Federal Court  Cour fédérale

Date: 20250704

Docket: IMM-9628-24

Citation: 2025 FC 1191

Ottawa, Ontario, July 4, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

HENRY JUNIOR AREVALO PELAEZ
AARON ANTHONY AREVALO MELENDREZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by a visa officer [Officer] of the Embassy of Canada in Mexico, dated May 13, 2024, refusing the Applicants' application for permanent residence [Decision]. The Officer found the Primary Applicant [PA] inadmissible to Canada for serious criminality and misrepresentation under ss 36(1)(c) and 40(1)(a) of the

Immigration and Refugee Protection Act, SC 2001, c 27 [*IRPA*] because he committed and failed to disclose an assault against his ex-fiancée. The application will be dismissed for the following reasons.

II. Facts

[2] The Applicants are a father and minor son [MA] both citizens of Cuba. The PA's wife (MA's mother) sponsored their application. At the hearing the Court was advised they have a newborn Canadian child.

[3] On his application, when asked if he had ever been detained, arrested, or charged or convicted he checked the box for "no."

[4] During the processing of the application, the Officer received information indicating that the PA had assaulted another individual during a stay in Oman.

[5] The PA was asked to provide a police clearance certificate from Oman. It appears from the record he made this request through counsel, following instructions from the Embassy but was unable to obtain one because the PA did not have an Oman Resident Card.

[6] The PA was then asked via email on September 7, 2022 to "submit an explanation letter confirming whether [he] had any altercations with the Oman police or other institutions while in Oman."

[7] The PA provided an explanation letter on October 25, 2022 stating that "during my time as a visitor in Oman, I did not have any altercation with the Oman police or any other government authorities." While technically correct, he made no mention of the fact he had been detained by police in the course of their investigation of the altercation he had with his fiancé discussed in more detail below. There is also evidence in the record (which he disputes) that he had been charged with simple assault but the file was closed. He focussed on the words "altercation with police."

A. *First PFL regarding concerns about misrepresentation*

[8] The Applicant was sent a Procedural Fairness Letter [PFL] on November 7, 2022 [PFL1], raising concerns that the Principal Applicant had not answered all questions truthfully, contrary to the requirement to do so under s 16(1) of *IRPA*. The letter states:

> Specifically, I have concerns that the there is contradictory information on file regarding your statement that you never had any interaction with the Oman police or other governmental agency.
>
> We have information on file indicating that there was an altercation between you and another individual on or about October 6, 2018. This altercation led to the individual filing a police denunciation a few days after the incident. As per a medical report taken at the time, the individual suffered visible bruises on different parts of their body as a result of this altercation.
>
> Please note that if it is found that you have engaged in misrepresentation in submitting your application for a permanent residence in Canada as a member of the Family Class, you may be found to be inadmissible [for misrepresentation] under section 40(1)(a) of the Immigration and Refugee Protection Act.
>
> A finding of such inadmissibility would render you inadmissible to Canada for a period of five years according to section 40(2)(a):
>
> …

> I would like to provide you with the opportunity to respond to this information. You will have 30 days from the date of this letter to submit additional information in this regard.

[9] The PA personally responded to PFL1, saying he misunderstood the question because "English is not his first language":

> I do apologise for any misunderstandings that may have been made on my part, as English is not my first language, and in reading you request for information you sent to me on 25-October, 2022 you asked me to confirm if I had any "altercation" with the Oman police or other authorities while in Oman.
>
> During my time in Oman, I did not have any argument, fight, or disagreement with the police or other authorities. I was not arrested, detained, or charged with any crime. My understanding is that any of these would be considered an "altercation," and the reason for previous statement.
>
> …
>
> I ask for your consideration in my misunderstanding the question. In my original letter I was never trying to lie or mislead, or misrepresent. I just went by what I understood the question was; (with my limited English) that I have not been convicted of any crimes, been in jail, had a disagreement or assaulted an officer.

[10] However, in his response the PA said "there was an altercation with another individual" in Oman. In brief summary, he said his ex-girlfriend sustained injuries after a "struggle" when he tried to put her in the back seat of his car to keep her from walking into traffic. He said she reported him to police, who questioned him and let him go after he gave his side of the story. He said he "left the country legally 26 days later with no issues," and that to his knowledge "no further action was ever taken with respect to this incident."

B. *Second PFL regarding concerns about serious criminality*

[11] The Officer sent a second PFL on January 11, 2024 [PFL2]. This letter states:

> After careful and thorough consideration of all aspects of your application and the supporting information provided, it appears that you do not meet the requirements for a permanent resident visa because you are a person described in paragraph 36(1)(c) of the Immigration and Refugee Protection Act. You would therefore be criminally inadmissible to Canada.
>
> …
>
> You committed in Oman on or about October 6, 2018 an offence, namely assault against [redacted by Court]. This act constitutes an offence under the laws of the place where it occurred under section 309 of the Omani Penal Code. If committed in Canada, this offence would be punishable under article 267(b) of the Criminal Code of Canada and would be punishable by a maximum term of imprisonment of at least ten years. I have determined that you committed this offence, based on a balance of probabilities, because of your own admission and based on a denunciation [redacted by Court] made against you in Oman.
>
> Our office was provided with a copy of the medical report for [redacted by Court] taken by the Oman Ministry of Health which shows the following injuries:
>
> - Bruises all over the body and some superficial wounds/cuts;
> - Bruise with swelling in the neck;
> - One of her nails was pulled/disjoined;
> - Bruise around the eye;
> - Traces with bruises on her hand;
> - Superficial wounds on her feet;
> - Injured at her knee.
> - Bruise with swelling on upon back
> - Bruise on lower abdomen

> I am satisfied the nature of these injuries constitute bodily harm. We were able to confirm with the Oman police that you were formally charged with assault and that the complaint was later refused and the case closed.
>
> Considering the nature and extent of the injuries sustained by [redacted by Court], I am not satisfied your account of events of having simply pushed her back in the car is plausible nor would have resulted in this type of injuries. This is further concerning since you had initially omitted to declare any stay in Oman and also failed to disclose your prior detention while there. I have reviewed your submissions that you did not intend to mislead and that it was due to your lacking English skills however I do not find this to be reasonable given you are represented by counsel and also the fact that your spouse has been in Canada since 2016 and presumably has a better level of English.
>
> Overall I have concerns you deliberately omitted this event to avoid further investigation being conducted.
>
> …
>
> Before I make a final decision, you may submit additional information relating to your criminal background. You must provide any additional information within 30 days from the date of this letter. If you choose not to respond with additional information I will make my decision based on the information before me, which may result in the refusal of your application.
>
> I look forward to receiving your additional information.

[12] The PA responded to PFL2 through counsel (different than counsel representing him on judicial review). Counsel submitted the PA did not have access to his police record or police reports from Oman, and requested disclosure of "these important documents in compliance with the principles of due process, procedural fairness, and natural justice."

[13] Counsel submitted the PA "strongly disputes that he was ever charged or detained by the Oman police. He was simply questioned and let go." Further:

> It is reasonable to assume that one or more of the parties to the relationship between him and [redacted by Court] had certain future expectations of that relationship which were dashed by their breakup, and that the story of the controversy between them may have contained certain embellishments that was used to settle a personal score or to scuttle the sponsorship application submitted by his spouse. Fairness demands that such allegations be carefully considered to avoid an unjust decision.
>
> Please note that contrary to your own assertion, PA never admitted to the allegations of assault at any time. He stated that [redacted by Court] threateningly approached him, and he pushed her away. He told the Oman police the same story and they believed him and never detained or arrested him. This explains why they "refused" the complaint and had the "the case closed" PA requests that you reconsider your finding of inadmissibility against him and allow his spouse to complete the sponsorship application submitted on his behalf. The present delay of his application has been traumatic for him, his wife, and their children.

[14] As will be outlined below, the Officer reviewed the PA's response to PFL2 and addressed these submissions in the Global Case Management System [GCMS] notes, entry dated February 6, 2024.

III. Decision under review

[15] The Officer found the PA was criminally inadmissible to Canada under s 36(1)(c) of *IRPA,* He was also found inadmissible for misrepresentation under s 40(1)(a). As a result, the Officer refused the Applicant's application under s 11(1) of *IRPA.*

[16] The finding of inadmissibility for serious criminality meant the PA and his sponsor could not appeal to the Immigration Appeal Division: *IRPA,* s 64(1). Thus he comes to this Court on judicial review.

A. *Inadmissibility to Canada*

[17] The Decision states:

> After careful and thorough consideration of all aspects of your application and the supporting information provided, it appears that you do not meet the requirements for a permanent resident visa because you are a person described in paragraph 36(1)(c) of the Immigration and Refugee Protection Act. You are criminally inadmissible to Canada.
>
> …
>
> You committed in Oman on or about October 6, 2018 an offence, namely assault against [redacted by Court]. This act constitutes an offence under the laws of the place where it occurred under section 309 of the Omani Penal Code. If committed in Canada, this offence would be punishable under article 267(b) of the Criminal Code of Canada and would be punishable by a maximum term of imprisonment of at least ten years. I have determined that you committed this offence, based on a balance of probabilities, because of your own admission and based on a denunciation [redacted by Court] made against you in Oman.
>
> Our office was provided with a copy of the medical report for [redacted by Court] taken by the Oman Ministry of Health which shows the following injuries:
>
> - Bruises all over the body and some superficial wounds/cuts;
> - Bruise with swelling in the neck;
> - One of her nails was pulled/disjoined;
> - Bruise around the eye;
> - Traces with bruises on her hand;
> - Superficial wounds on her feet;
> - Injured at her knee;
> - Bruise with swelling on upon back
> - Bruise on lower abdomen

> I am satisfied the nature of these injuries constitute bodily harm. We were able to confirm with the Oman police that you were formally charged with assault and that the complaint was later refused and the case closed.
>
> Considering the nature and extent of the injuries sustained by [redacted by Court], I am not satisfied your account of events of having simply pushed her back in the car is plausible nor would have resulted in this type of injuries. This is further concerning since you had initially omitted to declare any stay in Oman and also failed to disclose your prior detention while there. I have reviewed your submissions that you did not intend to mislead and that it was due to your lacking English skills however I do not find this to be reasonable given you are represented by counsel and also the fact that your spouse has been in Canada since 2016 and presumably has a better level of English.
>
> I am satisfied you deliberately omitted this event to avoid further investigation being conducted. Giving false information, withholding important material facts or providing misleading information that could induce in error is considered misrepresentation and constitutes a ground for inadmissibility to Canada.
>
> …
>
> This inadmissibility also extends to any stay in Canada as a visitor, for you and your family member. You and your dependent, AARON ANTHONY AREVALO MELENDREZ, should therefore not attempt to enter Canada.

[18] The Officer's GCMS Notes also say "[v]erifications conducted indicate the applicant was charged (minor abuse) and the charges were dropped and the case was closed."

[19] Notably, an earlier entry of the GCMS Notes speaking to the PA's reply to PFL2 also states:

> 1. … The law does not specifically address domestic violence, and judicial protection orders prohibiting domestic violence do not exist. Charges could be brought, however, under existing statutes outlawing assault, battery, and aggravated assault, which carries a

maximum sentence of three years in prison. Allegations of spousal abuse in civil courts handling family law cases reportedly were common. Victims of domestic violence may file a complaint with police, and reports suggested police responded promptly and professionally. The government continued to operate a hotline for reporting incidents of domestic violence and a shelter for victims.

The law prohibits gender-based discrimination against citizens, but the government did not appear to enforce the law effectively. Local interpretations of Islamic law and practice of cultural traditions in social and legal institutions discriminated against women. In some personal status cases, such as divorce, a woman's testimony is equal to half that of a man.

…

Considering the foregoing, it is not unreasonable to believe the[re] may be differentiated treatment towards women when reporting a spousal violence incident. Regardless of the functionality and partiality of Oman's judicial system, a medical report was taken by a health professional and chronicled several injuries sustained by [redacted by Court]. These injuries are inputted to the PA who himself recognized an incident with the victim and having used force against her. The explanation on how these injuries came to be sustained is simply not logical in view of their number, nature and location on the body. I give more weight to the medical report which was independently drafted and which provides an overview of the bodily harm sustained by the victim. By both the PA and the victim's account, there were no other parties involved in the incident. I am therefore satisfied the PA caused the injuries described in the medical report to PA. While the fact that the charges against him were dismissed is relevant, it does not impede PA admitted to the altercation with [redacted by Court]. His admission combined with the medical report reasonably lead me to conclude he caused those injuries to the victim and therefore committed a criminal offense under both Omani and Canadian legislations. PA is therefore inadmissible under A36(1)(c).

…

2. It is the applicant's responsibility to ensure the information provided to IRCC is truthful, precise and accurate, and this regardless of his knowledge of the English language. The applicant provided in support of his application a duly signed IMM5476 form appointing IRCC representative Marlys Rodriguez Perez. Mrs. Rodriguez Perez is listed as an active RCIC consultant. This form was signed on December 10, 2019. No mention was made of

Mrs. Rodriguez Perez being a friend of the family, on the contrary she was indicated to be a remunerated party. Contrary to the affirmation that he represented by an untrained assistant, it seems rather PA sought professional help to fill his application. His original Schedule was also signed on December 10, 2019. I therefore find it reasonable the former counsel would have explained to PA the importance of filling the form adequately.

Coincidentally, the information withheld pertains to adverse information against the PA. I find it odd the PA does not report having misunderstood other sections of the form. It would appear the PA willingly omitted the information about his initial stay in Oman to avert or discourage a line of enquiry from IRCC. While the PA submitted a copy of his passport showing an entry seal to Oman, this information was not clearly relayed on the IMM5669 form in either question 4, 6 and 12. PA still had the obligation of relaying the exact nature of his activities while in Oman. No mention was made of the incident with [redacted by Court]. The PA met with the Oman police who took his version of event.

3. The applicant refers to the vagueness of the inadmissibility concerns and the refusal of IRCC Mexico to unveil [redacted by Court]'s medical report. He was initially advised in the first procedural fairness letter that the concerns surrounded his undisclosed stay in Oman in his IMM5669 form and specifically, an altercation which occurred in October 2018 resulting in the other party suffering suffered visible bruises on different parts of their body. Later, in the second procedural fairness letter, PA was advised more specifically of the nature of each injury as noted by the Oman health physician.

I acknowledge PA's concerns raised regarding the lack of detail available to him surrounding the lack of disclosure of [redacted by Court]'s medical report however, the limits on this information are warranted and the information provided to him regarding [redacted by Court]'s injuries I feel are credible and sufficiently clear to be understood and addressed by the applicant. Our office tried to reach out to [redacted by Court]to obtain both her version of events and her consent to the disclosure of her medical report however no response was received. Since [redacted by Court]is a third party to this application, her personal information cannot be release without her authorization. The procedural fairness letter of Jan 11, 2024 provided PA with a delay of 30 days to respond to our concerns, thus allowing sufficient time to enable PA to respond to same. No final decision was yet made as the assessments on criminality and misrepresentation. These will be made taking into consideration the latest submissions made.

> With respect to the REP's assumption that parts of [redacted by Court]'s story could have been "embellished", there is an independent medical report stating her objective injuries. Her side of the story is only partially told however as mentioned before, I am satisfied based on the evidence before me, that PA caused her bodily harm during the course of an incident between them. Even accepting PA's version that [redacted by Court]came at him in a threatening manner, his response was objectively out of proportion as it appears PA did not sustain any injuries himself. On the contrary, [redacted by Court]'s injuries appear to be more consistent with having repelled an attack against her person.
>
> [Emphasis added]

B. *Best Interests of the Child*

[20] The Decision states that the Officer also considered humanitarian and compassionate [H&C] grounds for permanent residence and the best interests of the minor child but this did not satisfy the Officer's concerns:

> I have carefully assessed your response to our procedural fairness letter and have also considered humanitarian and compassionate grounds given the presence of the minor child, however, I am not satisfied the concerns outlined above were responded to in a satisfactory manner.

[21] The Officer's GCMS Notes further state:

> The best interest of the child would ideally be to continue residing with both of his parents. I have countered this with the gravity of the offense reproached to the PA and the fact that he was found inadmissible for misrepresentation. Given the child's young age and the fact that he is not yet of school age, the consequences of having to depart Canada, while stressful, would have a lesser impact than on an older child who has already started school, has a social network….
>
> The departure from CDA of PA and his child will surely have negative repercussions on the sponsor however I do not find these are insurmountable. Several families in similar situations find

> themselves separated due to immigration factors and previous actions of the principal applicant. The sponsor immigrated as a dependent in her parent's FC1 application, she therefore has no apparent impediment to returning to Cuba to visit her husband and child.
>
> The living standard in Cuba is in effect lower than that in Canada however this factor alone is not sufficient to consider warranting an exemption. Any separation in a family is difficult to handle however with today's technological means, it is possible to remain in close communication frequently and to slightly diminish the consequences of physical absence. Cuba is a relatively short distance from Canada and there are regular flights to several cities.
>
> While I weig[h] strongly the best interest of the child to remain in Canada with both of his parents, I do not find this is sufficient to overcome the grounds for the PA's inadmissibility. I do not find the child faces an exceptional situation; several families are indeed separated in two different countries and have to compose with this situation. I find the gravity of the PA's actions do not justify granting an exceptional measure.

IV. Issues

[22] The Applicants raise the following issues:

1. That the visa officer failed to observe a principle of natural justice and breached procedural fairness in finding that the principal applicant engaged in conduct outside Canada that can be described as severe criminality under subsection 64(2) and paragraph 36(1)(b) or (c) of the *IRPA* and did not provide to the applicant any evidence, and opportunity to controvert the evidence on which his/her decision is based.

2. That the visa officer breached procedural fairness by determining that the principal applicant withheld material facts or provided misleading evidence in violation of subsection 40(1)(a) of the *IRPA* without providing to the applicant a copy of the evidence on which his/her decision is based and an opportunity to controvert them.

3. The Visa Officer did not assess or consider the child's best interests in his/her humanitarian and compassionate grounds considerations.

4. The visa officer's decision was unreasonable, capricious, and arbitrary in the face of the evidence and totality of the circumstances.

[23] Respectfully, the issue is whether the Decision is reasonable and procedurally fair.

V. Standard of review

[24] The Applicants make no submissions on the standard of review. The Respondent submits the standard of review for the merits of the Decision is reasonableness. The Respondent submits questions of procedural fairness are not decided according to any particular standard of review. I agree with the Respondent that reasonableness is the issue on the merits, and find that in the immigration context foreign nationals are entitled to the gist of the concerns raised against them and an opportunity to respond.

A. *Reasonableness*

[25] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued contemporaneously with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the

> reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

[26] *Vavilov* makes it abundantly clear the role of this Court is not to reweigh and reassess the evidence unless there are "exceptional circumstances". The Supreme Court of Canada instructs:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court's deferring to a lower court's factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.

> [Emphasis added]

[27] The Federal Court of Appeal held in *Doyle v Canada (Attorney General),* 2021 FCA 237 [*Doyle*] that the role of this Court is not to reweigh and reassess the evidence unless there is a fundamental error:

> [3] In doing that, the Federal Court was quite right. Under this legislative scheme, the administrative decision-maker, here the Director, alone considers the evidence, decides on issues of admissibility and weight, assesses whether inferences should be drawn, and makes a decision. In conducting reasonableness review of the Director's decision, the reviewing court, here the Federal Court, can interfere only where the Director has committed fundamental errors in fact-finding that undermine the acceptability of the decision. Reweighing and second-guessing the evidence is no part of its role. Sticking to its role, the Federal Court did not find any fundamental errors.
>
> [4] On appeal, in essence, the appellant invites us in his written and oral submissions to reweigh and second-guess the evidence. We decline the invitation.

[28] Moreover, *Vavilov* requires the reviewing court to assess whether the decision subject to judicial review meaningfully grapples with the key issues:

> [127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard: Baker, at para. 28. The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.
>
> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading

> to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39.

B. *Procedural fairness*

[29] In the immigration context foreign nationals must be given an adequate understanding of the "gist of the concerns" against them and an opportunity to respond: *El Rifai v Canada (Citizenship and Immigration)*, 2024 FC 524 at paragraph 4 [per Grammond J].

VI. Relevant legislation

[30] The Applicants' application was refused under s 11(1) of *IRPA*, which states:

Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

[31] Paragraph 36(1)(c) of *IRPA* states that foreign nationals are inadmissible to Canada on grounds of serious criminality:

Serious criminality	**Grande criminalité**
36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36 (1)** Emportent interdiction de territoire pour grande criminalité les faits suivants :
…	…
c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.	**c)** commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction sous le régime d'une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

[32] Foreign nationals are also inadmissible for misrepresentation, per ss 40(1) and 40(2)(a) of *IRPA*:

Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(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;	**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	**Application**
(2) The following provisions govern subsection (1):	**(2)** Les dispositions suivantes s'appliquent au paragraphe (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…	**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…

VII. Submissions of the parties

[33] The Applicants submit the Officer breached their duty of procedural fairness and the Decision is unreasonable.

[34] The Respondent submits no breach of procedural fairness occurred and the Decision is reasonable.

A. *Was the Decision procedurally fair?*

[35] The Applicant submits visa officers are generally required to disclose to applicants when extrinsic evidence is being relied on (*Zaib v Canada (Citizenship and Immigration)*, 2010 FC 769; *Kahin v Canada (Citizenship and Immigration)*, 2011 FC 1064; *Fang v Canada (Citizenship and Immigration*), 2024 FC 671).

[36] The Respondent submits visa officers are entitled to put concerns to applicants by way of PFLs, which must contain sufficient detail to allow an applicant to know the case to meet: *Patel v Canada (Citizenship and Immigration)*, 2023 FC 1394 at paragraph 24; *Bui v Canada (Citizenship and Immigration)*, 2019 FC 440 at paragraph 29.

[37] The Respondent submits in the case at bar the two PFLs contained sufficient detail to allow the Applicants to know the case to meet, which is demonstrated by their response. The Respondent notes the Applicants provide no authorities for their argument that all material before the Officer should have been disclosed to them.

[38] Respectfully, procedural fairness in a case like this does not require disclosure of all relevant extrinsic documents. Such applicants need only be given an adequate understanding of the "gist of the concerns" and an opportunity to respond. Notably, the PA is not before a Canadian criminal court. Nor do foreign nationals have the benefit of *Charter* full disclosure such as provided persons by *R v Stinchcombe*, [1991] 3 SCR 326. Applicant's counsel agreed with these propositions.

[39] As I noted in *Wang v Canada (Citizenship and Immigration)*, 2024 FC 1965:

> [38] The Respondent submits and I agree that in the immigration context the jurisprudence recently and very well supports the proposition that procedural fairness does not require disclosure of all relevant extrinsic documents, but rather that the Applicant be given an adequate understanding of the "gist of the concerns" (*El Rifai v Canada (Citizenship and Immigration)*, 2024 FC 524 at paragraph 4 [per Grammond J]. I am certainly not persuaded the Applicant, a foreign national applying for status in Canada, has the *Charter* rights of full disclosure available to criminal accused in Canada as provided in *R. v. Stinchcombe*, 1991 CanLII 45 (SCC), [1991] 3 S.C.R. 326; submissions to that effect are of course doctrinally unsound.
>
> [39] The following reasons of Justice Grammond in the immigration context are consistent with the Federal Court of Appeal's holding in *Canadian Pacific Railway*, cited above:
>
> > [4] Moreover, the fact that the officer relied on verifications with the bank and considered the fact that other fraudulent documents had similar characteristics does not constitute extrinsic evidence that had to be disclosed to Mr. El Rifai: *Kong* at paragraph 28. It is true that some decisions of this Court state that a visa officer who intends to rely on extrinsic evidence must give the applicant an opportunity to provide submissions in this regard: *Kniazeva v Canada (Citizenship and Immigration)*, 2006 FC 268 at paragraph 21; *Youssef v Canada (Citizenship and Immigration)*, 2011 FC 399 at paragraph 12; *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 779 at paragraph 28. In such situations, however, procedural fairness does not require that all documents in the officer's possession be provided to the applicant: *Maghraoui v Canada (Citizenship and Immigration)*, 2013 FC 883 at paragraph 22; *Jemmo v Canada (Citizenship and Immigration)*, 2021 FC 1381 at paragraph 33. Rather, procedural fairness "does demand that the Applicant be given an adequate understanding of the gist of the concerns": *Geng v Canada (Citizenship and Immigration)*, 2023 FC 773 at paragraph 74. The scope of this requirement must be assessed on the basis of the circumstances of each case.

[Emphasis in original]

[40] In my respectful view the Applicant certainly knew the gist of the allegation against him. There is no merit in his submissions otherwise.

B. *Was the Decision reasonable?*

(1) Best Interests of the Child

[41] The Applicant submits Officers must be alert, alive and sensitive to the best interests of the child [BIOC] (*IRPA*, s 25(1), 25(1.1); *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 39 [*Kanthasamy*]). This is not to dispute and is binding on this Court. The Applicant argues the short paragraph in the Decision concerning the BIOC demonstrates the Officer did not adequately consider the BIOC in their assessment of the application.

[42] The Respondent correctly notes the Applicants did not request H&C relief or make H&C submissions aside from stating that "The present delay in his application has been traumatic for him, his wife, and their children." That said the Officer's detailed BIOC analysis is contained in the GCMS Notes. The Applicants also had the undoubted onus of demonstrating H&C relief is warranted, which they failed to do: *Owusu v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38 at paragraphs 5, 8.

[43] In reply, the Applicants maintain "[t]he officer's analysis, which was belatedly submitted as part of the record, is insensitive and not alert, alive, and sensitive to the child's best interests,"

citing *Baker v Canada (Citizenship and Immigration)* 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraph 75.

[44] In this respect it is trite that H&C officers are to focus on the case before them, and respond to them reasonably. In my view the Officer did just that. The Applicants are obliged to put their best case forward. The onus lies on them to make all the points needed to succeed: see e.g. *Nashir v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 147 at paragraph 39; *Nhengu v Canada (Citizenship and Immigration)*, 2018 FC 913 [per LeBlanc J as he then was] at paragraph 6; *Singh v Canada (Citizenship and Immigration)*, 2007 FC 1356 at paragraph 32. They cannot hang back (or fail to make meaningful submissions, as here), supply minimal if any submissions, and then fault the Officer on judicial review relying on their own error in failing to make a full and proper case in the first place. This argument of the Applicants turns the process on its head, forms no part of the law and is simply without merit.

[45] The Applicants also argue “the three-year-old child would be separated for the tender and nurturing care of the mother; such separation would have a very negative impact on the child’s mental, emotional, and psychological well-being. The child has adapted to life in Canada, formed relationships with kindergarten friends, and speaks the English language; it will create undue hardship for the mother to maintain her full employment in Canada through which she supports the family, and travel frequently to Cuba also to keep relationship with the child.”

[46] With respect, there are two flaws in these submissions. First, and as just mentioned, the Applicants choose not to make meaningful H&C submissions to the Officer. Secondly, and in

any event in my respectful view, the Officer's did consider these factors and found them insufficient to overcome the PA's grounds for inadmissibility. This is a matter of the Officer weighing and assessing the evidence and, as noted above, the Court may not reweigh and reassess the record except in extraordinary circumstances or where there is fundamental error. No such situation exists here.

[47] I therefore respectfully find the Officer's BIOC analysis reasonable. The Officer was certainly alert, alive and sensitive and their Reasons meet the standard set by the Supreme Court of Canada in *Kanthasamy* at paragraphs 38-40.

(2) Inadmissibility findings

[48] The Applicants' Memorandum only addresses procedural fairness and BIOC.

[49] The Respondent submits "[t]he Applicants do not appear to substantively dispute the Visa Officer's analysis and instead focus on the sufficiency of procedural fairness. Given this, and upon a review of the Visa Officer's reasons, the inadmissibility finding is reasonable."

[50] The Applicants' Reply contains submissions about the Officer's inadmissibility findings. Technically these come to late because reply is limited to responding to matters raised by the Respondent and is not an opportunity to raise new issues that could and should have been raised in main argument. I will consider them anyway.

[51] On serious criminality, the Applicants submit the Officer's suggestion that "[l]ocal interpretations of Islamic Law and practice of cultural traditions in social and legal institutions" in Oman may mean there is differentiated treatment towards women when reporting a spousal incident is illogical and based on conjecture, making it unreasonable per *Vavilov*.

[52] In this connection I note the GCMS Notes go on to state, as outlined above:

> Considering the foregoing, it is not unreasonable to believe the[re] may be differentiated treatment towards women when reporting a spousal violence incident. Regardless of the functionality and partiality of Oman's judicial system, a medical report was taken by a health professional and chronicled several injuries sustained by [redacted by Court]. These injuries are inputted to the PA who himself recognized an incident with the victim and having used force against her. The explanation on how these injuries came to be sustained is simply not logical in view of their number, nature and location on the body. I give more weight to the medical report which was independently drafted and which provides an overview of the bodily harm sustained by the victim. By both the PA and the victim's account, there were no other parties involved in the incident. I am therefore satisfied the PA caused the injuries described in the medical report to PA. While the fact that the charges against him were dismissed is relevant, it does not impede PA admitted to the altercation with [redacted by Court]. His admission combined with the medical report reasonably lead me to conclude he caused those injuries to the victim and therefore committed a criminal offense under both Omani and Canadian legislations. PA is therefore inadmissible under A36(1)(c).

[53] I am not persuaded the Officer acted unreasonably in determining the effect of the conduct either in Oman or in Canada in weighing and assessing the medical evidence (in respect of which I find there is no reasonable objection raised) against relevant law in either Canada or Oman countries. As noted this weighing is not reviewable on judicial review per *Vavilov* and *Doyle* unless there are exceptional circumstances which is not the case here.

[54] In terms of relevant law it is long settled that in absence of evidence to the contrary, most often expert evidence, the law in both countries is deemed to be the same, that is foreign law is deemed to be the same as Canadian law: *The Mercury Bell v Amosin*, 1986 CanLII 6832 (FCA), [1986] 3 FC 454 at 460; *International Air Transport Association v Canada (Transportation Agency)*, 2020 FCA 172 [per MacTavish JA] at paragraph 45, aff'd 2024 SCC 30 at paragraph 65; David M Paciocco, Lee Stuesser & Palma Paciocco, *The Law of Evidence*, 8th ed (Toronto: Irwin Law, 2020) at 243-44; *Zanin v Ooma, Inc*, 2025 FC 51.

[55] On misrepresentation, the Applicants submit the Officer made incorrect assumptions about the PA's ability to speak English and maintains this omission was "a simple and innocent mistake," citing *Medel v Canada (Minister of Employment and Immigration (CA)*, 1990 CanLII 12991 (FCA), [1990] 2 FC 345, which outlines the innocent misrepresentation exception. However, and with respect, it was reasonable for the Officer to find the Applicants inadmissible for misrepresentation given the PA's failure to disclose (a) his detention by police (he said he was not detained but and with respect it seems to me that he was; he filed nothing to suggest he reasonably had the choice to leave or walk away from the Omani police), (b) the police investigation into and the facts of the assault on his ex-fiancé, and (c) the charge laid against him noted above.

[56] On the last point, the PA checked the "no" box and argued he was never charged, alleging a difference between a "charge" and a "case" in Oman. But on the record in this case the Officer had evidence a charge and a case are the same. The evidence was from the Minister's Risk Assessment Unit, the branch of Immigration, Refugees and Citizenship Canada that

contacted Oman police and placed on file its findings that the PA had been charged, noting also the case had been closed. When considered holistically and with respectful deference, I am not persuaded the conclusion is unreasonable.

[57] It was also reasonable for the Officer to reject the PA's explanation that this was due to English language skills because the PA had a consultant.

VIII. Conclusion

[58] In my respectful opinion there is no reviewable error warranting judicial intervention in this case.

IX. Certified question

[59] Neither party proposes a question for certification and I agree none arises.

JUDGMENT in IMM-9628-24

THIS COURT'S JUDGMENT is that this application is dismissed, no question of general importance is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

John Agwuncha	FOR THE APPLICANTS
Nicholas Dodokin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John Agwuncha Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT