonstrate that former counsel's conduct was negligent or incompetent (the performance component). They must also establish that former counsel's incompetence resulted in a miscarriage of justice (the prejudice component): *El Khatib v Canada (Citizenship and Immigration)*, 2025 FC 49 at paras 10–11 [El Khatib]; *Uwa v Canada (Citizenship and Immigration)*, 2024 FC 1721 at para 9; *Brown v Canada (Citizenship and Immigration)*, 2024 FC 105 at para 17; *Discua v Canada (Citizenship and Immigration)*, 2023 FC 137 at para 30 [Discua].
- [10] As I noted at the hearing, it is very troubling that Applicant's current counsel, in levying these allegations of incompetence against former counsel, has himself failed to properly represent his client's interests. His failure to comply with the Court's Protocol is even more concerning given that he was recently admonished by Justice Fuhrer in another application concerning his non-compliance with the Protocol: *Aydin v Canada (Citizenship and Immigration)*, 2025 FC 359 at paras 16–20 [Aydin].
- [11] Furthermore, the Memorandum of Argument filed by Applicant's current counsel only consists of two paragraphs of legal argument. It fails to address the relevant issues, including notice to former counsel and the legal test for establishing ineffective assistance of counsel. The only jurisprudence referred to is *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. At the judicial review hearing, current counsel conceded his failings, referring to them as "lapses in judgment" and "conduct below par".
- (1) Non-compliance with the Protocol [12] The Court first adopted the Protocol in March 2014. It was subsequently updated and is presently set out in the Federal Court's Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings (last amended December 31, 2025).
- [13] The purpose of the Protocol is to assist the Court in adjudicating applications that raise allegations of ineffective assistance of counsel and to ensure a procedurally fair process for all parties. In that vein, the Protocol provides for notice to former counsel and an opportunity to respond to the allegations at three junctures: *El Khatib* at para 14; *Discua* at paras 34–35.
- [14] First, before raising the issue in an application for leave and for judicial review, applicant's current counsel must notify former counsel in writing, providing a concise summary of the allegations. In addition, the applicant must waive any applicable privilege and provide a copy of the Protocol to former counsel: Protocol at para 50.

- [15] Second, if the applicant decides to pursue the allegations, applicant's current counsel must serve former counsel with the perfected application, and proof of service must be provided to the Court: Protocol at para 52. Third, applicant's current counsel must provide former counsel a copy of the Court's order granting leave and setting the matter down for a hearing "forthwith": Protocol at para 57(i).
- [16] In this case, Applicant's current counsel only complied at the first juncture. He sent former counsel a letter setting out the general allegations of ineffective assistance: Letter dated January 1, 2025, AR at 55–56. In response, former counsel filed submissions denying that he was ever retained to represent the Applicant in his PRRA application: Letter dated January 8, 2025, AR at 66–69.
- [17] Applicant's current counsel failed, however, to serve former counsel with the perfected application. Furthermore, he did not serve former counsel "forthwith" with the Court's order granting leave, dated January 22, 2026. Indeed, Applicant's current counsel served former counsel with the leave order on April 2, 2026, less than two weeks before the judicial review hearing. This was only after the Court issued a Direction on March 30, 2026, requiring current counsel to confirm that he had complied with the Protocol in this regard.
- [18] This Court has exercised its discretion and adjudicated allegations of ineffective counsel where an applicant has not fully complied with the Protocol. The relevant considerations are whether former counsel had sufficient notice and an opportunity to decide whether to respond to the allegations, and whether the Court's fact-finding function has been prejudiced: *Bailey v Canada (Citizenship and Immigration)*, 2025 FC 1299 at para 17; *El Khatib* at para 19; *Discua* at para 36.
- [19] The overriding concern here is that former counsel was never provided the Applicant's perfected application. This is significant because the Applicant's Record includes an affidavit from the Applicant which sets out his allegations of incompetence in considerably more detail than what was conveyed to former counsel in current counsel's notice: Affidavit of Yusuf Aksoy, affirmed December 31, 2024 [Applicant's affidavit], AR at 26–53. This omission is particularly problematic given that current counsel relied heavily on this affidavit, and the details contained therein, at the judicial review hearing.
- [20] I recognize that former counsel was ultimately provided with the Court's order granting leave and he did not seek leave to intervene, as the Protocol permits. However, this does not allay my concerns about current counsel's failure to provide former counsel with the perfected application. Without the Applicant's Record, former counsel could not make an informed decision about whether to respond at the leave stage or to seek leave to intervene once the Court granted leave: Protocol at paras 54, 57(ii). The Protocol specifically requires that notice be given to former counsel at three different junctures so that counsel may decide whether they wish to participate at each distinct juncture of the proceedings.

- [21] In the circumstances, I find that Applicant's current counsel's failure to comply with the Protocol also prejudiced the Court's fact-finding function. I do not agree with current counsel that his non-compliance is "inconsequential". Rather, it is significant and, unlike in other cases, was not remedied. Non-compliance in this case is sufficient to dismiss the judicial review application. However, in fairness to the Applicant, I have nevertheless considered his allegations of ineffective assistance of former counsel on their merits.
- (2) The Applicant has not established a solicitor-client relationship [22] In my view, the Applicant's allegations fail on their merits because he has not established the threshold requirement that former counsel was representing him on his PRRA application: *Hassan v Canada (Citizenship and Immigration)*, 2025 FC 1501 at para 17; *Singh v Canada (Citizenship and Immigration)*, 2023 FC 981 at paras 22–50 [Singh]; *Guadron v Canada (Citizenship and Immigration)*, 2014 FC 1092 at para 22 [Guadron].
- [23] It is important to recall that ineffective assistance of counsel will only constitute a breach of procedural fairness in "extraordinary or exceptional circumstances": *Sachdeva v Canada (Citizenship and Immigration)*, 2024 FC 1522 at para 49 [Sachdeva]; *Reyes Contreras v Canada (Citizenship and Immigration)*, 2023 FC 1453 at para 46 [Reyes Contreras]. Consequently, the burden of proof on applicants is high; they must clearly establish every element of the test: *Sachdeva* at para 22–23; *Reyes Contreras* at paras 37, 39.
- [24] As Justice Little explains, an applicant cannot succeed if "the evidence does not show that the applicant had legal counsel who could be alleged to have acted incompetently": *Singh* at para 49. Or, in the words of Justice Diner, in the absence of such evidence, "the attendant obligations of competent representation [cannot] ensue": *Guadron* at para 22.
- [25] Where legal representation is in contention, as in this case, the burden is on the applicant to establish a solicitor-client relationship with clear and unequivocal evidence. I agree with Justice Little that the starting point for determining whether a legal relationship arises between an applicant and their former counsel in Ontario is the definition of "client" in the Law Society of Ontario's Rules of Professional Conduct: *Singh* at paras 23–24.
- [26] The Rules of Professional Conduct define "client" as follows:
- "client" means a person who:*
- (a) consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or
  - (b) having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on their behalf and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work;

[Emphasis added]

- [27] Based on this definition, a solicitor-client relationship may be established in one of two ways: (i) where an individual consults a lawyer and the lawyer “renders or agrees to render legal services” on their behalf; or (ii) after having consulted the lawyer, an individual “reasonably concludes that the lawyer has agreed to render legal services on their behalf”.
- [28] A formal retainer is not required to establish a solicitor-client relationship. It may instead be established by several other “signs or indicia”. These include meetings or correspondence between the lawyer and the individual, a bill rendered, instructions provided by the individual to the lawyer, and/or legal advice provided by the lawyer to the individual: Singh at paras 25–26.
- [29] Thus, central to establishing a solicitor-client relationship is the individual’s consultation with the lawyer and some form of communication with the said lawyer. This is precisely what is lacking in this case. The Applicant never consulted former counsel about filing a PRRA application. Indeed, the Applicant acknowledges that he never met with, spoke with, or communicated with former counsel regarding his PRRA application until after it was refused.
- [30] Rather, the Applicant relies upon his dealings with the interpreter as evidence that he had retained both the interpreter and former counsel to represent him on his PRRA application. He asserts that his refugee claim was also handled in this manner, namely that he only directly dealt with the interpreter. However, he cites no jurisprudence supporting the proposition that a third party’s actions may bind a lawyer and thereby ground a solicitor-client relationship.
- [31] Even if a solicitor-client relationship could, in principle, be established based on the Applicant’s dealings with the interpreter, I find that there is insufficient evidence in this regard. The Applicant did not file a personal affidavit in support of this judicial review application. The only affidavit filed is that of a law clerk from current counsel’s office, which attaches, as an exhibit, excerpts of the Applicant’s affidavit filed in support of his stay motion.
- [32] For the following reasons, I agree with the Respondent that the Applicant’s “failure to furnish first-hand sworn evidence concerning his allegations, is fatal to his application”: Respondent’s Further Memorandum of Argument at para 18.
- [33] Notably, in Aydin, current counsel relied on the same approach, appending the applicant’s stay-motion affidavit as an exhibit to an affidavit filed on the merits. In that case, Justice Fuhrer explained that a personal affidavit may not be required in all applications but, where the error cannot be found in the CTR, the Court may assign no probative value or weight to the third party “attaching affidavit”. This is because an attaching affidavit does not verify facts: Aydin at paras 22–24. Ultimately, Justice Fuhrer concluded there was “no acceptable evidentiary foundation” to support a breach of procedural fairness: Aydin at para 35.

[34] This Court has consistently rejected affidavits which simply attach, as exhibits, the substantive evidence of another person because this shields the evidence from cross-examination: *Sharif v Canada (Citizenship and Immigration)*, 2025 FC 1152 at para 8; *Rainy River First Nations v Bombay*, 2022 FC 1434 at para 35; *Qui v Canada (Citizenship and Immigration)*, 2019 FC 1162 at para 7; *ME2 Productions, Inc v Doe #1*, 2019 FC 214 at para 97. Here, the Applicant's affidavit evidence strikes at the very core of the allegations of ineffective assistance of former counsel and is relied on to exclusively support his application. Yet, his evidence could not be tested on cross-examination.

[35] Moreover, this Court has held that an affidavit filed in support of an interlocutory motion becomes "spent" once that motion is decided: *Blank v Canada (Justice)*, 2015 FC 753 at para 33; affirmed *Blank v Canada (Justice)*, 2016 FCA 189.

[36] In his response to the Applicant's notice of allegations, former counsel denies that he was retained by the Applicant on his PRRA application. Former counsel also asserts that the interpreter was an independent contractor, acting without his authorization in filing the Applicant's PRRA application. More specifically, former counsel states:

He was retained by the Applicant on his refugee claim, with a legal aid certificate;

He met with the Applicant and prepared his refugee application with the assistance of the interpreter, who is an independent contractor;

He was never retained by the Applicant on his PRRA application, nor did he receive any correspondence from him prior to his PRRA application regarding his intention to retain him as counsel;

He never received a legal aid certificate for the Applicant's PRRA file nor acknowledged any certificate issued by Legal Aid Ontario for the PRRA application;

The interpreter "wrote [his] name on [the Applicant's] PRRA application form without [his] authorization and sent the PRRA form himself by mail without [his] authorization";

Although he speaks the Applicant's language, the Applicant had his contact information, and they "met before a couple of times", the Applicant never contacted him regarding his PRRA application and did not indicate that he would like to retain him;

The interpreter "acted on his own" in submitting the Applicant's PRRA application;

The interpreter is not an employee of the former counsel's law firm. The interpreter's "involvement with [his] practice is only on a case-by-case basis when the claimants require interpretation and translation services due to language or dialect barriers".

Letter dated January 8, 2025 at paras 1–2, 4–10, AR at 66–69.

- [37] The Applicant failed to file any evidence to counter former counsel's response. There was ample time for him to do so as former counsel's response was filed on January 8, 2025, over one month before the Applicant perfected his application. He also could have filed a further affidavit after leave was granted. Having filed no evidence in response, former counsel's statements are unchallenged.
- [38] Moreover, there is insufficient evidence to support the Applicant's argument that he reasonably believed that former counsel was representing him on his PRRA application based on his dealings with the interpreter and how his refugee claim was handled. Regarding the former, the Applicant should have, at the very least, filed evidence of his communications with the interpreter. The Applicant notes that he primarily corresponded with the interpreter via WhatsApp and sometimes by email: Applicant's affidavit at para 15, AR at 28. As I stated at the hearing, important evidence is missing for the Court to adjudicate the Applicant's allegations.
- [39] With respect to the latter issue, there are several significant differences between how the Applicant's refugee and PRRA claims were handled. Former counsel filed a Use of a Representative form with the Applicant's refugee claim, but none was filed on the PRRA application. In addition, former counsel was retained with a legal aid certificate on the refugee claim, but former counsel did not receive one from the Applicant on the PRRA application. Finally, there is evidence of email communications between the Applicant, former counsel, and the interpreter, regarding the finalizing of the Applicant's refugee claim: Letter dated January 8, 2025, AR at 70. There is no such evidence of any communications including former counsel on the Applicant's PRRA application.
- [40] At the hearing, Applicant's current counsel referred to April and May 2024 emails exchanged between former counsel and the interpreter. These emails, however, do not establish a solicitor-client relationship. Former counsel, in his response, characterizes the emails as "unsolicited" and did not respond to them. Moreover, the record does not establish that former counsel was aware, at that time, that his law firm's address had been listed on the Applicant's PRRA application form.
- [41] There is insufficient evidence to establish the threshold issue of a solicitor-client relationship between former counsel and the Applicant for the purposes of his PRRA application.
- (3) There is no clear evidence of incompetence [42] The Applicant has also failed to demonstrate that former counsel's conduct was negligent or incompetent (the performance component): El Khatib at para 11. In that respect, allegations must be "specific and clearly supported by the evidence": Discua at para 53.
- [43] Here, the Applicant claims that the incompetence in question is the failure of former counsel and the interpreter to file any evidence in support of his PRRA application. It is undisputed that no evidence was filed. Rather, the contentious issue is whose fault it was.

[44] Significantly, former counsel submitted documentary evidence, namely an email wherein the interpreter advises him that the Applicant failed to provide him with evidence to submit in support of his PRRA application: Letter dated January 8, 2025, AR at 72. The Applicant disputes that the failure to submit evidence was his own fault. In his affidavit, the Applicant states: “I was under the impression that we had finished my affidavit for my PRRA application”: Applicant’s affidavit at para 15, AR at 28. The Applicant did not, however, submit any evidence in that regard. The Applicant could, for example, have adduced evidence of his communications with the interpreter to support that he had provided the interpreter with the requisite evidence for filing.

[45] For these reasons, the Applicant has failed to satisfy the high burden of proving incompetence with clear and unequivocal evidence: *Oppong-Sagoe v Canada (Citizenship and Immigration)*, 2025 FC 1154 at para 27; *Sachdeva* at para 22.

IV. Conclusion [46] Based on the foregoing, the Applicant has not established his allegations of a breach of procedural fairness. The application for judicial review is therefore dismissed. Should another removal order be issued, however, the Applicant will be eligible to submit a further PRRA application, as more than 12 months have elapsed since his last application: IRPA, s 112.

[47] In the circumstances, I am taking the exceptional step of requiring Applicant’s current counsel to provide a translation of this Judgment and Reasons to the Applicant, as I understand that he may not be fluent in English. The translation should be prepared promptly by an accredited translator at current counsel’s personal expense: *Balendra v Canada (Citizenship and Immigration)*, 2026 FC 423 at para 14.

[48] The parties did not propose a question for certification, and I agree that none arise.

JUDGMENT in IMM-24757-24

THIS COURT’S JUDGMENT is that:

The application for judicial review is dismissed.

Applicant’s current counsel shall promptly provide the Applicant with a translation of this Judgment and Reasons, prepared by an accredited translator, at counsel’s personal expense.

No question is certified for appeal.

*“Anne M. Turley”*

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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