

CANADA / JUDGMENT

Havenga v. Canada

(Citizenship and Immigration)

2026 FC 328

COURT

Federal Court

DECIDED

11 March 2026

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Havenga v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions
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20260311 Docket: IMM-12573-24 Citation: 2026 FC 328 Toronto, Ontario, March 11, 2026 PRESENT:
The Honourable Justice Thorne BETWEEN: MICHELE LEE-ANN HAVENGA Applicant and THE
MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I.
Overview [1] The Applicant seeks judicial review of a decision by Immigration, Refugees and
Citizenship Canada [IRCC] that refused her application [Application] for permanent residence
under the self-employed persons class.

- [2] IRCC held that the Applicant did not meet the definition of a "self-employed person" in subsection 88(1) of the Immigration and Refugee Protection Regulations, SOR/2002-227, because they were not satisfied that she had the financial capacity to become economically established and self-employed in Canada.
- [3] The Applicant alleges that IRCC's decision was procedurally unfair and unreasonable, as it had failed to take into account certain financial information that she had submitted.
- [4] For the reasons that follow, I dismiss the application for judicial review. II. Background [5] The Applicant is a citizen of Namibia, where she has been self-employed for more than a decade, operating an arts and crafts teaching business.
- [6] In 2020, the Applicant applied for permanent residence under the self-employed persons program. Included as dependants in the Application were her spouse and three children.
- [7] On March 12, 2024, the Applicant received a Procedural Fairness Letter [PFL] that requested additional documentation to demonstrate her financial ability to settle in Canada, and proof of full-time self-employment for two one-year periods. The PFL set a deadline of April 12, 2024 for the submission of the documentation. The Applicant accordingly provided further information, including, on April 2, 2024, Namibian banking records that recorded a balance equivalent to \$646.30 CAD.

- [8] On April 22, 2024, an IRCC officer [Officer] refused the Application [Decision]. In this refusal letter, the Officer stated they were not satisfied that the Applicant had the financial capacity to become economically established and self-employed in Canada.
- [9] The Global Case Management System [GCMS] notes of the Officer, which comprise part of the Decision and set out its reasoning (*El Hajj v Canada (Citizenship and Immigration)*, 2025 FC 2031 at para 7, citing *Mohammed v Canada (Citizenship and Immigration)*, 2025 FC 1933 at para 9), read with respect to this: I have reviewed the application. Family of 5, nationals of Namibia. As of 2024-02-29, applicant shows a bank balance, account number 8003060588, of 8991.03 NAD, equivalent to \$646.30 CAD. I am not satisfied that PA has sufficient funds to become economically established in Canada. I am not satisfied that PA has the financial ability to be self-employed in Canada. File refused.
- [10] On April 23, 2024, the day after the Decision was issued, IRCC records indicate that they received an additional package of supporting financial documentation from the Applicant. This included bank statements from the Applicant's Canadian savings account indicating a balance of nearly \$23,000 CAD, and bank statements from her spouse's Namibian investment account which contained a balance of approximately \$68,000 CAD.
- [11] On April 24, 2024, the Applicant requested reconsideration of the refusal Decision. This was denied.
- [12] On July 15, 2024, the Applicant filed this application for leave and judicial review in relation to the original refusal decision. III. Issues and Standard of Review [13] The issues at play in this matter are whether the decision under review was unreasonable or whether the decision was rendered in a procedurally unfair manner.
- [14] On judicial review, procedural fairness is reviewed on a correctness-like standard, with the overarching consideration being "whether the applicant knew the case to meet and had a full and fair chance to respond" (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 (CanLII), [2019] 1 FCR 121, [CPR] at paras 54-56; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 53; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35, leave to appeal to SCC dismissed, 2021 CanLII 69969 (SCC)). The Court, in this regard, asks "whether the procedure was fair having regard to all of the circumstances" (CPR at para 54). Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness (*Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 at para 16; *Baron v Canada (Attorney General)*, 2023 FC 1177 at para 23).
- [15] The standard of review of the merits of an administrative decision, however, is that of reasonableness (*Vavilov* at paras 10, 25). In undertaking reasonableness review, the reviewing Court must assess whether the decision bears the requisite hallmarks of reasonableness, namely justification, transparency and intelligibility (*Vavilov* at para 99). In particular, when reviewing a decision on this standard, "a court must consider the outcome

of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified” (Vavilov at para 15).

Accordingly, a reviewing court may intervene where a decision “[...] is not “justified in light of the facts” or when “the decision maker has fundamentally misapprehended or failed to account for the evidence before it”” (Mason v Canada (Citizenship and Immigration), 2023 SCC 21 at para 73 quoting Vavilov at para 126). Indeed, the decision must not only be “justifiable” but be “justified” (Vavilov at paras 86 and 96). Ultimately, a reasonable decision is one which is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (Vavilov at para 85). IV. Analysis A. The Decision is not procedurally unfair or unreasonable [16] The primary substantive question before me is whether the Applicant’s right to procedural fairness was breached. I do not find the Applicant has established that this was the case.

- [17] The Applicant essentially states that there is controversy as to whether her second package of financial documents, which contained both her Canadian bank statement and her spouse’s Namibian one, had been submitted prior to the issuance of the Decision. In a subsequent July 4, 2025 affidavit submitted to the Court – though not in her initial August 20, 2024 affidavit – the Applicant asserts that she submitted all of her documents on March 31, 2024, utilizing a series of different submission methods including email and uploading documents directly on the IRCC portal.
- [18] Counsel for the Applicant argues that the Officer failed to consider the second package of financial documents, and that the determination of an Application on an incomplete record is a denial of the right to be heard and therefore a breach of procedural fairness, citing *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581 at paras 16–19, 23 [Togtokh]. Counsel further notes that, though the Respondent has provided affidavit evidence in which the Officer swears that the records in the second package of financial documents were not before them when they rendered the Decision, the documents in question are in the Certified Tribunal Record [CTR]. They state that this proves that the Officer had access to the bank statements when making the decision, or at least that the CTR in this matter was deficient, which itself constituted a breach of procedural fairness.
- [19] The Applicant also cites *Karsou v Canada (Citizenship and Immigration)*, 2025 FC 928 [Karsou] at para 26, stating that in the matter at hand, as in that case, the Respondent had failed to provide evidence about how the IRCC portal functions or whether late submitted documents could be accepted or whether there could be any systemic issues which accounted for such discrepancies. The Applicant states that consequently the Court in *Karsou* held that there had been a breach of procedural fairness, and that such a finding should also be made here.
- [20] For its part, the Respondent asserts that the evidence does not support the claim that the Applicant submitted all of the documents prior to the issuance of the Decision. They note that the Applicant did not state that they had submitted all of the documentation on March 31, 2024 in their first affidavit of August 20, 2024, but rather that this claim was suspiciously

only added in their July 4, 2025 affidavit. The Respondent further notes that this claim is directly contradicted by the Applicant's April 23, 2024 reconsideration request email, which states: Good day. I have received an update that my application has been refused. Is there a way I can ask for a re-review of my application due to technical issues? [sic] that I have had and maybe resulted in you not receiving all the required documents needed. I know I had 30 days in giving you the required documents but due to circumstances it resulted that some of the documents have not reached you in time. Your kind assistance in this matter is greatly appreciated. [Emphasis added]

- [21] The Respondent also notes that affidavit evidence from the Officer directly establishes that they had not been provided with the second package of financial documents and did not have the bank statements while rendering their decision. They point out that the Officer's GCMS notes also indicate that those documents were uploaded on April 23, 2024, one day after the Decision was issued, and eleven days after the Applicant's deadline to submit documentation in response to the procedural fairness letter. They further highlight that the CTR contains a series of emails from the Applicant and her spouse that are marked "Email sent on 30 March 2024" and "Email sent on 11 April 2024", which the Respondent asserts makes clear that not all of the materials were submitted by the Applicant on March 31, 2024, as now claimed by the Applicant. The Respondent states that the Applicant has an unreliable memory, and that her "inconsistent account" should not be preferred over the evidence of the Officer, as in cases of conflicting affidavit evidence "the case law supports giving more weight to an officer's affidavit as they have no reason to lie and lack interest in the outcome" (*Lin v Canada (Citizenship and Immigration)*, 2025 FC 1043 at para 73).
- [22] The Respondent further addresses the presence of the bank statements in the CTR. They submit that while the CTR includes these documents, it is not uncommon for additional materials to be added to a CTR as a result of a later reconsideration request. They state that in any event, the CTR is not incomplete or deficient, but rather overinclusive, in the context of two related decisions pertaining to the same underlying visa application. They note that the Court has previously found that a CTR containing additional materials does not occasion a procedural fairness breach (*Almadhoun v Canada (Citizenship and Immigration)*, 2024 FC 193 at paras 8–10).
- [23] Weighing all of the evidence in the file, I do not find that the Applicant has established that they were subject to a procedural fairness violation. I note that, as the Respondent pointed out, the evidence establishes that immediately after the Decision the Applicant had initially indicated an awareness that certain of her documents had not reached IRCC by the submission deadline. It was only in her affidavit of a year later that the Applicant then claimed to have submitted all of her documents on the same day, March 31, 2024. In addition, there is directly contrasting evidence from the Officer warranting that the bank statements were not before them at the time they rendered the Decision, along with a record from the GCMS notes that indicates the bank statements were not uploaded to the system until April 23, 2024. Further, while the arguments of the Applicant insinuate that IRCC "had

the documents in hand but still failed to consider them, and now seeks to avoid responsibility”, the Applicant did not seek to cross-examine the Officer or otherwise explore or challenge the evidence of the Respondent.

- [24] Given all of this, in these circumstances I prefer the impartial evidence of the Respondent to that of the Applicant and find that the Applicant has not established the bank statements were submitted to IRCC prior to the decision being rendered, much less by the April 12, 2024 deadline that had been established.
- [25] While the determination of an application on an incomplete record is a breach of procedural fairness as a denial of the right to be heard, per Togtokh, there is a presumption that tribunal records are complete, which is rebuttable through evidence that missing information was properly submitted and should be part of the record (*Toor v Canada* (Citizenship and Immigration), 2019 FC 1143 at paras 11–12). However, applicants cannot demonstrate the incompleteness of a CTR through a “bare assertion” (*Guo v Canada* (Citizenship and Immigration), 2022 FC 883 at para 21, citing *El Dor v Canada* (Citizenship and Immigration), 2015 FC 1406 at para 32).
- [26] In this case, I find the Applicant has not established through their evidence that the bank statements had been submitted at the relevant time or that the Decision was, thus, based on an incomplete or improperly assessed record. The Applicant has accordingly not established that the Decision was rendered in a procedurally unfair manner. Nor was the Decision unreasonable, as I do not find the decision maker has fundamentally misapprehended or failed to account for the evidence before them (*Vavilov* at paras 125–126). Given the financial information before the Officer at the time of the Decision there is an internally coherent and rational chain of analysis in their finding that they were not satisfied that the Applicant had the financial ability to be self-employed in Canada.
- [27] Finally, a word on *Karsou*, which was cited by the Applicant, and is a decision that I had previously rendered. The Applicant seemingly implies that this decision stands for the proposition that, in a matter involving a dispute over the contents a CTR, where a Respondent fails to provide evidence about how the IRCC portal functions or whether there are systemic issues that might explain the discrepancy, this alone may occasion a breach of procedural fairness. To be clear, this is not the case. The context of *Karsou* was rather a situation where the Respondent had provided no competing evidence at all including, for example, information on the functioning of the IRCC portal, while the Applicant had provided persuasive evidence establishing that they had submitted the impugned documents. That is wholly different from the matter at hand, where the Respondent has indeed submitted competing evidence that contradicted the Applicant’s claim of having submitted the bank statements prior to the issuance of the Decision, and where other facets of the Applicant’s evidence also seriously undermined that contention. V. Conclusion [28] For these reasons, the application for judicial review is dismissed.

[29] The parties proposed no question for certification, and I agree that none arises. JUDGMENT in IMM-12573-24 THIS COURT'S JUDGMENT is that: This judicial review application is dismissed. No question of general importance is certified "Darren R. Thorne" Judge FEDERAL COURT SOLICITORS OF RECORD Docket: IMM-12573-24 STYLE OF CAUSE: MICHELE LEE-ANN HAVENGA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: Toronto, ontario DATE OF HEARING: AUGUST 13, 2025 JUDGMENT AND REASONS: THORNE j. DATED: March 11, 2026 APPEARANCES: Menal Al Fekih For The Applicant Jake Boughs For The Respondent SOLICITORS OF RECORD: Mamann Sandaluk LLP Toronto, Ontario For The Applicant Attorney General of Canada Toronto, Ontario For The Respondent

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