

Federal Court



Cour fédérale

**Date: 20180817**

**Docket: IMM-232-18**

**Citation: 2018 FC 841**

**Ottawa, Ontario, August 17, 2018**

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

**BETWEEN:**

**OSAMA GHARZELDIN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant is a Syrian citizen of the Druze minority who fears persecution in Syria. He seeks judicial review of the decision of a visa officer of the Canadian Embassy in Beirut, Lebanon dated November 16, 2017 refusing his application for permanent residence as a member of the humanitarian-protected persons abroad class.

[2] The Applicant was interviewed in English by the visa officer on September 25, 2017. As the Applicant did not understand English, an interpreter fluent in Arabic and English was present to assist with translation.

[3] According to the officer's computer generated notes of the interview [CAIPS notes], the Applicant stated that in October 2015, he and two friends were asked by the Elderly Druze in Jeremana to deliver one million Syrian pounds to Swayda since the Free Syrian Army had entered Khylekhleh and the Druze needed assistance. The Applicant said that they were stopped at the regime checkpoint in Hazm where they were beaten up and accused of funnelling the money to the terrorists. The Druze chieftains came to their defence; however, the police report of the incident was circulated. The Applicant claimed that he entered Lebanon illegally on October 5, 2015 with the help of a smuggler, returned to Syria with the same smuggler on September 1, 2017 and later re-entered Lebanon with him on September 23, 2017. When confronted by the officer with pictures taken on his phone, which appeared to contradict his account by placing the Applicant in Syria in August 2017, the Applicant responded that "the truth is we made up the entire story so I can resettle in Canada with my uncle".

[4] The Applicant's application for permanent residence was rejected due to the lack of credibility of this account, as well as not meeting the definition of a refugee.

[5] In his affidavit filed in support of the application for leave and for judicial review, the Applicant denies ever stating that he made up the story. The Applicant blames the interpreter, who he claims was hostile and insulting towards him throughout the interview, for

misrepresenting his evidence. The Respondent did not cross-examine the Applicant on his affidavit or adduce any evidence to the contrary. The Applicant was also denied the opportunity to cross-examine the visa officer regarding the alleged misconduct of the interpreter.

[6] The Respondent submits that the Applicant failed to raise any concern about the quality of the translation or the conduct of the interpreter during the interview. While that may be, any misinterpretation would not have been apparent to the Applicant at the time as he does not understand English. The Applicant raised the discrepancy between what he said and what was noted down in the interview at the first opportunity – the present proceeding. Moreover, I am not prepared to draw a negative inference from the fact that the Applicant, who was not represented by counsel, did not complain to the officer about the interpreter’s alleged misconduct through the interpreter himself.

[7] The Applicant’s interview was not recorded. As a result, a transcript is not available to clarify matters. All that is before this Court is the Applicant’s sworn affidavit evidence and the officer’s notes of the English translated version of the Applicant’s statements. As was stated by Mr. Justice François Lemieux in *Xu v. Canada (Citizenship and Immigration)*, 2007 FC 274, at para. 14: “...in not having some form of objective record of what was actually said in the interview, the process is open to attack.”

[8] Where there is a contradiction between sworn evidence and CAIPS notes, the latter would be admissible for the truth of their contents only if accompanied by an affidavit from the

officer or, in this case, from the interpreter, attesting to their veracity: *Canada (Citizenship and Immigration) v Vujicic*, 2018 FC 116 at para 12.

[9] The sworn evidence before this Court is that the Applicant did not make the alleged admission as recorded by the officer. As the sworn evidence has not been contradicted, I prefer it over unsworn assertions.

[10] In the circumstances, I agree with the Applicant that the application for judicial review should be granted as the alleged admission appears to have been central to the officer's credibility findings. Both parties agreed that no certified question exists.

**JUDGMENT IN IMM-232-18**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The matter is referred back for redetermination before a different visa officer, and preferably with the assistance of a different interpreter.
3. No question is certified.

“Roger R. Lafrenière”

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Judge

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

**DOCKET:** IMM-232-18

**STYLE OF CAUSE:** OSAMA GHARZELDIN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** AUGUST 16, 2018

**JUDGMENT AND REASONS:** LAFRENIÈRE J.

**DATED:** AUGUST 17, 2018

**APPEARANCES:**

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FOR THE APPLICANT

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FOR THE RESPONDENT

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