Federal Court  Cour fédérale

Date: 20160209

Docket: IMM-2266-15

Citation: 2016 FC 164

Ottawa, Ontario, February 9, 2016

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

FAKHRIA AMENI
EHSAN FAIZEE
NAJEB FAIZEE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the *IRPA*] by Fakhria Ameni [the Applicant] and her two sons, Ehsan Faizee and Najeb Faizee [collectively the Applicants], of a decision by an Islamabad Visa Officer, High Commission of Canada, Visa Section (Pakistan) [the Officer], dated March 17, 2015, and communicated to the Applicant on the same day, in which the Officer found the

Applicant and her two sons ineligible for permanent residence in Canada as members of the Convention refugee class or as members of the country of asylum class under section 96 of the *IRPA* and sections 139 and 147 of the *Immigration and Refugee Protection Regulations* [*IRPR*]. Leave to apply for judicial review was granted on October 28, 2015.

[2] As a procedural note, at the beginning of the hearing counsel for the Applicants moved with consent of the Respondent to amend the style of cause to add the two sons. Such order is granted with immediate effect; these reasons reflect the now-amended style of cause.

I. Facts

[3] The Applicant is Afghani. She filed her claim with the High Commission in Islamabad where she was interviewed. She claimed to have resided in Pakistan since 1993. Her application was initiated by her husband, who passed away in January 2015. The remaining persons on her application were two of her sons. Not included in the application are one married daughter in Pakistan, one married daughter in Kabul, and one son in the USA. The Applicant and her family are sponsored by Association Éducative Transculturelle of Sherbrooke, Québec.

[4] The Applicant and her family said they had moved to Peshawar from Afghanistan in 1993. At that time, amidst fighting taking place in their locale, a mujahedeen shot a brother-in-law and the husband's sister in front of the Applicant and her family. Fearing for their safety, the Applicant and her family fled on foot to Peshawar, Pakistan.

[5] In 1999, the family returned to Afghanistan in the hope that the country was safer with a changed regime. However, one month after the family's return, the Applicant's husband was taken and tortured by the Taliban for a week. After this incident, the family returned to Pakistan. The husband's injuries from this torture remained until his death.

[6] The Applicant and her sons provided the following evidence to the Officer in support of their residence in Pakistan:

- A letter in the initial application in 2010, signed by husband, stating "We have tried to get the POR card few times but due to the disorganized process and inefficient way we failed to get one." The Applicants did not have "POR" cards, which are identity documents issued to registered Afghan refugees in Pakistan through cooperation between the Pakistani government and the UNHCR;

- Afghani Tazkiras (national identity cards) renewed in 2009 and 2012;

- According to the Applicant's affidavit, though absent from the Certified Tribunal Record [CTR], school ID cards for the Applicant's sons, without report cards or other school records. At the hearing I asked that the departmental file be searched for the school ID documents, but the report was the same: no such documents are in the file. On this basis, I am not prepared to allow the alleged school ID documents to be admitted as new evidence in the face of a direct finding by the Officer that they were not presented, although I do note the Tazkiras referred to above are also not in the CTR;

- Tenancy Confirmation Letter by the Applicants' landlord, Dr. Sediqullah Sediq, stating the Applicant and her family have been tenants of his in Peshawar, Pakistan since 2005, and that the Applicant provided caregiving services for his children and mother;

- Utility bill for the leased property for January and February 2015;

- Letters from the sons' employer, a restaurant owned by an Afghani person, stating the sons' roles in the restaurant in Peshawar, Pakistan, on paper without letterhead, with a handwritten number replacing the printed number at the bottom of the letters. A business card for the restaurant was attached to these letters.

[7] The Applicants did not give the Officer their Afghani passports, which in fact they had renewed in Kabul in February 2015.

[8] The Officer sent a letter to the Applicant in January 2015, dated after her husband's passing, giving the family notice of an interview scheduled for March 4, 2015, but the letter came back undelivered from the address on the Applicants' record. On February 26, the principal applicant notified the Commission that the family had moved since January 1, 2015, and that her husband had passed away. She informed the Commission of her new address. The Commission sent out the interview notice to this new address and the Applicant received the letter without issue.

[9] The Officer determined that the Applicant did not meet the requirements for immigration to Canada under either class.

II. Issues

[10] In my view the issues are:

1. Did the Officer act incorrectly or unreasonably by requiring the Applicant and her sons to prove "residence" or "continuous residence" in Pakistan as a pre-condition to be accepted under either the Convention refugee class, or the country of asylum class, pursuant to section 96 of the *IRPA* and sections 139 and 147 of the *IRPR*?
2. Did the Officer act unreasonably in finding the Applicant and her sons misrepresented their country of residence as Pakistan instead of Afghanistan?
3. Did the Officer breach the rules of natural justice by not putting reavailment concerns to the Applicants so as to give them an opportunity to respond?

III. Discussion and Analysis

A. *Standard of Review*

[11] As to the standard of review, in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paras 57 and 62, the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." It is well established that reasonableness is the standard of review applicable to determining whether an Applicant is a member of a class of Convention refugee: *Sakthivel v Canada (Minister of Citizenship and Immigration)*, 2015 FC 292 at para 30; *Bakhtiari v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1229 at para 22. In *Dunsmuir* at para 47, the Supreme

Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[12] Issues of procedural fairness and natural justice are reviewable under the correctness standard of review: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at paras 53-55. In *Dunsmuir* at para 50, the Supreme Court of Canada explained what is required of a court reviewing on the correctness standard of review:

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

IV. Analysis

[13] The first issue concerns what one might term the quality of a claimant's connection to a country other than Canada as a pre-condition of claims for Convention refugee class or country asylum class status. For example, is it enough that a person "is" in such a country, or need he or she establish that they are "living" there, or is it necessary for the claimant to establish he or she

is actually a "resident" of that country? A second component of this inquiry asks why a claimant must establish the necessary quality of connection: the reason may derive from a statutory condition set out in the *IRPA* or *IRPR*, or it may be self-imposed in that the claimant claimed a set of facts in his or her application which they must then establish. Failure to meet a degree of connection set out in statute may lead to rejection of the claim. Failure to establish the facts on which an application is based may also lead to rejection of a claim based on a determination that there has been misrepresentation or lack of credibility or otherwise.

[14] In this case, it is alleged that the Officers who rejected the Applicants' claims mistakenly required that the Applicants be "resident" in Pakistan while, it is alleged by the Applicants, neither the *IRPA* nor *IRPR* contain any such residency requirement. It is argued that if the Officers imposed a requirement to reside in Pakistan to establish claims as Convention refugee or country of asylum class refugees, and did so under the mistaken belief they did so as a legal matter, the decision is unreasonable or incorrect and should be set aside on judicial review.

[15] In opposition, the Respondent says that the Officers were not wrong and that the Applicants as a legal matter were required to show they resided in Pakistan in order to make either a Convention refugee or country of asylum class refugee claim in Pakistan. In the alternative, and particularly at the hearing of judicial review, the Respondent emphasized that the Officers' determination to that effect, if unreasonable, was not dispositive; instead, the claim was rejected due to the Applicants' misrepresentation. That is, the Applicants stated that they resided in Pakistan whereas in fact they resided in Afghanistan, and having misrepresented their claims, it was reasonable for the Officers to reject them.

[16] With this in mind I will deal with the issues.

A. *Issue 1 - Did the Officer act incorrectly or unreasonably in misstating the applicable legal test by requiring the Applicant and her sons to prove "residence" or " continuous residence" in Pakistan as a condition of acceptance either under the Convention refugee class, or the country of asylum class, pursuant to section 96 of the IRPA and sections 139 and 147 of the IRPR?*

[17] In my view, the Applicants correctly assert that their claim was unreasonably rejected because the Officers required them to establish that they were residents outside of their country of nationality. This is overwhelmingly clear from the decision letter. The decision letter concluded by making specific reference to section 96 of the *IRPA*, which sets out the criteria for a Convention refugee claim, and Regulation 147 which sets out the criteria for a country of asylum class claim:

> (…) I am not satisfied that you reside in Pakistan as stated and find it more likely that you have repatriated or otherwise reside in Afghanistan, your country of nationality. … As a result, you do not meet the criteria set out at section 96 of the Act or section 147 of the Regulations. Consequently, with reference to section 139(1)(e) of the Regulations and section 11 of the Act, the application is refused.

[18] The Officer's notes, which form part of the decision, repeatedly refer to residence in terms as if it was a legislative requirement. This is illustrated in the highlighted portions of the material part of the GCMS notes:

> …. My name is Douglas and I am the visa officer assigned to your file. …. I will be the officer making a determination whether or not you reside outside your country of nationality and whether you meet requirements and are admissible for a visa to Canada. Clients indicated that they understood.
>
> …. RESIDENCY (Confirm with IMM8) (Proof of Residency) …. In her submission Mother states that she has been residing in

Peshawar Pakistan since 1993. She did not have POR Cards (Refugee ID Cards issued by Pakistani Gov't for Afghan refugees living in Pakistan) in 2006. No school records were available. Our interview letter was returned by the post office. There was no one there to receive the registered letter. The envelope has hand written remarks that states the contact number was called but the person answering said that they would not accept the letter. PA claimed that this is a new address but our envelope was sent to the new address in January 2015. PA provided utility bills but only from Jan. 2015 to March 2015. A tenant confirmation letter from Dr. Sediqullah signed on 28/02/2015 states that she and her family are living in a one bedroom plus bathroom accommodation at his house since 2005. She also provided a tenant agreement from Dr. Sediqullah's son that she has a one year's lease from his property. These letters do not in my opinion substantiate residency as they are easily obtainable from this third party.

There is much evidence that this family has returned to Afghanistan. The two sons claim to be working at a restaurant in Peshawar but the employment letter has a sticker on the back and no legitimate company logo on the front portion of the letter. On the front of the letter there was a private number written for verification. The purported official telephone number of the restaurant on the sticker that was on the back of the letter was no in service. Tazkiras (Afghani ID documents) were issued and certified in Kabul in 2009 and 2012. One son had a machine readable Afghani passport issued in February 2015. Machine readable passports are issued only in Kabul. I am not satisfied that PA and two sons are residing outside their country of nationality. OFFICER REVIEW: I have considered this application carefully and believe from the documentation and interview process that this family is not living outside their country of nationality. As noted above they have failed to establish that they are residents of Pakistan. The documents presented did not substantiate continuous residency in Pakistan. They were unable to present POR cards that Afghani nationals carry while living in Pakistan. They had no viable explanation for not obtaining these identity documents prior to 2006 when they were living in Peshawar. Their Afghan identity cards (Tazkiras) were issued in Kabul. No Educational documents were presented to prove attendance at school over the years. There is insufficient documentation to establish residency, school attendance or employment in Pakistan. There is a high incidence of fraud and a high number applicants incorrectly claiming Pakistani residency. In recent years more than 4.7 million Afghanis left Pakistan and returned to Afghanistan under a UN voluntary return programme. The UN also estimates that a further 900,000 Afghanis returned under their own volition. They have failed to

> satisfy me that they meet the requirement that they are residents outside of their country of nationality. As noted above and communicated to the applicants during the course of the interview, I do not believe that the applicants reside outside of their country of nationality, and therefore do not meet the eligibility criteria for resettlement to Canada as refugees as set out at section 96 of the Act and section 147 of the Regulations. I have considered all of the information and material available to me, as well as the applicants' responses to all of my stated concerns, yet I find that my final assessment is that they have misrepresented their country of residence, and that in fact they do not reside outside of their country of nationality.

[19] I will not repeat all the highlighted passages, but based on them I have no difficulty concluding the Officers considered these Applicants to have been under a legal obligation to prove they were residents of Pakistan as a precondition of making claims to be Convention refugee or country of asylum class refugees. The statement that "[t]hey have failed to satisfy me that they meet the requirement that they are residents outside of their country of nationality" is in my view representative of the analysis underlying the decision.

[20] However, and with respect, in doing so the Officers (there appear to have been two officers involved) did not follow the law in respect of either class. Section 96 of the *IRPA* governs Convention refugees and states:

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,	**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) is outside each of their countries of nationality and is	**a)** soit se trouve hors de tout pays dont elle a la nationalité

unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(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.	**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.
[emphasis added]	[soulignement a ajouté]

[21] Section 147 of the *IRPR* governs country of asylum class claims and states:

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.
[emphasis added]	[soulignement a ajouté]

[22] Section 139 of the *IRPR* states:

139 (1) A permanent resident visa shall be issued to a foreign	**139 (1)** Un visa de résident permanent est délivré à

national in need of refugee protection, and their accompanying family members, if following an examination it is established that	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 :
(a) the foreign national is outside Canada;	**a)** l'étranger se trouve hors du Canada;
(b) the foreign national has submitted an application for a permanent resident visa under this Division in accordance with paragraphs 10(1)(a) to (c) and (2)(c.1) to (d) and sections 140.1 to 140.3;	**b)** il a fait une demande de visa de résident permanent au titre de la présente section conformément aux alinéas 10(1)a) à c) et (2)c.1) à d) et aux articles 140.1 à 140.3;
(c) the foreign national is seeking to come to Canada to establish permanent residence;	**c)** il cherche à entrer au Canada pour s'y établir en permanence;
(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;
[emphasis added]	[soulignement a ajouté]

[23] With respect, there is no requirement in section 96, nor in Regulations 147 or 139, that a claimant must "reside" outside of the country of their nationality or habitual residence (habitual residence only applies to stateless people, which is irrelevant in this case and therefore will not

be further mentioned). The only country connection requirement for a Convention refugee class claimant is that he or she "is outside" his or her country of nationality: see subsection 96(a) and (b). Likewise, the only such requirement for a country of asylum class claimant is that they "are outside" their countries of nationality: see Regulations 147(a) and (b), and 139(1) which require that the claimant establish he or she "is outside" all of their countries of nationality and Canada. In other words, it is enough that such claimants be outside their country of nationality.

[24] Turning to the phrases used in the decision, nowhere do the *IRPA* or *IRPR* require a Convention refugee or country of asylum class claimants to "reside outside of the country of nationality", be "residing in Pakistan", "substantiate residency", or be "resident" in Pakistan as insisted upon by the Officers. Further, there is no requirement that the Applicants "substantiate continuous residency", or "establish residency" in Pakistan.

[25] For completeness, I note in the Officers' reasons there is a reference to the Applicants "not living outside their country of nationality." The concept of "living" in the country in which a claim is made was alluded to in *Nassima v Canada (Minister of Citizenship and Immigration)*, 2008 FC 688 [*Nassima*]:

> [13] The officer's decision letter makes reference to inconsistencies between the applicant's and her son's stories, where they are living, and what they are doing in Pakistan, which resulted in the officer not being satisfied that they are living in Peshawar and thus that they are not living in Afghanistan.
>
> [emphasis added]

[26] With respect, while *Nassima* refers to "living" in the country in which the claim is made, *Nassima* may not be taken as authority for the proposition that the language used by the

legislator in section 96 of the *IRPA* and sections 139 and 147 of the *IRPR* underlined above are to be replaced with the word "living" or variants thereon, any more than the words used in the legislation and regulations are to be replaced with the word "reside". That was not the issue in *Nassima*, which turned on the reasonableness of findings of fact made by an officer including on credibility. I note that in a subsequent case, *Wardak v Canada (Minister of Citizenship and Immigration)*, 2015 FC 673 [*Wardak*], the Court considered its previous decision in *Nassima* and mentioned the claimant family's failure to establish their residence in Pakistan led to the rejection of their claim. The issue arising in the case at bar simply did not arise in either *Nassima* or *Wardak*.

[27] I agree with the Applicants' submission that simply being outside one's country of nationality is required. This ruling is consistent with internationally accepted guidelines in that regard. The UNHCR's "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees" states at para 88: "It is a general requirement for refugee status that an applicant who has a nationality be outside the country of his nationality. There are no exceptions to this rule. International protection cannot come into play as long as a person is within the territorial jurisdiction of his home country" [emphasis added]. Note that the verb is not "to reside", nor is it "to live" but rather "to be".

[28] In my view, in terms of establishing the quality of connection to a country other than that of their nationality, persons claiming Convention refugee or country of asylum class protection outside Canada need only establish what the statute requires, namely that one "is outside" their

country of nationality, i.e., that they be outside such other country. Officers lack the legal authority to require applicants to meet any higher requirement. In my view they also act unreasonably and without statutory authority to the extent they impose, as I find they did in this case, a requirement that such claimants reside or live outside the country of their nationality; being outside such their country of nationality is enough.

[29] The Officers summarized their finding by stating: "…I do not believe that the applicants reside outside of their country of nationality, and therefore do not meet the eligibility criteria for resettlement to Canada as refugees as set out at section 96 of the Act and section 147 of the Regulations." This is an impermissible cause and effect analysis. Therefore this finding is unreasonable, and to the extent the decision depends on this finding and the underlying but non-existent residency requirement, it must be set aside. For completeness, in my respectful opinion the Officers applied an incorrect legal test with the same result namely that the decision must be set aside.

[30] Of course, and I want to make it very clear that this finding does not absolve claimants of their legal obligations to tell the truth in their claims. It is very well-established that claimants may suffer the consequences, including rejection of their claims, if they misrepresent the nature of their connection to a country outside their country of nationality. With this in mind, I turn to the alleged misrepresentation aspect of the case at hand.

B. *Issue 2: Did the Officers make an unreasonable finding that the Applicants misrepresented their country of residence as Pakistan when it was Afghanistan?*

[31] While the Officer technically made such a finding, in my respectful view, it was unreasonable for several reasons.

[32] First, the Officers' analysis focused overwhelmingly on an erroneous consideration of the degree of connection required to sustain a Convention refugee or country of asylum class claim under section 96 of the *IRPA* and sections 139 and 147 of the *IRPR*, namely residence. In my view, any consideration of misrepresentation was inextricably bound up with the erroneous legal test and unreasonable analysis concerning residing or living in the country other than that of the Applicants' nationality. The analysis of misrepresentation, to the very minimal extent it is actually present, appears added as an afterthought. With respect, the decision assessed the facts through an inappropriate lens to such an extent that it is now impossible to pull apart and separate the two different analyses. In this circumstance, it would not be safe to rely on the misrepresentation analysis and therefore judicial review must be granted.

[33] Moreover, important aspects of the assessment on the issue of misrepresentation are unreasonable or, at best, problematic. The following are the points relied upon by the Officers and the Respondent, with my comments following each:

A. The letter initially sent out to give notice of the interview to the Applicant was returned – the new address was the same as the address to which the first letter was sent. Comment: this finding is unreasonable. After the husband died the

Applicant and her sons moved. At about the same time in January 2015 the Officer sent the Applicants a letter that was returned. It is suggested that the returned letter was sent to the Applicants' new address; that is not possible because the Officer was not notified of the new address until late February. Moreover, in reviewing the addresses on the correspondence, these are in fact not the same addresses at all. The Officer likely drew an unwarranted negative credibility inference based on this clear error.

B. No POR cards (Refugee ID cards issued by Pakistani government to Afghan refugees living in Pakistan) prior to 2006. Comment: this finding is unreasonable. POR cards for Afghanis in Pakistan were essentially a product of a UNHCR census conducted in 2005; PORs were issued not prior to, but after 2006. The Officer likely drew an unwarranted negative credibility inference based on this error also.

C. No school records available. Comment: in my view this finding was reasonable, because in fact there are no school records in the CTR. While the Applicants submitted copies of school IDs on judicial review and deposed they had been filed, they cannot be accepted as new evidence in the face of the clear determination they were not filed at the hearing made by the Officers. That said I note that the Tazkiras apparently accepted by the decision-makers are not found in the CTR either.

D. Tenancy letters are "easily obtainable from this third party". Comment: this finding is unreasonable because it is given without any explanation whatsoever. I

am unable to determine why it was made hence it lacks justification. It essentially says the landlord was telling an untruth. Moreover, there is a presumption that documents are genuine absent more: see *Ma v Canada (Minister of Citizenship and Immigration)*, 2015 FC 838 at paras 40-45 (citing to *Cao v Canada (Minister of Citizenship and Immigration)*, 2015 FC 315).

E. The employment letter had a sticker on the back and no legitimate company logo on the front portion of the letter. On the front of the letter there was a private number written for verification. Comment: this finding is problematic. The Officers demanded proof of employment for the two sons; but in reality it is illegal for unregistered refugees such as the sons to work in Pakistan. Documents submitted must be viewed with this reality in mind.

F. Tazkiras were issued and certified in Kabul in 2009 and 2012. Comment: these were used to show the Applicants were living in Afghanistan, yet the evidence was they were obtained by a friend of the late father's and not as a result of attendance in Afghanistan.

[34] In addition to concerns about the reasonableness of the decision, I wish to note a concern regarding procedural fairness. The Officers found that one of the sons had a machine readable Afghani passport issued in February 2015. These are only issued in Kabul. There is no explanation for the comment respecting the son's passport, which also is not found in the CTR. The Applicants say they were not given notice of this finding and allege it was then used against them to suggest the Applicants resided in Afghanistan not Pakistan, and had in effect reavailed to

Afghanistan. There is no transcript. Lack of notice breaches the duty of procedural fairness. In my respectful view, the Applicants should have produced these passports to Canadian officials because they had an undoubted duty to produce all relevant documents to their applications. However, having failed to do so, the Officers nonetheless would be under a duty to put their concerns regarding reavailment to the Applicants: *Chandrakumar v Canada (Minister of Employment and Immigration)*, [1997] FCJ No 615, 71 ACWS (3d) 537; *Siddiqui v Canada (Minister of Citizenship and Immigration)*, 2015 FC 329 (adopting test in *Chandrakumar* providing that applicants' explanations for obtaining a passport needed to be considered by the Officers before a credibility determination on reavailment could be made). I am concerned these Applicants may not have been given an opportunity to reply to the Officers' reavailment concerns. However, I do not need to make a finding on this point given the other difficulties with the decision identified above.

[35] Judicial review does not consider the decision in parts; instead, judicial review is concerned with the decision as an organic whole. Moreover, judicial review is not a treasure hunt for errors: *Irving Pulp & Paper Ltd v CEP, Local 30*, 2013 SCC 34 at para 54. Judicial review instead is concerned with justification, transparency and intelligibility within the decision-making process.

[36] Stepping back and viewing the decision as an organic whole, in my respectful view, the decision does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law as required by *Dunsmuir*.

[37] Neither party proposed a question to certify, and none arises.

V. Conclusion

[38] Judicial review should therefore be granted, and no question certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to add Ehsan Faizee and Najeb Faizee as Applicants effective immediately.

2. The application for judicial review is granted.

3. The decision below is set aside.

4. The matter is remitted to a different Visa Officer for re-determination in accordance with these Reasons.

5. No question is certified.

6. There is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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