

CANADA / JUDGMENT

Green v. Canada (Citizenship and Immigration)

2026 FC 315

COURT

Federal Court

DECIDED

6 March 2026

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Green v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2026-03-06 Neutral citation 2026 FC 315 File numbers IMM-23654-24 Decision Content Date: 20260306 Docket: IMM-23654-24 Citation: 2026 FC 315 Toronto, Ontario , March 6, 2026 PRESENT: Mr. Justice Brouwer BETWEEN: eran green Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] This is an application for judicial review of the decision by Immigration, Refugees and Citizenship Canada [IRCC] rejecting Eran Green's application for permanent residence because it was incomplete. For the reasons set out below, I am granting the application because Mr. Green was deprived of procedural fairness as a result of his previous representative's incompetence. I. Background [2] Mr. Green is a national of Israel who has been living and working in Edmonton, Alberta, since 2023, on a work permit. On September 26, 2024, he applied for permanent residence for himself, his spouse and their dependents under the Express Entry program, having been selected as a Provincial Nominee by Alberta two months earlier. His application was submitted electronically on his behalf by his registered immigration consultant, Dvir Egdal ("the consultant").
- [3] On November 19, 2024, IRCC rejected Mr. Green's application. In a letter of the same date addressed to the consultant, IRCC advised: Immigration, Refugees and Citizenship Canada (IRCC) has reviewed your application for permanent residence. We have determined that your application does not meet the requirements of a complete application as described in sections 10 and 12.01 of the Immigration and Refugee Protection Regulations. Your application is rejected for being incomplete and therefore, was not put into processing. Specifically, your application does not include the following elements: Copy of passport/travel documents A copy of the passport/travel document for GREEN, ERAN was not provided. Note: A full review of your application was not performed. There may be other elements, not identified above, which may also be missing or incomplete. ... Since your application is rejected, you are no longer a candidate for Express Entry and your Express Entry profile number is no longer valid.

- [4] The consultant takes full responsibility for the failure to submit Mr. Green's passport and for the resulting refusal of the application. He deposes that he had all of Mr. Green's documents and had been retained to file the application, but that by his own inadvertence he submitted a second copy of the passport belonging to Mr. Green's spouse rather than Mr. Green's own passport. He deposes further that but for his "inadvertence" Mr. Green's application "would have been properly submitted to IRCC and the rejection would not have occurred. As a result, the Applicant could still be actively in the PR process and possibly even a Permanent Resident by now." II. Issues [5] Mr. Green argues that his consultant's error constitutes ineffective assistance of counsel and gives rise to a breach of procedural fairness warranting an order remitting the application for redetermination.
- [6] When assessing whether there has been a breach of procedural fairness, a reviewing court decides for itself whether the decision-making process was fair, having regard to all of the circumstances: "it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).
- [7] Although Mr. Green also asserts that IRCC's decision was unreasonable, I agree with the Respondent that the argument does not engage with IRCC's decision but relies entirely on the consultant's error, which fact was not before the decision maker. I will therefore limit my consideration to whether there has been a breach of procedural fairness. III. Analysis [8] To establish that there has been a breach of procedural fairness due to the ineffective assistance of counsel, Mr. Green must establish that: The consultant's alleged acts or omissions constituted incompetence; There was a miscarriage of justice in the sense that, but for the alleged conduct, there is a reasonable probability that the result of the original hearing would have been different; and The consultant has been given notice and has had a reasonable opportunity to respond (*Aluthge v Canada (Citizenship and Immigration)*, 2022 FC 1225 at para 22; *Guadron v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1092 at para 11; *R v GDB*, 2000 SCC 22 at para 26 [*R v GDB*]).
- [9] The third branch of the test – notice to the consultant – is not contested by the Respondent and is clearly met. However, the Respondent argues that Mr. Green has not established the first two branches.
- [10] Regarding the first branch, the consultant admitted that he was retained by Mr. Green and bears sole responsibility for the error of filing an incomplete application on Mr. Green's behalf. The Respondent contends, however, that Mr. Green must live with the consequences of letting his consultant file his application for him. With respect, I find that argument to be misguided. While it is true that the jurisprudence generally holds that litigants are bound by the decisions made by their counsel on their behalf, that proposition does not extend to situations of incompetence. In *R v GDB*, the Supreme Court of Canada explained:

- [27] Incompetence is determined by a reasonableness standard. The analysis proceeds upon a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. The onus is on the appellant to establish the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The wisdom of hindsight has no place in this assessment.
- [11] It cannot be argued that the consultant's failure to submit the correct passport was "the result of reasonable professional judgment." It was an obvious and indisputable error and it doomed the application to fail. The consultant admits as much.
- [12] Nor do I accept the Respondent's argument that the consultant's error is too minor or common to constitute incompetence; that a bigger, exceptional mistake is required. In my opinion, *Ahuja v Canada (Citizenship and Immigration)*, 2025 FC 33, upon which the Respondent relies, does not support this proposition. Understandable though the error may be, and as harsh as the term "incompetence" may sound, the consultant's failure to submit Mr. Green's passport meets the test for incompetence identified in *R v GDB* and the first branch of the test is made out.
- [13] The remaining question to be addressed is whether there has been a miscarriage of justice. The Respondent asserts that there has been no miscarriage of justice because it was open to Mr. Green to simply file a new application with the passport included. While as noted below, I have some sympathy for this argument, I am not persuaded that the availability of such alternative remedies is legally relevant. What is required at the second branch of the test is to determine whether, but for the consultant's incompetence, there is a reasonable probability that the result of the original application would have been different (*R v GDB* at para 28). On the evidence before me, this branch of the test is clearly met. If the consultant had submitted the passport as required, the application would have been processed and, as the consultant himself admits, Mr. Green might have been a permanent resident by now.
- [14] I therefore find that Mr. Green has established that the ineffective assistance of the consultant resulted a breach of procedural fairness in the processing of his application for permanent residence.
- [15] Despite the foregoing, I have reservations about granting this application. As the Respondent points out, it appears to have been open to Mr. Green to pursue the less costly, faster and far more efficient alternative remedy of simply refiling the permanent resident application with the missing passport, rather than retaining new counsel to bring this matter to Court, a choice of procedure that remains unexplained. Nevertheless, having found that Mr. Green suffered a breach of procedural fairness because of his consultant's incompetence, and acknowledging his right to seek a judicial remedy, I will grant the application.
- [16] Neither party proposed certification of a serious question of general importance, and I agree that none arises. JUDGMENT in IMM-23654-24 THIS COURT'S JUDGMENT is that: The application is allowed. The decision dated November 19, 2024, is set aside and the matter is

returned for redetermination by a different officer in accordance with these reasons. The Applicant shall have an opportunity to update his application prior to the rendering of the decision. No question of general importance is certified. "Andrew J. Brouwer" Judge
FEDERAL COURT SOLICITORS OF RECORD Docket: IMM-23654-24 STYLE OF CAUSE: ERAN GREEN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: videoconference DATE OF HEARING: FEBRUARY 17, 2026 JUDGMENT AND REASONS: BROUWER j. DATED: March 6, 2026 APPEARANCES: JOSHUA SLAYEN For The Applicant NIMA OMIDI For The Respondent SOLICITORS OF RECORD: Slayen Immigration Law Vancouver, British Columbia For The Applicant Attorney General of Canada Vancouver, British Columbia For The Respondent

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Prepared on 27 October 2026 · Esheria