Federal Court  Cour fédérale

Date: 20120227

Docket: IMM-3343-11

Citation: 2012 FC 266

Ottawa, Ontario, February 27, 2012

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

KANAPATHAPILLAI KANDASAMY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] This is an application under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (Act) for judicial review of the decision of a Counsellor, Immigration Section, Canadian High Commission in Sri Lanka (Officer) dated 29 March 2011 (Decision), which refused the Applicant's application for permanent residence under the Family Class.

BACKGROUND AND DECISION

[2] The Applicant is a sixty-year-old citizen of Sri Lanka. He currently lives in Sri Lanka with his wife and two daughters. His third daughter, the Applicant's sponsor under the family class, lives in Canada as a citizen (Sponsor).

[3] In August 1998, the Sponsor came to Canada from Sri Lanka as a refugee from the conflict between the LTTE and Sri Lankan Government forces. In her narrative, found at page 153 of the Certified Tribunal Record (CTR) and filed with her refugee claim, the Sponsor said that she had been asked to join the LTTE on several occasions, but had refused. Each time, she was detained for a few hours and assaulted. The Sponsor also said in her narrative that her family was displaced in 1995 from Idaikkadu, the town in Northern Sri Lanka where they lived on a farm, to Madduvil, a town further south and away from the conflict. She further said that, in July 1996, she and her father were taken by the army, detained for a few hours, and released after they had been questioned. The Sponsor was granted refugee status and became a citizen in 2003.

[4] In 2008, the Applicant, his wife, and the two daughters remaining in Sri Lanka applied for permanent residence in Canada under the Family Class. To support that application, the Applicant completed Form IMM 0008 – Schedule 1: Background/Declaration (2008 Form). On that form, question 9 asked

> Have you, or, if you are the principal applicant, any of your family members listed in your application for permanent residence in Canada ever […] been detained or put in jail?

[5] The Applicant checked the box marked "No" next to this question on the 2008 Form. He also indicated on the 2008 Form that, from birth to 1998, he had lived in Idaikkadu. After

completing the form, the Applicant signed it, indicating that the information he had included was truthful, complete, and correct.

[6] On 13 October 2010, the Immigration Section at the Colombo High Commission (Immigration Section) sent the Applicant a letter, asking him to clarify the following information

> 3. With regard to your daughter Kavitha's claim in Canada, please answer the following questions:
>
> i. Was your family harassed by the LTTE to give money?
> ii. Were you or any family member ever detained by the LTTE or any other armed force?
> iii. Did you do work for the LTTE?
> iv. Were any of your family members harassed to join the LTTE?
> v. Was your family ever displaced? If yes, please give details.
> vi. What problems have yourself or your family had with regards to the army?

[7] The Applicant responded by letter dated 24 October 2011. He wrote:

> 3) a) Yes
>
> b) Yes
>
> c) Yes
>
> d) Yes
>
> e) Yes, In October 1995, due to operations of SL army. We got displaced, [sic] from our permanent residence. First We [sic] moved to Madduvil. We all stayed there for some days. Coming to know that army were [sic] nearer to Thenmaradchy, our two young daughters were in fear and panic .[sic] we [sic] sent both daughters to yogapuram [sic] with my mother-in-low [sic] for safety. After this, we have to return to your village. as [sic] army has taken control of Jaffna peninsula.
>
> f) After returning to our village from Madduvil, (my self [sic], my wife and daughter Kavitha) Army very often comes to our area. On one such occasion, the army took my self [sic] and my daughter to their camp. Questioned with threat [sic] to tell details about tigers. My self [sic] and Daughter [sic] told them we are not aware about their activities. After this, we were detained for [sic] few hours and allowed to go

> home. On several occasion [sic] when my daughter along with other girls while going to school, the army at check point stopped, threatened, abused [sic] and were taken to their camp, Detained [sic] and questioned them, Later [sic] released them after few [sic] hours. Due to this situation I was worried about my daughter and she too was in fear and panic. I felt, life in our village is very fearful and risky due to harassment of army [sic].

[8] The Immigration Section responded to the Applicant's letter on 12 November 2010 with a request for more information (November Letter). The Immigration Section asked the Applicant to give details of the LTTEs harassment of his family, their detention by the LTTE or other armed force, and any work they had done for the LTTE. In a letter dated 23 November 2010, the Applicant said that he was harassed by the LTTE for money, but he refused them because his financial situation was bad. He also said that he was detained in an LTTE camp for a few hours after he refused to give them money. He further said that he was taken to an LTTE site where he was forced to dig a bunker and chop fire wood. Finally, he said that the Sponsor was forced to join the LTTE, but she refused.

[9] On 1 January 2011, the Applicant filed an updated application for permanent residence. He completed a second IMM 0008 form at this time (2011 Form). On the 2011 Form, he again indicated that he had not been detained or put in jail. He also wrote that he had lived in Idaikkadu from January 1969 to August 1998. He did not mention the details of his detention by the LTTE or his displacement to Madduvil in this form. The Applicant signed the 2011 Form indicating that the information he gave in the form was truthful, complete, and correct.

[10] The Officer wrote to the Applicant on 21 February 2011 to raise concerns about his permanent residence application. The Officer noted that the High Commission had received two

completed applications from the Applicant. He said the High Commission had also received correspondence from the Applicant and his family indicating that they had been displaced to Madduvil in 1995, but that he could not locate this information in their completed applications. The letter also indicted that the Applicant had been detained by the LTTE and the army, but none of the applications included this information. The Officer further noted that the Applicant had declared in both applications that he had never been detained or arrested. The Officer gave the Applicant thirty days to respond to the inconsistencies he had identified and said that, if no response was received in that time, the Applicant's case would be concluded with or without a response.

[11] The Applicant responded by letter on 2 March 2011 in which he confirmed that he and his family had been displaced to Madduvil because of a military operation. He said he had not mentioned this in the forms he submitted because it was for a short period, but he regretted this omission. The Applicant also confirmed that the LTTE had demanded money from him and his family and that, when they did not pay, took him to their camp and questioned him. He further confirmed that he and his daughter had been detained by the army, though they had been questioned and released the same day. He wrote that he was not arrested or kept in custody except for questioning.

[12] On 28 March 2011, the Officer wrote in the CAIPS notes on the Applicant's file that the Applicant did not deny he had been detained by the army and the LTTE. The Officer said that, in earlier correspondence, the Applicant indicated that his periods of working for the LTTE were over. The Officer also noted that the Applicant had not explained why he did not declare the detentions, though the Officer found that it was reasonable to assume he did not declare them because he did not believe they met the definition of "detained." The Officer noted that the November Letter had

asked for further details and that the Applicant had not included information on the detentions in the 2011 Form. The Officer said that it was clear that the Applicant had determined what information he was required to submit, even though he had been informed by letter that details were required.

[13] The Officer further said that the questions the Applicant was asked about residence and detention were simple and clear. He noted that there was no reference to duration or type of residence that would limit the need to declare this information in the application forms. The Officer said that, since the Applicant and his family came from a troublesome area, the information on their detention and residence was critical to determining their admissibility to Canada. The Officer found that there was a high probability that the Applicant had misrepresented his background, so he was inadmissible to Canada under section 40 of the Act. On this basis, the Officer said that the application was refused.

[14] On 5 April 2011, the Officer wrote to the Applicant informing him that his application was refused. The Officer noted that subsection 40(1)(a) of the Act establishes that a foreign national is inadmissible for misrepresentation if that foreign national directly or indirectly misrepresents or withholds material facts that could induce an error in the administration of the Act. The Officer said that the Applicant and his son (though the Applicant has only daughters) withheld information regarding the details of their arrests and detention. When they were asked to provide details, the Applicant said that they were released the same day as they were detained. Although the Applicant provided these additional details, the Officer noted that the Applicant omitted the detention from the 2011 Form. The Officer also said that there was no reference in any of his correspondence to duration or type of residence or detention which eliminated the need to declare it. The Officer found

that, without clear and factual information, he could not determine if the Applicant was admissible to Canada.

[15] The Officer then reviewed subsection 11(1) of the Act, which provides that an officer must issue a visa if he is satisfied that the foreign national applying for the visa is not inadmissible and meets the requirements of the Act. The Officer found that he was not satisfied that the Applicant was not inadmissible, and that he was refusing the Applicant's visa accordingly. This is the Decision under review.

[16] Prior to the hearing before me, the Respondent made a motion under section 87 of the Act for non-disclosure of part of the CTR. The Applicant opposed the motion, but Justice Simon Noël granted it on the strength of the Respondent's undertaking not to rely on the redacted material.

STATUTORY PROVISIONS

[17] The following provisions of the Act are applicable in this proceeding:

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.
12. (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the	**12.** (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils

spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.

ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

…

…

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.

…

…

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;

(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 two years following, in the

a) l'interdiction de territoire court pour les deux ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est

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; […]	pas au pays, ou suivant l'exécution de la mesure de renvoi;

ISSUES

[18] The sole issue in this proceeding is whether the Officer breached the Applicant's right to procedural fairness by failing to call him for an oral interview.

STANDARD OF REVIEW

[19] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9, held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[20] Whether the Officer was justified in not calling the Applicant for on interview impacts the Applicant's opportunity to respond, which is an issue of procedural fairness. The Federal Court of Appeal held in *Sketchley v Canada (Attorney General)* 2005 FCA 404 at paragraph 53 that the "procedural fairness element is reviewed as a question of law. No deference is due. The decision-maker has either complied with the content of the duty of fairness appropriate for the particular circumstances, or has breached this duty." In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)* 2011 SCC 62, the Supreme Court of Canada

affirmed at paragraph 19 that the standard of review with respect to questions of procedural fairness is correctness. The standard of review in this case is correctness.

ARGUMENTS

The Applicant

[21] The Applicant says that the CAIPS notes on his file do not reveal any negative remarks arising from background checks which were conducted on him and his family. This shows that there are no criminal or security considerations related to their application. The Applicant also says that, though the CAIPS notes indicate that the Sponsor's PIF was on file, there is no indication whether this PIF was reviewed or considered; there is also no indication if the PIF corroborated the evidence the Applicant gave to the Officer.

[22] The CAIPS notes entry from 31 January 2011 indicates that the Officer had concerns about the Applicant's residence and detention in Sri Lanka, which he had not declared on either the 2008 Form or the 2011 Form. Although he was advised of these concerns twice by letter and given thirty days to respond to each of these letters, the Applicant notes that the Officer never called him for an in-person interview. Although the onus was on the Applicant to complete the forms truthfully and completely, which he did not, he says these forms are not intended to be an entire account of applicants' lives and circumstances in their countries of origin.

[23] The Officer found that there was a high probability that the Applicant had misrepresented his background. Although he twice failed to disclose his detention and displacement, the Applicant challenges this finding. He says that he provided complete disclosure to the Immigration Section in

the course of all his correspondence; he eventually disclosed the family's displacement, and the detentions by the army and the LTTE.

[24] The Applicant asserts that an in-person interview is the best way for officers to assess applicants' credibility. He also says that the record does not disclose any criminal or security issues with respect to this application and that security background checks would have guided the Officer's Decision. Given the Officer's concerns, he breached the Applicant's right to procedural fairness when he did not convoke an interview.

[25] In order to find that an applicant for permanent residence is inadmissible to Canada, there must be a clear evidentiary basis. The Applicant relies on *Kanapathipillai v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1110, *Ali v Canada (Minister of Citizenship and Immigration)* 2003 FC 982, and *Armson v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 800 (FCA) . Since there is no right of appeal to the Immigration Appeal Board from the Decision, the Officer was obligated to provide a clear basis in the evidence for the finding that he was inadmissible.

[26] Rather than simply completing the application on paper, the Officer was required to call the Applicant for an interview and provide him with more information and documentation. In this interview, the Applicant could have addressed the Sponsor's past refugee claim and the Applicant's failure to disclose his detentions and displacement. Because he did not call the Applicant for an interview, the Officer did not give him a full opportunity to address the concerns identified in his application.

[27] In *Wong v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 24, Justice Barbara Reed held at paragraph 26 that

> Most significant is the non-disclosure to the applicant of information concerning the basis on which the opinion was rendered. The applicant and his counsel wished to respond to the conclusion that admission of the daughter to Canada would, as a result of her medical condition, cause excessive demands on social services. In order to do this in an intelligent way they needed to know what factors were considered relevant. In my view, the non-disclosure of the requested information constituted a breach of natural justice, is a breach of the rules of fairness.

[28] The Applicant also points to *Gedeon v Canada (Minister of Citizenship and Immigration)* 2004 FC 1245, and says that the Officer was under a duty to inform him of concerns arising from his application and call him for an interview to address those concerns. The Applicant notes that a manual from Citizenship and Immigration Canada (CIC), *OP1 – Procedures*, says at page 31 that "Officers should accurately describe to applicants the documentation they are required to submit in order to address their concern." He also points to CIC's manual, *OP2 – Processing Members of the Family Class*, which says at page 40 that "Officers should interview applicants and their family members only when it is essential to assess an application. Waive interviews wherever possible."

[29] According to the Applicant, these two manuals show that officers who assess applications are required to send out letters to inform applicants of potential issues and to call applicants for interviews to clarify admissibility issues. The Officer did not call the Applicant for an interview to clarify the issues arising from his application, so his right to procedural fairness was breached. The Applicant says that he was diligent in answering the letters the Officer sent informing him of the Officer's concerns about his detention and displacement in Sri Lanka.

[30] The Applicant says that family reunification applications are not simple paper-screening exercises. In assessing this kind of application, it is necessary to assess the nuances of families concerned. Further, family reunification applications touch on deeply personal issues, so there is a duty on Officers to provide full disclosure in these cases. Although in some cases it may be satisfactory to screen applications on paper, in this case it would not have been unreasonable for the Officer to call the Applicant for an interview to address the potential misrepresentation. Because he did not do so, the Officer breached the Applicant's right to procedural fairness.

The Respondent

[31] The Respondent argues that there is no reviewable error in this case. The Officer refused the Applicant's application for two reasons: he was not satisfied the Applicant was not inadmissible, so he could not grant a visa under section 11 of the Act, and he found that the Applicant was inadmissible for misrepresentation under paragraph 40(1)(*a*) of the Act. In *Sivayogaraja v Canada (Minister of Citizenship and Immigration)* 2010 FC 1112, Justice Yvon Pinard upheld the decision of a visa officer where:

> [5] The Visa Officer found that he was unable to determine the living history of the applicants due to the inconsistency of the information provided at the interview on November 5, 2009. He found that he did not have a complete picture of the background of the applicant and her son, and was not satisfied that they were not inadmissible to Canada, as the information presented lacked credibility due to internal discrepancies in the testimonies.
>
> [6] The misrepresentations found by the Visa Officer relate to the details of the places in which the applicants had resided, and the details of where the son had been schooled, and on which dates. The Visa Officer found that the misrepresentation or withholding of these facts could have induced incorrect decisions on the admissibility of the applicants.

[32] The present case is similar to *Sivayogaraja*, so it should be decided in the same way. The Officer was concerned about the conflicting information the Applicant had provided about his locations, activities, and detentions. The Officer notified the Applicant about these concerns and the Applicant's responses were insufficient to dispel his doubts. As *Gnanaguru v Canada (Minister of Citizenship and Immigration)* 2011 FC 536 establishes, information about activities, addresses, and detentions is material to an application for permanent residence; misrepresentation of these facts prevents an officer from making a proper finding of admissibility.

[33] Section 16 of the Act obliges all applicants to truthfully answer all questions put to them. Section 11 of the Act establishes that the Officer could not issue the Applicant a visa unless he was satisfied that the Applicant was not inadmissible. The Officer was not so satisfied, so he could not issue the applicant a visa; there is no reviewable error in this case.

The Respondent's Further Memorandum

[34] The Respondent notes that the Applicant indicated on the 2008 Form that neither he nor any of his family members had been detained or jailed. The Respondent also notes that question 11 on the 2008 Form says that applicants should "Provide details of your personal history since the age of 18. […] If you were not working, provide information on what you were doing (for example: unemployment, studying, travelling, in detention, etc.). In the 2008 Form, the Applicant declared that he had been continuously working as a farmer in Yogapuram, Sri Lanka since 1967 and declared that the information in his form was truthful, complete, and correct. The Applicant reiterated these statements in the 2011 Form, even though he had received correspondence which notified him of the Officer's concerns that he had misrepresented himself.

[35] The Respondent notes that foreign nationals seeking to enter Canada have a duty of candour which requires that they disclose all facts material to their applications. He says that this Court has recognized the importance of applicants' full disclosure to the administration of the Act (see *Bodine v Canada (Minister of Citizenship and Immigration)* 2008 FC 848 and *Baro v Canada (Minister of Citizenship and Immigration)* 2007 FC 1299). The purpose of paragraph 40(1)(*a*) of the Act is to ensure that applicants provide complete, honest, and truthful information at all steps of their applications to enter Canada. Further, it is not for applicants to decide what information is material or relevant and what is not.

The Decision is Reasonable

[36] Throughout his application, the burden rested on the Applicant to provide sufficient evidence to demonstrate to the Officer's satisfaction that he was not inadmissible to Canada and that he met the requirements of the Act. It is clear that the Applicant did not present complete and accurate information in his application, so the Officer could not have been satisfied that he was not inadmissible.

[37] In *Sinnathamby v Canada (Minister of Citizenship and Immigration)* 2011 FC 1421, Justice Leonard Mandamin upheld the decision of a visa officer to refuse a permanent resident visa. In that case, the information the applicants provided on their application and in subsequent correspondence kept changing, with new details being added. The visa officer in that case was uncertain about whether he had a complete and accurate account of the applicants' circumstances. The instant case is similar and, as with *Sivayogaraja*, above, should be decided similarly. The Officer was presented with conflicting information over a series of exchanges and the Applicant did not provide a

complete personal history. The Decision is reasonable on that basis, so it should not be disturbed on judicial review.

ANALYSIS

[38] The Applicant says that he was not provided with a full and fair opportunity to respond to the Officer's admissibility concerns and the evidence upon which the Officer based his assessment. He says that if the Officer had continuing concerns he should have provided him with an opportunity to address those concerns in an interview; the Officer's failure to do this breached his right to procedural fairness. For the following reasons, I disagree with these arguments.

[39] The Act clearly establishes that officers may only issue visas if they are satisfied that foreign nationals are not inadmissible:

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

[40] One of the most important requirements of the Act in the context of a permanent resident visa application is the obligation to provide true, correct and complete information. See *Uppal v Canada (Minister of Citizenship and Immigration)* 2009 FC 445 at paragraph 25 and *Nazim v Canada (Minister of Citizenship and Immigration)* 2009 FC 471 at paragraph 20.

[41] Subsection 16(1) of the Act explicitly imposes an obligation on Applicants to be truthful:

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.

[42] Under paragraph 40(1)(*a*) of the Act, a person is inadmissible to Canada if he or she "withholds material facts relating to a relevant matter that induces or could induce an error in the administration" of the Act:

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;

[43] The *Citizenship and Immigration Canada Enforcement Manual* sets out the policy intent behind section 40 of the Act:

> 9.1. Policy Intent
>
> The purpose of the misrepresentation provisions is to ensure that applicants provide complete, honest and truthful information in every manner when applying for entry into Canada.

> The provisions are broad enough to cover a range of scenarios to encourage compliance with the legislation and support the integrity of the program. Yet, it is also imperative that the application of the provisions be guided by the use of good judgment to support the objectives of the Act and ensure a fair and just decision-making. [emphasis added]

[44] As the Respondent points out, a foreign national seeking to enter Canada has a duty of candour which requires disclosure of material facts. This Court has recognized the importance of applicants' full disclosure for the proper and fair administration of the immigration scheme. Paragraph 40 (1)(*a*) of the Act attempts to ensure that applicants provide complete, honest and truthful information in every manner when applying for entry into Canada. See *Bodine*, above, at paragraph 41, 42 and 44, *Baro*, above, at paragraph 15 and *Haque v Canada (Minister of Citizenship and Immigration)* 2011 FC 315.

[45] It was not for the Applicant to decide what to answer, what was material, or what was relevant. He was not entitled to foreclose any possible investigations that might be done. As Justice Richard Mosley noted in *Haque* at paragraph 14:

> Section 3 of the IRPA points to a number of immigration objectives that should be kept in mind when administering the *Act*. Among others, these objectives include enriching and developing the country through social, economic and cultural means while ensuring the protection and security of Canadians living here. In order to adequately protect Canada's borders, determining admissibility necessarily rests in large part on the ability of immigration officers to verify the information applicants submit in their applications. The omission or misrepresentation of information risks inducing an error in the *Act*'s administration. [emphasis added]

[46] My review of the record suggests that, although the Officer did not convoke a further interview, he placed the problems concerning conflicting information about detentions and residences squarely before the Applicant in writing. He also gave the Applicant every opportunity to

respond and took the responses into account. The record shows that the Officer was correct when he said that he explained the points of concern to the Applicant in writing and the questions were "simple and clear." Nothing in the record suggests that the Applicant did not understand the points of concern or explains why he omitted the required details from his second application.

[47] As the CAIPS notes make clear, the information the Applicant provided did not correspond with information regarding detentions and residences the Sponsor declared in her PIF or with the Applicant's own earlier declarations. In addition, he failed to declare "all residences and failed to declare detainment and jailings" even after he was instructed on what was required. Because of the contradictions between his application forms and his correspondence, the Officer could not determine the Applicant's true background and concluded that "there is a high probability that the [Applicant] has misrepresented his background…"

[48] On the basis of the information before him, the Officer refused the application because the Applicant failed to adequately address the concerns he raised. It seems obvious that where officers do not have clear and consistent information, they will not be able to administer the Act. The Officer could have used an interview, but did not; this does not mean that a breach of procedural fairness occurred in this case. In the present application, the Court has no evidence from the Applicant to explain why an interview was essential to assessing his application or why he could not give adequate responses to the Officer's concerns in writing.

[49] In a situation like the present where the Officer set out his concerns in writing and gave the Applicant an opportunity to submit further information (and the required declaration), I cannot say that a breach of procedural fairness occurred. In spite of all the opportunities he had to address the deficiencies the Officer raised, the Applicant still did not include detentions and residence

information as required. The Applicant has not explained to me why he completed the second application in the way he did.

[50] In my view, the Applicant's letter to the Officer at page 111 of the CTR supports the Officer's conclusions that the Applicant applied his own definitions of detention to information he submitted and that there was a high probability of misrepresentation. This meant that the Officer could not determine admissibility, so his conclusion that section 11(1) of the Act was not met was reasonable.

[51] Given the facts before the Officer and the process he used, I cannot say that his Decision is unreasonable in its conclusions or that the Officer denied the Applicant procedural fairness. Absent a breach of procedural fairness or an unreasonable decision, the application for judicial review must be dismissed.

[52] Counsel agreed there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-3343-11
STYLE OF CAUSE:	KANAPATHAPILLAI KANDASAMY Applicant - and - MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	January 30, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	February 27, 2012

APPEARANCES:

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