

CANADA / JUDGMENT

Serat v. Canada (Citizenship and Immigration)

2026 FC 42

COURT

Federal Court

DECIDED

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Decision Content

Date: 20260113

Docket: IMM-11680-24

Citation: 2026 FC 42

Ottawa, Ontario, January 13, 2026

PRESENT: Mr. Justice Pentney

BETWEEN:

SAYED ZAHIDULLAH SERAT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

- [1] The Applicant, Sayed Zahidullah Serat, seeks judicial review of the decision denying his application for a permanent resident visa to Canada under the Temporary Public Policy for Extended Family Members of Former Afghan Interpreters (the Policy).
- [2] The Officer who interviewed the Applicant in connection with his application found that there was insufficient clear and credible evidence to conclude that the Applicant was not inadmissible to Canada. In particular, the Officer was concerned about the Applicant's answers regarding his connection with another man who had been linked to the insurgency in Afghanistan.
- [3] The Applicant argues there was a breach of procedural fairness during the interview because the interpreter lacked sufficient competency in Pashto, the only language the Applicant speaks. He also submits that the Officer's failure to accept the updated immigration forms the Applicant brought to the interview constituted a breach of procedural fairness.
- [4] For the reasons set out below, this application for judicial review will be dismissed. I find that the Applicant was not denied procedural fairness.

I. Background [5] The Applicant is a citizen of Afghanistan. He cannot read or write as he never received a formal education beyond some primary school. He only speaks Pashto.

- [6] The Applicant currently resides in Pakistan. He worked as a driver for international organizations working in Afghanistan. As the Taliban returned to power, the Applicant fled Afghanistan for Pakistan for fear of persecution. Part of his fear is based on his affiliation with his brother-in-law, who worked with Canada in Afghanistan.
- [7] The Applicant and his family applied for permanent residence in Canada under the Policy. He states that a relative helped him to fill out the necessary immigration forms, owing to his inability to read or write. He initially answered "no" to the question of whether he was ever arrested or detained.
- [8] On May 1, 2024, the Applicant was interviewed at the Canadian High Commission in Islamabad, Pakistan. The purpose of the interview was to collect sufficient additional information to be able to complete an assessment that the Applicant was not inadmissible to Canada. He brought with him updated immigration forms which indicated "yes" to whether he had ever been arrested or detained. The Applicant indicates that the Officer declined to receive the updated forms prior to the beginning of the interview.

- [9] At the beginning of the interview, the Applicant confirmed that he could understand the interpreter. The Officer indicated that they told the Applicant that if at any point he could not understand the interpreter, he should let the Officer know. The Officer indicates that the Applicant signalled his understanding of this and confirms that at no time during the interview did the Applicant signal that he could not understand the interpreter.
- [10] Following the interview, the Officer refused the Applicant's application for permanent residence under the Policy. The decision letter outlines the Officer's concerns about the credibility of the information the Applicant provided. In particular, the Officer was concerned about the inconsistent and evolving information the Applicant provided about his association with a Mr. Gul. The Applicant had been apprehended by coalition forces with Mr. Gul and brought to Bagram Airforce Base for questioning. While he initially said he did not know anything about Mr. Gul, under further questioning the Applicant stated he was aware of his name, the village he was from, which of the colleagues on the work site had been Mr. Gul's neighbours, and what Mr. Gul's jail sentence was.
- [11] In addition, the Officer noted other statements that appeared to be implausible. In particular, the Officer noted that the Applicant said he had been given Mr. Gul's phone and shoes after the initial detention, but he did not notice this until he got home. The Officer advised the Applicant about the credibility concerns but found his explanations to be lacking. The Officer refused the Applicant's application, stating "I have insufficient clear and credible information with which to complete an assessment that you are not inadmissible to Canada."
- [12] The Applicant submitted a request for reconsideration of the decision refusing his permanent residence application, and he subsequently provided a further request with an updated affidavit. His reconsideration application was refused.
- [13] The Applicant seeks judicial review of the refusal of his application for permanent residence under the Policy.

II. Issues and Standard of Review [14] The issue in this case is whether the Applicant was denied procedural fairness because: (a) the interpreter was not sufficiently fluent in Pashto and provided an inaccurate translation of his answers during the interview; and (b) the Officer refused to accept the updated forms the Applicant brought with him to the interview.

- [15] Procedural fairness is to be reviewed on a standard that is akin to "correctness," although technically no standard of review is applied at all: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [Canadian Pacific] at para 54; see also *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107. Under this approach, a reviewing Court is required to assess whether the decision-making process was fair in all of the circumstances, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual..." (*Canadian Pacific* at para 54). The ultimate question is "whether the applicant knew the case to meet and had a full and fair chance to respond" (*Canadian Pacific* at para 56).

[16] There is also a preliminary question regarding the admissibility of the affidavit filed by the Applicant in support of his application for judicial review.

III. Analysis A. The affidavit is only partially admissible [17] The Applicant filed an affidavit in support of his application for judicial review, in which he expresses his concerns about the quality of the interpretation provided during the interview, and recounts the Officer's refusal to consider his updated immigration forms. The Respondent argues that the affidavit is inadmissible because it goes beyond its legitimate purpose, which is to present facts "without gloss or explanation": *Canada (Attorney General) v Quadrini*, 2010 FCA 47 at para 18.

[18] The general rule is that evidence that could have been placed before the administrative decision-maker is not admissible before the reviewing Court: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22. A recognized exception is evidence that sets out the basis for a claim of a denial of procedural fairness, where that information was not reasonably available at the time of the decision: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 [Bernard] at para 25. However, objections based on a denial of procedural fairness must be raised at the first available opportunity; the failure to do so may result in a refusal to consider the issue on judicial review: *Bernard* at para 26.

[19] Another recognized exception is information that provides general background to the decision, to assist the reviewing court in understanding the record: *Bernard* at paras 20-22.

[20] The Applicant's affidavit in this case addresses two questions: the alleged inadequacy of the interpretation of his interview, and the Officer's refusal to accept his updated immigration forms. While he raised the interpretation question when he applied for reconsideration, the Applicant did not refer to the refusal to accept his forms. While this could lead to a finding that the Applicant did not raise the forms issue at the earliest opportunity, I will admit this portion of his affidavit in view of the Applicant's explanation that he did not fully comprehend the extent of the denial of procedural fairness until he received the decision and it was explained to him.

[21] As for the concerns about the quality of the interpretation, I note that much of the Applicant's affidavit mirrors the information he provided in his request for reconsideration. This information is already part of the record, and therefore not admissible in a new affidavit filed on judicial review. The current affidavit provides some more background information regarding the Applicant's background, and this is admissible under the recognized exception.

[22] I will therefore consider only the background information as well as the portions of the affidavit that deal with the Officer's refusal to accept the updated immigration forms.

[23] Having dealt with the preliminary issue, we turn to the substance of the Applicant's procedural fairness claims.

B. The interpretation of the Applicant's interview met the legal standard [24] The law does not require interpreters to be perfect; they must provide continuous, precise, competent, impartial and contemporaneous translation of the testimony: *R v Tran*, 1994 CanLII 56 (SCC), [1994] 2 SCR 951 [Tran] at p 979. The decision in *Singh v. Canada (Citizenship and Immigration)*, 2010 FC 1161, which is cited by the Applicant, provides a useful summary of the relevant legal principles:

- [3] Both counsel agree the question of the quality of the interpretation is governed by the Federal Court of Appeal's decision in *Mohammadian v. Canada (MCI)*, 2001 FCA 191, [2001] F.C.J. No. 916, applying the Supreme Court of Canada's decision in *R. v. Tran*, 1994 CanLII 56 (SCC), [1994] 2 S.C.R. 951. In my view, the principles enunciated in *Mohammadian* may be briefly summarized as follows:
- a. The interpretation must be precise, continuous, competent, impartial and contemporaneous.
 - b. No proof of actual prejudice is required as a condition of obtaining relief.
 - c. The right is to adequate translation not perfect translation. The fundamental value is linguistic understanding.
 - d. Waiver of the right results if an objection to the quality of the translation is not raised by a claimant at the first opportunity in those cases where it is reasonable to expect that a complaint be made.
 - e. It is a question of fact in each case whether it is reasonable to expect that a complaint be made about the inadequacy of interpretation.
 - f. If the interpreter is having difficulty speaking an applicant's language and being understood by him is a matter which should be raised at the earliest opportunity.

(emphasis in original)

- [25] The burden is on the Applicant to demonstrate that the translation errors were serious, non-trivial and that they affected his ability to provide information on material points: *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990 at paras 28–32; *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497 at para 14. It is important to examine the alleged interpretation problems in light of the following guidance from *Tran* at p. 987:

However, it is important to keep in mind that interpretation is an inherently human endeavour which often takes place in less than ideal circumstances. Therefore, it would not be realistic or sensible to require even a constitutionally guaranteed standard of interpretation to be one of perfection.

[26] In this case, the Applicant claims that during the interview he was provided with an interpreter who was supposed to be fluent in Pashto, but it became obvious that the interpreter's native language was Dari, "as I detected a Dari accent." The Applicant claims that the interpreter appeared to understand only basic Pashto, which resulted in several errors of understanding. He provides several examples of answers that he says were "wildly mistranslated".

[27] The Applicant points to a number of statements in the decision letter which appear to be based on inaccurate translation of his answers. For example, the decision found his explanation about receiving Mr. Gul's phone and shoes but not noticing this until he got home to Bagram to be implausible. The Applicant claims that this is not what he said during the interview:

I explained to the translator that Mr. Gul's FM radio, not his phone, was taped to my arm while I was blindfolded at the American base. I was flown from Bagram to Kandahar. I was blindfolded throughout the entirety of the journey from Bagram to Kandahar. When the blindfold was removed from my eyes, I had arrived in Kandahar.

At first, I was not sure where I was, until I was notified after I was released. I realized that I had been given Mr. Gul's shoes, his FM radio and his notebook. I explained that these were not mine when I was released. However, no one would help me.

[28] The Applicant offers several other examples of responses that he says were misunderstood and/or mistranslated. He claims these errors resulted in a denial of procedural fairness.

[29] I am not persuaded. There are several problems with the Applicant's argument. First, he claims that he did not know that he could raise issues about the quality of the translation during the interview. This is directly contradicted by the Officer's contemporaneous notes of the interview, which indicate that the Applicant confirmed at the outset of the interview that he understood the interpreter. The notes also show that the Officer explained that if the Applicant had any trouble understanding the interpreter, or if he had any issues with the interpreter, he should "tell [the Officer] immediately [because it is] important that we understand each other to avoid misunderstandings." The Applicant confirmed that he understood this instruction.

[30] The Respondent argues that the Applicant's failure to mention any interpretation issues during the interview must be taken as a waiver of his right to raise these problems subsequently. It is not necessary for me to go that far; instead, I simply note that the Applicant has not challenged this aspect of the interview, which contradicts his claim to have not been aware that he could express concerns about the quality of the interpreter's translation.

[31] A second problem is the generality of the Applicant's contention that the interpreter was not sufficiently fluent in Pashto. The Applicant does not provide any evidence to support this statement, beyond his assertion that "it became obvious that the interpreter's native

language was Dari as [the Applicant] detected a Dari accent”. It bears repeating that the Applicant was not entitled to perfect translation; the fundamental question was whether there was a sufficient capacity to communicate. The Applicant does not point to any specific words or phrases that were improperly translated or that indicated the interpreter’s limited understanding of Pashto. The Officer’s notes do not reflect any issues as between the Applicant and the interpreter, for example, the need to repeat questions or explain what was being asked. Moreover, although the Applicant states that the interpretation issue became “obvious” during the interview, he did not complain about it at the time.

- [32] Some of the examples of errors cited by the Applicant are, in fact, reflected in the Officer’s notes of the interview, indicating that the phrases he relies on were accurately translated. For example, the Applicant says that he was blindfolded when he was arrested, and this is included in the Officer’s notes. A review of the interview notes demonstrates that the Officer asked many questions to assess the Applicant’s relationship with Mr. Gul; the notes also reflect the Applicant’s contradictory and evolving evidence on that point. He first denied knowing Mr. Gul, but after being advised of the Officer’s concerns about his credibility, the Applicant was questioned further about the relationship and he provided further details, acknowledging that he knew what village Mr. Gul was from and the length of his prison sentence. He also indicated that he and Mr. Gul were from the same village, though he later provided different information.
- [33] The interview notes also show that the Applicant said that he was given Mr. Gul’s radio and shoes during his release from custody. Based on this, I find that the Officer’s reference to the Applicant’s possession of Mr. Gul’s phone to be a minor transcription error; nothing turns on this.
- [34] Finally, the Applicant’s affidavit in support of his reconsideration request raises the quality of the interpretation, but it was sworn approximately one month after the interview, and there is no indication about why the Applicant’s recollection should be preferred over the Officer’s contemporaneous notes. In such circumstances, there is abundant jurisprudence to the effect that an Officer’s notes are generally to be accepted, unless there is a reason to doubt their accuracy: see, for example, *Gebremichael v. Canada* (Citizenship and Immigration), 2024 FC 884 at paras 25-26; *Pompey v Canada* (Citizenship and Immigration), 2016 FC 862 at para 36.
- [35] Based on a careful review of the Officer’s notes, I am not persuaded that the Applicant’s complaints about the quality of the interpretation of his answers withstands scrutiny. Some of the alleged errors are actually reflected in the notes, which confirms that they were accurately translated. In addition, the Officer’s notes confirm the basis for the concerns about the Applicant’s inconsistent and evolving testimony about his connection with Mr. Gul, which lies at the heart of the Officer’s decision. The Applicant does not challenge most of these exchanges.

[36] For the reasons set out above, I am not persuaded that any translation issues that may have occurred were sufficiently central or serious to amount to a denial of procedural fairness.

C. The refusal to accept updated forms did not deny procedural fairness [37] The Applicant submits that he brought updated immigration forms to the interview, but the Officer refused to accept them. Crucially, he says that these forms corrected his earlier mistake in regard to his prior arrest. The Applicant had relied on others to complete his forms initially, because he cannot read or write. He says that the invitation to the interview instructed him to bring updated forms, and he prepared these forms with the assistance of others and corrected errors in his previous documentation. However, the Officer did not accept these forms when he arrived for the interview. The Applicant argues that this denied him procedural fairness.

[38] I am not persuaded. The Officer's decision does not turn on errors in the original forms, but rather focuses on deficiencies in the Applicant's evidence about his connection with Mr. Gul. Furthermore, it is not entirely accurate to state that the email inviting the Applicant to the interview instructed him to bring updated forms. Instead, the email message indicates that "[a]pplicants must bring these documents to the interview if not already provided." The bold type is in the original email. Since the Applicant had already provided his immigration forms, the Officer was not obliged to consider the updated information.

[39] At the end of the day, the question is whether the Applicant was denied procedural fairness by the Officer's failure to consider the updated forms. I can find no basis to reach this conclusion, mainly because the Officer's decision does not focus on any discrepancies in the forms.

IV Conclusion [40] Based on the analysis set out above, the application for judicial review will be dismissed. The Applicant was not denied procedural fairness either due to problems with the interpretation of his interview or by the Officer's failure to accept his updated documentation. The Officer's notes support the conclusions set out in the decision, and I can find no basis to disturb the findings that resulted in the refusal of the Applicant's request for permanent residence.

[41] There is no question of general importance for certification.

JUDGMENT in IMM-11680-24

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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