Federal Court Cour fédérale

Date: 20240124

Docket: IMM-12652-22

Citation: 2024 FC 114

Ottawa, Ontario, January 24, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

JAMEEL KHALAF ALMUSTAFA, KHAWLA HMOUD ALKHALF AND ABDULKAREM JAMEEL ALMUSTAFA, ABDULHADI JAMEEL ALMUSTAFA, ALEEN JAMEEL ALMUSTAFA AND WALEED JAMEEL ALMUSTAFA (BY THEIR LITIGATION GUARDIAN JAMEEL KHALAF ALMUSTAFA)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is a judicial review of a decision of a migration officer [Officer] at the Embassy of Canada in Amman, Jordan, dated April 19, 2022 [Decision] rejecting the Applicants' application for permanent residence as members of the *Convention* refugee abroad class or as members of

the humanitarian-protected persons abroad designated class. The Officer determined the Principal Applicant [PA] did not meet the requirements for immigration to Canada, pursuant to subsections 11(1) and 16 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], and section 139 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. The Officer determined that on a balance of probabilities, the PA's declarations at his interview were not credible: specifically the PA's his role during a Syrian Army military mission in 2011, his desertion from the Syrian Army, and his allegation he had no contact with any members or associates of the Free Syrian Army and ISIS/Daesh from 2011-2016. The Officer was not satisfied the PA "is not inadmissible" and therefore dismissed his claim.

II. Background

[2] The PA, his wife, and two children fled Syria in 2016. They left due to the ongoing conflict and civil war, because the PA deserted from the Syrian Army in 2011 in fear of the Syrian Army itself, and because he did not want to be involved in the war and did not want to kill civilians. They have since had two more children. The Applicants are registered refugees with the United Nations High Commission for Refugees living in a refugee camp.

[3] The PA was conscripted in 2010 to serve in the Syrian Army for a two-year period. The civil war started in early 2011. The PA was assigned to a military mission in September 2011. In October 2011, he requested permission to leave his outfit to [deleted], and deserted. The PA returned to his home area, married in 2014, and fled in 2016.

[4] In fall 2018, the Applicants submitted an application for permanent residence as privately sponsored refugees sponsored by a religious community in Canada. The Applicants were

interviewed by a migration officer in Jordan in 2019. The first Officer requested the PA be interviewed by a second Officer, and therefore the PA was subsequently interviewed by a second migration officer in 2022. The Applicants' application for permanent residence was refused in 2022.

III. Issues

[5] The Applicants raises the following issues:

1. The Officer's conclusions regarding credibility were unreasonable, for various reasons:
    - The Officer failed to consider whether the evidence was reasonable and plausible in light of actual conditions in Syria.
    - The Officer either ignored or misconstrued evidence provided.
2. The Officer's reasons were inadequate.
3. Given the particular country context, the Officer also failed to consider both the convention refugee abroad class and the unique country of asylum class, given the ongoing conflict and civil war in Syria.

[6] The Respondent submits the Applicants have not established a serious issue upon which their application for judicial review can succeed.

[7] Respectfully, the sole issue is whether the Officer's Decision is reasonable.

IV. Decision under review

[8] The refusal letter states the Officer's conclusions:

> Having taken into consideration the totality of the evidence before me, based on a balance of probabilities, I find that your declarations at your interview are not credible regarding your role during the military mission in [deleted] in 2011, your desertion from the Syrian Army and the fact that you had no contact with any members or associates of the Free Syrian Army and ISIS/Daesh from 2011 to 2016. You were confronted with these concerns during interview and I have taken into consideration your response.
>
> Your declarations relate directly to your admissibility to Canada. Without true and credible testimony, I am not satisfied that you are not inadmissible to Canada.

[9] The Global Case Management System [GCMS] notes record the following from the first interview:

> DETAILS OF REFUGEE CLAIM I was in the military I deserted (1 Oct 2011). Went to my village [deleted] I thought it was safe but there was FSA and gangs. I kept moving in the villages around my village for 6 years – with family got married 2014, it was not safe in my area – the regime army was approaching my area, if they arrested me they would force me to go back. Heard from the people in the area and because of airstrikes I knew they were coming close. I was afraid of both sides I would stay home most of the times because of scared of both sides. If the situation was ok we would go outside and work the farm. ISIS was in the area but never interacted I was afraid of all. Never interacted with them – it's a farming area – usually only worked when it was safe.
>
> …
>
> POLITICAL INVOLVEMENT Q: Are you or have you ever been registered with the Baath Party, including at a low level: A: NO Q: If yes, at what level/if no, how did you avoid registration (required during military service according to common understanding) and what were consequences? A: no Q: Other group/organization membership A: no

…

MILITARY SERVICE Q: At what age did you enter the military: A: 2010 joined Q: Dates of service: A: 2010 to 1 Oct 2011 – I deserted I told them I was going [deleted] but never came back. They asked me to open fire at civilians – we had finished training. They asked us to go for mission at [deleted] and said we had to open fire on any civilians there. If we saw any abnormal movement or anything unusual open fire – a lot of soldiers deserted. Ran away.

…

KNOWLEDGE OF EVENTS …. Q: Have you taken part in the Syrian conflict, directly or indirectly: A: no Q: Were you aware of demonstrations, and did you ever participate: A: no there was FSA in our area – after that ISIS came. Never participated in any demonstrations and never saw any Q: Did you ever witness violence during demonstrations, or were you ever a victim of violence during demonstrations/protests A: no Q: Which armed opposition/resistance groups were active in your area: A: FSA and ISIS. When I deserted the army my area was under control of FSA – never interacted with them I was at home and sometimes farming …Q: Which groups were engaged in fighting with each other, and who was winning: A: shelling by airstrikes by the Syrian army. FSA would fight back in any way they could with whatever they had. When I realized the Syrian army was approaching our area I left…Q: Was your city/neighbourhood ever attacked: A: many times Q: Did you ever interact with any groups, if so which: A: worked on the farm – family – supported selves with family and farming Q: Which groups approached you to join them: A: never approached by any groups was afraid when Syrian army approached…

…

CONCLUSION Applicant gave very limited answers. PA consistently declared that he spent time farming when things were calm- when groups like ISIS/Syrian Army/and FSA were acting up he and his children stayed home and were not bothered. States he did not leave the farm which is why he never had any issues/interactions with the groups in the area. States they lived off of what they grew on the farm and did not have to leave home. Applicant to be further questioned by another officer.

[10] The GCMS notes record the PA's second interview:

> Please explain the combat at the checkpoint? [Deleted]
> Firing started from the building around the checkpoint. They started to face this fire with fire. They exchanged fired.
> Who was firing at you? Just armed groups, he does not know exactly.
> When was that? From September 5th to October 1st, 2011.
> The fighting lasted almost one month correct? Yes
> Any casualties on your side? Yes
> Any casualties on the other side? He does not know.
> Did you use your weapons during this combat? He was shooting in the air. If he did not short, he would have been punished.
> Why did you shoot in the air? He did not want to be involved in the war and killed anybody.
> What happened after October 1st? He ran away from the military.
> I thought it was in November? Yes, in November, no on October 1st, 2011.
> Why did you say November at the beginning of the interview? Maybe he made a mistake. The year is 2011, it is October 1st.
> Why did you decide to leave on October 1st? If he remained, he would be killed or killed someone, he decided to leave.
> ….
>
> Where did you go on October 1st? He returned to his village.
> Who was in control of your village at the time? At the time, FSA was in control.
> Did you join them? No
> Why? Because he ran away from the war, he did not want to involve himself in the war again.
> …
>
> [All recorded by the Officer in the third person.]

[11] The GCMS notes following the PA's second interview which include cautions by the Officer, giving notice of the Officer's concerns and an opportunity to respond, and the PA's responses:

> CONCLUSION Told PA that I will not make my final decision today but I will tell him my concerns regarding his application and I will give him time to reply to my concerns. – I find it difficult to understand that when you were in the Syrian Army during combat, you were just shooting in the air for 3 weeks. PA said that to be

honest with me, he raised his weapons and shot in the air. And your military supervisor did not do anything about it? During the combat, nobody knew what he was doing. – I find it difficult to understand that you were able to leave the military with the help of your father. PA said that for me, it was easy, his father helped to create another ID. For others, it was difficult…. I find it difficult to understand that when you went back to your village you were not approached by FSA to join them. PA said nobody from them approached him to join them. He did not want to involve himself in this. He did not want to be involved in the war again, combat and blood. With your experience and knowledge in the military, I find it difficult to understand that they did not approach you? They did not ask him to join them and he did not want to join them. – I have difficulty to understand how you were not in contact with FSA for 1 year. PA said that he never had any contact with anyone. – I also have difficulty to understand why you were not in contact with ISIS although they were in control of your town for many years. PA said he was minimizing his movement. He was in the house or in the farm. – I would like to understand better how come you stayed so long under ISIS control. PA said that they were moving from one area to another area in the rural area…

V. Relevant Provisions

[12] The following sections of *IRPA* are relevant:

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.
Obligation — answer truthfully	**Obligation du demandeur**

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.

[13] The following sections of the *IRPR* are relevant:

Member of Convention refugees abroad class	**Qualité**
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.
Member of country of asylum class	**Catégorie de personnes de pays d'accueil**
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	**b)** une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause

rights in each of those countries.	ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

VI. Analysis

A. *Standard of Review*

[14] The parties agree the standard of review is reasonableness, as do I. With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued at the same time as 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]

[15] In the words of the Supreme Court of Canada in *Vavilov*, a reviewing court must be satisfied the decision-maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.
>
> [Emphasis added]

[16] The Supreme Court of Canada in *Vavilov* at paragraph 86 states, "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision-maker to those to whom the decision applies," and provides guidance that the reviewing court decide based on the record before them:

> [126] That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it. In *Baker*, for example, the decision maker had relied on irrelevant stereotypes and failed to consider relevant evidence, which led to a conclusion that there was a reasonable apprehension of bias: para. 48. Moreover, the decision maker's approach would *also* have supported a finding that the decision was unreasonable on the basis that the decision maker showed that his conclusions were not based on the evidence that was actually before him: para. 48.
>
> [Emphasis added]

[17] Furthermore, *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]

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

> [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.
>
> [Emphasis added]

B. *The Officer's implausibility conclusions are reasonable*

[19] The Applicants submit the Officer made unreasonable plausibility findings, failed to consider whether the evidence provided by the PA was plausible in light of the general and cultural situation in Syria, and were based on improper speculation and conjecture as to what was reasonable in the PA's circumstances. The Applicants rely on the Federal Court of Appeal in *Minister of Employment and Immigration v Satiacum (1989),* 99 NR 171, [1989] FCJ No 505, at paragraph 33 for the difference between a reasonable inference and conjecture:

> The common law has long recognized the difference between reasonable inference and pure conjecture. Lord Macmillan put the distinction this way in *Jones v. Great Western Railway Co.* (1930), 47 T.L.R. 39 at 45, 144 L.T. 194 at 202 (H.L.):
>
> > The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof.

> The attribution of an occurrence to a cause is, I take it, always a matter of inference.

[20] They also rely on *Ghirmatsion v Canada (Citizenship and Immigration)*, 2011 FC 519 and *Amanuel v Canada (Citizenship and Immigration)*, 2021 FC 662. In this connection, the Applicants allege the Officer erred by providing no evidentiary basis for their conclusions that the PA's accounts were not credible.

[21] They also rely on country condition evidence they did not put before the Officer. They say the Officer should have considered it. Essentially their new country condition evidence is that during the first years of the civil war, tens of thousands of soldiers and officers deserted from the Syrian army, deserters are treated in the same fashion as other opposition activists and risk being killed or jailed and subjected to torture if caught, the conflict in Syria is characterized by great complexity due to the many different actors involved on all sides which makes it difficult to provide detailed and precise information on the situation, recruitment of fighters to armed opposition groups generally takes place on a voluntary basis and are hard to confirm, that many men who stayed in those areas did not participate actively in the armed conflict, that some agricultural communities are "hard-to-reach", and human rights abuses occurred under the Syrian regime. While I am not asked to strike this evidence, it seems to me it would all lie within the professional knowledge of local visa officers dealing with the many visa applications arising from those in refugee camps.

[22] The Applicants submit in accordance with the CIC Policy Manual OP5 [Manual], the Applicants should be given the benefit of the doubt, and if not, the decision-maker must provide

an explanation as to why not. The Manual states the following on assessing credibility in section 13.1:

> • The applicant should be given the benefit of the doubt;
>
> • It is important to consider the story in the totality of the circumstances in order to establish a standard of reasonableness;
>
> • Officers should be well-informed when evaluating credibility - in particular, the credibility of the applicant "has to be evaluated in light of what is generally known about the conditions and laws of the applicant's country of origin";
>
> • Do not show "undue eagerness in attempting to find contradictions" - officers must not be "over-vigilant by microscopically examining the applicant", especially where an interpreter is being used - officers "must not search through the evidence looking for inconsistencies or for evidence that lacks credibility thereby building a case against the applicant's credibility".

[23] Relying on the Federal Court of Appeal in *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 (FCA) [*Maldonado*], the Applicants also say a decision-maker acts arbitrarily in choosing to disbelieve an applicant's testimony where there exists no valid reason to doubt the truthfulness of it. I note this does not dispute the existence of plausibility findings such as made here.

[24] The Respondent submits the Applicants merely disagree with the Officer's reasonable conclusions. The Respondent took the new evidence as basically background information and did not ask that it be struck. On this point, I am prepared to admit the new country condition evidence but and with respect it is not determinative. In my view it simply confirms what a trained migration officer in the field would have as part of their professional knowledge.

[25] Moreover, with respect to the PA's desertion, the Respondent submits the Officer did not find this to be impossible, but rather, the Officer found the PA's narrative on how it occurred with the assistance of a fake ID from his father to be not credible.

[26] Because this case involves credibility findings and findings of implausibility, and with respect, it is worthwhile to summarize the principles.

[27] First, an applicant is presumed to tell the truth: see *Maldonado*. However, this presumption is rebuttable. Where the evidence is inconsistent with the applicant's sworn testimony, the presumption may be rebutted: *Su v Canada (Citizenship and Immigration)*, 2015 FC 666 at paragraph 11, [per Fothergill J.] citing *Adu v Canada (Minister of Employment and Immigration)*, [1995] FCJ No 114 (FCA).

[28] Indeed, in *Ibikunle v Canada (Citizenship and Immigration)*, 2020 FC 391, the Chief Justice Crampton at paragraphs 23-24 concludes and I agree that the presumption may be rebutted where there is any reason to doubt its truthfulness. In my view such reasons include implausibility findings of the type made by the Officer in this case:

> [23] Relying on *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302, at para 5 ["*Maldonado*"], Mrs. Ibikunle maintains that her statement that her husband was from the State of Ogun was entitled to a presumption of truthfulness.
>
> [24] I disagree. The *Maldonado* presumption falls away when there is any "reason to doubt [the] truthfulness" of a refugee applicant's claims: *Maldonado*, above. Therefore, if credibility concerns have been identified in respect of other aspects of an applicant's evidence, the presumption of truthfulness will no longer apply. That presumption will also no longer apply where an applicant fails to reasonably explain a failure to provide corroboration for assertions that strain credulity, in light of other evidence before the

> decision-maker: *Canadian Association of Refugee Lawyers v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1126, at para 184.
>
> [Emphasis added]

[29] Respectfully also, as stated by Justice Strickland in *Kabran v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 115 [*Kabran*], negative credibility findings made by a visa Officers after a hearing (as here) must be afforded deference: "… the decision turned on credibility, and the Officer's negative credibility findings are to be afforded deference (*Mezbani v Canada (Citizenship and Immigration)*, 2012 FC 1115 at paragraph 26" [quoting Justice Boivin, as he then was].

[30] In this connection I note Justice Rochester's determinations in *Onwuasoanya v Canada (Citizenship and Immigration)*, 2022 FC 1765 at paragraph 10 with respect to credibility determinations after an oral hearing by the RPD:

> [10] Credibility determinations are part of the fact-finding process, and are afforded significant deference upon review *(Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29 [Fageir]; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35 [*Tran*]; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Such determinations by the RPD and the RAD demand a high level of judicial deference and should only be overturned "in the clearest of cases*" (Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12). Credibility determinations have been described as lying within "the heartland of the discretion of triers of fact […] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence" (*Fageir* at para 29; *Tran* at para 35; *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 at para 22, citing *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165 at para 9).

[31] In my respectful view a visa officer having heard the oral testimony of a claimant may make credibility findings based on implausibility, common sense and rationality, although adverse credibility findings "should not be based on a microscopic evaluation of issues peripheral or irrelevant to the case": *Haramichael v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1197 at paragraph 15, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraphs 10-11; *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444.

[32] Simply put, as the Federal Court of Appeal decided many years ago, credibility findings fall within the heartland of the expertise of decision makers who hear and decide matters based on oral testimony (as opposed to paper reviews). Notably the Federal Court of Appeal concluded findings of fact and determinations of credibility fall within the "heartland" of the expertise of the RPD: *Giron v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 481 (FCA).

[33] Reviewing the Officer's decision as a whole, I have concluded the Officer's negative credibility findings with respect to the PA are transparent, intelligible and justified. The Officer expressed their concern and provided several opportunities to the PA during the interview to explain matters in respect of which the visa officer wanted a better understanding. The Officer's resulting plausibility findings are based on common sense and rationality.

[34] As counsel for the Respondent put it at the hearing, it beggars belief that no superior in the Syrian army noticed that the PA for three weeks was disobeying orders and firing in the air when engaged. Likewise a trained local visa officer would be justified in finding as a matter of

common sense and rationality that the PA was not credible in asserting it was “easy” to desert from the Syrian army simply “with the help of his father” and a fake ID. This is particularly so when the PA also testified it was difficult for others to desert. With respect, neither of these findings have anything to do with different cultural norms. I am not persuaded either warrants judicial intervention.

[35] Nor and again with respect, is the Court able to interfere with the Officer’s implausibility finding in respect of the PA’s assertion that he was never contacted either by the FSA (a resistance militia opposed to the Al-Assad regime), or by ISIS/Daesh which controlled where he said he was farming at different times over a five year period. He says he was never approached to join either side for five years. Notably, the PA was working on a farm and going to the market to sell farm products when things were quiet, but claims never to have been contacted or approached. In this respect as with the other two, the PA gave oral testimony on two occasions, and was cautioned on these points. The Officer reasonably found his responses did not alleviate his concerns.

[36] As noted already, relevant country conditions lie within the professional knowledge of a local visa Officer as here. It is also important to note the PA, as the Officer noted, gave “limited answers” as found by the first Officer. Frankly, it is equally apparent his answers before the second Officer were very limited also.

[37] The PA’s testimony was weighed and assessed by both Officers each of whom had the benefit of observing the PA throughout the question and answer interview, an undeniable benefit this Court does not have.

[38] In my respectful view, in all the circumstances, it was open for the visa Officer to make these findings based on the interview and record and their professional knowledge. The reasons explain the Officer's negative credibility findings were drawn as a direct result of the PA's responses.

[39] The onus is on the PA, and with respect I am not persuaded to accept his challenge to the credibility findings made against him. In my respectful view the visa Officer's findings meet the tests of reasonableness.

C. *The Officer's reasons are adequate*

[40] The Applicants also argue that the Officer's reasons are inadequate in that they are based on "unfounded generalizations" of the evidence, such that the Decision is unreasonable. The Applicants submit there are three instances where the Officer states, "I do not find credible" the explanations of the PA, but provide no further analysis.

[41] With respect, I am not persuaded. The Officer did not find the PA credible. The Officer set out why. I have just reviewed the three credibility findings and found them reasonable. The Decision in the context of the record provides adequate reasons in the context of the transcript of the first interview, the second interview, the express caution on points the Officer wanted to better understand, and the re-interview after that caution. These reasons are transparent, intelligible and justified per *Vavilov*.

D. *The Applicant failed to establish he was "not inadmissible"*

[42] The Applicants submit the Officer failed to consider objective evidence and context in Syria, and failed to consider the claim pursuant to the country of asylum class. Section 147 of the *IRPR* states the following:

> **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
>
> (a) they are outside all of their countries of nationality and habitual residence; and
>
> (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.

[43] With respect, the onus was on the PA to establish to the Officer's satisfaction that he was "not inadmissible" under section 11(1) of *IRPA*. On the issue of his being "not inadmissible", his evidence was not credible. This led the Officer to find they were not satisfied that the PA "is not inadmissible" as required by the statute. In my view, an immigration officer may reject an application without a specific finding of inadmissibility; it is enough for the Officer to conclude they were not satisfied the claimant "is not admissible". That was the finding here, is in accord with precedent, and put an end to the PA's claim for refugee abroad status.

[44] Where there is no finding on inadmissibility, and the Officer is not satisfied that the Applicant "is not inadmissible" (the statutory test), there is no requirement to assess under section 147 because regardless of that assessment, the Applicant cannot succeed given the Officer must be satisfied the claimant "is not inadmissible" and was not. In *Kabran*, Justice

Strickland discusses and affirms this principle in similar circumstances to those in the case at bar:

> [39] The Applicant asserts that the Officer was compelled to provide grounds for being inadmissible, referencing s 34 of the IRPA which sets out the basis for a finding of inadmissibility on security grounds. However, the section that applies in this matter is s 11(1) which states that a visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national "is not inadmissible" and meets the requirements of the IRPA. Further, a similar argument as to the necessity of making a specific finding of inadmissibility was recently addressed by Justice Southcott in *Noori v Canada (Citizenship and Immigration)*, 2017 FC 1095 at paras 17-18 ("*Noor*i"):
>
> > [17] Finally, the Applicants argue that the Decision is unreasonable because the Officer asked the Principal Applicant no questions about his admissibility to Canada and conducted no analysis of his admissibility. The Respondent's position on this argument is that the inconsistencies in the Principal Applicant's evidence caused the Officer's sufficient concerns about the veracity of his testimony that further inquiries were precluded and the Officer was unable to conduct an admissibility assessment.
> >
> > [18] I agree with the Respondent's characterization of this aspect of the Decision. The GCMS notes expressly state that the discrepancies in the Principal Applicant's evidence identified by the Officer and his lack of truthfulness after repeated questioning raised concerns about the veracity of the rest of the testimony the Principal Applicant had provided during the interview. The notes state that, as a result, the Officer was unable to be satisfied that the Principal Applicant is eligible and is not inadmissible. An immigration officer can reject an application without a specific finding of inadmissibility, on the basis that he or she cannot actually determine that the applicant is not inadmissible (see *Ramalingam v Canada (Citizenship and Immigration)*, 2011 FC 278 at para 37). If an applicant is untruthful, this can affect the reliability of the whole of his or her testimony, and an officer may be unable to conclude that the

> applicant is not inadmissible (see *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105 at para 33).
>
> [Emphasis added]

VII. Conclusion

[45] The Decision is transparent, intelligible and justified and in the Court's view meaningfully grapples with the issues. It adds up given the reasons, the record and constraining law. It meets the test of reasonableness in *Vavilov*. Therefore, this Application must be dismissed.

VIII. Certified Question

[46] The parties do not propose a question of general importance for certification, and I agree none arises.

JUDGMENT in IMM-12652-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

3. There is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12652-22
STYLE OF CAUSE:	JAMEEL KHALAF ALMUSTAFA, KHAWLA HMOUD ALKHALF AND ABDULKAREM JAMEEL ALMUSTAFA, ABDULHADI JAMEEL ALMUSTAFA, ALEEN JAMEEL ALMUSTAFA AND WALEED JAMEEL ALMUSTAFA (BY THEIR LITIGATION GUARDIAN JAMEEL KHALAF ALMUSTAFA) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF ZOOM VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 18, 2024
JUDGMENT AND REASONS:	BROWN J.
DATED:	JANUARY 24, 2024

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