

Court File No. T-1553-23

Seal

FEDERAL COURT

FEDERAL COURT COUR FÉDÉRALE	
FILED	JUL 26 2023
NICOLE HRADSKY	
TORONTO, ON	

BETWEEN:

Adrian Maliqi

Plaintiff

and

His Majesty the King

and

Minister of Immigration, Refugees and Citizenship

Defendant

STATEMENT OF CLAIM

STATEMENT OF CLAIM TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defense in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defense if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the

Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: July 26, 2023

Issued by:

Address of local office: Federal Court of Canada
180 Queen Street West
Toronto, ON, M5V 3L6

TO: HIS MAJESTY THE KING
The Attorney General of Canada
C/O: Department Justice of Canada

Ontario Regional Office
The Exchange Tower
120 Adelaide Street West
Suite 400
Toronto, Ontario
M5X 1K6
Fax (416) 954-8982

TO: Minister of Immigration, Refugees and Citizenship

STATEMENT OF CLAIM

The Plaintiff claims damages in the amount of \$100,000 in general and compensatory damages caused by a wrongful decision of Immigration Refugees Citizenship Canada (IRCC), Canadian Embassy in Vienna Austria, and another 60,000 in punitive damages for gross misconduct and breaches of the law

THE FACTS

1. In December 2015, Adrian Maliqi, a permanent resident and a convention refugee (protected person) of Canada, was in Germany and then Austria for a visit.
2. He lost his permanent resident (PR) card while he was in Europe
3. On January 12 the Plaintiff went to the Canadian Embassy in Vienna to apply for a travel document so he can return to his home in Toronto as he was planning prior to losing his PR card.

4. On the same day the Plaintiff had an interview with an immigration officer in the Canadian embassy in Vienna.
5. The officer asked the plaintiff to provide documents in order to prove his residency in Canada.
6. The Plaintiff provided his passport and copies of his passport stamps, flight tickets and some other documents he had access to at that time. He also mentioned during the interview that he has been a protected person in Canada since 2006.
7. The interviewing officer told him that he was not satisfied and he needed more documents in order to decide if a travel document could be issued to the plaintiff.
8. A new appointment was scheduled for a later date so that the plaintiff could bring more documents.
9. On January 17 the plaintiff provided more documents to the embassy in Vienna : a lease agreement of the house he was renting in Toronto, bank statements, T4 forms from Canada Revenue Agency, **a detailed letter with entries and exits in and out of Canada and the calculation of all days of physical presence in Canada which showed that the Plaintiff was in Canada for more than 730 days in the last 5 years prior to that application. He also provided a document confirming Convention Refugee status issued by Immigration Refugees and Citizenship Of Canada (IRCC).**
10. On February 12, 2016 Vienna embassy informed the Plaintiff to go and pick up his passport he submitted. On the same day, he went there to receive his passport but **no travel document was issued.**
11. In a decision letter dated February 11, 2016, given to the plaintiff at the same time he picked up his passport read that the travel document was refused and his **permanent resident status was taken away by an immigration officer in Vienna.** Their reason was that the Plaintiff did not comply with the residency obligation according to Immigration Refugee Protection Act (IRPA).
12. In disbelief with that decision, the plaintiff tried to talk to someone at the embassy and explain that it was a wrong decision and he has to go to Canada, but he was told that the only option to him was to appeal the decision and contact the embassy by email.

13. The Plaintiff wrote several email requests to the embassy explaining that they made a wrong decision and requested to go back to Canada because not that he was a permanent resident, he also was a protected person (convention refugee) in Canada.
14. The decision was not changed and the plaintiff was left helpless in Austria.
15. On February 18 (stamped on Feb. 22) the Plaintiff appealed the decision of February 11, 2016 at Immigration Appeal Division (IAD) in Toronto.
16. Later, the Plaintiff requested the Canadian Embassy in Vienna, in writing by an email to issue a travel document after he filed for the appeal, so he could return to Canada and prepare for his IAD case on residency obligation as most of his documents to prove his compliance with IRPA residency requirements were at his home in Toronto.
17. The right to return to Canada in cases when someone loses the permanent resident status and files an appeal is stated in the Article 31.3.c of IRPA, it was also stated on the decision letter given to the plaintiff on February 11, 2016.

31 (1) *A permanent resident and a protected person shall be provided with a document indicating their status.*

(3) *A permanent resident outside Canada who is not in possession of a status document indicating permanent resident status shall, following an examination, be issued a travel document if an officer is satisfied that*
(c) *they were physically present in Canada at least once within the 365 days before the examination and they have made an appeal under subsection 63(4) that has not been finally determined or the period for making such an appeal has not yet expired.*

Immigration and Refugee Protection Act (S.C. 2001, c. 27)

18. In fact the Plaintiff was in Canada during the month of March 2015 until April 3 2015, he proved that to the embassy when he applied for the travel document.
19. In an email dated March 14, 2016 the Canadian Embassy in Vienna, Visa Section staff deliberately misinformed the Plaintiff about the process of application for returning to Canada to prepare and appear in person for his hearing.

20. The embassy staff wrote to him that the Plaintiff, Adrian Maliqi, had to request IAD if he wanted to apply for a travel document to go back to Canada and not the embassy in Vienna, when in fact they were responsible for issuing the document and they were well aware of his case.
21. This was a gross misconduct and breach of principles of natural justice by intentionally misinforming and preventing him to go to Canada and prepare for his hearing. The plaintiff was lawfully eligible to apply at the embassy in Vienna according to IRPA 31.3.(c).
22. In desperate need to return to his home in Toronto, the Plaintiff applied for a travel document through IAD as he was instructed. He applied on April 6, 2016 and it was refused as well.
23. The Plaintiff lost his hopes and he was waiting in Europe where he was forced to reside illegally until he went to Sweden and applied for protection, which was refused since they found out that he already had a protected person status in Canada.
24. The Plaintiff requested a travel document from the Canadian Embassy in Vienna one more time on Nov 17, 2017, to be able to go to Canada so he can return to Toronto to find a lawyer, prepare his documents and attend his IAD appeal hearing in person. This time the embassy answered on Nov. 29, 2017 as follows:
“ Since you were last physically present in Canada on April 3, 2015, you ceased to be eligible for a Travel Document on April 3, 2016”.
25. The embassy staff did not realize that the Plaintiff had previously requested for a travel document within that eligible period. He did make a request on March 13, 2016 and he had been given misleading instructions instead of being issued a travel document.
26. When he presented the embassy with the emails exchanged by the embassy staff and the Plaintiff himself, they realized that they were caught misinforming him. They replied ***“ In light of the new information provided, your application for a Permanent Resident Travel Document (PRTD) will be reopened and a PRTD issued to you “.***
27. Eventually on July 20, 2018 the Vienna embassy decided to issue a traveling document after two years and a half of waiting.

28. The Plaintiff came back to Toronto in September 2018 to prepare and appear in person for the IAD appeal case on his permanent resident status that was scheduled for October 2018.
29. Once in Toronto, he retained a lawyer and prepared his case properly for his final hearing session.
30. On October 22, 2018 he had his hearing on his permanent resident status and **an IAD member decided that the Canadian Embassy in Vienna made an erroneous decision and the plaintiff Adrian Maliqi was always a lawful permanent resident of Canada**, although his status was taken away from him temporarily from January 2016 until October 2018.
31. His permanent resident status was reinstated on a legal validity basis, which means he did not breach IRPA rules as the officer in Vienna stated in February 2016 and not issuing a travel document in the first place was wrong.

DAMAGES

32. The Plaintiff's lawful right to be in Canada from January 2016 until July 2018 was taken unlawfully when he was a legal permanent resident and a protected person.
33. The Plaintiff lost the opportunity to work to study and participate in his daily and community activities in Toronto where he was living for over 10 years, also he could not see his family members and friends in Canada for over two years and a half.
34. The Plaintiff lost access to basic services such as healthcare and education. He had health conditions that needed regular treatment for which he informed the embassy when he applied for the travel document.
35. As a protected person (convention refugee) of Canada he was left without help from the Canadian government for two years and a half.
36. Because of these events the Plaintiff suffered mental problems such as anxiety, panic attacks and depression, it made him afraid that he would be returned to his country of origin where he would face mistreatment and torture.

37. His citizenship application was considered abandoned in May 2016 by IRCC after five years being in process due to the fact that he was not able to open and respond to the IRCCs requests sent by mail at his home address in Toronto. He was prevented from going to his home in Toronto during that time.

38. The plaintiff's citizenship application was delayed for another seven years due to this wrongful decision of February 2016 in Vienna, which made him lose other rights and benefits as a Canadian citizen.

39. For these reasons, the Plaintiff is justified to ask the following damages:

- i. \$100.000 for the damages caused from the day he was refused the travel document on February 11, 2016 until he was allowed back in July 2018
- ii. \$ 60.000 on punitive damages for the intentional malicious actions IRCC members took and prevented him from his rights that are protected under Canadian and International law.

40. Alternatively, If this Honourable Court judges that other remedies are more appropriate within its discretionary power, the Plaintiff asks the Court to judge on the merits that would alleviate the terrible wrong that the Plaintiff has suffered from from Defendant's actions.

41. The Plaintiff proposes that the trial of this action take place at the Federal Court in Toronto.

Toronto, July 25, 2023

Adrian Maliqi
The Plaintiff



Court File No.

FEDERAL COURT

BETWEEN:

Adrian Maliqi

Plaintiff

and

His Majesty the King

and

Minister of Immigration, Refugees and Citizenship

Defendant

STATEMENT OF CLAIM

Adrian Maliqi
14 Hope Street, Toronto, ON, M6E1J7
Email: adrian.gml@gmail.com
Phone: 647 767 2420

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of JUL 26 2023 A.D. 20____

Dated this _____ day of JUL 26 2023 20____


NICOLE HRADSKY
REGISTRY OFFICER
AGENT DU GREFFE

Federal Courts Fees Receipt
Reçu pour frais judiciaires des cours fédérales

NO. **A 618168**



Federal Court of Appeal /
 Cour d'appel fédérale

Federal Court /
 Cour fédérale

Court Martial Appeal Court of Canada /
 Cour d'appel de la cour martiale

To / À : Name/Nom : <u>Adriane Maliqui</u> Organization/Organisation : _____ Address/Adresse : <u>TORONTO</u> _____ _____	Date : <u>26-Jul-2023</u>
	Issuing Office / Bureau émetteur : <u>TOR</u>
	Prepared by / Préparé par : <u>NH</u>
	Court File No./ N° du dossier de la Cour : <u>T-1553-23</u>

Style of Cause & Description of Services Provided Intitulé de la cause et description des services rendus	Cost(s) Frais
<p><u>ADRIAN MALIQI</u> <u>v.</u> <u>HIS MAJESTY THE KING ET AL.</u> <u>STATEMENT OF CLAIM</u></p>	<p>Total = <u>150.00.</u></p>

Method of Payment / Mode de paiement	
<input type="checkbox"/> Account / Compte Dept# / # Département : _____ Org Code / Code org : _____ Reference Code / Code référence : _____	<input type="checkbox"/> Cheque No. / N° chèque : _____ <input type="checkbox"/> American Express: _____ <input type="checkbox"/> MasterCard: _____ <input checked="" type="checkbox"/> Visa: <u>054742</u>
<input type="checkbox"/> Cash / Comptant <input type="checkbox"/> Debit Card / Carte de débit	

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Blue - Accounting - Ottawa
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CAS/SATJ-26 (REV 2/11)

Goldenrod - Accounting 2nd copy. Local Office
 where costs retained by Province (Ottawa Statistics)

Or - Comptabilité 2^e copie. Bureau local lorsque
 les frais sont retenus par la province (Statistiques Ottawa)

Pink - Party
 Rose - Partie

Canary - Duplicate - Local office
 Jaune - Duplicata - Bureau local