

Federal Court



Cour fédérale

Date: 20171006

Docket: IMM-4639-16

Citation: 2017 FC 891

Ottawa, Ontario, October 6, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ABDULHALIM HASHIR ABDULRAHIM

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], for judicial review of the decision of an immigration officer at the High Commission of Canada in Nairobi, Kenya [Officer], dated August 3, 2016 [Decision], which denied the Applicant's application for permanent residence as a member of the Convention

refugee abroad class or as a member of the humanitarian-protected persons abroad designated class.

II. BACKGROUND

[2] The Applicant is a national of Ethiopia who has lived in Kenya since fleeing Ethiopia in 1993. A member of the Oromo people, the Applicant claims that his perceived involvement with the Oromo Liberation Front [OLF] led to persecution by the Ethiopian government and makes it impossible for him to return to Ethiopia.

[3] In 2010, the visa office denied the Applicant's first application for permanent residence status in Canada as a member of the Convention refugee abroad class or the humanitarian-protected persons abroad designated class. As part of this first application, a visa officer interviewed the Applicant, with the aid of a translator, at the Kakuma Refugee Camp in Kenya on March 25, 2009. Notes from this 2009 interview describe the Applicant as stating that he provided food, money, and information to the OLF, and that he met with a person he believed to be a senior OLF fighter on a weekly basis.

[4] Concerned by some answers the Applicant provided, the visa office sent the Applicant a letter asking him to precisely detail his involvement with the OLF. The Applicant responded by letter in which he denied that he had ever helped the OLF. He claimed to have never stated that he provided assistance or had relations with the OLF during the 2009 interview. The Applicant's letter explained that he had tried to narrate a story about being falsely accused of assisting the OLF and blamed the miscommunication on the translator. The visa office was dissatisfied with

the Applicant's response. The visa office noted inconsistencies with information in the Applicant's United Nations High Commission for Refugees [UNHCR] Resettlement Registration Form [RRF], which also described the Applicant as having provided support to the OLF in the form of food, money, and information. The visa office refused the first application on credibility grounds. The Applicant did not seek judicial review of this decision.

[5] The Applicant submitted a new application for permanent residence in Canada in 2015. The Officer interviewed the Applicant on August 18, 2015. After the interview, the Officer perceived discrepancies between the Applicant's answers to questions about the Applicant's relationship with the OLF, notes from the 2009 interview, and the Applicant's RRF. Consequently, the Officer sent a procedural fairness letter [Fairness Letter] to the Applicant to allow the Applicant to address these concerns and provide further information. The Applicant responded by letter and explained that he had only morally supported the OLF before it withdrew from Ethiopia's transitional government. He again claimed that he had never personally provided financial support to the OLF. Rather, the Applicant claimed that he suspected his father may have provided financial and food support to the OLF, and he had assumed responsibility for his father's activities, but later realized that his father's activities should not be attributed to him even though he supported the OLF morally.

III. DECISION UNDER REVIEW

[6] The Officer did not find the Applicant credible and decided that he did not meet the requirements for immigration to Canada under either the Convention refugee abroad class or the humanitarian-protected persons abroad designated class.

[7] The Decision notes that the Applicant was interviewed again in 2015 with the assistance of an interpreter fluent in Oromo. The Officer states that the Applicant did not indicate any difficulty understanding, or being understood by, the translator during this interview. After explaining the relevant refugee classes and Canadian law related to them, the Decision outlines the basis of the Officer's credibility finding. The Decision reiterates that the Officer found "significant discrepancies" between the Applicant's 2015 interview responses, 2015 application materials, 2009 interview responses, and the Applicant's claim in the RRF. The Decision states that the Applicant's response to the Fairness Letter was considered, but that more discrepancies arose as a result. The Officer describes OLF involvement as the basis of the Applicant's claim and found the Applicant's description of involvement with the OLF to be contradictory. Since the Officer did not find the Applicant credible on this point, he concluded that the Applicant did not meet the definition of a Convention refugee or of the country of asylum class.

IV. ISSUES

[8] The Applicant initially submitted that the following are at issue in this application:

1. Was the Decision made without regard to the material before the Officer?
2. Did the Officer misunderstand the basis of the Applicant's claim?

[9] Based upon the evolving arguments in the present application, I would add the following issues:

1. In the application for judicial review before this Court, is the Respondent entitled to rely on notes from the 2009 interview and the Applicant's RRF to justify the Decision?

2. If the answer to the first issue is yes, did the Officer's failure to provide the Applicant with notes from the 2009 interview and the RRF with the Fairness Letter breach the duty of fairness?
3. If the answer to the second issue is no, is the Officer's credibility finding and Decision justified by the material that was before the Officer?

V. STANDARD OF REVIEW

[10] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[11] The issue concerning reliance on notes from the 2009 interview and the RRF does not involve judicial review of the Decision. Rather, it is an interpretation by this Court of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [Rules], and the direction of Justice Phelan, dated March 1, 2017.

[12] The second issue concerns a question of procedural fairness. Questions of procedural fairness are reviewed under the standard of correctness: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*].

[13] The other issues engage the Officer’s credibility finding and its relevance to the determination of the Applicant’s eligibility for permanent residence. It is therefore a question of fact, and mixed fact and law, and will be reviewed on the standard of reasonableness: *Tesfamichael v Canada (Citizenship and Immigration)*, 2017 FC 337 at para 8, citing *Sivakumaran v Canada (Citizenship and Immigration)*, 2011 FC 590 at para 19.

[14] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at para 47, and *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

VI. STATUTORY PROVISIONS

[15] The following provisions from the Act are relevant in this proceeding:

Convention refugee

96 A Convention refugee is a person who, by reason of a well-founded fear of

Définition de réfugié

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant

persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[16] The following provisions from the *Immigration and Refugee Protection Regulations*, SOR/2002-227, are relevant in this proceeding:

General requirements	Exigences générales
139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	139 (1) Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
...	...
(e) the foreign national is a member of one of the classes prescribed by this Division;	e) il fait partie d'une catégorie établie dans la présente section;
...	...

**Member of Convention
refugees abroad class**

145 A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.

**Person in similar
circumstances to those of a
Convention refugee**

146 (1) For the purposes of subsection 12(3) of the Act, a person in similar circumstances to those of a Convention refugee is a member of the country of asylum class.

**Humanitarian-protected
persons abroad**

(2) The country of asylum class is prescribed as a humanitarian-protected persons abroad class of persons who may be issued permanent resident visas on the basis of the requirements of this Division.

**Member of country of
asylum class**

147 A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

Qualité

145 Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.

**Personne dans une situation
semblable à celle d'un
réfugié au sens de la
Convention**

146 (1) Pour l'application du paragraphe 12(3) de la Loi, la personne dans une situation semblable à celle d'un réfugié au sens de la Convention appartient à la catégorie de personnes de pays d'accueil

**Personnes protégées à titre
humanitaire outre-frontières**

(2) La catégorie de personnes de pays d'accueil est une catégorie réglementaire de personnes protégées à titre humanitaire outre-frontières qui peuvent obtenir un visa de résident permanent sur le fondement des exigences prévues à la présente section.

**Catégorie de personnes de
pays d'accueil**

147 Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :

- | | |
|--|--|
| <p>(a) they are outside all of their countries of nationality and habitual residence; and</p> | <p>a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;</p> |
| <p>(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.</p> | <p>b) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.</p> |

[17] The following provisions from the Rules are relevant in this proceeding:

Obtaining Tribunal's Decision and Reasons

Production de la décision du tribunal administratif et des motifs y afférents

9 (1) Where an application for leave sets out that the applicant has not received the written reasons of the tribunal, the Registry shall forthwith send the tribunal a written request in Form IR-3 as set out in the schedule.

9 (1) Dans le cas où le demandeur indique dans sa demande d'autorisation qu'il n'a pas reçu les motifs écrits du tribunal administratif, le greffe envoie immédiatement à ce dernier une demande écrite à cet effet selon la formule IR-3 figurant à l'annexe.

(2) Upon receipt of a request under subrule (1) a tribunal shall, without delay,

(2) Dès réception de la demande prévue au paragraphe (1), le tribunal administratif envoie :

(a) send a copy of the decision or order, and written reasons therefor, duly certified by an appropriate officer to be correct, to each of the parties, and two copies to the Registry;

a) à chacune des parties une copie du dispositif et des motifs écrits de la décision, de l'ordonnance ou de la mesure, certifiée conforme par un fonctionnaire compétent, et au greffe deux copies de ces documents;

...

...

Obtaining Tribunal's Record

17 Upon receipt of an order under Rule 15, a tribunal shall, without delay, prepare a record containing the following, on consecutively numbered pages and in the following order:

(a) the decision or order in respect of which the application for judicial review is made and the written reasons given therefor,

(b) all papers relevant to the matter that are in the possession or control of the tribunal,

(c) any affidavits, or other documents filed during any such hearing, and

(d) a transcript, if any, of any oral testimony given during the hearing, giving rise to the decision or order or other matter that is the subject of the application for judicial review,

and shall send a copy, duly certified by an appropriate officer to be correct, to each of the parties and two copies to the Registry.

Production du dossier du tribunal administratif

17 Dès réception de l'ordonnance visée à la règle 15, le tribunal administratif constitue un dossier composé des pièces suivantes, disposées dans l'ordre suivant sur des pages numérotées consécutivement :

a) la décision, l'ordonnance ou la mesure visée par la demande de contrôle judiciaire, ainsi que les motifs écrits y afférents;

b) tous les documents pertinents qui sont en la possession ou sous la garde du tribunal administratif,

c) les affidavits et autres documents déposés lors de l'audition,

d) la transcription, s'il y a lieu, de tout témoignage donné de vive voix à l'audition qui a abouti à la décision, à l'ordonnance, à la mesure ou à la question visée par la demande de contrôle judiciaire,

dont il envoie à chacune des parties une copie certifiée conforme par un fonctionnaire compétent et au greffe deux copies de ces documents.

VII. ARGUMENT

A. *Applicant*

(1) Reliance Issues

[18] The Applicant submits that the Respondent is not entitled to rely on notes from the 2009 interview and the RRF to justify the Decision, as the Respondent declined to provide these materials as part of the Respondent's Rule 9 response. Justice Phelan's direction states that "it is the decision maker who signs the certificate stipulating what the reasons are. The parties... must live with the certificate and presumptively could not rely on the notes as forming part of the reasons for decision." The Applicant argues that, regardless of whether the 2009 interview notes are considered evidence or reasons, claimed discrepancies between the 2009 interview notes and the 2015 interview notes are part of the Officer's reasons. The Applicant notes that the RRF is an external document provided to the Respondent by the UNHCR and was not provided to the Applicant. Rather than grounding his argument in the Rules, however, the Applicant asserts that it breaches the duty of fairness for the Respondent to rely on asserted inconsistencies without providing the 2009 interview notes or the RRF. The Applicant claims that the proper interpretation of Justice Phelan's direction is that the Decision must stand or fall without reference to the 2009 interview notes or the RRF.

(2) Procedural Fairness

[19] In the alternative, the Applicant argues that if inconsistencies between the 2009 interview notes, the RRF, and the 2015 interview can be used to justify the Decision, then the Officer

breached the duty of fairness by not providing the earlier notes and RRF with the Fairness Letter. The Applicant asserts that the duty of disclosure required the Officer to provide the Applicant with extrinsic documents relevant to the Officer's credibility assessment if the Officer relied on those documents in the Decision.

(3) Reasonableness

[20] The Applicant further argues that there are four problems with the Officer's reasoning that render his credibility finding unreasonable.

[21] First, the Applicant argues that, contrary to the Officer's finding, he did not deny ever supporting the OLF during the 2015 interview. The Applicant alleges that the Officer never explicitly asked whether the Applicant supported the OLF. While the 2015 interview notes record the Applicant denying that he ever contributed money to the OLF, this cannot be equated with a blanket denial of support. The Applicant says he understood questions about contributions to be concerned with tangible, rather than moral, support, and he says he did support the OLF morally.

[22] Second, the Applicant argues that the Officer mischaracterized the Applicant's response about of his father's involvement with the OLF. The Decision claims that, in the 2015 interview, the Applicant stated that "he didn't know of any father's involvement in the OLF." The Applicant argues that the 2015 interview notes only show that the Applicant denied having precise knowledge of the nature of his father's involvement in the OLF. The Applicant argues

that there is a material difference in this distinction that contributed to the unreasonableness of the Officer's credibility finding.

[23] Third, the Applicant argues that the Decision fails to consider his response to the Fairness Letter. The Applicant's responding letter explained that he had previously stated that he had supported the OLF based on an incorrect understanding that, as first born in his family, he was responsible for his father's activities. He only later became aware that he was not responsible for his father's activities and from then on sought to clarify that he had only contributed moral support to the OLF. The Applicant argues that it was the Officer's responsibility to consider the Applicant's explanation, and explain why it was rejected. The Applicant argues that the Officer's brief statement that "more discrepancies arose," without further elaboration, is evidence of the Officer's failure to give the Applicant's response meaningful consideration.

[24] Fourth, the Applicant argues that the Officer misunderstands the basis of his claim. The basis of the claim is the Applicant's "perceived involvement" with the OLF, not actual involvement. The Applicant explained that, because of his Oromo ethnicity, the government of Ethiopia suspected that he supported the OLF. Instead of appreciating that the Applicant's claim was based on this perception of support, the Officer concentrated on whether the Applicant actually supported the OLF. The Applicant argues that the Officer's credibility assessment regarding his actual involvement with the OLF is irrelevant, as the basis of his claim is perceived involvement. The Applicant argues that this resulted in the Officer never addressing the actual basis of the Applicant's claim.

[25] For these reasons, the Applicant requests that the Decision be set aside and the matter returned for redetermination by a different officer.

B. *Respondent*

(1) Reliance Issues

[26] The Respondent submits that the Applicant's interpretation of Justice Phelan's direction expands the direction's scope and defeats the scheme of the Rules. While the direction stipulates that the Respondent could not rely on the 2009 interview notes or the RRF as part of the Decision's reasons, the Respondent can rely on them as evidence that justifies the Decision. The Respondent argues that Rule 9 does not contemplate the decision-maker providing all of the underlying evidence upon which the decision is based. Rather, if leave is granted, the evidence is then provided as part of the Certified Tribunal Record under Rule 17. The Respondent argues that this is precisely what occurred in this case. The Applicant has now been provided with the 2009 interview notes and the RRF. The Respondent contends that this renders the Applicant's concerns moot, and that the Respondent is entitled to rely on the 2009 interview notes and the RRF to justify the Decision.

(2) Procedural Fairness

[27] The Respondent argues that the jurisprudence does not support the Applicant's assertion that the Officer breached the duty of fairness by failing to provide the 2009 interview notes and the RRF to the Applicant. The Respondent cites *Hussaini v Canada (Citizenship and Immigration)*, 2013 FC 289 at para 10 [*Hussaini*] to establish that the duty of fairness required

the Officer to provide enough information in the fairness letter to allow the Applicant “a meaningful opportunity to respond” to the Officer’s concerns. In *Feng v Canada (Citizenship and Immigration)*, 2014 FC 386 at para 18 [*Feng*], Justice Zinn held that the applicants in that case were provided with a meaningful opportunity to respond to a fairness letter despite the officer not providing the applicants with the email that was the source of his concerns, nor indicating the source of the information in the fairness letter. In this case, the Fairness Letter informed the Applicant that there were discrepancies in the evidence he provided, described what those discrepancies were, and explained how they were inconsistent. The Respondent argues that these details provided the Applicant with a meaningful opportunity to respond to the Officer’s concerns, and therefore satisfied the level of fairness required.

(3) Reasonableness

[28] The Respondent submits that the evidence before the Officer showed numerous inconsistencies in the Applicant’s story that justify the Officer’s credibility conclusions. The Respondent argues that decisions reviewed on a reasonableness standard should not be approached as “a line-by-line treasure hunt for error”: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54. Rather, the Court should approach the decision-maker’s reasons “with a view to understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression”: *Canada (Minister of Citizenship and Immigration) v Ragupathy*, 2006 FCA 151 at para 15. The Respondent says that the Applicant’s arguments amount to just such a treasure hunt.

[29] The Respondent also says that the Officer's statement that the Applicant "denied ever having supported the OLF" is consistent with the Applicant's denial that he provided material support to the OLF. The Officer's use of the word "support" to exclusively mean actual support does not mean the Officer ignored the possibility that the Applicant had morally supported the OLF. The Respondent explains that a sequence in the 2015 interview notes, where the Applicant argues the Officer stated that the Applicant supported the OLF, is properly understood as the Officer quoting the Applicant reciting the Ethiopian government's accusation that he supported the OLF. Therefore, there is no internal inconsistency with the Officer's statement that the Applicant denied supporting the OLF.

[30] The Respondent also says that the Officer did not mischaracterize the Applicant's knowledge of his father's involvement with the OLF. The distinction pointed to by the Applicant is simply a paraphrase of the Applicant's acknowledged claim that he did not have exact knowledge of his father's OLF activities.

[31] The Respondent argues that a full reading of the Global Case Management System [GCMS] notes, provided as part of the Decision's reasons, shows that the Officer summarizes and considers the Applicant's response to the Fairness Letter. In the GCMS notes, the Officer explains how the Applicant's response contradicts information he provided in the 2015 interview, his response to the 2009 letter, the 2009 interview, and the RRF. Therefore, the Officer gave the Applicant's response to the Fairness Letter appropriate consideration.

[32] The Respondent also argues that the Officer did not misunderstand the basis of the Applicant's claim. The primary basis for the Officer's Decision was that the Applicant stated he was involved with the OLF in the 2009 interview, but had now changed that story. The Officer found this contradictory, and therefore did not find the Applicant's story credible.

[33] The Respondent points out that the Applicant has not submitted any argument addressing inconsistencies between his answers during the 2009 interview, the RRF, and his 2015 interview and response to the Fairness Letter. Instead, the Applicant has chosen to take the position that the Respondent is not entitled to rely on those inconsistencies to justify the Decision. As noted, the Respondent argues that he is entitled to rely on those inconsistencies. The Respondent says that much of the Decision's basis has therefore gone unchallenged.

VIII. ANALYSIS

[34] As Justice Phelan directed on March 1, 2017, the parties "must live with the [Rule 9] certificate and presumptively could not rely on the notes as forming part of the reasons for decision [*sic*]." As Justice Phelan was only dealing with Rule 9 issues, his direction does not affect the tribunal's obligations under Rule 17 to prepare a record that includes, *inter alia*, "all papers relevant to the matter that are in the possession or control of the tribunal." This required the tribunal to disclose all "notes" and any other relevant documents such as the Fairness Letter and the Applicant's reply to that letter. The parties agree that the notes referred to in Justice Phelan's direction are the notes of the March 25, 2009 interview that relate to the Applicant's first application. The GCMS notes related to the August 3, 2016 Decision under

review were disclosed as part of that Decision and are not excluded from constituting part of the reasons by Justice Phelan's direction.

[35] In effect, Justice Phelan's direction prevents the Respondent from supplementing the reasons beyond the Decision and reasons disclosed under Rule 9, but it does not prevent or excuse the non-disclosure of any papers or documentation that are "relevant to the matter." The tribunal had to disclose the 2009 interview notes under Rule 17, and those notes are before the Court as a consequence of Rule 17 disclosure.

[36] So the essence of the Decision under review is contained in the following reasons:

After carefully assessing all factors relative to your application, I am not satisfied that you are a member of any of the classes prescribed because I do not find you credible. I find there are significant discrepancies between the responses you gave at the interview on August 18th 2015, your claim on your PSR application (in the schedule 2 and the narrative), responses you gave at the interview on March 25th 2009, and your claim in the RRF in your previous application. I considered your response to my procedural fairness letter dated May 10th 2016, but more discrepancies arose from your responses. As your involvement with the OLF is contradictory from one time to another, I do not find your story credible. As your involvement with the OLF constitutes the basis of your refugee claim, I am not satisfied that you have a well-founded fear of persecution. I am not satisfied that you meet the definition of a Convention Refugee as per A96 of the Immigration and Refugee Protection Act, nor Country of Asylum Class, as per R146 of the Immigration and Refugee Protection Regulations.

I considered humanitarian and compassionate grounds for your case. After reviewing your file, I do not find compelling humanitarian and compassionate grounds.

[37] The relevant GCMS notes that are also part of the reasons read in relevant part as follows:

ELIGIBILITY: FAILED: PA responded to my concerns listed in the procedural fairness letter sent on May 10th 2016. I reviewed his response. PA states that he and his father supported OLF after the Dergue military regime was overthrown because it was declared that every citizen of the country had full right to rally under and support any political party of their choice. The PA specifies that they supported OLF until it withdrew itself from the transitional government. In that same response, the PA provided reasons why he supported the OLF and he goes on about the type of involvement he had with OLF and how his father was involved. I also note that the PA was able to provide lots of details and examples of his father's involvement. However, at the interview on 18-08-2015, the PA denied ever having supported the OLF and stated he didn't know of any father's involvement in the OLF. Previously, in response to a letter dated March 31, 2009, the PA stated that he never supported the OLF in money, food, in kind, etc. However, the PA had mentioned in detail at the interview on 25-03-2009 how and why he supported the OLF by providing food, money, and meeting a certain OLF member weekly. He subsequently claimed that there must have been a misunderstanding with the interpreter. However, he had clearly given that same information to UNHCR previously, as his involvement with the OLF was explained in details in the RRF. Considering the totality of the information on file, my concerns remain. With every new information given by the applicant, more discrepancies come up between his stories. As the PA's involvement with the OLF is contradictory from one time to another, I do not find his story credible. As his involvement with the OLF constitutes the basis of his refugee claim, I am not satisfied that the PA has a well-founded fear of persecution. Eligibility failed. Application refused.

[Emphasis added.]

[38] Also important for purposes of this application are the Officer's Fairness Letter of May 10, 2016 and the Applicant's response of June 30, 2016.

[39] The Fairness Letter reads in relevant part as follows:

Reviewing all information before me, I find there are significant discrepancies between the responses you have given at the interview on 18-08-2015, your claim on this PSR application (in the schedule 2 and the narrative), your responses to the interview on 25-03-2009, and your claim in the RRF. Before [*sic*] these discrepancies, I have concerns on your credibility.

In the RRF and in the interview notes, you stated in detail how and why you supported the OLF by providing food, money, and meeting a certain OLF member weekly. In a letter dated March 31, 2009, you were asked to elaborate on the dates that you provided this support in order to examine your background. In response, you stated that you never supported the OLF in money, food, in kind, etc., and justified those discrepancies by a misunderstanding by the interpreter. During the interview on 18-08-2015, you denied ever having supported the OLF and stated you didn't know of any of your father's involvement in the OLF. However, you explained your support to OLF also in the RRF.

[40] It is clear that the Decision in this case is a general negative credibility finding based upon “significant discrepancies between the responses you gave at the interview on August 18th 2015, your claim on your PSR application (in the schedule 2 and the narrative), responses you gave at the interview on March 25th 2009, and your claim in the RRF in your previous application.” The Applicant’s response to the Fairness Letter did not resolve these discrepancies.

[41] The Applicant now raises a series of arguments for reviewable error in the Decision. I will deal with them in turn:

A. *March 25, 2009 Interview Notes*

[42] The Applicant says that the 2009 interview notes “can not be used to justify the decision in this case” because they are simply part of the Decision that Justice Phelan excluded in his direction of March 1, 2017.

[43] The short answer to this is that these materials are not excluded by Justice Phelan's direction which only says that the parties "must live with the [Rule 9] certificate and presumptively could not rely on the notes as forming part of the reasons for decision" [emphasis added]. Justice Phelan says nothing about Rule 17 disclosure that, as a matter of law, required the tribunal to produce all relevant documents. As a result of Justice Phelan's direction, the 2009 interview notes cannot be used to supplement the "reasons," but they must be taken into account as part of the evidence that lies behind those reasons. And that evidence supports the discrepancy between what the Applicant said in 2009 and what he said in 2015 that was brought to the Applicant's attention in the Fairness Letter.

[44] There is no reason in law to support the exclusion of these notes. The Applicant is attempting to exclude evidence that clearly does not support his position.

B. *Resettlement Registration Form*

[45] Once again, the Applicant argues that "discrepancies between the UNHCR Resettlement Registration Form and other materials can not be used to justify the decision in this case." He gives two reasons for this assertion:

- (a) "The Resettlement Registration Form comes from the local Office of the United Nation High Commissioner for Refugees. It is an external document which has not been provided to the applicant";
- (b) "Like the interview notes from the March 25, 2009 interview, it is not part of the visa office Rule 9 response."

[46] The short answer to these assertions is that the Applicant's relevant RRF has, in fact, been provided to the Applicant as part of the Rule 17 disclosure, and it was not required as part

of the Rule 9 response for the obvious reason that it is evidence that is not disclosed under Rule 9.

[47] There is no reason in law to support the exclusion of the RRF. Once again, the Applicant is attempting to exclude evidence that does not support his position.

C. *Support for the OLF*

[48] The Applicant argues that in the GCMS notes for the 2015 interview, the Officer says “the PA denied ever having supported the OLF” and that this statement ignores the Applicant’s “moral” support for the OLF.

[49] The Applicant points out that he was asked “Did you ever contribute money or anything to OLF?” and that he answered “No.” He now says that the “contribution of money or anything else is different from support, which can be and, according to the applicant in other materials, was moral only.”

[50] In another exchange, the Applicant was asked if he has ever “Been a supporter or member of political/religious/student/community/professional organisations [*sic*]?” and again answered “No.” He now says this “exchange is not a specific denial of support for the OLF” and the Officer misunderstood this.

[51] It is entirely unclear what the Applicant means by “moral” support. He appears to contrast it with “actual” support which, in effect, seems to mean nothing more than that he

agreed in his own mind with the OLF's objectives but did nothing to actually assist the OLF. In the context of the Officer's questions, it is obvious that the Applicant was being asked about "actual" support rather than simply whether he morally supported the OLF or agreed with them.

[52] The Applicant does not suggest that he has given consistent evidence regarding his support for the OLF, which the record shows that he has not. Yet he is asking the Court to find a reviewable error based upon an alleged semantic distinction. There is nothing in the Officer's wording to suggest that by "support" he meant anything more or less than some form of actual support – "money or anything." The Applicant is simply attempting to engage in semantic quibbles instead of addressing the actual discrepancies in the evidence that are the basis of the Decision. This is not a basis for judicial review. Justice Gascon made clear in *Newman v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 888 [*Newman*]:

[14] The reasons are to be read as a whole, in conjunction with the record (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 53; *Dunsmuir* at para 47). To determine the reasonableness of a decision, not only must the Court review the reasons but it can also look at the underlying record (*Newfoundland Nurses* at para 15). That said, a judicial review is not a "line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at para 54). The Court should approach the reasons with a view to "understanding, not to puzzling over every possible inconsistency, ambiguity or infelicity of expression" (*Canada (Citizenship and Immigration)*] v *Ragupathy*, 2006 FCA 151 at para 15).

[Emphasis added.]

[53] As the record makes clear, the Applicant did not, in fact, in his response to the Fairness Letter provide an explanation for the discrepancies in his testimony. Instead he provided an unsupported third version of events in which he says "I took my father's activities up on

myself.” He does not adequately explain why he could not have said this in the first place. This is evolving evidence that does not explain the clear contradictions in his earlier evidence, which is why the Officer says “more discrepancies arose from your responses.”

D. *Father’s Involvement*

[54] The Applicant also quibbles over an entry in the Officer’s notes which says “during the interview on 18-08-2015, the PA... stated he didn’t know of any father’s involvement in the OLF.” The Applicant points out that he said “To my knowledge I don’t know exactly his involvement with OLF activities but he was accused by the government of supporting it.” The Applicant says he didn’t say he “didn’t know of any father’s involvement in OLF” and that there is “a difference between not knowing of an involvement and not knowing exactly what the involvement is.”

[55] In my view, there is no inconsistency between the Applicant’s “To my knowledge I don’t know exactly his involvement with OLF activities,” and the Officer’s conclusion that the Applicant “didn’t know of any father’s involvement in the OLF.” All the Officer is saying is that the Applicant was unable to describe any involvement that his father might have had with the OLF. This kind of semantic quibble cannot form the basis of a reviewable error. See *Newman*, above, at para 14. And once again, the Applicant is simply attempting to avoid the gravamen of the Decision which is based upon what are clearly contradictions and discrepancies in the evidence he gave about his own involvement in the OLF.

E. *Response to Procedural Fairness Letter*

[56] The Applicant further alleges a reviewable error in the Officer's failure to refer to the explanation he gave in his response to the Fairness Letter. The Applicant says that, in his response to the Fairness Letter, he acknowledged that he had, at one time, said that he supported the OLF financially and with food, even though he had not done so. His explanation was that his father had provided such support and he had assumed responsibility for his father's activities. He later recognized that his father's activities should not be attributed to him, even though he supported the OLF morally.

[57] The GCMS notes make it clear that the Officer did, in fact, fully consider the Applicant's response to the Fairness Letter. The Decision itself advised the Applicant that:

I considered your response to my procedural fairness letter dated May 10th 2016, but more discrepancies arose from your responses. As your involvement with the OLF is contradictory from one time to another, I do not find your story credible.

[58] The Officer is not obliged to accept the Applicant's explanation. All he is required to do is consider it and, if he finds it unacceptable, to explain why. It is clear the Officer did this. It is obvious from the record that "more discrepancies" means yet another version of the Applicant's involvement with the OLF.

F. *Basis of Claim*

[59] The Applicant alleges that the Officer mischaracterizes the basis of his refugee claim. In the Decision, the Officer says "As your involvement with the OLF constitutes the basis of your

refugee claim, I am not satisfied that you have a well-founded fear of persecution.” The Applicant says this is not the case because the basis of his claim was “perceived involvement in the OLF, not actual involvement in the OLF. The applicant claimed refugee status because the government, so he said, thought he was involved in the OLF, not because he was involved in the OLF.”

[60] The Applicant argues that:

Since the basis of claim was not involvement with the OLF, but only perceived involvement with the OLF, a credibility finding which focuses on actual involvement with the OLF does not address the basis of claim.

[61] Once again, the Applicant is looking for a semantic detour around the real basis for the Decision. The real basis for the Decision is that the Applicant cannot be believed:

After carefully assessing all factors relative to your application, I am not satisfied that you are a member of any of the classes prescribed because I do not find you credible.

[Emphasis added.]

[62] When the Officer says in the reasons that “your involvement with the OLF constitutes the basis of your refugee claim,” it makes no difference whether “involvement” means actual or perceived involvement because the Officer simply cannot believe anything the Applicant says about his relationship with the OLF. The Decision generally makes clear that the Applicant is entirely inconsistent about his support for, and any connection he may have had with, the OLF. The Applicant has told a different story every time he has been asked to describe his relationship with the OLF so that the Officer was inevitably focussed upon the fact that “your involvement

with the OLF is contradictory from one time to another” and it is the Applicant’s “involvement with the OLF” that constitutes the basis of his claim. All this means is that, whether the claim is based upon actual involvement or perceived involvement, the basic problems with the claim are the Applicant’s inconsistent statements about his involvement with the OLF. In his response to the Fairness Letter, the Applicant says “when it comes to my personal activities I was not involved in OLF except my morally supporting them [*sic*]” and that:

My moral support and my father’s involvement in the OLF activities were until OLF withdrew itself from the transitional government of the country. After that we were targeted by EPRDF, subjected to inhumane mistreatments and our whole life was devastated. Consequently I was forced to flee the country to save my life for my life was endangered.

[63] This too is not believed for reasons given by the Officer. The Officer does not need to address the distinction that the Applicant now makes because the Officer finds that “As your involvement with the OLF is contradictory from one time to another, I do not find your story credible” [emphasis added]. This includes any of the Applicant’s assertions of targeting for perceived involvement.

G. *Procedural Fairness*

[64] In his Reply, although not in his initial Memorandum of Argument, the Applicant raises procedural fairness:

If discrepancies between the March 2009 interview notes and the UNHCR Refugee Resettlement Form on the one hand and the August 2015 interview notes on the other hand, can be used to justify the decision, they had, in respect for the duty of fairness, to be disclosed to the Applicant in some manner.... The applicant contends that the duty of disclosure requires disclosure of extrinsic documents when the visa officer is making a comparison between

those documents and what is said at interview[s] in order to draw conclusions of inconsistencies.

[65] No legal authority is cited to support this bald assertion and, as the Respondent points out, this is not the law. The duty of fairness in this context only required the Officer to provide enough information in the Fairness Letter to give the Applicant a “meaningful opportunity” to respond to the Officer’s concerns about inconsistency. See *Hussaini*, above, at para 10 and *Feng*, above, at para 18.

[66] In the present case, the details provided in the Fairness Letter constitute a meaningful opportunity to respond to the Officer’s concerns about inconsistency. The Fairness Letter tells the Applicant what the pieces of evidence are, and describes the inconsistencies. The Applicant’s reply to the Fairness Letter makes it clear that he was fully aware of what the problem was and knew what he needed to explain. This is similar to the situation in *Feng*, above, where Justice Zinn had the following to say on point:

[18] In short, I find that the failure to provide the email and its attachments did not prevent the Applicants from making a full and complete explanation; the officer’s failure to disclose the source of the information or the evidence provided did not prejudice the Applicants. The level of detail in the response to the fairness letter reveals that the Applicants would not have been put in any better a position to respond to the allegations if the email and attachments were provided to them.

[Emphasis added.]

[67] The Applicant has made efforts in this application to avoid the consequences of what is a straightforward Decision based upon major inconsistencies in his own evidence. As

Justice Snider pointed out in *Yu v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 720:

Contradictions or discrepancies in the evidence of a refugee claimant is a well accepted basis for a finding of lack of credibility (*Rajaratnam, supra*) and the Board was entitled to rely on these contradictions and discrepancies for its negative credibility finding related to the Applicant's story of his arrival in Canada. The Board provided reasons in clear and unmistakable terms for this negative credibility finding and referred to specific examples of inconsistencies and contradictions (*Hilo v. Canada (Minister of Employment and Immigration)*, [1991] F.C.J. No. 228 (C.A.) (QL)). As a result, the Board did not commit a reviewable error in drawing a negative credibility inference from the Applicant's description of his arrival in Canada.

[68] I can find no reviewable error in the Decision.

[69] Counsel agree there is no question for certification and the Court concurs.

JUDGMENT IN IMM-4639-16

THIS COURT'S JUDGMENT is that

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4639-16

STYLE OF CAUSE: ABDULHALIM HASHIR ABDULRAHIM v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: WINNIPEG, MANITOBA

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DATED: OCTOBER 6, 2017

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