Date: 20090316

Docket: IMM-921-08

Citation: 2009 FC 266

Ottawa, Ontario, March 16, 2009

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ABDUL GHAFFAR ALAKOZAI,
SEEMA ALAKOZAI,
ABDUL MUMEN ALAKOZAI
by his litigation guardian,
ABDUL GHAFFAR ALAKOZAI
and CANADIAN LUTHERAN
WORLD RELIEF

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to s. 72 (1) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (Act) for judicial review of a decision of an immigration officer (Officer) of the Canadian High Commission in Islamabad, Pakistan (CHC), dated January 15, 2008 (Decision), in which the Officer refused the Applicants' application for permanent residence in Canada as not falling within the Convention Refugee Abroad or the Humanitarian-protected Person Abroad classes.

BACKGROUND

[2] The Applicants are citizens of Afghanistan and part of the Pashtun ethnic group. The Principal Applicant, Abdul Alakozai, is currently 56 years old. Seema, the Principal Applicant's wife is 51 years old and the Principal Applicant's son, Abdul Mumen Alakozai is 17 years old. Two other sons of the Principal Applicant and his wife were killed in Afghanistan on August 17, 2004. They were 25 and 23 years old at the time.

[3] There was fighting between the Tajik and Pashtun ethnic groups in Herat where the Applicants lived. The Applicants fled from Herat to a village outside Melysebcha after their sons were killed and remained there for almost one month until they fled from Herat to Kandahar, then to Kabul and on to Pakistan. The Applicants say they were unable to retrieve any documents or personal belongings from their house because of the danger. They were eventually told that their house had been looted.

[4] The Applicants escaped from Afghanistan by paying for a truck to take them to Kandahar, staying there one night and then continuing to Kabul. In Kabul, the Applicants looked for friends or relatives to assist them but they were unable to find anyone. They believed that their friends and relatives had moved to seek refuge elsewhere. The Applicants feared remaining in Pakistan as there was ongoing mistreatment at the hands of the police and a lack of settlement opportunities.

[5] The Principal Applicant says he was a teacher in Afghanistan. He had completed six years of primary school and 6 years of secondary school, followed by two years at a teaching institute in Kabul where he received his teaching diploma. The Principal Applicant also had some "non-formal" training as a carpenter. He says he worked as a teacher from March 1973 until December 1976 at Hayati Primary School in Herat, and from March, 1977 until June, 1982 at Alawudeen Ghuri School in Herat. From 1982 to 1991 he worked as a carpenter, and then again as a teacher from March 1991 until September 2004 at Alawudeen Ghuri School in Herat.

[6] The Applicants applied for a permanent resident visa on May 20, 2005. They applied as refugees outside of Canada on the basis that their lives were in danger in Afghanistan. This application was filed in conjunction with an undertaking to sponsor by a Sponsorship Agreement Holder pursuant to the private sponsorship program in subsection 13(2) of the Act and Part 8 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations). The application included a Letter of Approval from the Canadian Lutheran World Relief (CLWR) office in Toronto, dated November 30, 2005.

[7] The Applicants were interviewed by the Officer at the Canadian visa office in Islamabad on November 22, 2007. In a January 9, 2008 letter, the Officer rejected their application.

DECISION UNDER REVIEW

[8] The Officer held that she could not establish the Applicants' credibility as both the Principal Applicant and his wife provided conflicting information about their careers in Afghanistan. The Officer found that the evidence of the Principal Applicant contradicted both his wife's and his own application form. When the Officer asked the Principal Applicant and his spouse to explain these contradictions they were unwilling or unable to do so. Consequently, the Officer held that she was not satisfied that the Applicants were seriously or personally affected by the civil conflict in Afghanistan or that they met the requirements of the Act. Their application was refused.

ISSUES

[9] The Applicants submit the following issues for review:

(a) Did the Officer err in law in reaching her Decision with respect to the Applicants' application for permanent residence in Canada and, in particular, in finding that the Applicants did not meet the definition of the Convention Refugee Abroad Class, or the Humanitarian-protected Persons Abroad Class, and in particular the Country of Asylum Class?

(b) Did the Officer err in law in making erroneous findings of fact without regard to the evidence before her, and was her Decision patently unreasonable or capricious considering the evidence before her, or did she ignore or misinterpret evidence before her?

(c) Did the Officer err in failing to observe a principle of natural justice, procedural fairness or other procedures that she was required by law to observe and did she also demonstrate a reasonable apprehension of bias?

(d) Such further and other grounds as the Applicants may advise and this Court permit.

[10] In their Reply, the Applicants have also raised several other issues:

(a) Did the Officer err in failing to consider the application under both the Country of Asylum Class and the Convention Refugees Abroad Class?

(b) Did the Officer err in failing to consider the application in light of CIC policy related to gender-related persecution, including the IRB's Gender Guidelines for Women Refugee Claimant's Fearing Gender-Related Persecution?

(c) Did the Officer err in failing to duly consider the reasons why the Applicants feared persecution, and by refusing the claim based on credibility findings related to peripheral matters (i.e. the answers provided by the Principal Applicant related to his employment)?

STATUTORY PROVISIONS

[11] The following provisions of the Act are applicable in these proceedings:

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,	**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

following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

16. (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

16. (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

(*b*) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) la menace ou le risque ne résulte pas de l'incapacité du

provide adequate health or medical care.	pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	**Personne à protéger**
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	**(2)** A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

[12] The following provisions of the Regulations are applicable in these proceedings:

139(1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	**139. (1)** Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
(*d*) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely	*d*) aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :
(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or	(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,
(ii) resettlement or an offer of resettlement in another country;	(ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;

144. The Convention refugees abroad class is prescribed as a class of persons who may be issued a permanent resident visa on the basis of the requirements of this Division.	**144.** La catégorie des réfugiés au sens de la Convention outre-frontières est une catégorie réglementaire de personnes qui peuvent obtenir un visa de résident permanent sur le fondement des exigences prévues à la présente section.
145. A foreign national is a Convention refugee abroad and a member of the Convention refugees abroad class if the foreign national has been determined, outside Canada, by an officer to be a Convention refugee.	**145.** Est un réfugié au sens de la Convention outre-frontières et appartient à la catégorie des réfugiés au sens de cette convention l'étranger à qui un agent a reconnu la qualité de réfugié alors qu'il se trouvait hors du Canada.
146. (1) For the purposes of subsection 12(3) of the Act, a person in similar circumstances to those of a Convention refugee is a member of one of the following humanitarian-protected persons abroad classes:	**146. (1)** Pour l'application du paragraphe 12(3) de la Loi, la personne dans une situation semblable à celle d'un réfugié au sens de la Convention appartient à l'une des catégories de personnes protégées à titre humanitaire outre-frontières suivantes :
(*a*) the country of asylum class; or	*a*) la catégorie de personnes de pays d'accueil;
(*b*) the source country class.	*b*) la catégorie de personnes de pays source.
(2) The country of asylum class and the source country class are prescribed as classes of persons who may be issued permanent resident visas on the basis of the requirements of this Division.	(2) Les catégories de personnes de pays d'accueil et de personnes de pays source sont des catégories réglementaires de personnes qui peuvent obtenir un visa de résident permanent sur le fondement des exigences prévues à la présente section.

147. A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because	**147.** Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(*a*) they are outside all of their countries of nationality and habitual residence; and	*a*) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(*b*) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.	*b*) une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.
148. (1) A foreign national is a member of the source country class if they have been determined by an officer to be in need of resettlement because	**148. (1)** Appartient à la catégorie de personnes de pays source l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(*a*) they are residing in their country of nationality or habitual residence and that country is a source country within the meaning of subsection (2) at the time their permanent resident visa application is made as well as at the time a visa is issued; and	*a*) d'une part, il réside dans le pays dont il a la nationalité ou dans lequel il a sa résidence habituelle, lequel est un pays source au sens du paragraphe (2) au moment de la présentation de la demande de visa de résident permanent ainsi qu'au moment de la délivrance du visa;
(*b*) they	*b*) d'autre part, selon le cas :
(i) are being seriously and personally affected by civil war or armed conflict in that country,	(i) une guerre civile ou un conflit armé dans ce pays ont des conséquences graves et personnelles pour lui,

(ii) have been or are being detained or imprisoned with or without charges, or subjected to some other form of penal control, as a direct result of an act committed outside Canada that would, in Canada, be a legitimate expression of freedom of thought or a legitimate exercise of civil rights pertaining to dissent or trade union activity, or

(ii) il est détenu ou emprisonné dans ce pays, ou l'a été, que ce soit ou non au titre d'un acte d'accusation, ou il y fait ou y a fait périodiquement l'objet de quelque autre forme de répression pénale, en raison d'actes commis hors du Canada qui seraient considérés, au Canada, comme une expression légitime de la liberté de pensée ou comme l'exercice légitime de libertés publiques relatives à des activités syndicales ou à la dissidence,

(iii) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group, are unable or, by reason of such fear, unwilling to avail themself of the protection of any of their countries of nationality or habitual residence.

(iii) il ne peut, craignant avec raison d'être persécuté du fait de sa race, de sa religion, de sa nationalité, de ses opinions politiques ou de son appartenance à un groupe social particulier, ou, du fait de cette crainte, ne veut se réclamer de la protection de ce pays.

(2) A source country is a country

(2) Est un pays source celui qui répond aux critères suivants :

(*a*) where persons are in refugee-like situations as a result of civil war or armed conflict or because their fundamental human rights are not respected;

a) une guerre civile, un conflit armé ou le non-respect des droits fondamentaux de la personne font en sorte que les personnes qui s'y trouvent sont dans une situation assimilable à celle de réfugiés au sens de la Convention;

(*b*) where an officer works or

b) un agent y travaille ou s'y

makes routine working visits and is able to process visa applications without endangering their own safety, the safety of applicants or the safety of Canadian embassy staff;	rend régulièrement dans le cadre de son travail et est en mesure de traiter les demandes de visa sans compromettre sa sécurité, celle des demandeurs ni celle du personnel de l'ambassade du Canada;
(*c*) where circumstances warrant humanitarian intervention by the Department in order to implement the overall humanitarian strategies of the Government of Canada, that intervention being in keeping with the work of the United Nations High Commissioner for Refugees; and	*c*) les circonstances justifient une intervention d'ordre humanitaire de la part du ministère pour mettre en oeuvre les stratégies humanitaires globales du gouvernement canadien, intervention qui est en accord avec le travail accompli par le Haut-Commissariat des Nations Unies pour les réfugiés;
(*d*) that is set out in Schedule 2.	*d*) il figure à l'annexe 2.

STANDARD OF REVIEW

[13] In *Dunsmuir v. New Brunswick*, 2008 SCC 9 (*Dunsmuir*), the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, "the analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review" *Dunsmuir* at paragraph 44. Consequently, the Supreme Court of Canada held that the two reasonableness standards should be collapsed into a single form of "reasonableness" review.

[14] The Applicants submit that the standard of review applicable to a visa officer's decision as to whether an applicant comes within the definition of Convention refugee or Country of Asylum class is reasonableness *simpliciter*, as it is a question of mixed law and fact: *Krishnapillai v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 302 at paragraphs 5-10.

[15] The Respondent submits that a visa officer's decision should be assessed against the reasonableness standard set out in *Dunsmuir.* The only relevant exception is issues of procedural fairness where correctness applies.

[16] The Respondent relies on the case of *Azali v. Canada (Minister of Citizenship and Immigration)* 2008 FC 517 which involved a visa officer refusing an application for permanent residence based upon the Convention Refugee Abroad Class or the Humanitarian-Protected Persons Abroad Designated Class. The three issues reviewed in that case were: (1) whether the officer erred in requiring corroborative evidence as a condition of acceptance of the applications; (2) whether the officer erred in failing to draw a conclusion as to whether he accepted the applicants' explanation for the error in their forms; and (3) whether the officer erred in failing to confront the applicants with the inconsistency between their application and their previous applications for temporary resident visas. It was held that the first two issues were questions of fact and reviewable on the "deferential standard of reasonableness" while the third issue was a question of procedural fairness and reviewable on a standard of correctness.

[17] The Respondent submits that the Officer's Decision in this matter is entitled to deference under the reasonableness standard, with the exception of procedural fairness, which should be assessed on the correctness standard.

[18] In light of the Supreme Court of Canada's decision in *Dunsmuir* and the previous jurisprudence of this Court, I find the standard of review applicable to the issue of whether the Applicants were Convention refugees or Humanitarian-protected persons abroad to be reasonableness. When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at para. 47. Put another way, the Court should only intervene if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[19] In relation to the credibility of the Applicants, *Aguebor v. Canada (Minister of Citizenship and Immigration)*, [1993] F.C.J. No. 732 (F.C.A.) (*Aguebor*) at paragraph 4 states that "[a]s long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review." In other words, the Board's credibility findings in the present case are entitled to a high degree of deference and the burden rests upon the Applicants to show that the inferences drawn by the Board could not reasonably have been drawn.

[20] On the procedural fairness issues, I agree that the proper standard of review is correctness: *Suresh v. Canada (Minister of Citizenship and Immigration)* 2002 SCC 1.

[21] For the reasonable apprehension of bias issue, I rely upon the test outlined by the dissent in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 (*Liberty*).

ANALYSIS

[22] The central complaint in this application is that the Officer was unreasonable to base her Decision regarding a well-founded fear of persecution solely on credibility findings. The Applicants say that the Officer should have gone on to address the full basis of the Applicants' claim. Because the Officer curtailed the process on the grounds of credibility, she did not undertake a full assessment and analysis of the Applicants' case. The Applicants also say that the Officer failed to provide any analysis of her credibility concerns related to the merits of the claim.

[23] A full explanation and analysis of the problem was provided to the Applicants in the Decision. The letter of January 9, 2008 explains that, because of the conflicting evidence provided about the Principal Applicant's teaching career in Afghanistan, it was impossible for the Officer to establish that either of the adult Applicants had any credibility. Not only did the Principal Applicant contradict his own written submissions about his teaching career, his wife's evidence on the same topic contradicted the evidence of the Principal Applicant.

[24] The Officer provided the Principal Applicant and his wife with a full opportunity to explain what were, in fact, fundamental and incomprehensible discrepancies. There was no problem with the interpreter. The Applicants confirmed that they understood the questions. But they simply failed to answer the basic issues: “When asked to explain this, you and your spouse were either unwilling or unable to do so. This lack of credibility puts your whole claim in doubt, such that it must be refused.”

[25] The overall lack of credibility meant that the Officer could not be “satisfied that you continue to be seriously and personally affected by the civil conflict in Afghanistan.”

[26] It is also clear from the CAIPS notes that the Officer was not even able to establish the Applicants’ identities. They said they had fled Afghanistan in a hurry and so had been unable to obtain any identity documentation. But the Applicants did not provide a satisfactory answer when the Officer questioned them on this issue.

[27] Had the Officer been able to establish that the Applicants were credible people, it is obvious that the process would have continued and a fuller assessment would have been made.

[28] The issues, then, are whether the Officer’s general negativity finding was reasonable on the facts and whether she was legally justified in curtailing the application process after reaching a conclusion that she could not establish that the Applicants were credible claimants.

[29] In my view, there is nothing in the evidence to suggest any kind of procedural unfairness. The Officer made sure that the Applicants understood the interpreter. She asked them simple questions on a fundamental issue. She asked the questions several times. She explained the enormous discrepancies in the evidence to the Applicants. She asked them to explain. She gave them time to explain. But they either could not, or would not, explain the differences in their evidence.

[30] There was also nothing in the Officer's conduct that breached the relevant guidelines for interviewing refugees, and what the Applicants point to as inappropriate comments in the CAIPS notes are entirely neutral and do not suggest a "strong negative attitude the Applicants and a misunderstanding of events." The fact that the Applicants now point to such matters reveals how difficult they have found it to establish fault with the Decision.

[31] It is important to bear in mind that the Applicants submitted no documentation with their application. Hence, it was crucial that the Officer examine their narrative carefully to establish the legal requirements for their claim. This is what she attempted to do. There is nothing in her conduct that was procedurally unfair and, given the enormous contradiction within the husband's own testimony as well as between the husband and wife over the husband's profession and what he had been doing in Afghanistan for over 30 years, there is nothing in the Officer's general negativity finding that would take it outside of the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[32] The only issue before me, in my view, is whether the Officer's appropriate finding on general credibility justified her not proceeding to address all of the issues that would normally be addressed in this kind of claim.

[33] It is clear that the burden of proof rested upon the Applicants: *Salimi v. Canada (Minister of Citizenship and Immigration)* 2007 FC 872 at paragraph 7.

[34] It is also clear that the Officer had good grounds for holding that the Applicants were in breach of subsection 16(1) of the Act in that they had not answered truthfully all questions put to them for the purposes of the examination. What is more, the Applicants could not clearly establish their identities with the usual documents.

[35] Any relevant country condition documents alone would not have provided an adequate basis for a positive determination because the Applicants would have had to demonstrate a link between their personal situation and the situation in Afghanistan. The Applicants, however, could not provide credible evidence concerning their own situation. The Officer found that general credibility was lacking. In other words, there was no point in proceeding further with the application process.

[36] But was the Officer's finding of a general lack of credibility on the part of both the husband and the wife sufficient to dispose of the claim? The decision of the Federal Court of Appeal in *Sellan v. Canada (Minister of Citizenship and Immigration)* 2008 FCA 381 suggests that it was:

> 3. In our view, that question should be answered in the following way: where the Board makes a general finding that the claimant lacks credibility, that determination is sufficient to dispose of the claim unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus of demonstration there was such evidence.
>
> 4. This leads to the question of whether there was in the record before the Board any evidence capable of supporting a determination in the respondent's favour. In our view, there was clearly no such evidence in the record. We are satisfied that had the Judge examined the record, as he was bound to, he would no doubt have so concluded. In those circumstances, returning the matter to the Board would serve no useful purpose.

[37] In the present case, there was no independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. This is because there was no evidence to support a link between the documentation on country conditions in Afghanistan and the Applicants' personal situation. The Applicants' personal evidence just could not be relied upon. In addition to the contradictions, the Applicants could not even establish their identities.

[38] The Applicants cite a number of cases for the proposition that the Officer was required to proceed with an assessment of the documentary evidence and the full extent of the application even though there was a negative finding of credibility with regards to their alleged experience of persecution. For example they point to the words of Justice Blais in *Fernando v. Canada (Minister of Citizenship and Immigration)* 2006 FC 1349 at paragraphs 27, 29 and 30.

[39] However, Justice Blais' conclusions on this point in *Fernando* were as follows:

> **31** Based on the existing jurisprudence, it could thus be said that the key factor in determining whether an assessment of the documentary evidence before the Board will be required even if the claimant is found not to be credible, will depend on the nature of said evidence and its relationship to the claim.
>
> **32** The applicant submits that the panel ignored evidence that would show that shopkeepers in Colombo, such as the applicant, have been the victim of LTTE extortion tactics and threatened with bodily harm should they fail to comply.
>
> **33** Nevertheless, the onus is to the applicant to demonstrate the link between the personal situation of the applicant and the situations where extortion could amount to persecution in some circumstances in Sri Lanka.
>
> **34** Once the lack of credibility of the applicant has been established, I have difficulty believing that the panel has the duty to look at the documentary evidence to find a link to factual elements of the applicant's situation; the link has to be demonstrated by the applicant, not the panel.

[40] It is the same with Justice Mactavish's decision in *Bastien v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 982. Everything Justice Mactavish says in *Bastien* to the effect that a negative credibility finding is not "the end of the matter" was premised upon the fact that there was no dispute in that case that the applicant was a Haitian woman who would be returning to Haiti. There was a link between the established facts and the risks alleged. In the present case, no such link exists because the Applicants' narrative was reasonably found not to be credible.

[41] The Applicants have filed an affidavit with this application sworn by Muslina Waziri, who is the Principal Applicant's cousin in Canada. This affidavit does not comply with Rule 12(1) of the

Federal Court Immigration and Refugee Protection Rules and, for the reasons given by Justice Pinard in *Toma v. Canada (Minister of Citizenship and Immigration)* 2006 FC 779, at paragraphs 5-8, it can be afforded little weight and is insufficient to affect my conclusion in this matter.

[42] In the end, the behaviour of the Applicants at their interview remains a great mystery, but I can find no reviewable error in the Officer's Decision.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. This application is dismissed.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-921-08
STYLE OF CAUSE:	**ABDUL GHAFFAR ALAKOZAI, SEEMA ALAKOZAI, ABDUL MUMEN ALAKOZAI by his litigation guardian, ABDUL GHAFFAR ALAKOZAI and CANADIAN LUTHERAN WORLD RELIEF** v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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