

**Court File No. IMM-00000-00**

**FEDERAL COURT**

**BETWEEN:**

**OSTAP BENDER**

Applicant

and

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

Respondent

**MEMORANDUM OF ARGUMENT**

## **OVERVIEW**

1. This is an application for leave and judicial review of Immigration, Refugees and Citizenship Canada's (IRCC, the Respondent) decision to return as incomplete the application package under the family class.
2. For clarity, the *application package* included two interdependent applications: 1) Mr. Hicham Chaib's (the Applicant's) *application to sponsor*, and 2) Mr. Ibrahim Chaib's (the sponsored relative's) *permanent residence application*, with the latter to be processed only if and after the sponsorship is approved.
3. The application package *did include* a properly completed and signed IMM 5476 form (Use of a Representative) by the sponsored relative, appointing their authorized immigration representative.

**Affidavit of Valery Gulyaev, Tab 4, p. 25**

4. The application *did not include* an IMM 5476 form from the Applicant.
5. The absence of the Applicant's IMM 5476 was the sole reason the Respondent cited for returning the application package as incomplete. The application package was otherwise complete in all material respects and met the requirements of the Immigration and Refugee Protection Regulations ("IRPR").
6. The Respondent treated absence of the Applicant's IMM 5476 form as a fatal defect, returning the entire application package.
7. Because the return nullified the original lock-in date, the sponsored relative subsequently turned 22 years of age and is now barred from re-applying as a dependent child. Respondent 's refusal/return was therefore both unreasonable and contrary to law.
8. The Applicant respectfully requests that the Court set aside the Respondent 's decision and order the application to be accepted for processing as complete as of its original submission date.

## **PART I – FACTS**

9. On March 13, 2025, the application package was submitted electronically by the representative duly appointed by the sponsored relative. All required forms, supporting documents, and government processing fees were included in the application package.
10. In the IMM 1344 "Application to sponsor" form, the Applicant completed the "Sponsor Contact Information" section, in which they listed the law office contacts for correspondence. This was done so that all correspondence from IRCC would be directed to the office of the immigration representative appointed by the sponsored relative.
11. On March 19, 2025, the Respondent issued a letter informing the Applicant that the application was being returned and/or could not be processed. The letter stated that the Applicant may be using a representative, in which case they must submit the IMM 5476 "Use of a Representative" form. The letter cited sections 10, 11 and 12 of the IRPR and indicated that because this form was not included, the application did not meet the required completeness criteria. The application package and fees were thus returned, losing the original filing date.

**Decision, Tab 2, p. 8**

12. The Applicant did not formally appoint a representative through an IMM 5476 at the time of filing, and thus did not consider the *application to sponsor* to be "represented" in the legal sense. The law office contact information was provided only as the mailing address for correspondence. The Applicant understood from the IMM 1344 form instructions that providing an email or mailing address for a representative was permissible for correspondence purposes, and that completing IMM 5476 would be necessary only if the Applicant wished to authorize the release of personal information to that representative.
13. Relying on this understanding, the Applicant believed the application was complete and that omitting their IMM 5476 would simply mean IRCC would correspond directly with the Applicant at the provided mailing address, rather than treat any third party as an authorized representative.

14. The return of the application package has caused *irreversible prejudice*: the sponsored relative can no longer obtain permanent residence through family sponsorship, solely because the Respondent treated the missing Applicant's IMM 5476 as a fatal defect.
15. The Applicant is seeking to have the original application package accepted as complete with the initial lock-in date preserved.

## **PART II – ISSUES**

16. Did the Respondent err in law or act unreasonably by deeming the application package incomplete for lack of the Applicant's Use of a Representative form (IMM 5476)? In particular, was the non-inclusion of the Applicant's IMM 5476 form actually a failure to meet the prescribed requirements of a complete application under the IRPR?
17. Did the Respondent misinterpret their own forms and instructions regarding representatives, thereby rendering its decision to return the application package unreasonable? The Court must consider whether the Respondent's decision failed to consider relevant instructions (specifically, the note on Form IMM 1344) and whether it was disproportionately harsh in the circumstances.

## **PART III – STANDARD OF REVIEW**

18. This application raises both legal and discretionary issues. The central question – whether an IMM 5476 form from the Sponsor was legally required for the application to be complete under IRPR sections 10 and 12 – turns on interpreting the Regulations.
19. While reasonableness is the presumptive standard (*Vavilov*), correctness may apply where the issue involves general questions of law. The Applicant submits that the Respondent's interpretation was inconsistent with the text and scheme of the IRPR and should not attract deference.

[Canada \(Minister of Citizenship and Immigration\) v. Vavilov, 2019 SCC 65 \(CanLII\), \[2019\] 4 SCR 653, paras. 15, 17, 23, 85, 101, 126](#)

## **PART IV – ARGUMENT**

### **the sponsorship application met the regulatory requirements for completeness**

20. Under the IRPR, a sponsorship application (and accompanying permanent residence application) must satisfy certain mandatory requirements at the time of submission. R10 sets out the form and content of application requirements. Notably, an application must:
- a. Be made in the prescribed form and be signed by the applicant
  - b. Include all information and documents required by the Regulations and any other evidence required by the Act
  - c. Be accompanied by the applicable fees

#### **[Immigration and Refugee Protection Regulations SOR/2002-227](#)**

21. In the context of a family class sponsorship, this means the application package should contain the completed sponsorship form (IMM 1344), the principal applicant's forms (such as IMM 0008, Schedule A, etc.), civil documents (marriage certificate, etc.), proof of payment, and so on. The Use of a Representative form (IMM 5476) is only required if the applicant is formally appointing a representative to act on their behalf in communications with IRCC. If no representative is being appointed, IRCC's own website confirms that you *"do not need to include the Use of a Representative form (IMM 5476) with your application."*

#### **[IRCC Website: If I am not using a representative](#)**

22. In this case, no representative was appointed and hence the Applicant did not sign or submit IMM 5476. Therefore, the application was not "represented" in the legal sense, and IMM 5476 was not a document "required by these Regulations" for this application under R10(1)(c). The Applicant fulfilled all the core requirements: the forms were properly completed and signed, all necessary supporting documents were included, and fees were paid. The Respondent has not alleged any deficiency other than the missing IMM 5476.
23. The IRPR require that an application include the full contact details of any person representing the applicant, but only if the applicant is in fact represented in connection

with the application (R10(2)(c.1)). This obligation applies only where a *representative relationship* exists, not based solely on whose contact information appears in the form.

In other words, if an applicant has formally appointed a representative the application must include that person's contact details and, by operational policy, be supported by IMM 5476.

24. However, **the converse is not true**: listing someone's address, email, or phone number in the application does not, in itself, make that person a representative by law, nor does it create a legal obligation to appoint them as one. The use of another party's contact details – such as for correspondence or convenience – does not trigger the regulatory requirement to submit representative information or an IMM 5476, unless the person is actually acting in a representative capacity on behalf of the applicant.

Thus, the presence of a third party's contact information in the application, without more, is *legally insufficient* to conclude that the applicant is represented or that IMM 5476 is required.

25. **No formal representative was appointed**: The Applicant had wished for a third party to receive correspondence. However, by choosing not to submit IMM 5476, the Applicant explicitly did not appoint that third party as an authorized representative on file. This is a critical distinction: an authorized representative (per IRPR and IRPA s. 91) has the legal ability to conduct business with IRCC on the applicant's behalf. The Applicant never conferred such authority in the submission, and is not obliged to. Instead, the Applicant provided the third party's contact as a mailing address only, akin to using a friend's address for mail. The Applicant remained the primary contact in the eyes of the law, and could have handled any follow-up with IRCC directly.
26. **IMM 5476 was not required under R10**: Because the Applicant was not *represented* in the formal sense, the condition in R10(2)(c.1) was not triggered. There was no regulatory requirement that the application include the name and address of a representative or the representative's form. All required information under R10(2) was in fact provided (the Applicant's name, address, etc., and a declaration of completeness were all present in the forms). The only thing missing was a document that is *conditional*

*and optional* – conditional on choosing to appoint a representative, and optional in the sense that an applicant may elect not to appoint one.

27. **R12 does not justify return in this scenario:** Section 12 of the IRPR states that if the requirements of R10 and R11 are not met, the application and all supporting documents shall be returned to the applicant. The Respondent relied on this provision.

Decision, Tab 2, p. 8, 9

However, since the application did meet the requirements of R10, R12 should **not** have been engaged. The Respondent essentially presumed a requirement that does not exist *in law*: the inclusion of IMM 5476 absent a formal appointment. Returning the application was therefore not authorized by the regulations. In past cases, the Federal Court has cautioned that the Respondent cannot simply bounce incomplete applications without clear authority in legislation or regulation

[Campana Campana v. Canada \(Citizenship and Immigration\), 2014 FC 49, para. 15](#)

28. Here, there is a clear absence of an explicit *requirement in the law* to include a use of representative form unless a representative is being appointed. Silence in the law on this point cannot be used to create a mandatory requirement where the applicant has chosen not to use a representative.
29. The Applicant's submission is that the application, as originally submitted, met all the IRPR requirements for a complete application. The decision to treat it as incomplete due to the missing IMM 5476 was based on an erroneous application of R10 and R12. The proper course for the Respondent would have been to either process the application with the understanding that no representative was appointed (and correspond directly with the Applicant at the provided address), or at most, to seek clarification. It was unreasonable to reject the entire application outright on this basis.

**Parliament's statutory scheme confirms representation must be expressly conferred**

30. The Supreme Court in *Law Society of British Columbia v. Mangat* underscored that "representation" is a legal status created by federal legislation, not a mere practical arrangement. When that reasoning is mapped onto A91, it follows that a person becomes

a "representative" only when the applicant formally appoints them – normally via the IMM 5476 form – not just when their mailing address appears on another form.

[Law Society of British Columbia v. Mangat, 2001 SCC 67 \(CanLII\), \[2001\] 3 SCR 113](#)

31. Parliament subsequently tightened s. 91, restricting paid representation to lawyers, Québec notaries, or CICC members and clarifying in 2024-2025 policy that help given without consideration does not amount to representation. This evolution shows that Ottawa deliberately drew a bright line: representation is voluntary and triggered only by an affirmative act of appointment.

32. IRCC gives a clear answer the question who a representative is:

*A representative is someone who provides advice, consultation, or guidance to you at any stage of the application process, or in a proceeding and, if you appoint them as your representative by filling out this form, has your permission to conduct business on your behalf with Immigration, Refugees and Citizenship Canada (IRCC) and the Canada Border Services Agency (CBSA).*

(emphasis added)

[Use of a Representative Form \(IMM 5476\)](#)

It transpires that only if an applicant is authorizing an individual to *act on their behalf*, such individual must be properly appointed a representative using the IMM 5476 form. There is no obligation in law for an applicant to confer such an appointment.

### **IRCC's own form architecture distinguishes correspondence from representation**

33. IRCC provides two separate mechanisms:

- a. IMM 5475 – authorizes the release of information to a designated individual;
- b. IMM 5476 – appoints an authorized representative who may act on the client's behalf.

34. Public guidance stresses that applicants should use IMM 5476 only if you are appointing/cancelling/updating a representative. This confirms that listing a third-party address (or even using IMM 5475) does not in itself make that party a representative or render IMM 5476 mandatory.



35. Treating a sponsor's use of counsel's address as automatic evidence of representation ignores this deliberate two-form structure and collapses correspondence into representation, contrary to IRCC's own instructions.

**Respondent misinterpreted their own instructions regarding representatives**

36. The Respondent's decision was also unreasonable because it ignored or contradicted the IRCC's own published instructions and form guidance, thereby misleading the Applicant and mischaracterizing the situation.
37. **IMM 1344 sidenote implications:** On the IMM 1344 sponsorship form, in the section for the applicant's mailing address and contact info, the form provides a note regarding representatives:

*All correspondence will go to this address unless you indicate your e-mail address below.*

*Indicating an e-mail address will authorize all correspondence, including file and personal information, to be sent to the e-mail address you specify.*

*If you wish to authorize the release of information from your application to a representative, indicate their e-mail and mailing address(es) in this section on the IMM5476 form.*

(emphasis added)

Affidavit of Valery Gulyaev, Tab 4, p. 18

This wording naturally leads an applicant to a two-step reading:

- a. **Email = authorization.** By simply writing an email address, the sponsor has already authorized IRCC to send all correspondence (including personal information) to that address – regardless of who owns it.
- b. **IMM 5476 = formal appointment.** The subsequent sentence distinguishes a different act: if the sponsor wants to go further and give a third party the status of representative, then the sponsor must complete IMM 5476. Thus IMM 5476 is framed as the tool for appointing a representative, not for merely releasing correspondence that the form has already authorized.

In short, nothing in the sidenote warns that omitting IMM 5476 will invalidate the application; it merely explains how to elevate a helper from *addressee* to *authorized representative*.

38. If the Respondent now contends that the sidenote can be read another way – i.e., that any third-party email automatically turns that person into an undeclared representative – then the text is plainly ambiguous. Under well-established administrative-law principles, an applicant cannot be penalized for relying on a reasonable interpretation of the IRCC's own instructions. Where official guidance admits multiple plausible meanings, fairness requires that IRCC choose the interpretation least prejudicial to the applicant, not the one that nullifies an otherwise complete submission and, in this case, irreversibly strips eligibility.
39. **Applicant's reasonable reliance on instructions:** The Applicant completed the forms in accordance with their instructions. By listing the law office address and email under the sponsor's contact information, the Applicant followed the form's prompt for where to send correspondence. The Applicant did not fill or sign IMM 5476, thereby indicating (consistent with the form's note) that they were not authorizing IRCC to deal with the representative as an agent. The expectation was that IRCC would simply send any mail or email to the address provided, treating it as the Applicant's designated address for service. Many applicants list a mailing address different from their residential address – often for practical reasons, such as an upcoming move – without causing any issues. From the Applicant's perspective, this was a permissible way to ensure they received IRCC letters without formally appointing the representative or violating any rule.
40. **Respondent's unwritten rule versus its own published guidance:** IRCC appears to follow an internal – yet undisclosed – rule that any hint of third-party involvement (for example, a law-firm address or a mailing address differing from the residential one) automatically triggers a duty to file IMM 5476. That rule is nowhere stated in the forms and squarely contradicts IRCC's publicly posted instructions:
  - a. Paid or unpaid representative – IMM 5476 required. The guide says applicants must upload IMM 5476 when they formally appoint either a paid or unpaid representative.

- b. Helper who is not a representative – no disclosure needed. The same guide expressly carves out a category of "*someone who isn't a representative*," such as a friend who helps print documents or lets the applicant use their email address. In that scenario, "*You don't need to tell us that you're getting help.*"

[Sponsor your spouse, partner, or child / How to apply](#)

The Applicant's situation falls squarely in this latter category: they merely used the law office address for correspondence, while choosing not to appoint the office or a person there as a representative. The IMM 1344 sidenote confirmed that withholding IMM 5476 simply meant IRCC would not release case information to the addressee – not that the application would be rejected. Faced with two plausible readings, the Applicant relied on the one textually supported by IRCC's own guide. Under basic principles of administrative fairness, IRCC cannot penalize an applicant for following a reasonable – indeed, officially sanctioned – interpretation, particularly when the contrary, unwritten policy was never communicated and its application here has irreversibly destroyed the Applicant's eligibility.

The Applicant's interpretation was that the representative form was optional unless one wanted to *designate* the representative officially.

41. **No statutory basis to refuse processing:** As discussed above, there is no regulation or statute explicitly stating that failure to submit IMM 5476 results in application rejection. The Respondent's decision to treat the application as incomplete is effectively a self-imposed requirement, not grounded in law, especially given that the Applicant did not agree that a representative was acting on their behalf in the legal sense. The Federal Court has held that such extra-statutory requirements cannot be enforced to deprive applicants of their rights. For example, in *Campana v. Canada*, Justice Roy reiterated that unless there is "*explicit and positive language in a relevant statute or regulation*" allowing the return of an application for a given deficiency, the Respondent cannot simply refuse to accept it. Here, the Respondent relied exclusively on section 10 of the Regulations as justification, but as Justice Roy observed

*I cannot find anything in section 10 to confirm that a lack of compliance results in an application not being in existence. Rather, we have a section that provides in*

*clear terms what an application under the Regulations must contain. That an incomplete application may not be processed is one thing. Suggesting that it does not even exist is quite another.*

[Campana v. Canada \(Citizenship and Immigration\), 2014 FC 49, paras. 15, 20](#)

42. While later cases (such as *Ma v. Canada*) have taken a stricter view that truly incomplete applications confer no rights, those cases involved clear omissions of mandatory forms or information.

[Ma v. Canada \(Citizenship and Immigration\), 2015 FC 159](#)

In this case, what the Respondent labeled "incomplete" was in fact an intentional choice by the Applicant following the instructions provided. It is a far cry from, say, missing a signature or failing to include a principal applicant's birth certificate – omissions that unquestionably justify return. The Respondent's decision here was based on a misinterpretation (seeing the Applicant's provided mailing address as evidence of an undeclared representative) and a rigid application of a guideline, rather than the law.

43. Unreasonable outcome and lack of proportionality: The result of the Respondent's decision was draconian. Instead of processing the application and simply treating the Applicant as unrepresented (which would have caused zero prejudice to the integrity of the system), the Respondent chose to send everything back. This caused significant delay and potential prejudice, particularly regarding the lock-in date for the Applicant's family member. The principle of procedural fairness in administrative law includes an element of proportionality and common sense. If an officer had concerns that a representative was involved without proper authorization, a reasonable step would have been to contact the Applicant for clarification or request the IMM 5476 without immediately losing the filing date. The Respondent's inflexible approach was unwarranted. It essentially punished the Applicant for a perceived technicality that the Respondent's own forms suggested was not fatal.
44. **No release of information occurred or was requested:** It bears emphasizing that in the period before the application was returned, there was no issue of IRCC having released any personal information improperly. The only communications were the return letter itself. Thus, the Respondent's ostensible concern – protecting the Applicant's information

by ensuring a representative is properly authorized – was never actually at risk. The Applicant's rights and privacy were intact. The Respondent could have simply redirected correspondence to the Applicant's residential address or required future contact to come from the Applicant directly if they refused to recognize the representative. Any of these solutions would have achieved IRCC's policy goal without aborting the entire process. This underscores that the decision to return the application was a disproportionate response not justified by the circumstances.


45. In light of the above, the Applicant submits that the Respondent's decision fails the reasonableness analysis. A reasonable decision is based on internally coherent reasoning and justified by the facts and law. Here, the Respondent's reasoning (that the application was incomplete for lack of IMM 5476) is internally inconsistent with IRCC's own guidance and is not justified by the regulatory requirements. It falls outside the range of acceptable outcomes.

#### **PART V – ORDER SOUGHT**

46. For all the above reasons, the Applicant submits that the decision to return the sponsorship application was incorrect in law and unreasonable. The application was complete, and the Respondent's contrary view was based on a misinterpretation of what constitutes a "required" document. The Applicant should not be penalized for following the form instructions that implied IMM 5476 was optional unless a representative was formally appointed. The relief sought will simply allow the sponsorship process to continue as if the application had never been wrongly returned.
47. The Applicant respectfully requests that this Court:
- a. Grant leave for this judicial review;
  - b. Set aside the Respondent's decision communicated by letter dated March 19, 2025, which returned the application as incomplete;
  - c. Declare that the Applicant's sponsorship application meets the requirements of a complete application under IRPR s. 10, notwithstanding the absence of a Use of Representative form, since no representative was formally appointed;

- d. Order the Respondent to process the sponsorship and accompanying permanent residence application, using the original submission date as the received date for all purposes (including but not limited to age lock-in calculations), or alternatively, remit the matter for redetermination with directions consistent with the Court's reasons.

Dated this August 02, 2025



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