

CANADA / JUDGMENT

Devgon v. Canada (Citizenship and Immigration)

2025 FC 2005

COURT

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DECIDED

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Decision Content

Date: 20251218

Docket: IMM-23491-24

Citation: 2025 FC 2005

Toronto, Ontario, December 18, 2025

PRESENT: The Honourable Justice Battista

BETWEEN:

PREET KAMAL DEVGON

JASVIR SINGH,

KULDEEP KAUR

Applicants

and

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Respondent has developed very specific, technical requirements for the determination of a complete family class application. The impact of these requirements for applicants is that if they miss a detail in the requirements, they lose an opportunity to obtain permanent residence, perhaps permanently. The impact of the requirements for the Respondent is that if its delegates misinterpret the highly technical definition of a complete application, the return of an application for incompleteness is not justified.

[2] The Applicants challenge the return of their sponsored family class application because it was incomplete, and in addition they challenge the refusal of their reconsideration request. They argue that their present circumstances are the result of incompetence on the part of their former counsel.

[3] The Respondent states that the return of the Applicants' application is "non-justiciable," and the reconsideration request could not be accepted because "an incomplete application" means there was no existing application to be reconsidered. In the alternative, the Respondent argues that the decisions to return the application and the refusal to reconsider were reasonable and procedurally fair.

[4] For the reasons below, I find the return of the Applicants' application for incompleteness to be justiciable, and the decision to return the application to be unreasonable. As such, it is unnecessary to deal with the refusal of the reconsideration request and the alleged incompetence of former counsel.

II. Background [5] After receiving an invitation to apply, Preet Kamal Devgon applied to sponsor the permanent resident applications of her parents, Jasvir Singh and Kuldeep Kaur (the "Applicants"). After filing the applications, an Immigration, Refugees and Citizenship Canada (IRCC) Application Intake Officer (the "Officer") advised the Applicants that documents were missing from their applications, including resumes/CVs for the Applicants that go back to age 18. They were advised to submit CVs with no chronological gaps.

[6] The Applicants submitted their CVs, one of which contained a one-year chronological gap. The Officer then returned the application as incomplete.

- [7] The Applicants submitted a request for reconsideration on the basis that the application was complete because they had in fact provided the requested CVs. To this request, they attached a CV with no chronological gaps. IRCC responded by stating:

We have received your request for reconsideration and after careful review, we have determined that your application is incomplete and does not meet the requirements for processing. Therefore, your request cannot be accepted.

III. Issues and Standard of Review [8] The issue of justiciability does not involve a standard of review because it is a threshold question unrelated to the substantive review of an administrative decision. Instead, the question of justiciability is resolved through the application of principles related to institutional and constitutional standards that answer the question of whether a matter is inappropriate for judicial involvement (*Friends of the Earth v Canada (Governor in Council)*, 2008 FC 1183 [*Friends of the Earth*] at paras 19, 24-26).

- [9] Assuming that justiciability is established, the return of the application is reviewable pursuant to the reasonableness standard set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], and affirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21. A reasonable decision is one that is justified in light of the legal and factual constraints bearing on the decision (*Vavilov*, at paras 105-107).

IV. Analysis A. The challenge to the return of the application is justiciable [10] The Respondent argues that a decision to return an application for “incompleteness” is not a “matter” under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, because the return of an application does not affect the rights of a party, impose legal obligations, or prejudicially affect the party directly (*Sadeghian v Canada (Minister of Citizenship and Immigration)*, 2024 FC 1144 [*Sadeghian*] at paras 7-8; *Sheikh v Canada (Citizenship and Immigration)*, 2020 FC 199 [*Sheikh*]).

- [11] However, the decisions relied upon by the Respondent do not establish that a decision to return an application for incompleteness is non-justiciable. *Sheikh* and *Sadeghian*, the Respondent’s principal authorities, establish that an applicant’s inability to comply with the threshold requirements to file an application is not a “matter” capable of review. There is a difference between the threshold requirements granting a right to file an application, and the requirements governing the completeness of an application once permission to file the application has been granted.

- [12] Canada’s immigration processing regime initially allowed applicants to file applications simply by submitting necessary forms and documents demonstrating that they meet the legislative and regulatory requirements in an immigration stream. This changed in 2008 when section 87.3 was added to the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], giving the Minister authority, among other authorities, to control the intake of applications through the use of Ministerial Instructions.

- [13] One of the ways that the Minister was empowered to control application intake was through the establishment of threshold requirements that must be met before permitting applicants to file applications in certain immigration streams. These requirements are similar to “leave” requirements in the judicial system, effectively granting permission to move to the full consideration of an applicant’s claim. They can take the form of demonstrating certain work or education experience, or, as in the present case, being selected through a lottery. Applicants are informed that they have met threshold requirements when they receive an invitation to make an application, or “invitation to apply” (IRPA, s 10.1). This process is distinct from the process to determine whether, after permission is granted to file an application, that application is complete.
- [14] As stated above, the cases relied upon by the Respondent relate to an applicant’s qualifications to be invited to make an application. They do not establish that the return of an application as incomplete is inherently non-justiciable.
- [15] In *Sheikh*, the Applicant attempted to file an application that was not tethered to the invitation which was extended for the filing of the application. In particular, information in the application was different from the information on the Expression of Interest (EOI) which led to the invitation. This was contrary to the Minister’s Instructions governing the criteria to receive an invitation to apply, and the Officer reassessed and then denied the invitation to apply because the Applicant did not meet the requirements for the invitation (*Sheikh*, at paras 3-8). The Applicant in *Sheikh* therefore did not properly make it past the threshold to file an application and the Court determined that the reassessment and denial of the invitation to apply was not a reviewable decision (*Sheikh*, at paras 46-56, 70-71).
- [16] The Court in *Sheikh* defined the dispute as “whether the Officer’s refusal to allow processing to occur at a particular time and under the scheme in place in 2018 should be subject to review in Court” (*Sheikh*, at para 52). The “scheme in place in 2018” was the lottery that generated invitations to apply (*Sheikh*, at para 51). The Court made it clear that “the refusal to process did not occur because the sponsorship application was non-compliant,” accentuating the distinction between the threshold requirement of receiving an invitation to apply, and the determination of whether an application filed pursuant to an invitation is complete. (*Sheikh*, at para 56). The matter shielded from review was the Applicant’s non-compliance with the invitation scheme for processing sponsorship applications (*Sheikh*, at para 68).
- [17] Similarly, *Sadeghian*, a parental sponsorship case, does not involve a decision to return an application for incompleteness. In *Sadeghian*, the Applicants were informed that an invitation to apply was not extended (*Sadeghian*, at para 3) and the Court found this not to be justiciable under section 18.1 of the Federal Courts Act. This again was a decision that refused to review the Applicants’ failure to pass the threshold requirements allowing them to file an application.

- [18] Finally, although it was raised by the Respondent in another context, it is worth clarifying the Federal Court of Appeal's decision in *Gennai v Canada* (Citizenship and Immigration), 2017 FCA 29 [Gennai] because this decision has at times been used as support for the proposition that the return of an application is not a "matter" within section 18.1 of the Federal Courts Act . The Appellant in *Gennai* was trying to revive a previous application, but it was blocked from processing by Ministerial Instructions requiring him to receive an Invitation to Apply through the Express Entry system (*Gennai*, at para 3). *Gennai* does not deal with justiciability or whether a returned application is a "matter" for the purpose of section 18.1 of the Federal Courts Act.
- [19] The issues in *Sheikh, Sadeghian* and *Gennai* are not before me. In *Sheikh and Sadeghian* there were no affected rights that were justiciable because the Applicants had no right to file applications in the first place. *Gennai* concerned the ability of an Applicant to revive a returned application under newly implemented threshold criteria.
- [20] In the present case, the Applicants received an invitation to apply under the 2024 sponsorship program for parents and grandparents. They crossed the threshold that blocked the Applicants in *Sheikh, Sadeghian* and *Gennai*. The question in the present case is whether it was reasonable to return their application as incomplete when measured against the definition of a complete application in the relevant processing instruments.
- [21] Applying the criteria governing justiciability (*Air Canada v Toronto Port Authority*, 2011 FCA 347 [Air Canada] at para 29), and the broad interpretation of "matter" under section 18.1 of the Federal Courts Act (*Sheikh*, at paras 61-62; *Mfudi v Canada* (Citizenship and Immigration), 2019 FC 1319 [Mfudi] at paras 6-7), I find the Applicants' challenge to the return of their application to be justiciable because it affected their rights and resulted in prejudice. Moreover, in its supervisory role over the rule of law, the Court has capacity and legitimacy in addressing the issues that the Applicants raise.
- [22] The decision to return the application affected the Applicants' right to file an application in pursuit of permanent residence. This right was conferred upon them by statute when they received an invitation to apply under subsection 10.1(1) of the IRPA. Without the invitation to apply, grounded in statutory authority, the Applicants would have no right to have their application processed. The Officer's decision to return their application affected this right.
- [23] The decision to return the application also affected the Applicants prejudicially because it deprived them of the right to pursue permanent residency via parental sponsorship. Counsel for the Applicants indicated in oral argument that the parental sponsorship program has been paused for 2025 (Canada, Immigration, Refugees and Citizenship Canada, "Update on 2025 Parents and Grandparents Program" (Ottawa: Government of Canada, 2025)).
- [24] Prior to the widespread use of Ministerial Instructions, the return of an application as incomplete was generally little more than an administrative inconvenience. Today, the return of an application for incompleteness in many immigration categories pushes

applicants backward two steps into a pool of tens of thousands of other applicants waiting for an invitation to apply, if it ever arrives, always at the risk of changed threshold criteria for an invitation. The determination of an application as “incomplete” not only prevents continued processing of the application, but it results in the application’s return, expunging the invitation to apply which was the threshold for filing the application. Given the competitiveness and uncertainty in obtaining a new invitation to apply, this results in significant prejudice.

- [25] Errors in the return of an application cannot therefore be characterized as purely clerical or administrative matters merely affecting a right to have applications “dealt with at a particular time in a particular way” (Sheikh, at paras 63 and 69).
- [26] Although it dealt with a separate issue, the Court in Sheikh emphasized that the conclusion of non-justiciability “would be different if the Applicant had, as a consequence of the [o]fficer’s [d]ecision, lost the right to sponsor his parents” (Sheikh, at para 69). In my view, there is no justification for limiting prejudice to the complete denial of application rights under the IRPA. It is sufficient that the return of the application impacted the Applicants’ rights and prejudicially affected them in some way, resulting in a “matter” in accordance with section 18.1 of the Federal Courts Act (Air Canada, at para 29; Mfudi, at paras 6-7).
- [27] The Respondent advances decisions of this Court that suggest the principle of non-justiciability applies broadly to all matters that are not “decisions” or matters that are non-compliant with Ministerial Instructions (*Filippiadis v Canada (Citizenship and Immigration)*, 2014 FC 685 at paras 3, 20-33; *Adnan*, at paras 9-10).
- [28] With respect, in my opinion, this approach casts the scope of non-justiciability too broadly, perceives prejudice too narrowly, and fails to account for the rule of law as a basis for assessing justiciability.
- [29] Justiciability was never intended to have closed criteria, but is contextual and flexible depending on the rights and interests at issue, animated by the broader question of whether it is appropriate and legitimate for the Court to intervene in a specific case (*Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at para 34; *La Rose v Canada*, 2023 FCA 241 at paras 28-30).
- [30] As stated above, the FCA has determined that a “matter” within the meaning of section 18.1 of the Federal Courts Act goes beyond decisions and orders to broadly include any matter in respect of which a remedy may be available under section 18.1 of the Federal Courts Act (*Air Canada*, at paras 24-25). As a result, the “clarification” in subsection 87.3(5) of the IRPA that the return of an application is not a decision has little impact on the justiciability of a matter: “[L]egislatures cannot shield administrative decision making from curial review entirely” (*Vavilov*, at para 24).

- [31] Non-justiciability should not be applied generally to all non-compliance with Ministerial Instructions because justiciability is concerned with the nature of the public power being reviewed in relation to its impact, and not the source of the power. Justiciability is established when there is capacity and legitimacy for the courts to review (Lorne Sossin, *The Rule of Law and Justiciability of Prerogative Powers: A Comment on Black v. Chrétien* (2002) 47:2 McGill LJ 435 [Sossin 2002] at 447). Capacity refers not to operational capacity — justiciability is not a workload management tool — but to whether the issue can be determined according to “objective, judicially cognizable standards and evidence” (Sossin 2002, at 447).
- [32] Judicial capacity of this Court exists in evaluating the return of applications for reasonableness and fairness. The Court routinely evaluates the decisions and actions of the Respondent against relevant legal constraints and factual constraints contained in the record.
- [33] Moreover, given the broad authority conferred to Ministerial Instructions, which includes the establishment of new programs, the development of program criteria, the imposition of program caps and moratoria, and conditions prior to and during processing (IRPA, ss 10.1-10.4, 14.1, 87.3), the extension of non-justiciability to all matters governed by Ministerial Instructions would have the effect of insulating the majority of processing activities and decisions under the IRPA from judicial review. Given the rule of law consequences for denying access to a court remedy, non-justiciability applied generally to matters governed by Ministerial Instructions is inappropriate because justiciability must necessarily be “open-ended” and context-specific (*Friends of the Earth*, at para 25 quoting Lorne Sossin, *Boundaries of Judicial Review: The Law of Justiciability in Canada*, 2nd ed (Scarborough: Carswell, 1999) at 4-5).
- [34] Further, the rule of law dimensions of justiciability provide legitimacy for court involvement given that “courts play a fundamental role in holding the executive and legislative branches of government to account in Canada’s constitutional order” (*Canada (Attorney General) v Power*, 2024 SCC 26 at para 56). As stated recently by the Court’s former Chief Justice:

While courts are generally expected to “avoid interfering in the management of public administration,” they have a duty to “act as vigilant guardians of constitutional rights and the rule of law.”

(*MacKinnon v Canada (Attorney General)*, 2025 FC 422 [MacKinnon] at para 83, citations omitted)

- [35] The general application of non-justiciability to matters governed by Ministerial Instructions presents rule of law challenges because Ministerial Instructions are not statutory instruments (IRPA, s 93) and their development and implementation bypasses the usual democratic processes, including public consultation and Parliamentary oversight, that are attached to the development of legislation and regulations. While this insulation from “front end” democratic input reflects Parliament’s intention, limitations on the justiciability of matters governed by Ministerial Instructions should be imposed with caution. The “back

end” limitation of judicial scrutiny combined with the lack of “front end” democratic scrutiny risks the authorization of fully unscrutinized executive action. This would be incompatible with the rule of law.

- [36] The rule of law is not an impractical, abstract concept. It is a democratic governance principle that arguably has greatest impact when it touches every individual subject to Canadian law in a tangible way (See also *Vavilov*, at para 95). It is the source of confidence in our governance institutions.
- [37] The rule of law requires the decision to return the Applicants’ application as incomplete to be justiciable (*MacKinnon*, at paras 83, 208-9). The error described below— the Officer’s imposition of an unjustified requirement to the requirements for a complete application — provides an example of the injustices that would result if determinations of complete applications were not justiciable. Requesting the Court to determine this matter non-justiciable is a request for the Court to turn its eyes away from unreasonableness in public administration, amounting to an abdication of the Court’s fundamental responsibility on judicial review.
- [38] As a result, I agree with my colleague Justice Anne Turley that “[d]ecisions to reject an application for incompleteness cannot be immune from judicial review where an applicant disputes the determination that it is indeed incomplete” (*Goel v Canada (Citizenship and Immigration)*, 2025 FC 275 at para 9).

B. The decision to return the application is unreasonable [39] The Respondent argues that the decision to return the application as incomplete was reasonable because the Applicant did not comply with the requirements of the Ministerial Instructions and application package requirements. I disagree.

- [40] To establish an incomplete application, there should be an unbroken chain in the requirements for an application, beginning with section 10 of the Immigration and Refugee Protection Regulations, SOR/2002-227 (IRPR), through the regulations and administrative processing instruments, to the unmet requirement for an application.
- [41] In the present case, the alleged unmet requirement was a CV with no chronological gaps. While the CV was a requirement of the application document checklist, and the checklist requirements could be traced through Ministerial Instructions back to the definition of a complete application in section 10 of the IRPR, the checklist did not specify that only CVs with no chronological gaps could qualify as a CV. The Officer who returned the application appears to have imported the “no chronological gap” requirement into the definition of a CV.
- [42] Immigration, Refugees and Citizenship Canada (IRCC) sets out several criteria to define a complete application in the document checklist. By contrast to the instructions for CVs, the checklist did specify that a Schedule A: Background Declaration document with chronological gaps would result in an incomplete application. The checklist for Schedule A stated:

IMPORTANT: For this form to be accepted, it must be complete (including no gaps in time for education and personal history in sections C and D).

- [43] IRCC clearly turned its mind to the significance of chronological gaps, finding them to violate the requirement of a complete application for the Schedule A: Background Declaration Form, but not to violate the requirement for a complete application for CVs. The Officer did not have the authority to unilaterally add requirements to the definition of a complete application.
- [44] The Respondent argued that the Applicants were sent a procedural fairness letter (PFL) requesting the CVs with no chronological gaps, and the Applicants failed to comply with this request.
- [45] However, a PFL is not an instrument legally authorized to define a complete application. PFLs do not fall within the chain of instruments that define a complete application, and an officer's request within a PFL cannot support the return of an application for incompleteness unless the application also does not meet the requirements set by the instruments that define a complete application.
- [46] While the Applicants' non-compliance with the request in the PFL may have supported a refusal of the application for non-compliance pursuant to subsections 16(1) and paragraph 41 of the IRPA, the application was not refused on that basis. It was returned as incomplete, based on a requirement for a CV with no chronological gaps that was not specified in section 10 of the IRPR or any of the instruments governing complete applications that flow from section 10. As such, the return of the application as incomplete was unreasonable.

V. Conclusion [47] The return of the Applicants' application for incompleteness is a justiciable matter because it affects their rights, results in prejudice and corresponds with the rule of law. The return of the Applicants' application was unreasonable because the Officer added unjustified requirements to the Respondent's detailed and specific regime defining a complete application. The application for judicial review is therefore granted.

JUDGMENT in IMM-23491-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is granted, the decision to return the Applicants' application for permanent residence for incompleteness is set aside, and the application is remitted to a different officer for continued processing.

There is no order regarding costs and no question for certification.

"Michael Battista"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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