

**Date: 20080207**

**Docket: IMM-1981-07**

**Citation: 2008 FC 166**

**Toronto, Ontario, February 7, 2008**

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

**BETWEEN:**

**ANWAR ALI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a decision of a Visa Officer in which a dependent of a Convention Refugee from Bangladesh is ruled to be inadmissible for landing in Canada due to misrepresentation under s.40(1)a of the *Immigration and Refugee Protection Act* S.C. 2001, c. 27 (*IRPA*).

[2] The Visa Officer's CAIPS notes disclose that, prior to the misrepresentation being detected, there was no outstanding issue with respect to the Applicant's age or his family relationships. The misrepresentation issue arising thereafter was due to the fact that the Applicant submitted a

fraudulent school record. The Applicant subsequently filed a further school record and stated that the misrepresentation was made without his knowledge.

[3] In order for an applicant to be inadmissible due to misrepresentation, s.40(1)a of *IRPA* requires that the misrepresented facts be material to the application. Therefore, by Citizenship and Immigration Canada's policy guidelines with respect to evaluating whether a misrepresentation will render an applicant inadmissible, the materiality of the misrepresentation must first be determined (see ENF 2, Evaluating Admissibility, s. 9.3, Applicant's Application Record, p. 97). The CAIPS notes do not reflect any analysis by the Visa Officer on the issue of the materiality of the misrepresentation under consideration. However, the rejection letter sent to the Applicant gives the following reason for finding that the Applicant is inadmissible:

Because such documents are used as evidence of age, identity, and relationship to the family member in Canada, the submission of fraudulent school documents could induce an error in the administration of the *Immigration and Refugee Protection Act*.

(Tribunal Record, p.14)

[4] As mentioned above, in the evaluation of the Applicant's admissibility, his age, identity, and family relationships were not in doubt prior to the detection of the misrepresentation. As a result, I find that the reasons given in the rejection letter do not constitute an analysis of materiality warranting the Applicant's rejection. On this basis I find that the Visa Officer's decision is not in accordance with s. 40(1)a of *IRPA*, and further, is factually erroneous.

[5] As a result, I find that the Visa Officer's decision was rendered in reviewable error.

**ORDER**

Accordingly, I set aside the Visa Officer's decision and refer the matter back for re-determination before a differently visa officer.

"Douglas R. Campbell"

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Judge

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** IMM-1981-07

**STYLE OF CAUSE:** ANWAR ALI v. THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** FEBRUARY 7, 2008

**REASONS FOR ORDER  
AND ORDER BY:** CAMPBELL J.

**DATED:** FEBRUARY 7, 2008

**APPEARANCES:**

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