

Federal Court



Cour fédérale

**Date: 20180129**

**Docket: IMM-2938-17**

**Citation: 2018 FC 85**

**Ottawa, Ontario, January 29, 2018**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**YOUSEF NASERI ASBAGH**

**Applicant**

**And**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Nature of the Matter**

[1] The Applicant, Mr. Asbagh, is seeking judicial review of the May 3, 2017, decision [Decision] of a visa officer at the Immigration Section of the Embassy of Canada in France [Officer], rejecting his application for permanent residence. Specifically, the Officer determined that Mr. Asbagh had misrepresented or withheld certain material facts in his application, thus deeming him inadmissible to Canada for a period of five years as specified under s. 40 of the *Immigration and Refuge Protection Act*, SC 2001, c 27 [IRPA].

[2] This application involves a review of the Officer's reasons for determining that Mr. Asbagh's response to a procedural fairness letter [PFL] was not sufficient to overcome the initial concern that one of the supporting documents originally submitted by the Applicant was fraudulent.

[3] For the reasons set out below, the application is allowed and the matter is remitted to the Immigration Section for redetermination.

## II. **Background**

[4] Mr. Asbagh is an Iranian national. In April 2016, following his nomination by the Province of Saskatchewan, he applied to be a permanent resident of Canada under the Federal Skilled Worker Program.

[5] To prove his length of employment in Iran, Mr. Asbagh initially submitted two Social Security Organization [SSO] certificates, along with certified translations. One certificate was associated with his position at Sana Pazhouhesh Gostar Technology Co. [Sana]. It covered the period from August 23, 2010 to May 20, 2016 [the Sana SSO Certificate]. The other certificate covered the period from November 22, 2005 to February 18, 2009 when he was employed by Fanavari Azmayeshgahi Ltd. Only the Sana SSO Certificate is in issue in this proceeding.

[6] Upon review of the certificates, the Officer was concerned that the numbers on the Sana SSO Certificate were written in "Roman numerals" (in fact, they are Arabic numerals), whereas they should have been written in Persian numerals. As well, the Sana SSO Certificate stated the Applicant had only worked 637 days since 2010, far less than what had been indicated in a previously submitted employment letter. Accordingly, the Officer sent a PFL to Mr. Asbagh. In

it, the Officer indicated that he had concerns that the Sana SSO Certificate provided in support of the application was fraudulent. The specific bases upon which the Officer believed the certificate to be fraudulent were not set out in the letter.

[7] In a letter dated September 24, 2016, by which Mr. Asbagh responded to the PFL, the matter of the “Roman numerals” was not addressed. However, Mr. Asbagh did address the discrepancy in work days by explaining that Sana had paid his insurance premiums to two different SSO branches (Tabriz Branches 1 and 5), and that the contributions made to Branch 1 had not been accounted for in the previously submitted Sana SSO Certificate.

[8] Attached to his letter, Mr. Asbagh provided a new SSO certificate which combined, corrected and updated the information from the other two certificates [Consolidated SSO Certificate]. It was certified, signed and stamped by Branch 5 of the SSO of Tabriz.

[9] Finally, Mr. Asbagh also submitted an “Employment Certificate” letter from Sana. It confirmed that Mr. Asbagh had been employed with Sana as an Electrical Engineer on a full-time basis since August 23, 2010, and that the information contained in the Consolidated SSO Certificate was accurate.

### III. Analysis

[10] There is no dispute between the parties that two issues arise in this application: Was the Decision reasonable and was it arrived at in a procedurally fair manner? I agree.

[11] The Officer’s finding of misrepresentation under s. 40(1)(a) of the IRPA involves questions of mixed fact and law, reviewable on the standard of reasonableness (*Ge v Canada*

(*Citizenship and Immigration*), 2017 FC 594 at para 14 [*Ge*]; *Seraj v Canada (Minister of Citizenship and Immigration)*, 2016 FC 38 at para 11). The standard of correctness applies to the procedural fairness issues arising in this case (*Ge*, above; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43).

[12] As explained below, it is my view that the Decision, which includes the Global Case Management System [GCMS] notes, is not reasonable. It is therefore not necessary to address the question of whether the process was procedurally fair.

[13] The letter set out two reasons for the Officer's finding that Mr. Asbagh was inadmissible for misrepresentation or withholding material facts relating to relevant matter:

I reached this determination because the format of the certificate is incorrect and your identity number differs from document to document.

[14] The Minister concedes that, contrary to the Officer's determination, the identity number was the same from document to document. The Officer erred in making the finding of fact that it differed.

[15] The GCMS notes, which contain additional reasons for the determination, indicate that the Officer placed reliance on his mistaken belief about the identification number. The note written on May 3, 2017, the same date as the letter, states in the relevant part:

L'explication fournie par le requérant n'est pas satisfaisante du tout. En effet, les relevés ou certificats SSO sont toujours écrit en chiffres et lettres persanes. De plus, même si le paiement des cotisations avait été faite [*sic*] auprès de 2 branches différentes, les numéros de SS ou d'identification des personnes ne changeraient pas (tout comme au Canada ou en France).

[TRANSLATION] The explanation provided by the moving party is not at all satisfying. In fact, the SSO statements or certificates are always in Persian figures and letters. As well, although the contributions were paid to two different branches, the SS numbers or the identification of the individuals would not change (like in Canada or France).

[16] This note confirms that the Officer had only two grounds for finding that the response provided by Mr. Asbagh to the PFL was “not at all satisfactory”: (1) SSO certificates are always written in Persian numerals and letters; and (2) even if payments had been made to two different branches, the identification number of the individual would not change.

[17] The reference in the GCMS note that “[d]e plus, même si le paiement des cotisations avait été faite [*sic*] auprès de 2 branches différentes” “[a]s well, although the contributions were paid to two different branches” [Translation] implies that the Officer was not entirely satisfied by the Applicant’s explanation that payments were made to two different branches of the SSO (emphasis added). It is also apparent from the immediately following words in the GCMS note (that is, that the identification number should not change) that the Officer relied on his mistake about the identification number in order to resolve the matter definitively against Mr. Asbagh.

[18] It is clear that the identification number was a significant factor in the Officer’s analysis. It is not clear, however, whether the Officer would have reached the same conclusion on the merits had the mistake about the identification number not been made.

[19] As a result of the foregoing, the reasons are not transparent, intelligible or justified. The outcome is therefore not found to be within the range of possible, acceptable outcomes defensible on the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[20] For these reasons, the application is allowed and the matter is returned to the Immigration Section for redetermination.

[21] No question for certification arises on these facts nor was one proposed by either party.

**JUDGMENT IN IMM-2938-17**

**THIS COURT'S JUDGMENT is that** the application is allowed and the matter is returned to the Immigration Section of the Embassy of Canada in France for redetermination.

"E. Susan Elliott"

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Judge

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

**DOCKET:** IMM-2938-17

**STYLE OF CAUSE:** YOUSEF NASERI ASBAGH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JANUARY 22, 2018

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ELLIOTT J.

**DATED:** JANUARY 29, 2018

**APPEARANCES:**

Arghavan Gerami FOR THE APPLICANT

Adrian Johnston FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Gerami Law Professional Corporation FOR THE APPLICANT  
Ottawa, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Ottawa, Ontario