

Federal Court



Cour fédérale

**Date: 20180427**

**Docket: IMM-4180-17**

**Citation: 2018 FC 459**

**Ottawa, Ontario, April 27, 2018**

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

**BETWEEN:**

**RAAHEMA HAMMAD**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], for judicial review of the decision of an Immigration Officer [Officer] in the High Commission of Canada, dated August 29, 2017 [Decision], which refused the Applicant's application for a permanent resident visa as a skilled worker and found the Applicant inadmissible to Canada because she misrepresented facts material to her application.

## II. BACKGROUND

[2] The Applicant is a citizen of Pakistan. In 2014, she applied for permanent residence in Canada under the Federal Skilled Worker [FSW] program. She claimed experience as a Property Manager and supplied a reference letter from her alleged employer, Sadiq Enterprises, as part of her application.

[3] The Officer reviewed the Applicant's application and had concerns over the amount and quality of the documents that had been supplied to establish the Applicant's employment experience. As a result, on September 20, 2016, a Risk Assessment Unit [RAU] conducted a verification visit at the employment address given in the reference letter. The RAU reported that, on an earlier visit to the building conducted on the same day, they were told that the owner of the building, Mr. Arif Sadiq, had his office in a fourth floor suite from 2004 to 2012. During its second visit, the RAU spoke with staff at two law firms who were commercial tenants at the building and the person they were directed to as the Property Manager of the fourth floor, Mr. Qamar Khan Niazi. Neither the tenants or Mr. Niazi claimed to recognize the Applicant's picture, and the tenants confirmed that their only dealings for property and contract matters had been with Mr. Niazi. Mr. Niazi indicated that he had been the Property Manager of the fourth floor, which contained all of the executive offices, since 2004. He also stated that another individual (a Mr. Shafiq) managed the other three floors of the building and had been in that position for 30 years. The RAU was also concerned that it would be "culturally unusual for a woman to hold this position or to work in this all-male environment," particularly because of the Applicant's family situation. The report noted that the RAU did not observe "a single woman

working or shopping” at the building during its hour-long visit. The RAU concluded that there were significant concerns about the Applicant’s credibility and found that the documents supporting her application had been improperly issued and were “completely fraudulent.”

[4] To allow the Applicant to respond to concerns raised by the RAU’s report, the Officer sent a procedural fairness letter to the Applicant in October of 2016. The letter informed the Applicant of the results of the RAU’s site visit and that the Officer’s specific concern was with the reference letter from Sadiq Enterprises.

[5] In her response to the Officer’s fairness letter, the Applicant explained that she had left her employment as a Property Manager at Sadiq Enterprises in March of 2016 after a dispute with two tenants (a pair of lawyers) led to an ongoing campaign of harassment against her. As part of that harassment, the lawyer tenants submitted fake applications under her name that resulted in organizations regularly appearing at her place of work looking for her. As a result, her employer instructed employees to deny that she had ever worked at the building.

[6] Included with the Applicant’s response to the Officer’s fairness letter were numerous documents that purported to corroborate her claim that she had been a Property Manager for Sadiq Enterprises before leaving as a result of the harassment campaign. These documents are:

- a) An affidavit from Mr. Niazi stating that he is the Floor Manager at Sadiq Enterprises, that he was approached by two individuals asking about the Applicant in September 2016 but that he denied knowledge of her because senior management at Sadiq Enterprises instructed him to deny that she worked for the organization, and that he had worked under the Applicant when she was the Property Manager;
- b) A letter from the Applicant to the Station House Operator [SHO] in a Lahore police station complaining about the lawyers;

- c) A letter from the Applicant to “SP Police Station” in Lahore complaining about the lawyers and the lack of action by the SHO;
- d) An unsigned letter, on plain white paper without letterhead or the writer declared, purportedly from management at Sadiq Enterprises, explaining that the Applicant had worked for them as a Property Manager, the circumstances that led to her leaving, and that the company had instructed employees not to provide information about her;
- e) Two lease agreements and an addendum to a lease agreement that include the Applicant’s signature as a witness on their final pages;
- f) Two letters on Sadiq Enterprises headed paper, both signed by the Applicant, requesting that tenants refrain from political activities that violate the building’s occupancy rules;
- g) A letter from the Mall Road Trader’s Association to Sadiq Enterprises stating that a complaint had been received from tenants of Sadiq Enterprises alleging that the Applicant, as Property Manager for Sadiq Enterprises, was interfering with the tenants’ professional activities; and
- h) A reconciliation agreement between the lawyers and the Applicant.

[7] The Officer reviewed the Applicant’s submissions and then referred the file to the immigration officer delegated to review misrepresentation concerns engaging s 40 of the Act.

### III. DECISION UNDER REVIEW

[8] The Officer was not satisfied that the Applicant met the requirements for immigration to Canada under the FSW program. The officer designated to review the Applicant’s file for misrepresentation determined that the Applicant was inadmissible to Canada because she had misrepresented facts material to her application and was therefore subject to s 40 of the Act.

[9] In the letter communicating the Decision to the Applicant, the Officer explains that he is not satisfied that she performed the actions described in her permanent residence application or a substantial number of the main duties listed for National Occupation Classification [NOC] code

1224 (Property Administrator). The Officer notes the results of the RAU's verification visit to the address provided in the Applicant's reference letter. No one the RAU spoke with at the building recognized the Applicant and they were informed that property management of the building was handled by two persons other than the Applicant. Since the documents the Applicant provided did not satisfy the Officer that she worked as a Property Manager for Sadiq Enterprises, she did not satisfy the requirements of the FSW program.

[10] Global Case Management System [GCMS] notes provided in response to the Applicant's request for reasons under Rule 9 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, elaborate on the Officer's concerns about the Applicant's documents. The Officer notes the absence of "bank statements showing salary deposits or tax documents showing payment of income tax." Instead, the Officer finds that the documents provided are "not of particularly good quality."

[11] The Officer questions the lease agreements provided by the Applicant because they only include the Applicant's signature on the final page as a witness. In comparison, the two full leases are signed on each page by the parties. The Applicant is also the only signatory who does not list her Computerized National Identity Card [CNIC] number. And the lease dated April 17, 2015 states that notice should be addressed to a different party than Sadiq Enterprises and does not list the Applicant as the Property Manager.

[12] The Officer acknowledges the Applicant's explanation about why employees at the building she claimed to manage denied knowing her. But despite providing two letters of

complaint that she sent to the police, the Applicant did not provide any official police documents, such as a First Information Report [FIR], that could substantiate her harassment complaints. The Officer also notes that the Applicant's explanation about her employer telling its employees to deny knowledge of her does not address why tenants at the building would not recognize her or tell the RAU that "the Floor Manager, Mr. Nianzi [*sic*]" was responsible for property management. The Officer therefore places greater weight on the RAU report and finds that the Applicant does not have the experience she claims and does not meet the requirements of ss 75(2) and 75(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. The Officer therefore refuses the Applicant's application for permanent residence.

[13] The Decision also explains that since the documents that the Applicant submitted relating to her employment at Sadiq Enterprises were found to be not genuine, she had misrepresented facts material to the assessment of whether she met the requirements of the FSW class. Since this could have led to an error in the administration of the Act, the Applicant is as described in s 40(1)(a) of the Act and inadmissible to Canada for five years.

#### IV. ISSUES

[14] The Applicant submits that the following issue arises in this application:

1. Was the Officer's assessment of the Applicant's procedural fairness response package reasonable?

[15] In my view, the issues in this application break down into two distinct questions:

1. Did the Officer breach the duty of fairness by not allowing the Applicant an opportunity to respond to his concerns about the credibility of documents provided by the Applicant in her response to the Officer's fairness letter?
2. Is the determination that the Applicant misrepresented facts material to her application for permanent residence unreasonable?

V. STANDARD OF REVIEW

[16] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], 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 settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[17] The standard of review for issues of procedural fairness is correctness. See *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*], and *Mission Institution v Khela*, 2014 SCC 24 at 79.

[18] An immigration officer's finding of misrepresentation under s 40 of the Act is reviewable under a reasonableness standard. See *Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38 at para 11.

[19] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with “the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” See *Dunsmuir*, above, at para 47, and *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law.”

## VI. STATUTORY PROVISIONS

[20] The following provisions of the Act are relevant in this application:

### **Misrepresentation**

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(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;

### **Fausses déclarations**

40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :

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;



[21] The following provisions of the Regulations are relevant in this application:

### **Skilled workers**

75 (2) A foreign national is a skilled worker if

(a) within the 10 years before the date on which their application for a permanent resident visa is made, they have accumulated, over a continuous period, at least one year of full-time work experience, or the equivalent in part-time work, in the occupation identified by the foreign national in their application as their primary occupation, other than a restricted occupation, that is listed in Skill Type 0 Management Occupations or Skill Level A or B of the National Occupational Classification matrix;

(b) during that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the National Occupational Classification;

(c) during that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the National Occupational Classification, including all of the essential duties;

### **Qualité**

75 (2) Est un travailleur qualifié l'étranger qui satisfait aux exigences suivantes :

a) il a accumulé, de façon continue, au moins une année d'expérience de travail à temps plein ou l'équivalent temps plein pour un travail à temps partiel, au cours des dix années qui ont précédé la date de présentation de sa demande de visa de résident permanent, dans la profession principale visée par sa demande appartenant au genre de compétence 0 Gestion ou aux niveaux de compétence A ou B de la matrice de la Classification nationale des professions, exception faite des professions d'accès limité;

b) pendant cette période d'emploi, il a accompli l'ensemble des tâches figurant dans l'énoncé principal établi pour la profession dans les descriptions des professions de cette classification;

c) pendant cette période d'emploi, il a exercé une partie appréciable des fonctions principales de la profession figurant dans les descriptions des professions de cette classification, notamment toutes les fonctions essentielles;

...

**Minimal requirements**

(3) If the foreign national fails to meet the requirements of subsection (2), the application for a permanent resident visa shall be refused and no further assessment is required.

...

**Exigences**

(3) Si l'étranger ne satisfait pas aux exigences prévues au paragraphe (2), l'agent met fin à l'examen de la demande de visa de résident permanent et la refuse.

VII. ARGUMENTA. *Applicant*

## (1) Procedural Fairness

[22] The Applicant submits that the Officer breached the duty of fairness by not putting to her his concerns about the authenticity of the documents she submitted in response to the fairness letter. She says that it is clear in the Decision that the Officer doubts the legitimacy of many of the documents she provided. In comparable circumstances, where new concerns about the veracity of documents submitted in response to a fairness letter arose, this Court has held that “the Officer should have provided an opportunity for the Applicant to address the new concerns.” See *Grewal v Canada (Citizenship and Immigration)*, 2017 FC 955 at paras 17-20 [*Grewal*]. The Applicant says that the Officer could have asked for original copies of the documents and explanations regarding perceived deficiencies. This Court has suggested that where the implication is that the Applicant may have submitted fraudulent documents the appropriate response might be to obtain an expert assessment of the documents’ authenticity. See *Agyemang v Canada (Citizenship and Immigration)*, 2016 FC 265 at para 14 [*Agyemang*]. The Applicant says that, even if expert analysis is unnecessary, the Officer cannot refuse to take

available steps to verify the documents, such as requesting the original copies, before making a decision on their credibility.

[23] The Applicant also says that the Officer cannot impugn her for failing to provide documents that were never requested. The Officer repeatedly notes that the Applicant did not provide bank statements or tax documents. But the Applicant points out that neither the Immigration, Refugees and Citizenship Canada document checklist nor the Officer's fairness letter asked for these records. She says that if these concerns had been raised by the Officer she could have either provided the documents or an explanation for why they were unavailable.

[24] The Applicant also submits that, at numerous points in the Decision, the Officer describes her work experience as "culturally unusual." The phrase is repeated both before and after the RAU's site visit and the Applicant says that it is among the factors weighed in the Officer's assessment. The Applicant says that the Officer never elaborates on the meaning of this phrase or provides an evidentiary basis for the concern. And since the concern was never raised with the Applicant she was never put on notice and provided with an opportunity to rebut it with evidence that it is not culturally unusual for a woman to hold a Property Manager position in Pakistan.

[25] The Applicant also notes that the Officer references her failure to provide a police FIR or other official documents substantiating the harassment she faced. While the Applicant disputes the Officer's conclusion that such a document would be likely to exist when workplace harassment is reported to authorities, she also notes that this concern was also not raised with her by the Officer. She says that, if it had been raised, she could have explained why such a report

was unlikely to exist. And she notes that she did provide other letters corroborating the harassment. Those letters bore the official letterhead of the organizations they purport to be from, and she submits that it is unclear why the Officer discounts their probative value by focusing only on the lack of a police report.

(2) Misrepresentation

[26] The Applicant submits that the finding that she misrepresented material facts is unreasonable. Because of the significant consequences of a misrepresentation determination, such a finding “can be made only where there is ‘clear and convincing evidence’ to support it”: *Borazjani v Canada (Citizenship and Immigration)*, 2013 FC 225 at para 11, quoting *Xu v Canada (Citizenship and Immigration)*, 2011 FC 784 at para 16 [*Xu*]. Unlike other inadmissibility findings made under the reasonable grounds to believe standard, a misrepresentation finding under s 40 of the Act must be established on a balance of probabilities. See Act, s 33, and *Chughtai v Canada (Citizenship and Immigration)*, 2016 FC 416 at paras 29-30 [*Chughtai*]. Thus, it is possible to distinguish between an applicant who submits insufficient evidence of genuine employment and instances where there is sufficient evidence to find that an applicant has committed a misrepresentation.

[27] The Applicant says that, even if the Officer had additional concerns or questions about the documents she provided to substantiate her employment, it was unreasonable to make a leap to a finding of misrepresentation without further investigation. See *Chughtai*, above, at para 30 and *Xu*, above, at para 16.

[28] The Applicant also submits that the Officer's treatment of the evidence she provided in response to the fairness letter is unreasonable. The Applicant says that the lease agreements are the clearest indication that she acted as Property Manager for Sadiq Enterprises. Bank records and tax records would not have provided evidence of the position she held and the duties she performed and would therefore have been insufficient to establish that she met the requirements of the FSW program. She says that the Officer's emphasis on her name only ever appearing on the last page ignores that this is where one would expect the signatures of the parties involved to be. More than simply including the Applicant's signature as a witness, stamps on the leases also indicate that she is the Property Manager at Sadiq Plaza. She says that the Officer had to be either negligent or disingenuous to ignore these stamps. And in noting that the Applicant is the only signatory who did not include her CNIC number, the Officer ignores that she is the only signatory who placed her fingerprint in ink on each application. She notes that the addition of a CNIC number would have been easy if the documents were fabricated and submits that the Officer's reliance on the number's absence exemplifies his zealotry to discredit her documents.

B. *Respondent*

(1) Procedural Fairness

[29] The Respondent submits that the Officer did not breach the duty of fairness as the Applicant was made aware of concerns about the authenticity of her employment and was provided with an opportunity to respond. The Respondent notes that the level of fairness that visa applicants are entitled to is at the low end of the spectrum. See *Pan v Canada (Citizenship and*

*Immigration*), 2010 FC 838 at para 26 [*Pan*], citing *Chiau v Canada (Minister of Citizenship & Immigration)* (2000), [2001] 2 FCR 297 at para 41 (CA), *Canada (Minister of Citizenship and Immigration) v Khan*, 2001 FCA 345 at paras 30-32, and *Canada (Minister of Citizenship and Immigration) v Patel*, 2002 FCA 55 at para 10. It is also the Applicant's responsibility to put her best foot forward as ambiguous or insufficient supporting material does not create an entitlement to an interview or requests for further information, or shift the onus to the Officer. See *Pan*, above, at paras 27-28. The Officer is not obliged to provide a "running-score" on the Applicant's application; to impose this obligation on the Officer would "be akin to requiring a visa officer to give advance notice of a negative decision, an obligation that has been expressly rejected": *Pan*, above, at para 28.

[30] The Respondent says that the procedural fairness letter the Officer sent to the Applicant advised her of the concerns about her alleged employment and the findings of the RAU's site visit. The Applicant's response included the lease documents, but no further explanation about them beyond the assertion that they prove her employment with Sadiq Enterprises. She did not include any secondary corroborating documents such as bank statements or tax records. The Officer considered the leases, and other documents submitted by the Applicant, and came to his conclusions.

[31] The Respondent submits that the Officer was not required to make further inquiries or request further and better evidence in response to deficiencies in the Applicant's response to the fairness letter. See *He v Canada (Citizenship and Immigration)*, 2012 FC 33 at para 30 [*He*], citing *Heer v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1357 at para 19. An

officer is not obliged to accept the explanations or excuses offered by an applicant. See *Sinnachamy v Canada (Citizenship and Immigration)*, 2012 FC 1092 at para 17. The Respondent says that the present case is analogous to *He*, above, at para 30, where Justice de Montigny held that it was not a breach of fairness for an officer not to make follow-up inquiries because there was already an evidentiary basis for the misrepresentation finding. See also *Ni v Canada (Citizenship and Immigration)*, 2010 FC 162. As the Applicant's response to the fairness letter does not address all of the Officer's existing concerns, the concerns about the poor quality of the documents she submitted and the lack of a FIR were only additional concerns identified by the Officer.

[32] The Respondent also says that a fair reading of *Grewal* shows that it is distinguishable from the present case. In *Grewal*, Justice Kane's decision turned on the "particular circumstances of [the] case" which involved "red flags" about how information relied on in the misrepresentation finding was verified and did not account for inconsistencies between that information and other records the applicant submitted. See *Grewal*, above, at paras 20 and 22. The Respondent says that *Agyemang* is similarly distinguishable because of its unique facts.

## (2) Misrepresentation

[33] The Respondent submits that the Officer reasonably assessed the Applicant's response to the fairness letter and that the misrepresentation finding is reasonable. The Respondent accepts that a finding of inadmissibility for misrepresentation is made on a balance of probabilities standard but also notes that the fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in Canada. See *Medovarski v Canada (Minister*

*of Citizenship and Immigration*), 2005 SCC 51 at para 46, and *Canada (Minister of Employment and Immigration) v Chiarelli*, [1992] 1 SCR 711 at 733. The Applicant's response did not address why tenants at the building she claimed to manage did not recognize her picture or why they claimed that they interacted with someone else as Property Manager. The Applicant also failed to provide bank records of payroll deposits and tax documents that must exist if the Applicant worked as a Property Manager. In these circumstances, the Officer placed greater weight on information in the RAU report, and the Respondent says that the only obvious conclusion is that the Applicant's entire application is fraudulent.

[34] Regarding the lack of a police FIR specifically, the Respondent says that the Officer's concern was the lack of police documents responding to the complaints the Applicant alleges she made to police and that were included in her response to the fairness letter.

[35] The Respondent also says that there is ample evidence for the finding of misrepresentation. In response to the fairness letter's concerns about her claimed employment, the Applicant provided leases that she allegedly signed instead of documents such as bank statements and tax statements that are less easily forged. Irregularities in the formatting of the leases, such as the Applicant only signing on the final page and not including her CNIC number, are a reasonable basis for the Officer's concerns. In questioning the format of the leases, the Officer was weighing the evidence, not engaging in amateur forensic analysis. The Respondent submits that the Applicant's suggestion that it would have been easy to omit the discrepancies if the leases were in fact forgeries simply leads to the conclusion that the Applicant was not smart about forging the documents. The Respondent says that the Applicant's arguments are an attempt



to distract from her failure to address the Officer's key finding: that she provided no explanation for why tenants the RAU interviewed at the building did not know her.

[36] The Respondent also submits that the Officer did not find the Applicant's employment "culturally unusual." The Respondent notes that no mention is made of this factor in the key part of the Officer's reasons. The Officer's opinion that the Applicant's employment appeared to be culturally unusual contributed to initial concerns about the authenticity of her employment and provoked investigation. The results of the site visit validated these concerns and are the basis for the Officer's conclusions.

[37] The Respondent also notes that the Applicant's Further Affidavit, sworn well after the Decision, attempts to give evidence about what the Applicant would have said in response to the Officer's concerns about the authenticity of the leases had this concern been raised. The Respondent says that, to the extent that this is an attempt to undermine the reasonableness of the Decision, it is an improper attempt to provide rebuttal evidence that was not before the decision-maker and an invitation to this Court to reweigh the evidence. See *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-18, quoting *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 17-19.

## VIII. ANALYSIS

[38] The essence of this Decision is found in the GCMS notes and reads as follows:

Having reviewed all of the information before me, I am not satisfied that the PA has worked as a property manager at Sadiq Enterprises as she states, for the reasons outlined below. The documentation the PA has provided for this employment is not of particularly good quality and she has not provided secondary supporting document[s], such as bank statements showing salary deposits or tax documents showing payment of income tax to substantiate her employment. She has provided copies of lease agreements, however, I note that her name appears only ever on the very last page as a witness, and in each case she is the only one without a CNIC listed. I note that the PA's signature does not appear among the other signatures at the bottom of each page of the leases of 17 Apr 2015 or February 2008. The Lease of 17 April 2015 also states that notice should be address[ed] to Shahid Mahmood and does not mention the PA as the property manager. The PA states that the company employee denied any knowledge of her as an employee of the company because of a dispute she had with tenants of the building. She states she received a letter of complaint from Mall Road Traders Association due to a complaint made against her by the lawyers and that she reported the harassment from the lawyers to the police and has provided a copy of two letters she states she sent to the police. However, I note that the PA has not provided any official documentation from the police, such as a copy of the First Information Report (FIR) to substantiate this. During the site visit RAU also spoke with employees at two companies that leased offices from Sadiq Enterprises as well as with the employee of Sadiq Enterprises. The employees at these two companies also did not recognise the PA by name or by photograph. They had leased their offices throughout the period the PA states that she was the property manager. This information was provided to the PA in the procedural fairness letter, however, she has not provided an explanation as to why these tenants of the building also did not recognise her and told RAU that the Floor Manager, Mr Nianzi [sic] was the person responsible for the property management. Having reviewed all of the information before me, I am giving more weight to the evidence provided by the RAU report. I note that RAU spoke with a company employee and tenants of the building, all of whom denied knowledge of the PA. I also note the PA has not provided documentation such as bank statements or FBR tax documents for this work and has not provided police FIR or other official documents for the harassment that she states she faced. On the balance of probabilities, it appears that the PA has not worked as [a] Property Manager at Sadiq Enterprises as she states and it appears that the PA does not have the work experience as a Property Manager to meet the NOC code 1224 as she has

stated. Therefore, in light of above, I am not satisfied that the PA has the experience as a Property Manager as claimed. This application will be refused for not meeting the minimum requirements as per R75 (2)(a) and R75 (3). The PA listed NOC0112 as her primary occupation, however, I am not satisfied that she performed the actions described in the lead statement nor a substantial number of the main duties. It appears that A40 applies to this case as, in my opinion, on a balance of probabilities the applicant has misrepresented herself. The PA submitted documentation from Sadiq Enterprises to show she met the NOC in order to meet the minimum requirements. As such, the file will be referred to an officer delegated to review A40 concerns[.]

[39] The fairness letter that preceded these conclusions reads as follows:

This refers to your application for permanent residence in Canada as a member of the Federal Skilled Worker class. I have reviewed your application and all of the documents you submitted in support of it. It appears that you may not meet the requirements for immigration to Canada. Subsection 11(1) of the Immigration and Refugee Protection Act (IRPA) provides that a foreign national must, before entering Canada, apply to an officer for a visa or any other document required by the Immigration and Refugee Protection Regulations. The 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 Act. I have reasonable grounds to believe that you have not fulfilled the requirement put upon you by subsection 16(1) of the Immigration and Refugee Protection Act, which states: 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. Specifically, I have concerns that the reference letter that you submitted from Sadiq Enterprises, dated 21 November 2014, which you have provided in support of your application, may be fraudulent. The Risk Assessment Unit (RAU) at the Canadian High Commission in Islamabad conducted a verification visit to the address given in your reference letter, where they spoke with a relevant company employee and tenants of the building. RAU noted that nobody they spoke with recognised your photograph and they were informed that the property management is conducted by two people, neither of which had the same name as you. On the basis of this verification visit, the Risk Assessment Unit at [the] Canadian High Commission in Islamabad has concluded that the information you have provided, and the reference letter submitted

in support of this, are fraudulent. Section 40(1) IRPA states that: A permanent resident or foreign national is inadmissible for misrepresentation (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. Please note that if a senior immigration officer finds that the misrepresentation is material to your application for a permanent resident visa you could be found to be inadmissible under section 40(1)(a) of the IRPA. A finding of such inadmissibility would render you inadmissible to Canada for a period of five years according to paragraph 40(2)(a) which states: the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of determination in Canada, the date the removal order is enforced. I would like to provide you with the opportunity to respond to this information, and to submit any additional information or evidence that you would like to have considered as it pertains to your application and the information contained in this letter. Your responses and any other evidence that you provide will all be reviewed and examined in full before I make a decision on your file. For the purpose of clarity and fairness with respect to this process, I would like to advise you that if I find that the evidence on your file does not support your contention that you worked as a Property Manager, your application may be refused for not meeting the minimum requirements. Furthermore, as set out above, if it is determined that you misrepresented yourself in the course of your submissions, you may be found inadmissible to Canada, Subsection 75(2) of the Immigration and Refugee Protection Regulations states that a foreign national is a skilled worker if: Within the 10 years preceding the date of their application for a permanent resident visa, they have at least one year of continuous full-time (30 hours/week) employment experience, as described in subsection 73(1), or the equivalent in continuous part-time employment in the occupation identified in their application as their primary occupation, other than a restricted occupation, that are listed in Skill Type 0 or Skill Level A or B of the National Occupational Classification matrix; During that period of employment they performed the actions described in the lead statement for the occupation as set out in the occupational descriptions of the National Occupational Classification; During that period of employment they performed a substantial number of the main duties of the occupation as set out in the occupational descriptions of the National Occupational Classification, including all of the essential duties; For the reasons outlined above, I have

concerns that you do not have work experience as a Property Administrator to meet the NOC code 1224 listed as your primary occupation. Please respond using the address at the top of this letter and clearly indicate your file number for all correspondence you send to the High Commission of Canada, London, UK. If you do not respond to this request within 30 days, your application will be assessed based on the information currently on file and may result in the refusal of your application. Sincerely, Immigration Officer

[40] As can be seen from the above GCMS notes, the negative findings of the Officer are based upon several factors:

- (a) The documentation provided “is not of particularly good quality”;
- (b) The Applicant did not provide “secondary supporting document[s], such as bank statements showing salary deposits or tax documents showing payment of income tax to substantiate her employment”;
- (c) The Applicant provided copies of lease agreements but the Officer had concerns about these documents:
  - i. The Applicant’s name “appears only ever on the very last page as a witness”;
  - ii. The Applicant is the only one “without a CNIC listed”;
  - iii. The Applicant’s signature “does not appear among the other signatures at the bottom of each page of the leases of 17 Apr 2015 or February 2008”;
  - iv. The lease of 17 April 2015 “also states that notice should be address[ed] to Shahid Mahmood and does not mention the [Applicant] as the property manager”;
- (d) As regards the Applicant’s dispute with the lawyers and the letters she sent to the police, the Applicant did not provide “any official documentation from the police, such as a copy of the First Information Report (FIR) to substantiate this”;
- (e) The Applicant did not provide an explanation “as to why... tenants of the building also did not recognise her and told RAU that the Floor Manager, Mr. Nianzi [*sic*] was the person responsible for the property management.”

[41] Taking these factors into account, the Officer found that, on a balance of probabilities, “it appears that the [Applicant] has not worked as [a] Property Manager at Sadiq Enterprises as she

states” so that she does not have the necessary work experience as a Property Manager to meet the NOC requirements and “has misrepresented herself.”

[42] It is not clear from the Decision what conclusion the Officer draws from his observations about the lease agreements in so far as they relate to the Applicant’s position as a Property Manager for Sadiq Enterprises. It appears that the Officer’s observations are meant to express a concern, but a concern about what? For example, why does the fact that the Applicant’s signature does not appear among the other signatures at the bottom of each page either support a conclusion that the documents are not genuine or that the Applicant is not a Property Manager for Sadiq Enterprises? Or why does the fact that the Applicant does not use her CNIC number suggest the documents are not genuine? Had the Applicant concocted fraudulent leases then there is no reason why she could not have written in her CNIC, as do other signatories to the leases. If the facts noted by the Officer are anomalies that give him concern, then he would have to explain what he is relying upon to classify them as such and say something about why they do not conform to local law or custom, and he would, as a matter of procedural fairness, have to put these concerns to the Applicant and provide her with an opportunity to address what he regards as anomalies. See *Grewal*, above, paras 17-20.

[43] On these grounds alone, this is sufficient to render the Decision both unreasonable and procedurally unfair. However, the Officer says that the Applicant’s name appears on these documents as a “witness” and fails to acknowledge that the lease agreements are not only signed by the Applicant, they also contain an official stamp which says “Sadiq Plaza” and “R. Hammad” – i.e. the Applicant’s name – and “Property Manager.” This is a gross oversight

by the Officer. In other words, the Officer omits – whether deliberately or by oversight – a significant fact.

[44] The Officer gives significant weight to the RAU report: “I am giving more weight to the evidence provided by the RAU report.” The Officer further relies on his view that the Applicant “has not provided an explanation as to why these tenants of the building also did not recognise her and told RAU that the Floor Manager, Mr. Nianzi [*sic*] was the person responsible for the property management.”

[45] The affidavit of Mr. Niazi reads as follows:

I, Qamar Khan Niazi S/O Fazal-ur Rehman NIC # 35202-4442368-1, current employee of Sadiq Enterprises, 69, The Mall, Lahore, as Floor Manager, solemnly declare that:

1. I was approached by two individuals in the month of September, 2016, at my work place, IV Floor, Sadiq Plaza, asking me questions about Raahema Hammad and showing me her photograph for identification.
2. I completely denied any knowledge about any person with the name Raahema Hammad or recognition, when showed the photograph.
3. I have worked for many years as Raahema Hammad’s subordinate in Sadiq Enterprises. She worked as the Property Manager where as [*sic*] my designation is of Floor Manager.
4. Raahema Hammad left her job at Sadiq Enterprises in the month of March 2016 citing personal reasons.
5. I was strictly instructed by the senior management of Sadiq Enterprises to completely deny her work at this organization or to pass any information about her to any third party.

[46] The RAU report upon which the Officer relies reads as follows:

On arrival to the fourth floor of the Sadiq Plaza, RAU did not find the Floor Manager, Mr. Niazi, but were told he would be back soon. RAU waited for Mr. Niazi. In the meantime, RAU asked staff at two law firms (renters for 6 and 10 years respectively) on the floor about the Building Manager or the person with whom they manage contracts, property matters, etc. In both instances, it was confirmed that Mr. Niazi was the person responsible. RAU showed the photo of the PA to both and nobody in either law firm recognized her.

Mr. Niazi returned and we questioned him once again about his position with the building to which he confirmed he is the Property Manager. We asked Mr. Niazi if he is responsible for the whole building. Mr. Niazi told RAU that he is responsible for the fourth floor where all the executive office suites are, but that the other three floors [*sic*] are managed by Mr. Shafiq. Mr. Niazi further told RAU that Mr. Shafiq has been in the position for the past 30 years.

RAU showed Mr. Niazi a photo of the PA but he did not recognize her and confirmed to his knowledge, she has never worked in the building.

#### CONCERNS

- The person RAU was directed to and referred as the Property Manager was Mr. Niazi, in the position as Manager of the fourth floor of the Sadiq Plaza since 2004;
- Staff in two rental businesses on the fourth floor confirmed their only dealings are with Mr. Niazi for property/contract related matters;
- Neither staff at the two law firms nor Mr. Niazi recognized the PA as per the photo on her file;
- It was confirmed that Mr. Shafiq is the Manager of the other three floors in the building and has held the position for the past 30 years;
- RAU assesses that it would be culturally unusual for a woman to hold this position or to work in this all-male environment, especially for this long period of time and given her family situation. Most women, if employed, will quit work once children are born. Also interesting to note is that during the 1-hour spent in Sadiq Plaza, RAU did not see a single woman working or shopping.



[47] The RAU report does not say who the “staff” consulted were, or how long the staff had occupied their current positions. The Applicant had left her employment at this time so that these “staff” might never have seen or heard of her. And Mr. Niazi’s affidavit does provide a reason for what he said at the time.

[48] Given the information that was provided to the Applicant in the fairness letter, in which tenants and staff were not identified, it does not seem unreasonable to me that she would try to address the Officer’s concerns by providing copies of lease agreements that show her as the Property Manager, particularly if she could not enlist the help of the police.

[49] Given that the RAU report is not conclusive, or particularly thorough because of the lack of information about who was consulted – apart from Mr. Niazi, who later recanted – I think it was procedurally unfair in this case to discount the leases without giving the Applicant an opportunity to address concerns that were not, in my view, really indicative of fraudulent documentation. The Applicant should also have been given an opportunity to explain why there was no FIR report from the police if the Officer was going to rely upon this fact. As Justice Kane pointed out in *Grewal*:

[19] While the principles from the jurisprudence have generally been applied to address the duty on the visa officer when assessing the supporting documents and evidence in the initial application, the same principles have guided my assessment of the scope of the duty of procedural fairness owed in the present case. The GCMS entries indicate that the Officer questioned the lack of a date on the Applicant’s letter of explanation, doubted the veracity of the letter from the General Manager and doubted the veracity or authenticity of the pay slips, noting that the use of the same ink suggested that the pay slips were all prepared at once, rather than monthly. The Respondent also submits that these documents had indicia of

unreliability. Clearly, the credibility, veracity and/or the authenticity of the documents was at issue.

[20] In the particular circumstances of this case, including those noted in my observations below, the Officer should have provided an opportunity for the Applicant to address the new concerns.

[50] In the particular circumstances of this case, it is my view that the Decision is unreasonable and, before making a final decision, the Officer should have provided the Applicant with an opportunity to address his new concerns that arose after the Applicant's response to the fairness letter.

[51] Counsel agree there is no question for certification and the Court concurs.

**JUDGMENT IN IMM-4180-17**

**THIS COURT'S JUDGMENT is that**

1. The application is allowed. The decision is quashed and the matter is returned for reconsideration by a different officer.
2. There is no question for certification.

“James Russell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4180-17

**STYLE OF CAUSE:** RAAHEMA HAMMAD v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 4, 2018

**JUDGMENT AND REASONS:** RUSSELL J.

**DATED:** APRIL 27, 2018

**APPEARANCES:**

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