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Goel v. The Minister of Citizenship and Immigration, Order of Justice Little dated July 21, 2026

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Federal Court Cour fédérale

Date: 20260721

Docket: IMM-22687-24

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July 30, 2026
30 juillet 2026
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Ottawa, Ontario, July 21, 2026

PRESENT: Justice Andrew D. Little

BETWEEN:

MEHUL MAHESH GOEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER

UPON MOTION in writing by the applicant filed on June 19, 2026, under Rule 399(2)(a) of the *Federal Courts Rules*, for an order setting aside the Court's order dated November 5, 2026, which dismissed an application for leave and judicial review of a decision of the Refugee Appeal Division ("RAD") dated November 8, 2024; and for an order granting the applicant leave to file an application record to replace the application record submitted by former counsel on January 15, 2025, granting the respondent leave to file a responding record/memorandum, and granting the applicant leave to file a reply memorandum prior to the matter being submitted for redetermination of the application for leave;

AND CONSIDERING the affidavit of Mehul Mahesh Goel sworn on June 12, 2026, and the affidavit of Nabila Kalid Abdurhim sworn on June 12, 2026;

AND CONSIDERING the written representations of the applicant dated June 19, 2026, the written representations of the respondent dated June 29, 2026, and the applicant's reply submissions filed on July 3, 2026;

AND CONSIDERING the applicant's request, by letter dated July 11, 2026, that this motion be determined on an expedited basis due to the applicant's pending removal from Canada on July 27, 2026;

AND CONSIDERING that Rule 399(2)(a) confers discretion on the Court to vary or set aside a decision "by reason of a matter that arose or was discovered subsequent to the making of the order"; and that:

(a) the burden is on the moving party to make a *prima facie* case as to why the order ought not to have been made;

(b) the authority of the Court to set aside its own orders is necessary to deal with the case where the court made a decision based on misleading or incomplete information;

(c) the finality of judicial decisions means that setting aside a decision must be based on "exceptionally serious and compelling grounds"; and that

(d) it is well established that three conditions must be met for the Court to allow such a motion: (1) the newly discovered information must be a "matter" [« faits nouveaux » in the French version] within the meaning of paragraph 399(2)(a); (2) the

> "matter" must not be one which was discoverable prior to the making of the order by the exercise of due diligence; and (3) the "matter" must be something that would have a "determining influence" on the decision in question;

See *Atkinson v. Canada (Commissioner of Competition)*, 2026 FCA 72, at paras 29, 31; *Sierra Club Canada Foundation v. Canada (Environment and Climate Change)*, 2024 FCA 167, at paras 10-11; *Ayangma v. Canada*, 2003 FCA 382, at para 3; *Income Tax Act (Re)*, 2018 FC 1012, at paras 13-14;

AND CONSIDERING the applicant's contention that there was misconduct by the applicant's former counsel because counsel: (1) did not submit an application record that was compliant with the Federal Court's practice guidelines on the use of artificial intelligence ("AI") because it failed to disclose the use of artificial intelligence to the Court and the applicant; (2) failed to verify the cases cited and relied on "hallucinated" cases in the applicant's memorandum of argument; and (3) failed to comply with the Court's Direction dated September 5, 2025, to provide the cases cited in the memorandum of argument;

AND CONSIDERING that the parties disagreed on whether misconduct of counsel constitutes a "new matter";

AND CONSIDERING that with respect to non-compliance with practice guidelines and failing to verify the cases, this Court has found that an error of counsel and ignorance of the law or process do not constitute a "new matter" within the meaning of Rule 399(2)(a), and that to find otherwise would be contrary to the principles of finality and would invite ongoing motions pursuant to Rule 399 based on claims of inadequate representation arising from counsel's failure

to comply with the *Federal Courts Rules* or to raise an argument: see e.g., *M&P Healthcare Services Inc. v. Canada (Employment and Social Development)*, 2024 FC 1886, at paras 19-21, quoting *Ismael v. Canada (Citizenship and Immigration)*, 2018 FC 1191, at para 37;

AND CONSIDERING that the applicant submitted that the former counsel's misconduct was of a nature that it would have affected the decision to dismiss the application for leave and must have been a determining influence on the decision in question, given the reliance on cases that "do not exist"; and the applicant raised the integrity of the judicial process;

AND CONSIDERING that the use of AI (disclosed or undisclosed) and references to possible "hallucinated" cases do not constitute an automatic basis under Rule 399(2)(a) to set aside an order, in this case an order dismissing an application for leave and for judicial review;

AND CONSIDERING that the respondent's submissions on the application for leave did not raise the possible use of AI and possible "hallucinated" cases. However, the Court reviewed the applicant's memorandum of argument on the leave application and issued a Direction dated September 5, 2025, that requested copies of certain cited cases and asked counsel to advise whether AI was used to prepare the applicant's argument. The Court also received and considered former counsel's response;

AND CONSIDERING that the dismissal of the application for leave and for judicial review in this case was not based on the following issues raised by the applicant on this motion: (i) that the applicant may have used AI in the preparation of the applicant's submissions, or (ii) that such use was not disclosed, or (iii) that the applicant's written submissions may have

referred to “hallucinated” cases, or (iv) the responsiveness of the applicant’s letter and book of authorities filed in response to the Direction;

AND CONSIDERING the familiar principles that apply on applications for leave and for judicial review under section 72 of the *Immigration and Refugee Protection Act* and in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653;

AND CONSIDERING, on this motion again, the reasons provided by the RAD for its decision and the applicant’s written submissions filed with the application for leave and for judicial review;

AND CONSIDERING that the applicant submitted on this motion that the applicant’s application for leave and for judicial review of the RAD’s decision has merit, arguing that the RAD’s decision contained a “clear error” in paragraph 22 of the RAD’s decision, which according to the applicant was “core” to its decision and coloured its overall assessment of the applicant’s risk in India. The applicant argued on this motion that the RAD found that his parents had not come to his home in Delhi; however, according to the applicant’s submissions, the applicant testified that his parents came to Delhi to look for him previously and would “certainly” look for him if he were to go to Delhi (citing page 238 of the transcript of the applicant’s testimony at the Refugee Protection Division (“RPD”), excerpted in the motion record), and it was mentioned in his Basis of Claim narrative. The applicant further argued that his parents came to his home in Delhi “on several occasions” and would come to find him in Delhi if he returned to India (without additional citation);

AND CONSIDERING that Rule 399(2)(a) is inapplicable to this submission because it raises an argument on the merits of the application for leave that was discoverable prior to the making of the order dismissing leave;

AND CONSIDERING, in any event, that in the applicant's RPD testimony as excerpted in the motion record, the applicant did not testify that his parents came to look for him previously. He was asked about what would occur if he returned to Delhi ("… if you were to go to New Delhi, do you think that your parents would look for you there?") and responded "[i]f they are notified then certainly they would" (p. 238; same response on p. 239); and that the applicant's narrative refers, in the passage cited on this motion, to his father coming to Delhi after April 2019 and before April 2020 when the applicant moved back to Patna, India to live with his parents during the pandemic;

AND FINDING that, even if the applicant's submissions had raised a matter that was not discoverable prior to the making of the order dismissing leave, Rule 399(2)(a) is inapplicable because the issue raised would not have had a determining influence on the order dismissing leave: *Sierra Club Canada Foundation*, at paras 11, 21-22;

AND CONSIDERING the principle of finality of judicial decisions, and the high burden on the applicant on this motion to show "exceptionally serious and compelling grounds" to set aside the order: see *Atkinson*, at para 33; *Sierra Club Canada Foundation*, at para 10;

AND CONCLUDING that the applicant has not raised any matter that arose or was discovered subsequent to the making of the order that would have a determining influence on the order dated November 5, 2025, that dismissed the application for leave and for judicial review;

AND DETERMINING that, for the reasons above, the applicant has not demonstrated on this motion that the Court's order dismissing his application for leave should be set aside under Rule 399(2)(a),

THEREFORE, THIS COURT ORDERS that the applicant's motion is dismissed.

"Andrew D. Little"
Judge