

Federal Court



Cour fédérale

**Date: 20220104**

**Docket: IMM-3615-19**

**Citation: 2022 FC 2**

**Ottawa, Ontario, January 4, 2022**

**PRESENT: The Honourable Madam Justice Elliott**

**BETWEEN:**

**MUHAMMUD ABDUL WOHAH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant challenges the reasonableness and fairness of a decision made on May 13, 2019, by an immigration officer (Officer) in the visa section of the High Commission of Canada, in Dhaka, Bangladesh (Decision). The Officer found that the Applicant and the six dependents they identified in the application were inadmissible to Canada as permanent residents

under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [the *IRPA*] for a period of five years from the date of the letter.

[2] I have not been persuaded that the Decision was unreasonably made or that the process employed by the Officer was procedurally unfair.

[3] For the reasons that follow, this application is dismissed.

[4] Legislation referred to in these reasons is set out in the attached Appendix.

[5] The style of cause in this matter is hereby amended to reflect “The Minister of Citizenship and Immigration” as the Respondent. The Minister of Citizenship and Immigration is the proper respondent in this application as he is the Minister responsible for the administration of the *IRPA* in respect of the decision for which judicial review is sought (see subsection 4(1) of the *IRPA* and paragraph 5(2)(b) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22).

## II. **Background Facts**

[6] The Applicant was approved by the Province of Saskatchewan under the Saskatchewan Immigrant Nominee Program for a job as a Line Cook for Cora’s Breakfast and Lunch.

[7] The Applicant and six dependants - the Applicant’s wife, three daughters and two nephews - are all citizens of Bangladesh. The two nephews, aged 15 years 10 months and 18 at

the relevant time, are the children of the Applicant's deceased sister. Their biological father is still alive.

[8] In his application, the Applicant referred to the two nephews as "two adopted children".

[9] Based on documents in the file, the Officer had concerns about the qualifications of the Applicant for the position as a Line Cook and whether the Applicant would pursue that employment. A procedural fairness letter (PFL) was issued on March 14, 2017 by email. It was responded to on April 11, 2017 by counsel for the Applicant. Ultimately, it was determined that the Applicant had the ability to be economically established in Canada therefore these concerns were not factors in the Decision.

[10] On August 16, 2018 the Applicant was advised that an interview was required and that applications which require interviews fall outside of normal processing standards.

[11] On August 29, 2018 an email was sent to the Applicant advising them that the interview would be held in Dhaka on September 19, 2018.

[12] On September 13, 2018 an email to the Applicant advised that the two nephews, who were claimed as dependants, must also attend the interview on September 19<sup>th</sup> and the Applicant must provide the original adoption document along with a certified English/French translation at the time of the interview.

[13] The Officer interviewed, in person, in the Bangla language, each of the Applicant, his wife and the younger accompanying dependant nephew, Mr. Siam. The Officer questioned each of them about the nature of the relationship between the two nephews and their biological father. In an attempt to resolve conflicting evidence provided by each of them, the Officer also questioned the biological father by telephone.

[14] The older nephew, Mr. Shuvo, was not interviewed because the Officer found he was not physically well and did not appear to have full mental capacity.

### III. The Decision

[15] The Decision found that contrary to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act, SC 2001 c 27 [IRPA]* the Applicant had misrepresented or withheld material facts relevant to the assessment of whether his nephews were eligible to be included in his application for permanent residence as *de facto* dependants. As a result, the Applicant and his dependants were found to be inadmissible to Canada for a period of five years pursuant to paragraph 40(2)(a) of the *IRPA*.

[16] The Decision stated that during the September 19, 2018 interview, the Applicant, his spouse, and his nephew were evasive and non-cooperative. They misrepresented the nature and timing of the contact between the boys and their biological father. They provided contradictory and irreconcilable accounts in an attempt to hide that the boys have regular and ongoing contact with their biological father.

[17] The Decision noted that Mr. Siam admitted that he had misrepresented the truth about the contact with his father because he was told to do so by his father. His explanation for that instruction was that if it was discovered that the father owns a business and is married, the authorities might ask why the father gave guardianship to the Applicant.

[18] The Decision indicated that the Applicant also admitted he had been untruthful about the biological father's visits with the family. His wife however, did not admit to any misrepresentation but persisted in providing irreconcilable and non-credible accounts.

[19] The Decision found that the interviewees gave irreconcilable accounts of the biological father's mental capacity, employment and family relationships.

[20] Based on the conflicting and inconsistent answers given during the interviews, the Officer determined that the relationship between the two nephews and their biological father had been misrepresented. The Officer was satisfied that the Applicant and Mr. Siam engaged in material misrepresentation of the relationship between Mr. Siam, Mr. Shuvo and their father. The Officer also found that the Applicant's wife did not admit to any misrepresentation, but persisted in providing irreconcilable and non-credible accounts.

[21] The Officer found, given that there is no adoption in Bangladesh, the purpose of the misrepresentation was to create a compelling case by which the nephews could be included as *de facto* dependants as part of the Applicant's application for permanent residence.

[22] In addition to the letter conveying the Decision, the GCMS notes of the Officer constitute the reasons for the Decision: *Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793, at para 19. These notes will be referred to in the analysis of the issues put forward by the Applicant.

#### IV. Issues and Standard of Review

[23] The Applicant raises two issues:

##### A. *Is the Decision reasonable?*

[24] The Applicant submits that the Decision was unreasonable because (1) the Officer disregarded documentary evidence that supported the claim, and (2) the Officer closed their mind and discounted positive evidence so no real weighing occurred.

[25] The standard of review for administrative decisions, other than for a breach of procedural fairness, is now presumptively reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23.

[26] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision: *Vavilov* at para 100.

B. *Was the Decision reached in a procedurally unfair manner?*

[27] The Applicant alleges that the Decision was procedurally unfair because the Officer interviewed Mr. Siam without the Applicant's consent and in the absence of the Applicant or any other relative or trusted friend.

[28] In addition, the Applicant states that the Officer improperly and unfairly relied on undisclosed extrinsic evidence in arriving at the Decision.

[29] Issues of procedural fairness are not reviewed on the basis of reasonableness. In *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR], Mr. Justice Rennie reviewed and confirmed the core principles at play when reviewing matters involving issues of procedural fairness. He determined that procedural fairness is not strictly amenable to a standard of review analysis. Rather, the question is whether the applicant "knew the case to meet and had a full and fair chance to respond.": *CPR* at paragraphs 55 and 56.

[30] The Applicant concedes that the content of the duty of fairness owed by a visa officer is at the low end of the range. However, he states that the duty will vary according to the circumstances when an officer chooses to interview a minor. He says that at the very least the Officer ought to have allowed the Applicant or his spouse to be present during the interview. The Applicant says that failing to do so rendered the process procedurally unfair.

[31] Notwithstanding the concession of the Applicant it has been established that given the severe consequences of a finding of misrepresentation, namely ineligibility to apply to come to

Canada for a 5-year period, a higher degree of procedural fairness is required to ensure that such findings are made only where there is clear and convincing evidence of misrepresentation: *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171, at para 26 and cases cited therein.

[32] For reasons set out later I find that the higher degree of procedural fairness has been met in this case as there was clear and convincing evidence of several misrepresentations made to the Officer in the three interviews and the telephone call with the father of the nephews.

V. **The Decision was Reasonable**

A. *No evidence the nephews are de facto Dependents*

[33] The Applicant listed his nephews as adopted children. As set out in the Decision, there is no adoption in Bangladesh. There is evidence in the CTR that the father appointed the Applicant as Guardian of his sons. However, as it transpired, the father was still very much in the lives of his sons. The nature and timing of the contact between the boys and their biological father was misrepresented by Mr. Siam, apparently upon the instruction of his father, in an attempt to hide both the nature and extent of such contact.

[34] When the Officer confronted the Applicant directly, alone, with this information and asked him to explain why he also lied, the Applicant said that if the Officer knew the father (the Applicant's brother-in-law) lived with them he "would not permit the application."



[35] The Officer advised the interviewees that they had received three or four different sets of stories which left them completely unsatisfied as to the motivations of the guardianship order and whether the application was made in good faith.

[36] At the conclusion of the interview the Officer further indicated to the interviewees that the application might be refused for misrepresentation. The GCMS notes indicate the Officer shared with them that “the clients have not been forthcoming about the nature of the relationship to the biological father, his circumstances, and various other matters relating to the application (e.g., Shuvo’s studies.)”.

[37] The Officer then asked whether the interviewees had anything to add. At that point Mr. Wohab spoke. The GCMS notes show that he said “Sir, he requests that I please think about the boys. If they go to Canada they can have advanced lives and opportunities there. He begs that I not disallow the application.” At that point the interview was concluded.

[38] In an affidavit filed as part of this proceeding the Applicant has denied admitting that he made any misrepresentation to the Officer. He also states that he did not try to hide the fact that the nephews have regular contact with their father. He says he tried to explain that they all see the father at separate times due to their daily schedules. He also states that a full adoption of the nephews would transfer the real estate to him therefore the decision was made to act as their legal guardian.

[39] The Officer's notes are detailed and precise. The Applicant's denials ask the Court to find that for some unknown reason the Officer fabricated evidence in order to stop the Applicant and family from receiving permission to enter Canada to work for Cora's.

[40] I find it unnecessary to resolve the stated discrepancy between the Officer's GCMS Notes and the Applicant's recollection of events. Based on the collective interview answers, there are more than enough unchallenged findings of fact to support the Decision. I do however observe that the GCMS notes are very detailed and the Applicant has put forward no reason motivating the Officer, a professional civil servant working for the Government of Canada, to falsify the notes.

[41] The Applicant appears to have tried to avoid contacting the father of the nephews. After receiving inconsistent answers from each person who was interviewed, the Officer asked the Applicant whether he had a telephone number for the biological father. The Applicant retrieved his phone from security and tried to call the father. There was no answer so the Officer asked the Applicant if there were any other numbers. The Applicant responded no, but the Interpreter said there was another telephone number under the father's name. When that number was called the man who answered identified himself as the father of the nephews. The Officer identified that he was calling from the High Commission of Canada in Dhaka; he asked the man if he would answer some questions about his sons. The man agreed to do so.

[42] Unfortunately, all the answers the father provided about the timing of his visits with his sons, his business and personal details were at odds with the three different answers already

received from the Applicant, Mr. Siam and the Applicant's wife. The result was that the Officer found the four people interviewed all gave wildly divergent accounts and the Applicant and Mr. Siam admitted to providing false and misleading information.

[43] Given all of the foregoing, the Officer was unable to sort fact from fiction.

[44] I find it was reasonable for the Officer to determine that contrary to paragraph 40(1)(a) of the *IRPA* that the Applicant had misrepresented or withheld material facts relevant to the assessment of whether his nephews were eligible to be included in his application for permanent residence as *de facto* dependants.

## VI. **The Decision was Procedurally Fair**

### A. *The Officer's approach to the interviews*

[45] Before the interviews began the Officer spoke with the Applicant in the absence of the others. At that time the GCMS notes show the Officer explained that the purpose of the interview was to examine the eligibility of the dependants and to also confirm experience, education, language, intent etc.

[46] During the interviews, the Officer advised the interviewees to relax and let the Officer know if they did not understand and, to only tell the truth. The Officer stressed the importance of clear communication and honesty. If they need clarification they should say so and if they don't know the answer to something they should say so and not make anything up.

B. *Possible Inheritance Argument*

[47] The Applicant is under the impression that the Officer doubted whether the nephews are entitled to inherit some real estate when they are of age.

[48] The Applicant raised this argument in support of the Decision being unreasonable but given the nature of the allegations I find it is a challenge to the procedural fairness of the Decision.

[49] There is a bald assertion in the Applicant's factum that the Applicant claimed the nephews were entitled to some inheritance and his testimony was not believed by the Officer nor was he given an opportunity to submit evidence to dispel that suspicion.

[50] The factum also contains an allegation that the Applicant did not "have an opportunity to provide documents that the boys are entitled to some inheritance and dispel the Officer's suspicion regarding the adoption." and "the Officer closed his mind" and "no real weighing" occurred.

[51] I see no reference in the GCMS Notes or the documents in the Applicant's Record to an inheritance statement or discussion. In the Certified Tribunal Record (CTR) there is a translated copy of a document called a Succession Certificate which states that Hasina Banu, the mother of the two nephews died, survived by her husband and two sons, all of whom are named. The Certificate also states that the deceased "was a resident of 2 No. Kawaltia Union, Ward no. 07, Village- South Salna due to her death the applicant Md. Shahadat Hossain,[ . . . ] applied to

authorize him as her successor of moveable and irremovable property had been titled by deed Hasina Banu.” The Certificate then names the husband and two minor children as successors.

[52] I have reviewed the GCMS notes and the CTR in search of any reference to an inheritance or real estate other than as set out in the Succession Certificate. It clearly states that the father of the nephews applied to be the successor to the real estate (irremovable property) owned by the mother. I can find no reference to the nephews inheriting the real estate nor is there any evidence of the laws of succession in Bangladesh.

[53] Even if there is a mention of possible inheritance somewhere in the materials placed before the Officer, it is unclear how a future inheritance would impact the Officer’s analysis of the application. The determinative fact found by the Officer was the unwillingness of each interviewee to tell the truth regarding the relationship between the two nephews and their father.

[54] I find that the Applicant has not established that the Officer disregarded any documentary evidence such as a possible inheritance or closed his mind. There is no evidence that there was anything to weigh concerning the inheritance.

[55] I am not satisfied that the Applicant has shown that the presence or absence of a future inheritance for the two nephews played or could have played any role in the Officer’s decision-making.

C. *Mr. Siam was interviewed alone*

[56] The Applicant says that Mr. Siam should not have been interviewed alone because prior to the interviews he was concerned about Mr. Siam's state of mind. He says that Mr. Siam was upset, frightened and refused to attend the interview until the Applicant reassured Mr. Siam that he (Mr. Siam) was not going to take any active part in the interview.

[57] The GCMS notes indicate that at the time of the interview the Officer asked the Applicant whether Mr. Siam was in good health and whether he understood English. Although he was assured by the Applicant that Mr. Siam was fine and his English was medium, the Officer took the precaution of interviewing Mr. Siam in the local language with the assistance of an interpreter.

[58] The Applicant submits that it was procedurally unfair to interview Mr. Siam alone, "especially where the Officer relied exclusively on Mr. Siam's answer to questions regarding the biological father's visitation and others."

[59] The Officer did not rely exclusively on Mr. Siam's answers regarding his father's visit.

[60] The letter refusing the application states that "[d]uring the interview on September 19, 2018, you Mr. Wohab, your spouse Ms. Akter, and your nephew, Mr. Siam misrepresented or withheld material facts relevant to the assessment of whether your nephews were eligible to be included in your application as de facto dependants."

[61] The Officer questioned each interviewee and the father as to the nature and frequency of the father's interactions with his children and aspects of the father's life. The answers given were contradictory, evasive and confusing. As explained later, the Officer subsequently spoke with the biological father in an unsuccessful attempt to reconcile the discrepant answers.

[62] In respect of interviewing Mr. Siam alone being procedurally unfair, the Applicant relies on part of paragraph 11 of *Jesuthasan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 872 (*Jesuthasan*):

While I am mindful that the court should not unduly encumber the process and impose restrictions on visa officers that inhibit efficiency, there are, in my view, basic requirements that must be met in all cases when a child under the age of 18 is interviewed, if the evidence is to have probative value. At a minimum, the visa officer must ensure that the child understands the nature of the proceeding, understands the importance of telling the truth, indicates a willingness to tell the truth and in circumstances where the questions relate to a previous time frame, the officer must ensure that the child has the capacity to remember the time in question.

(Emphasis added by the Applicant)

[63] I find that the earlier part of paragraph 11 is also important:

[ . . . ]The duty of fairness for a visa officer who chooses to interview a child will vary depending on the circumstances. There are no precise rules that can be applied because each situation will be different. Much will depend on the age and cognitive development of the child and the capacity of the child to communicate. The younger the child, the more stringent the duty will be.

(My emphasis)

[64] I note that the child being interviewed in *Jesuthasan* was 12 years old. Mr. Siam was, at the time of the interview, two months short of 16 years old, and he was in Class 10 at school.

Although he had capacity to communicate in English at a medium level, Mr. Siam was interviewed by the Officer in his native language with the use of an interpreter.

[65] The Officer was aware that care is to be taken when interviewing a minor. The Officer spoke with both Mr. Siam and Mr. Shuvo before proceeding with the interview. As a result, the Officer determined that Mr. Shuvo appeared to have cognitive issues and would not be interviewed. The Officer determined that Mr. Siam could be interviewed.

[66] There was no indication that Mr. Siam did not have the capacity to remember a previous time frame or event. Considering Mr. Siam's age, education and ability to speak English and that he was able to answer in his native language thanks to an interpreter, I find that given those characteristics and the lack of objection by the Applicant at the time of the interview, the Officer did not breach procedural fairness in determining that Mr. Siam could be interviewed without an adult present.

[67] In his affidavit filed with this application, the Applicant attests that on the day of the interview Mr. Siam was worried about missing a major component of his final examination as well as being intimidated and frightened by the interview. He also states that he was concerned about Mr. Siam's state of mind because Mr. Siam was upset, frightened and refused to attend until he was reassured by the Applicant.

[68] The statements in the Applicant's affidavit are at odds with the GCMS notes.



[69] The Officer's GCMS notes indicate that before interviewing Mr. Siam, the Officer asked the Applicant whether Mr. Siam was "ok" to which the response was "yes". They then discussed that Mr. Siam was in Class 10 and was passing. At no point then or later that day did the Applicant express any concern that Mr. Siam was worried, intimidated or frightened. It may be that after the interview Mr. Siam was worried or frightened given that he had admitted that he had not been truthful concerning his father, but there is no indication in the GCMS notes that Mr. Siam was acting in any such manner during the interview.

[70] There was no indication in the materials submitted with the application that there was an ongoing relationship with the biological father. Nor could it be anticipated that the Applicant and the other interviewees would lie and give conflicting stories when answering questions concerning the biological father. As a result, no procedural fairness letter could have been sent in advance of the interviews.

[71] Based on all of the foregoing, I am satisfied that it was not procedurally unfair to interview Mr. Siam alone.

D. *No extrinsic evidence was relied upon*

[72] While the Applicant claims that the Decision relied on extrinsic evidence, no specific extrinsic evidence was identified nor do the GCMS notes refer to any such evidence.

[73] If the Applicant is referring to the telephone call with the nephews' father, that call and the information from it, was fully disclosed to the Applicant who participated in making the call

using his mobile phone. The additional contradictions raised by the father's answers were put to the parties but the Officer did not receive any satisfactory answer to resolve the contradictions.

[74] I find that the Applicant has not established that the Officer unreasonably disregarded documentary evidence or relied on extrinsic evidence in arriving at the Decision.

E. *The Applicant was given an opportunity to address concerns raised in the Interview*

[75] Finally, the Applicant alleges that he was not able to participate in a meaningful way nor did he have an opportunity to respond to the Officer's concerns raised at the interview as the Decision was made after the interview.

[76] The Applicant appears to miss the point of the Officer having stated their concerns, on multiple occasions, during the interview process. On each such occasion, that was the opportunity for the Applicant to respond. Often, the responses just made matters worse as more conflicting stories kept emerging.

[77] The GCMS notes clearly set out that the Officer explained the purpose of the interviews, the requirement to give truthful answers and that failure to do so could result in a finding of misrepresentation.

VII. **Conclusion**

[78] For all the foregoing reasons, this application is dismissed.

[79] No question was posed for certification and I find that none exists on these facts.

**JUDGMENT IN IMM-3615-19**

**THIS COURT'S JUDGMENT is that**

1. The style of cause is amended to name the Minister of Citizenship and Immigration as the proper respondent.
2. The application is dismissed.
3. There is no certified question arising on these facts.

"E. Susan Elliott"

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Judge

## Annex "A"

### **Misrepresentation**

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

### **Fausses déclarations**

40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

### **Application**

(2) The following provisions govern subsection (1):

(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced;

### **Application**

(2) Les dispositions suivantes s'appliquent au paragraphe (1) :

a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;

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

**DOCKET:** IMM-3615-29

**STYLE OF CAUSE:** MUHAMMUD ABDUL WOHAJ v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 13, 2021

**JUDGMENT AND REASONS:** ELLIOTT J.

**DATED:** JANUARY 4, 2022

**APPEARANCES:**

Kolade Oladokun FOR THE APPLICANT

Marcia Jackson FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

A.R.E. Law Prof Corp. FOR THE APPLICANT  
Barristers and Solicitors  
Regina, Saskatchewan

Attorney General of Canada FOR THE RESPONDENT  
Saskatoon, Saskatchewan