

Federal Court



Cour fédérale

**Date: 20161005**

**Docket: IMM-720-16**

**Citation: 2016 FC 1115**

**Ottawa, Ontario, October 5, 2016**

**PRESENT: The Honourable Mr. Justice LeBlanc**

**BETWEEN:**

**ZABIHULLAH HAMID  
AZIZA HAMID**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**ORDER AND REASONS**

[1] The Applicants seek judicial review of the decisions of an immigration officer at the Canadian High Commission in New Delhi, India [the Officer], dated December 16 and December 31, 2015 respectively, dismissing their applications for permanent residence in Canada as members of the Convention Refugee Abroad class or of the Country of Asylum class. The Officer found that the Applicants did not truthfully answer all questions put forth to them

and as a result, failed to meet the requirements of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act).

[2] The relevant facts can be summarized as follows. The Applicants are citizens of Afghanistan. They are mother (Aziza) and son (Zabihullah). Zabihullah (or Mr. Hamid) is married and has three children. The Applicants claim that they left Afghanistan for India in 2008 to escape the Taliban's reign of terror which has cost the lives of Mr. Hamid's father and sister. Mr. Hamid alleges that he was kept captive and tortured by the Taliban for five months and 20 days before he managed to escape. The Applicants have been living in India ever since.

[3] The Applicants both filed for refugee protection in February 2015. At the first interview held with the Officer on February 10, 2015, Mr. Hamid's testimony was found credible. When questioned about his work experience, he indicated that since he turned 18, he taught math, physics and English to high school students, ran the finances of his late father's construction business, taught basic computers and prepared students for university exams. He also stated that in Kabul, he worked as a translator for Non-Governmental Organizations.

[4] Upon completion of the interview, the Officer concluded that Mr. Hamid qualified as a Convention Refugee under section 96 of Act as member of a particular social group. The Officer held that given Mr. Hamid's work experience, it was reasonable to assume that he would have been targeted as a civilian suspected of supporting anti-government elements. The Officer also found Aziza to qualify as a Convention refugee since she was a widow with no male protection other than her son.

[5] However, in September 2015, upon receipt of a “poison letter” from a third party stating that Mr. Hamid worked at the Embassy of Afghanistan in New Delhi [the Embassy] and had a nice house in Kabul, the Officer convoked Mr. Hamid to a subsequent interview to be held on December 10, 2015.

[6] During the second interview, the Officer asked Mr. Hamid where he worked. When he answered that he had been working as a translator for the five previous years, the Officer confronted him with the information received in the “poison letter” as well as with his LinkedIn profile which stated that he had been working at the Embassy as Secretary to Minister Counselor of the Deputy Chief of Mission since June 2010. Mr. Hamid acknowledged that he worked at the Embassy but explained that he had started working there in March 2015, after he had completed his application for refugee protection and added that he was now working for the Economic Council.

[7] Due to contradictory information contained in Mr. Hamid’s LinkedIn profile, the Officer started to doubt that Mr. Hamid ever worked with his father or ever faced problems from the Taliban due to such work. Indeed, at the time Mr. Hamid was allegedly working with his father, he had listed on his LinkedIn profile his employment at the Kabul Bank. The Officer started to doubt the death of Mr. Hamid’s father and to believe Mr. Hamid had fabricated his refugee story.

[8] Following the second interview, the Officer asked her program assistant to call the Embassy to inquire about Mr. Hamid’s employment. According to the Officer’s Global Case Management System (GCMS) notes, the Embassy’s receptionist first confirmed that Mr. Hamid

had been working at the Embassy for years but then called back to indicate that she was wrong and that Mr. Hamid had started working there in March 2015. On December 15, 2015, the Officer noticed that Mr. Hamid's LinkedIn profile had been modified to fit his testimony that he had started working at the Embassy in March 2015. Amongst the other changes brought to Mr. Hamid's LinkedIn profile on that date, the Officer noted that the job reference at the Kabul Bank had been deleted and the number of years Mr. Hamid allegedly worked as a math and physics teacher in Afghanistan had been shortened. Together, these facts made the Officer doubt Mr. Hamid's credibility and raised concerns that he might be concealing material aspects of his work experience.

[9] On December 16, 2016, the Officer rejected Mr. Hamid's application for refugee protection on the basis that he had acted in a dishonest way contrary to subsection 16(1) of the Act and therefore, that he did not meet the requirements of the Act.

[10] On December 29, 2016, the Officer interviewed Aziza. She corroborated her son's story regarding his employment at the Embassy. She claimed that the information on her son's LinkedIn profile had been added by an enemy. She subsequently changed her story and claimed that Mr. Hamid had lied on his profile to find employment. She handed the Officer a letter from the Embassy dated December 28, 2015, corroborating Mr. Hamid's testimony. That letter was not submitted by the Applicants in their Application Record.

[11] On December 31, 2015, Aziza's application for permanent residence was dismissed on the same basis as her son's.

[12] The Applicants claim that the Officer's decision in each case is unreasonable and violates the principles of procedural fairness in a number of respects. However, at the hearing, they narrowed down their claim against the Officer's decisions to a single issue, which is whether the Officer violated the principles of natural justice by not providing Mr. Hamid with an opportunity to respond to her concerns regarding the information gathered during the phone calls made to, and received from, the Embassy.

[13] The Applicants insist that the fact that they were not provided with an opportunity to disabuse the Officer's concerns regarding what was in essence extrinsic evidence, is sufficient to vitiate the whole process that led to the Officer's decisions. They concede though that their evidence before the Officer contains a number of contradictions and inconsistencies and that if it was not for these phone calls, the Officer's decisions would probably withstand judicial scrutiny on a reasonableness standard of review.

[14] It is well-established that matters raising issues of procedural fairness are reviewable on a standard of correctness (*Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, at para 43; *Canada (Attorney General) v Sketchley*, 2005 FCA 404; *Maghraoui v Canada (Citizenship and Immigration)*, 2013 FC 883, at para 18 [*Maghraoui*]).

[15] It is clear that a visa applicant must be made aware of the "case to be met" and that the information known to the visa officer must be made available to him or her. The Respondent's own guidelines provide as such (Immigration, Refugee and Citizenship Canada, *Overseas Processing Manual*, Chapter OP-1: Procedures, s. 8 "Procedural fairness", Ottawa, March 15,

2016, at 42). However, as is well-settled too, the discharge of a visa officer's duty of fairness in any given case must be assessed on a case-by-case basis. As the Supreme Court of Canada held recently in *Canada (Attorney General) v Mavi*, 2011 SCC 30 [*Mavi*], a number of factors help in determining the content of procedural fairness in a particular statutory and administrative context but the "obvious point is that the requirements of the duty in particular cases are driven by their particular circumstances" (*Mavi*, at para 42).

[16] This Court has consistently held that to trigger the duty to disclose extrinsic evidence in the immigration context, this evidence must be important in the sense that it may impact the outcome of the decision. In other words, the issue to be determined in such cases is whether "meaningful facts essential or potentially crucial to the decision had been used to support a decision without providing an opportunity to the affected party to respond to or comment upon these facts" (*Yang v Canada (Minister of Citizenship and Immigration)*, 2013 FC 20, at para 17); see also: *Muliadi v Canada (Minister of Citizenship and Immigration)*, [1986] 2 FC 205 (FCA); *Majdalani v Canada (Citizenship and Immigration)*, 2015 FC 294, at para 37 [*Majdalani*]).

[17] The duty to disclose extrinsic evidence for an immigration visa officer is therefore not absolute; it is a function of the importance of that evidence in the officer's decision-making process, the ultimate goal being to ensure that the applicant was given the opportunity to participate in a meaningful manner in that process (*Majdalani*, at para 58).

[18] Here, I am satisfied that although the Officer referred to it in her decisions, the information gathered in the course of the phone calls made to, and received from, the Embassy

was not essential or crucial to the decisions. First, it is quite clear that when read as a whole in conjunction with the GCMS notes, the decision dismissing Mr. Hamid's permanent residency application was essentially and primarily based on the work experience inconsistencies and discrepancies between his application for permanent residence, the versions of his LinkedIn profile of December 10 and December 15, 2015 and the information he provided at the December 10, 2015 interview. This is evident from the Officer's notes entered into the GCMS on December 16, 2015:

I have reviewed my interview notes of December 10<sup>th</sup> and have come to the conclusion that [Mr. Hamid] does not meet the requirements of the refugee program. I have come to this conclusion based on the responses provided to me at the interview and subsequent review whereby the applicant stated that he had been working only since March 2015 at the Embassy of Afghanistan in New Delhi when in fact his Linked In page showed that he had been working there since June 2010. A copy of the Linked In page as was shown to the applicant on December 10<sup>th</sup> during the interview and printed out that same day is on file and uploaded in GCMS. That copy shows the date it was printed out (10/12/2015). While I write these notes today on December 15, 2015, I notice that the same Linked In page shows very different information [*http address omitted*]. It states he has been working at the Embassy since March 2015 as he stated at the interview. The rest of his biography that was published on the December 10<sup>th</sup> version of the Linked In page has been changed so for example his job reference at Kabul Bank has been deleted and the years he worked as a maths and physics teacher have been shortened. This change to the Linked In page had to have been done by the applicant as it is reasonable to think that one manages the content of one's own Linked In page as it is a social and professional network online forum where people join voluntarily. This begs the question why he changed his Linked In page? I believe [Mr. Hamid] has acted in a dishonest way and has deliberately changed the evidence before me as a means to conceal discrepancies and inconsistencies in information contained in the Linked In page and in his immigration application. The version of [Mr. Hamid]'s Linked In page dated December 15, 2015 is uploaded in GCMS and is dated December 15, 2015.

[19] It is also clear from the Officer's decision regarding Mr. Hamid and from the GCMS notes that the contradictory information gathered from the telephone calls with the Embassy is referred to as an added concern, not as a key or determinative piece of evidence crucial to the outcome of the case. I understand the Officer's decision in that regard to mean that the phone call received from the Embassy was another attempt on the part of Mr. Hamid, similar to the changes he brought to his LinkedIn page, to corroborate his statement at the December 10 interview that he had started working at the Embassy in March 2015.

[20] As the extract of the GCMS notes I have just reproduced reveals, the Officer's mind that Mr. Hamid did not meet the requirements of the refugee program was already made up before she made any reference to this added concern. In other words, there was far much more to the Officer's finding that Mr. Hamid did not meet the requirements of the refugee program than the concern flowing from the phone call received from the Embassy. As such, this concern was not, in my view, essential or crucial to the Officer's decisions denying the Applicants' permanent residency applications and it was therefore not incumbent on the Officer, from a procedural fairness standpoint, to provide the Applicant with an opportunity to respond to it.

[21] But there is more to it. After Mr. Hamid's application for permanent residence was refused on December 16, 2015, Aziza tried to change the Officer's decision about her son by explaining that Mr. Hamid had been working as a volunteer at the Embassy from 2010 to 2015, which would explain why the Embassy's receptionist would have initially responded that Mr. Hamid had been working there for years. According to the affidavit he filed in support of the present proceedings, this is the explanation Mr. Hamid would have provided the Officer if he had



been given the opportunity to disabuse her concern regarding the contradictory information gathered from the Embassy.

[22] As the Respondent rightfully points out, if such was the case, it is reasonable to believe, given the very serious discrepancy between the information appearing on his LinkedIn page on December 10, 2015, where it is stated that he had been working at the Embassy since June 2010 in what appears to be a full-time position, and his evidence at the December 10 interview that he had started working there in March 2015, that Mr. Hamid would have mentioned his volunteer work with the Embassy at that interview in order to provide an explanation for this apparent discrepancy. The opportunity was clearly there for him to do so but he did not. I therefore agree with the Officer when she says that Mr. Hamid was provided with an opportunity to respond to her concerns at the December 10 interview and that there was no point in giving him a further opportunity to respond to the contradictory information gathered from the Embassy.

[23] Again, the Applicants concede that if it was not for the Officer going this extra-mile, her decisions would withstand judicial scrutiny. I have not been persuaded that going this extra-mile, when there was really no need to do so, was of such importance to the outcome of the case that it fatally vitiates the Officer's decision-making process. In sum, I am satisfied, in the particular circumstances of this case, that Mr. Hamid was provided with an opportunity to participate in a meaningful manner to that process (*Majdalani*, at para 58).

[24] Before I conclude, I would like to point out that by Order of this Court dated August 3, 2016, the Applicants were given access to actual content of the "poison letter" that was received

by the Officer in September 2015 and which up to that date had not been disclosed to them. Only the portions of the said letter revealing the identity of its author were held to be protected from disclosure. As indicated previously, the Applicants have chosen not to pursue at the hearing any of their arguments related to the “poison letter” or the fact its actual content was not disclosed to them by the Officer or was redacted from the Certified Tribunal Record.

[25] The Applicants’ judicial review application will be dismissed. Neither party proposed a question for certification. None will be certified.

**ORDER**

**THIS COURT ORDERS** that:

1. The application for judicial review is dismissed;
2. No question is certified.

"René LeBlanc"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-720-16

**STYLE OF CAUSE:** ZABIHULLAH HAMID, AZIZA HAMID v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTREAL, QUEBEC

**DATE OF HEARING:** AUGUST 31, 2016

**JUDGMENT AND REASONS:** LEBLANC J.

**DATED:** OCTOBER 5, 2016

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