Federal Court  Cour fédérale

Date: 20190322

Docket: IMM-1011-18
and others. See below

Citation: 2019 FC 359

Ottawa, Ontario, March 22, 2019

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

SAM IBID AND
ABDULLAH ZAID ISMAIL

Applicants

and

THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP

Respondent

In the matter of applications for leave and judicial review of numerous decisions denying applications under the Private Sponsorship of Refugees Program on the basis that the conditions set out in subsection 154(1) of the *Immigration and Refugee Protection Regulations***, SOR/2002-227 were not met.**

IMM-999-18	IMM-1000-18	IMM-1001-18	IMM-1002-18
IMM-1003-18	IMM-1004-18	IMM-1005-18	IMM-1006-18
IMM-1007-18	IMM-1008-18	IMM-1012-18	IMM-1013-18
IMM-1014-18	IMM-1015-18	IMM-1016-18	IMM-1017-18
IMM-1018-18	IMM-1020-18	IMM-1025-18	IMM-1026-18
IMM-1027-18			

JUDGMENT AND REASONS

I. Nature and summary

[1] These reasons are issued in connection with 22 applications for judicial review, which were consolidated by Justice Zinn's Order dated November 27, 2018. Justice Zinn also ordered the application in IMM-1011-18 to be the "lead case." All the principal Applicants are citizens of Syria. They, along with accompanying dependants, seek refugee status in Canada under a special sponsorship program created in September, 2015. This special program was part of Canada's action to alleviate the international Syrian and Iraqi refugee crisis reduce delays. This special program was put in place in 2015, and twice renewed in 2016.

[2] These applications were dismissed by an Officer of Immigration, Refugees and Citizenship Canada who was not satisfied the Applicants had sufficient "financial resources." The Officer also was not satisfied the Applicants had adequate arrangements for their settlement, also referred to as 'settlement assistance.' Sufficient "financial resources" is a requirement of paragraph 154(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Adequate 'settlement assistance' is a requirement of paragraph 154(1)(b) of the *IRPR*. The main issue in this case is whether the Officer's reasons are reasonable in the circumstances as required by the Supreme Court of Canada.

[3] Technically, these applications are brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] from the negative decision made

by an Immigration Program Officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC] – Resettlement Operations Centre – Ottawa [ROCO] dated January 30, 2018 [Decision].

[4] As set out below, I have concluded the Officer's Decision is unreasonable. Therefore judicial review will be ordered.

II. Facts

A. *Canada's Temporary public policy to facilitate sponsorship of Syrian and Iraqi refugees*

[5] The Minister of Citizenship and Immigration introduced the *Temporary public policy to facilitate the sponsorship of Syrian and Iraqi refugees by Groups of Five and Community Sponsors* [Temporary Policy] on September 19, 2015, to facilitate the resettlement of vulnerable individuals. It was renewed on September 20, 2016, and again on December 19, 2016 for an additional year.

[6] In addition to being time limited, the Temporary Policy, by the terms of its third iteration, ceased to apply once "1,000 foreign nationals, that is principal applicants and their family members," were received for processing. The Temporary Policy aimed to "enable Canada to implement fair and efficient procedures that maintain the integrity of the Canadian refugee protection system" during the "ongoing humanitarian crisis in the Middle East affecting Syrian and Iraqi refugees."

[7] Pursuant to the Minister's special powers under section 25.2 of the *IRPA*, the Temporary Policy exempted foreign nationals of Syria and Iraq, who had fled their country of nationality or habitual residence, from complying with the requirements of paragraph 153(1)(b) and section 307 of the *IRPR*. These provisions, respectively, required such refugee applicants to have a document from the UNHRC or a foreign state certifying they have refugee status (paragraph 153(1)(b)), and to pay a processing fee (section 307). The Temporary Policy provided all applicants remained "subject to all other statutory eligibility and admissibility requirements."

B. *Applicants' applications and settlement plans*

[8] In accordance with Justice Zinn's Order, I take the facts from the lead case. That said, I must occasionally refer to material in the other files, but do so without making binding determinations and based on a cursory review. I do this in fairness to both the Respondent and to the other Applicants.

[9] The claims in question were all handled by a Canadian company carrying on business under the name "Fast to Canada" [FTC]. FTC is owned by Sam Ibid [Ibid], whose wife Abeer Qita [Qita], a registered Immigration Consultant, works for FTC. FTC employs a small number of administrative staff.

[10] These applications appear to involve between 59 and 65 individuals including principal Applicants and accompanying dependents. The Applicants' counsel said these refugees are professionals with money; that was not disputed but by the same token I make no binding determination on this point. Most of the principal Applicants are university educated; most

indicated they are working where they are currently living. It appears more than ten of the principal Applicants and their dependents are professionals (e.g., physician, dentist, teacher, engineering consultant, and architect) or relatively senior managers (e.g., CEO and VP, branch manager, coordinator, senior analyst, web designer, etc.). Many of their children are enrolled in universities or secondary schools.

[11] As noted, all principal Applicants are citizens of Syria, however where they live differed. Most were living in the United Arab Emirates, while others were in Saudi Arabia, Algeria, Kuwait, or Qatar. An underlying theme of Ms Jackman's submissions was that the Applicants are refugees with money and Canada should welcome them, along with the far greater number of Syrian and Iraqi refugees who lack such means. Although their status as refugees is yet to be established, it was submitted - and on cursory examination it appears - that none of the Applicants are citizens where they currently live, i.e., none have "durable solutions" elsewhere per paragraph 139(1)(d) of the *IRPR*.

[12] FTC submitted a number of settlement plans in respect of these refugee claimants. The 1st Settlement Plan dated June 8, 2016, listed FTC as the community sponsor, without a co-sponsor. The 1st Settlement Plan promised "enough funds to provide settlement for the refugee for up to 12 months", noting that such funds were held in a trust account. FTC would issue monthly cheques to help the refugee family pay for rent and living expenses. It further stated that Syrian Active Volunteers [SAV], a non-government organization supporting Syrian Refugees, would "help in the refugee settlement plan from the time they reach Canada until they settle completely in Canada." According to the 1st Settlement Plan, SAV's role would include

accommodation services; guidance on language training, finding jobs, education enrollment, registering with a family doctor; and providing in-kind donations such as furniture, clothes, and food supplies. SAV was not a co-sponsor of the 1st Settlement Plan.

[13] The Officer requested further information from FTC on May 30, 2017, including: "proof of funds held in trust" and "identity of the beneficiary ... , when and how funds will be dispersed, the outcome of the funds should the beneficiary not arrive in Canada and the details of the two members of the sponsoring group with signing authority ...." This was not a procedural fairness letter, simply a request for additional information. FTC was provided an opportunity to respond within 30 days. However the Officer sent the first of three Procedural Fairness Letters [PF] before 30 days were up.

[14] The Officer sent the 1st PF on June 19, 2017, requesting new settlement plans for each Applicant to include among other things: "a detailed explanation of the kind of accommodation available for the refugee(s)"; "the type of help/support the refugee(s) will receive from SAV and [FTC]"; and the "contact information of people working/volunteering for SAV," among other details. The Officer "strongly suggest[s] that SAV be included as a co-sponsor" to meet the *IRPR* section 154 requirements. The Officer referred to *IRPR* in the following terms: "As you state in your application that SAV will provide all the settlement services to the refugees, we strongly suggest that SAV be included as a co-sponsor in your application for your group to meet the requirements of R154 *Immigration and Refugee Protection Regulations* (IRPR). As a co-sponsor, SAV will become jointly and severally or solidarily liable to the sponsorship as per

R153(3) IRPR. Please submit new undertakings (IMM5373) for each application included in the attached Excel sheet." FTC was provided an opportunity to respond.

[15] FTC responded on June 30, 2017 with revised applications and indicated it would submit a further response regarding the settlement plan. On July 18, 2017, FTC responded among other things with the 2nd Settlement Plan and undertaking, proof of funds held in trust - namely the bank business portfolio, a bank letter confirming the existence of two trust accounts, and a statement for one of the trust accounts. In connection with the lead Applicant, the banking information was that a Canadian bank held a term deposit in trust naming the lead Applicant as a beneficiary in the amount of $21,200. The banking information subsequently provided indicated other sums were similarly held in trust for other claimants in this group of cases.

[16] The 2nd Settlement Plan repeated that FTC was the sponsor. However this Plan added SAV as the co-sponsor, as recommended by the Officer. The 2nd Settlement Plan indicated FTC would provide start-up costs and settlement assistance. It stated SAV would also provide settlement assistance, and that SAV would provide temporary hotel accommodations and help find permanent accommodations. In addition the Plan stated SAV volunteers, who were named, would be responsible in assisting with: airport pick-ups, SIN and health card applications, locating a family doctor, scheduling rides for medical appointments, employment and labour market training, becoming familiar with their environments, language training, school enrollment, public transportation, and banking. SAV's executive director would coordinate all the above-mentioned settlements. FTC stated it would provide monthly cheques to the Applicants for the 12-month settlement period following arrival.

[17] The Officer responded with a 2nd PF dated September 22, 2017. The 2nd PF stated that the Officer had continued concerns FTC may "not be able to provide settlement assistance, emotional and social support to the refugees." The Officer stated:

> 1. ... It is reasonable to believe that people working in your organization may not be able to be part of the sponsorship obligations for twenty families because they have other obligations which include working in your office. As a sponsor, your obligations is [*sic*] not only financial but also to tend to the emotional and settlement needs of the person(s) you are sponsoring. ... No information has been provided to indicate how your seven employees will be able to care for or assist in caring for twenty families given their full time employment and other obligations. ...

[18] The Officer again raised the issue of FTC's ability or willingness to provide financial support and how it raises funds:

> 2. In addition, I have concern that your organization may not be able or willing to provide financial support to the refugees. As per IRPR 154 (1) (a) the sponsor must have the financial resources to fulfil the Settlement plan for the duration of the undertaking. Given the number of applications submitted by your organization, I would like to have more information regarding the way your organization raises funds to sponsor refugees.
>
> ... You may submit any documents or information which you believe may alleviate my concerns. This may include, but is not limited to, audited financial statements showing that your organization raised funds to provide for the family, a list of activities in which your organization is involved to raise funds, etc...

[19] FTC responded to the 2nd PF on October 19, 2017. Regarding emotional and non-financial support FTC stated:

> [FTC] has long time experience in settlement services for more than 7 years as [it has] provide[ed] this service [*sic*] long time ago and helped more than 100 families to settle in GTA .... So 20

> family [*sic*] or 30 family [*sic*] is not a big issue as we have [*sic*] system to do that while they are mostly friends and relatives and has [*sic*] also friends and relatives her [*sic*] in Canada[.] ... Yes we have 7 employees but we have [*sic*] system to do the service right and can hire more if we need to[.] ... Also we have our cosponsor SAV Syria who is willing and has [*sic*] obligation to help those applicants with over than [*sic*] 100 volunteers.

[20] As to financial support, FTC stated:

> Most of those applicants has [*sic*] relatives here in Canada and they cannot bring them alone as they do not have 5 persons to do group five [*sic*] but they have enough money to support them so they contribute money to support them financially and **we put the money in** [*sic*] **trust account as** [*sic*] **fix deposit for each of them** and we contribute with [*sic*] not taking any fees and put fund for who [*sic*] does not have relatives. Our fund contribution came from our income and savings and reserves in our corporation and we have enough money to fulfill our obligation towards our community and towards Canada not to put more financial burdens for refugees.
>
> [Emphasis in original]

C. *CBC story and aftermath*

[21] The Officer became aware of an internet story posted by the Canadian Broadcasting Corporation [CBC] entitled "[S]ome immigration consultants violating rules of private refugee sponsorship program." The story was posted April 19, 2016, and updated June 10, 2016. It suggested FTC was charging fees, that is, making money from refugee claimants from Syria. In addition the story alleged FTC was demanding claimants pay their own settlement funds "up front, which violates the financial guidelines of the Private Sponsorship of Refugees Program." The story quoted FTC's Qita: "'It is normal for an immigration consultant to charge fees for their

time,' she said. 'The support, the quality of work, the service you're providing those people ... this is what makes you special.'"

[22] The CBC story provided a hyperlink to an FTC retainer agreement, an excerpt of which stated:

> **5. Requirements by CNIA (SAH) as followings** [*sic*]**:**
>
> - The amount is refundable (CAD500) per person only if the applicant(s)' refugee claimant has been rejected without Canada; (no file number). Any refund to be through FTC A/C to the client;
>
> - FTC is solely responsible for depositing the Settlement fund into CNIA's Trust account through (one-time deposit in full) when receiving the file# from CNIA which is the initial approval by the government;
>
> - Administration fees of $50 applicable for each refundable amount and to be add [sic] to the settlement fund plus tax 13% total of $50 X 12X 13% =678
>
> ***The settlement fund amount calculation breakdown as follows:***
>
> **FAST TO CANADA**
>
> One person: CAD 12,000
> Two persons: CAD 17,000
> Three persons: CAD 22,000
> Four persons: CAD 25,000
> Five persons: CAD 29,000
> Six persons: CAD 32,000
> For each additional person, there is amount of CAD $3000 required.

- Both FTC and CNIA have a joint liability to perform due diligence and ensure that both the sponsors meet the financial eligibility in being able to support the refugee applicants in their first year in Canada without resorting to Social Assistance. Internal controls need to be established by FTC in order to ensure that the mandate setup by CNIA is met and that there is no subsequent breach of contract when the refugees arrive in Canada.

...

7. Total settlement fund for this agreement

To be paid once approved and get file number to be transfer [*sic*] to CNIA trust A/C directly

_____ Persons: CAD _____ (to be refund [*sic*] in 12 monthly installments of _____ monthly)

Refund fees: CAD 678

Total: CAD _____

...

[Emphasis in original]

[23] The Officer's GCMS entry dated November 15, 2017 discusses the CBC story:

> Information has come to my intention [*sic*] that indicates that fast to Canada requires that refugees deposit the full amount of their settlement funds. This information was obtained online ... and I have obtained a copy of the Retainer agreement of Fast to Canada requires that refugees sign which confirms this. 154(1) (a) requires that a community sponsor must have the financial capacity to fulfill the settlement plan for the duration of the undertaking. Inland Processing manual 3. (IP3). Section 30.6 states that the sponsoring group may establish a trust fund for the sponsorship but cannot expect or require that a refugee pay to obtain a sponsorship. In this case Fast to Canada requires that that [*sic*] refugees pay to obtain a sponsorship, this is confirmed in Fast to Canada [*sic*] own retainer agreement. In addition, 154(1) (a) requires that a community sponsor has the financial resources to fulfill the settlement plan and I am not satisfied that without the contribution of the refugee that the sponsor can support them. As such, I am not

> satisfied that Fast to Canada meet [*sic*] the requirement under the Act.

[24] As a consequence, the Officer issued a 3rd (and final) PF dated December 1, 2017. The Officer again expressed concerns with FTC's ability to provide financial support to refugees given the CBC story. The Officer stated:

> I have reviewed your response to my procedural fairness letter sent to you on September 22, 2017. New information has come to my attention and I continue to have concerns that your organization may not be able to provide financial support to the refugees for the duration of the undertaking:
>
> Information contained in an article posted by CBC news on April 19, 2016 (http://www.cbc.ca/news/canada/immigration-consultants-refugee-program-1.3535899) suggests that Fast to Canada requires that refugees deposit the full amount for their settlement funds prior to a sponsorship being submitted on their behalf. This is contrary to guidelines set out in the Private Sponsorship of Refugees (PSR) Application Guide (IMM5413); Appendix A-Financial Guidelines states that "Refugees have no legal obligation, and cannot be made to enter into a legal or informal obligation, to prepay or repay their sponsoring groups for lodging, care, and settlement assistance and support" and "Sponsorship groups are expected to provide the refugees with both financial and settlement support for a period of up to 12 months".
>
> Based on the above information, I have reason to believe that the refugees you now seek to sponsor may have also been required to pay for their resettlement in Canada contrary to PSR Guidelines and without this money you would not have sufficient funds to meet the requirements under IRPR 154(1) (a).

[25] FTC responded on December 19, 2017, explaining the "CBC reporter who made several errors in an attempt to sensationalize and demonize perfectly acceptable and legal activities carried out by Fast to Canada was biased and unfair." FTC said the reporter "lied about the purpose of interview," and "only used edited comments from [Qita] to support her story ... an

example of ‘yellow journalism.’” In particular, FTC said it told CBC it was “helping those people in need who meet the definition of Convention Refugee abroad class,” and corrected the reporter on the number of refugee applications notwithstanding which the reporter used the wrong number. FTC also said it explained to the CBC that its “retainer agreement included all the fees to be **arranged by the family relatives/friends of the refugee applicant and we insisted that the funds should not come from refugees** [emphasis in original].”

[26] In this connection, FTC filed a statement (not an affidavit as it is described) signed by the lead Applicant in which he said he sent his settlement funds to FTC. I note $21,200 was held for him in trust by the bank arranged by FTC for that purpose as outlined above. I was asked to consider fresh evidence in this respect but instead infer the lead Applicant paid FTC the $21,200 that FTC’s bank held in trust for him. The admission of fresh evidence in this respect would be contrary to *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, per Stratas JA [*Association of Universities*] at para 19.

[27] FTC also updated the Officer on the issue of settlement assistance. To recall, the 1st Settlement Plan indicated settlement assistance would be provided by FTC and SAV. In its response to the 1st PF, FTC changes its settlement plan such that SAV became co-sponsor, as had been strongly suggested by the Officer. In addition the 2nd Settlement Plan said SAV “will be available for all immigrant settlement assistance that the refugees may require, instead of referring them to other settlement agencies.” In FTC’s final response the responsibility for

settlement services is shared by FTC and SAV, in addition to the relatives and friends of the refugees.

D. *Decision under review*

[28] The Officer's Decision refused FTC's sponsorship applications. The reasons are set out in the Officer's GCMS entry:

> After reviewing, the response and documents submitted by Fast Canada, I still have concerns that they do not have the financial resources to fulfill the Settlement Plan without funds contributed by the refugees. My reasons are the following: In my procedural fairness letter, I approached FTC with the fact that in their own retainer agreement, which is available online from CBC, they are asking refugees to pay for their own settlement plan. In their response to my procedural fairness letter, they mentioned that during the interview they explained to the reporter that their retainer agreement included all the fee [*sic*] to be arranged by the family/friend of the refugee applicant and they insisted that the funds should to come from the refugee. They attached Memorandum of Understanding (MOU) sent to all applicants as proof which said that the source of funds cannot come from the refugees. I have considered their response and remain unsatisfied that Fast to Canada has sufficient funds without relying on the funds contributed by the refuges [*sic*]. While the MOU provided by Fast to Canada indicates that the source of funds cannot come from the refugees, Fast to Canada has provided no evidence of this or where the money came from. FTC failed to provide evidence of where the funds that they provided (held in trust) come from. In their response they provided affidavits that the funds are coming from relatives. With open source information suggesting that refugees are being required to pay for their own settlement, I find the affidavits insufficient as it do [*sic*] not show the evidence of the funds. I am therefore not satisfied that Fast to Canada has the financial resources to provide financial support to all the refugees they are sponsoring. For the applications without family links in Canada, FTC declared that they are financially contributing to the settlement costs. FTC did not submit any evidence showing where these funds originated. Officer refusal notes [*sic*] In my first procedural letter sent to Fast to Canada on June 19th 2017, I approached them with my concerns that Syrian Active Volunteer

(SAV) was the only organization designated to provide all Settlement assistance and FTC was not included in the Settlement Plan. FTC added SAV as a co-sponsor in all their applications submitted to us which failed to alleviate my concerns as FTC, the sponsor, was not participating in any way in the settlement of the refugees they were sponsoring. As per our PSR guide "Where co-sponsors are involved in the sponsorship, discuss settlement arrangements and responsibilities together and jointly fill out the settlement plan" and as per our IP3 guide "Section 39: Co-sponsor share responsibility with the CS for providing settlement support (either financial or non-financial) to the refugee for the duration of the sponsorship. Community Sponsors are expected to play an active role with the co-sponsor to deliver settlement support. In my second procedural letter sent to Fast to Canada on September 22nd 2017, I approached them with my concerns that as a community sponsor they will not be able to provide settlement assistance, emotional and social support to the refugees because they were not included in the settlement plan and they only have 7 staff's [*sic*] in their organization which is a small amount of people to provide settlement assistance to the 30 families they are sponsoring considering that they are all working and have other duties outside their work obligation. In their response, FTC stated that SAV will be the main organization supporting the refugees they are sponsoring. This failed to alleviate my concerns as again it appears that FTC, the sponsor, will in no way be involved in the fulfillment of the settlement plan. I have also approached them with my concerns that their organization may not be able to provide financial support to the refugees as it is required in the Immigration and Refugee Protection Regulations IRPR 154 (1) (a) that the community sponsor must have the financial resources to fulfill the settlement plan for the duration of the undertaking. In addition, I have asked them to provide more information regarding the way their organization raises funds to sponsor refugees. In their response, FTC provided proof of funds held in trust with a financial institution and a letter from the bank stating that FTC is a client of the bank. FTC also stated that most of the refugees have relatives in Canada and that the relatives are the ones contributing for the resettlement of the refugees. Moreover, they mentioned that their organization is financially contributing for the refugees who do not have families in Canada. Upon review, FTC failed to provide evidence of how the funds were gathered. Despite providing two opportunities to respond to my concerns, I again sent athird PFL. In my third procedural letter sent to Fast to Canada on December 1st 2017, I have approached them with my concerns that without the financial contribution of the refugees that they are sponsoring they cannot support the refugees financially as

> it is required in the IRPR 154 (1) (a) after reviewing an article published by CBC. See above for an assessment of the response of the third PFL. I have approached FTC three times with my concerns regarding them not meeting IRPR 154 (1) (a) and IRPR 154 (1) (b). FTC has provided insufficient evidence to satisfy me that they will be involved in the settlement of the refugees or able to fulfill the settlement plan, both financially without relying on the financially [*sic*] contribution of the refugees and through providing settlement assistance. I am therefore not satisfied that Fast to Canada would fulfill their obligations as per the requirements of IRPR 154 (1) (a) and 154 (1) (b).

III. Preliminary issues raised by the Respondent

[29] The Respondent raised three preliminary issues, which I will deal with now.

[30] First, the Respondent submits the Applicants rely on post-refusal evidence. Indeed they do; they rely on documents attached to Ibid's affidavit filed after the Decision. I agree these should be disregarded: *Association of Universities* at para 19: "Accordingly, as a general rule, the evidentiary record before this Court on judicial review is restricted to the evidentiary record that was before the Board. In other words, evidence that was not before the Board and that goes to the merits of the matter before the Board is not admissible in an application for judicial review in this Court."

[31] Second, the Respondent submits the Applicants rely on documents in their further memorandum from other than the lead case, contrary to Justice Zinn's Order. In my view, Justice Zinn's Order does not preclude reference to any information in any of the other of these files. Justice Zinn's direction to the Applicants to file a single application record and memorandum addressing all cases, did not permit the Applicants to file fresh evidence; it is well known that

judicial review is not the place for serial re-litigation on fresh evidence. However, I will not rely on that information except in general terms to avoid prejudicing the Respondent in this case, and as the Applicants proceed with further determinations.

[32] Third, the Respondent submits Ibid's affidavit contains incorrect and internally inconsistent claims, to which the Court should give no weight. I will not consider it except in a non-determinative manner.

IV. Issues raised by the Applicants

[33] The Applicants raised three main issues, but I need only consider two. I will not consider the issue of fettering although I will deal with some aspects of it in the course of dealing with the remaining two issues. While cast as "errors of law," these are issues of reasonableness, which I have revised accordingly:

> [1] Whether the Officer acted unreasonably in finding FTC failed to provide sufficient evidence that it had the financial resources as a community sponsor to fulfil the settlement plan for the duration of the undertaking for all the refugees being sponsored.
>
> [2] Whether the Officer acted unreasonably in finding FTC failed to provide sufficient evidence that it would be able to provide settlement assistance to the refugees being sponsored.

V. Standard of review

[34] In their memorandum the Applicants submit the standard of review is correctness, but at the hearing they submitted the standard of review is reasonableness in context. They emphasize *Vavilov v Canada (Citizenship and Immigration)*, 2017 FCA 132, per Stratas JA at paras 35–39,

leave to appeal to SCC granted, no 37748, in which the Federal Court of Appeal discusses the reasonableness standard as taking its colour from the context of relevant factors in the case.

[35] The Respondent submits the standard of review is reasonableness on the basis that the Officer, an administrative decision-maker, interpreted and applied her own home statute: *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61, per Abella J at paras 7–8 [*Kanthasamy*]; and *Agraira v Canada (Public Service and Emergency Preparedness)*, 2013 SCC 36, per LeBel J [*Agraira*] at para 50. The Respondent, in my view correctly, submits that post-*Dunsmuir*, the Supreme Court of Canada has repeatedly held that questions of pure statutory interpretation arising under a tribunal's home statute are presumptively reviewed on the reasonableness standard. The Respondent submits *Kanthasamy* confirms this presumption applies equally to immigration officials.

[36] Thus, the applicable standard of review is reasonableness. Doubtless this requires consideration of the context of the case. The presumption of the reasonableness standard has been confirmed by the Supreme Court of Canada post-*Dunsmuir*, most recently in *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31, per Gascon J [*Canadian Human Rights Commission*] at paras 27–28:

> [27] ... To this end, there is a well-established presumption that, where an administrative body interprets its home statute, the reasonableness standard applies (*Dunsmuir*, at para. 54; *Alberta Teachers*, at para. 39; *Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, [2016] 1 S.C.R. 770, at para. 15; *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47, [2016] 2 S.C.R. 293, at para. 22; *Quebec (Attorney General) v. Guérin*, 2017 SCC 42, [2017] 2 S.C.R. 3, at paras. 33-34; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, at para. 8).

> [28] The presumption may be rebutted and the correctness standard applied where one of the following categories can be established: (1) issues relating to the constitutional division of powers; (2) true questions of *vires*; (3) issues of competing jurisdiction between tribunals; and (4) questions that are of central importance to the legal system *and* outside the expertise of the decision maker (*Capilano*, at para. 24; *Dunsmuir*, at paras. 58-61).
> ...
>
> [Emphasis added]

[37] In addition, lest there be doubt, the correctness standard is not applicable to matters concerning the construction of the *IRPA* or *IRPR* because none of the four rebutting categories are established: *Canadian Human Rights Commission* at para 28. Ultimately, this case "involves a decision maker 'interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity' (*Dunsmuir*, at para. 54) ... confirm[ing] that the applicable standard is reasonableness": *Agraira* at para 50.

[38] In *Canadian Human Rights Commission* at para 55, the Supreme Court of Canada explains what is required of a court reviewing on the reasonableness standard of review:

> [55] In reasonableness review, the reviewing court is concerned mostly with "the existence of justification, transparency and intelligibility within the decision-making process" and with determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 14). When applied to a statutory interpretation exercise, reasonableness review recognizes that the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the statute (*McLean*, at para. 33). Reviewing courts must also refrain from reweighing and reassessing the evidence considered by the decision maker (*Khosa*, at para. 64). At its core, reasonableness review recognizes the legitimacy of multiple

> possible outcomes, even where they are not the court's preferred solution.

[39] This case also raises issues of procedural fairness. Questions of procedural fairness such as these are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43. That said, I wish to note that in *Bergeron v Canada (Attorney General)*, 2015 FCA 160 at para 69, the Federal Court of Appeal says a correctness review may need to take place in "a manner 'respectful of the [decision-maker's] choices' with 'a degree of deference': *Re:Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at paragraph 42." But see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69.

[40] In *Dunsmuir* at para 50, the Supreme Court of Canada explains what is required of a court reviewing on the correctness standard of review:

> [50] ... 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.

[41] The Supreme Court of Canada also instructs that judicial review is not a line-by-line treasure hunt for errors; the decision should be approached as an organic whole: *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34. Further, a reviewing court must determine whether the decision, viewed as a whole in the context of the record, is reasonable: *Construction Labour Relations v Driver Iron*

Inc, 2012 SCC 65; see also *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

VI. Relevant law

[42] The *IRPA*'s objectives pertaining to refugees are laid out in subsection 3(2). The Respondent emphasizes paragraph 3(2)(e) while the Applicants emphasize paragraph 3(2)(d):

Objectives — refugees	**Objet relatif aux réfugiés**
3 (2) The objectives of this Act with respect to refugees are	3 (2) S'agissant des réfugiés, la présente loi a pour objet:
…	…
(d) to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;	d) d'offrir l'asile à ceux qui craignent avec raison d'être persécutés du fait de leur race, leur religion, leur nationalité, leurs opinions politiques, leur appartenance à un groupe social en particulier, ainsi qu'à ceux qui risquent la torture ou des traitements ou peines cruels et inusités;
(e) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;	e) de mettre en place une procédure équitable et efficace qui soit respectueuse, d'une part, de l'intégrité du processus canadien d'asile et, d'autre part, des droits et des libertés fondamentales reconnus à tout être humain;
[Emphasis added]	[Nos soulignés]

[43] A foreign national outside Canada may be sponsored by a corporation as provided by subsection 13(1) of the *IRPA*. Likewise, the *IRPR* in section 138 provides corporations may act as sponsors. No distinction is made in the *IRPA* or the *IRPR* between for-profit and not-for-profit corporations; each may act as sponsors. Other relevant *IRPA* provisions are reproduced below. The regulations particularly relevant are those in the *IRPR* at paragraphs 154(1)(a) and (b).

Sponsorship of foreign nationals	**Parrainage de l'étranger**
13 (1) A Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province or an unincorporated organization or association under federal or provincial law — or any combination of them — may sponsor a foreign national, subject to the regulations.	13 (1) Tout citoyen canadien, résident permanent ou groupe de citoyens canadiens ou de résidents permanents ou toute personne morale ou association de régime fédéral ou provincial — ou tout groupe de telles de ces personnes ou associations — peut, sous réserve des règlements, parrainer un étranger.
[Emphasis added]	[Nos soulignés]

[44] Under Division 1 of the *IRPR*, respecting "Convention Refugees Abroad, Humanitarian-protected Persons Abroad and Protected Temporary Residents," section 138 defines "sponsor":

sponsor means	***répondant*** S'entend, selon le cas :
(a) a group, a corporation or an unincorporated organization or association referred to in subsection 13(2) of the Act, or any combination of them, that is acting for the purpose of sponsoring a Convention refugee or a person in similar	a) de tout groupe ou toute personne morale ou association visés au paragraphe 13(2) de la Loi, ou tout regroupement de telles de ces personnes, qui agissent ensemble afin de parrainer un réfugié au sens de la Convention ou une personne

circumstances; or	dans une situation semblable;
(b) for the purposes of section 158, a sponsor within the meaning of the regulations made under *An Act respecting immigration to Québec*, R.S.Q., c.I-0.2, as amended from time to time. (*répondant*)	b) pour l'application de l'article 158, au sens de la définition de *garant* dans les règlements d'application de la *Loi sur l'immigration au Québec*, L.R.Q., ch. I-0.2, compte tenu de leurs modifications successives. (*sponsor*)
[Emphasis added]	[Nos soulignés]

[45] Sections 153 and 154 of the *IRPR* set out sponsorship requirements. Of these, paragraphs 154(1)(a) and (b) are most material. Section 153 of the *IRPR* provides:

Sponsorship requirements	**Exigences de parrainage**
153 (1) In order to sponsor a foreign national and their family members who are members of a class prescribed by Division 1, a sponsor	153 (1) Pour parrainer un étranger et les membres de sa famille qui appartiennent à une catégorie établie à la section 1, le répondant doit satisfaire aux exigences suivantes :
…	…
(b) must make a sponsorship application that includes a settlement plan, an undertaking and, if the sponsor has not entered into a sponsorship agreement with the Minister, a document issued by the United Nations High Commissioner for Refugees or a foreign state certifying the status of the foreign national as a refugee under the rules	b) faire une demande de parrainage dans laquelle il inclut un plan d'établissement, un engagement et, s'il n'a pas conclu d'accord de parrainage avec le ministre, un document émanant du Haut-Commissariat des Nations Unies pour les réfugiés ou d'un État étranger reconnaissant à l'étranger le statut de réfugié selon les règles applicables par le Haut-

applicable to the United Nations High Commissioner for Refugees or the applicable laws of the foreign state, as the case may be; and	Commissariat des Nations Unies pour les réfugiés ou les règles de droit applicables de l'État étranger, selon le cas;
(c) must not be — or include — an individual, a corporation or an unincorporated organization or association that was a party to a sponsorship in which they defaulted on an undertaking and remain in default.	c) ne pas être — ou s'abstenir d'inviter à prendre part au parrainage — un individu ou une personne morale ou association qui a été partie à un parrainage à l'occasion duquel il a manqué aux obligations prévues dans un engagement et qui demeure en défaut.
Undertaking	**Engagement**
(2) The undertaking referred to in paragraph (1)(b) shall be signed by each party to the sponsorship	(2) L'engagement visé à l'alinéa (1)b) doit être signé par toutes les parties au parrainage.
Joint and several or solidary liability	**Obligation solidaire**
(3) All parties to the undertaking are jointly and severally or solidarily liable.	(3) Toutes les parties à l'engagement sont solidairement responsables de toutes les obligations qui y sont prévues.
…	…

[46] As a note on section 153 of the *IRPR*, the Applicants were sponsored under the Temporary Policy; they do not have the UNHCR or a foreign state certifying their refugee status.

Thus, while the Temporary Policy waives the requirement for UNHCR or foreign-state recognition, the other provisions of section 153 apply.

[47] Subsection 154(1) of the *IRPR* provides an officer shall approve an application in certain circumstances, and is a focus of these Reasons:

Approval of application	**Autorisation de la demande**
154 (1) An officer shall approve an application referred to in paragraph 153(1)(b) if, on the basis of the documentation submitted with the application, the officer determines that	154 (1) L'agent autorise la demande visée à l'alinéa 153(1)b) s'il conclut, sur la foi de la documentation fournie avec la demande, que :
(a) the sponsor has the financial resources to fulfil the settlement plan for the duration of the undertaking, unless subsection 157(1) applies; and	a) d'une part, le répondant dispose de ressources financières suffisantes pour exécuter le plan d'établissement pendant la durée de l'engagement, à moins que le paragraphe 157(1) ne s'applique;
(b) the sponsor has made adequate arrangements in anticipation of the arrival of the foreign national and their family members in the expected community of settlement.	b) d'autre part, le répondant a pris des dispositions convenables en prévision de l'arrivée de l'étranger et des membres de sa famille dans la collectivité d'établissement.

VII. Parties' positions and Analysis

A. *Issue 1 – Whether the Officer acted unreasonably in finding FTC failed to provide sufficient evidence that it had the financial resources as a community sponsor to fulfil the settlement plan for the duration of the undertaking for all the refugees being sponsored.*

[48] The first material requirement requires FTC as sponsor to show it has financial resources to fulfil the settlement plan for the duration of the undertaking, per paragraph 154(1)(a) of the *IRPR*:

Approval of application	**Autorisation de la demande**
154 (1) An officer shall approve an application referred to in paragraph 153(1)(b) if, on the basis of the documentation submitted with the application, the officer determines that	154 (1) L'agent autorise la demande visée à l'alinéa 153(1)b) s'il conclut, sur la foi de la documentation fournie avec la demande, que :
(a) the sponsor has the financial resources to fulfil the settlement plan for the duration of the undertaking, unless subsection 157(1) applies	a) d'une part, le répondant dispose de ressources financières suffisantes pour exécuter le plan d'établissement pendant la durée de l'engagement, à moins que le paragraphe 157(1) ne s'applique;
…	…

[49] The Officer was not satisfied FTC had sufficient financial resources to support the Applicants. Notwithstanding that FTC had or appears to have had sufficient money in trust to meet its obligation to financially contribute the Applicants' settlement assistance in the government-prescribed amounts for the one-year period concerned, the Officer concluded otherwise because FTC failed to show how the funds were sourced, and did so with reference to the CBC story. In addition, the Officer considered FTC did not provide evidence to satisfy the Officer's doubts that FTC could financially fulfil the settlement plan without the refugees' contribution:

> In my third procedural letter sent to Fast to Canada on December 1st 2017, I have approached them with my concerns that without

> the financial contribution of the refugees that they are sponsoring they cannot support the refugees financially as it is required in the IRPR 154 (1) (a) after reviewing an article published by CBC.

[50] The Applicants submit the Officer erred in finding a lack of financial resources. They point to bank documents, Memoranda of Understanding [MOU] stating that the refugees were not to provide their own funds, and signed but undated statements (mis-described as affidavits) - one from the lead Applicant stating funds were contributed by "our relative" which then named the lead Applicant himself. The Applicants submit the lead Applicant is the only Applicant who paid the cost of his own settlement himself. Statements for the other Applicants, signed by their "relatives", "friends", or Ibid and Qita appear to indicate funds for their settlement, likewise held in trust in the Canadian bank, came from "relatives and friends."

[51] The Applicants submit the Officer should not have relied on the CBC story because it related to an earlier and very different factual situation, namely a fee-based for-profit retainer undertaken in 2016 at which time FTC acted as paid counsel for a refugee claimant being sponsored by CNIA, a different sponsoring group. Conversely, and while the case at bar was filed in 2016, FTC is the sponsor not CNIA. Moreover, the FTC's refugees had the MOU stating they cannot provide their own funds for resettlement. However, the Officer rejected the MOU, Ibid's reply, and the statements confirming who put up the funds. The Officer does not explain why she rejected the evidence, rendering the Decision arbitrary and unjustified: *Thavachchelvam v Canada (Minister of Citizenship and Immigration)*, 2014 FC 601, per Martineau J at para 5; *Rahmatizadeh v Canada (Minister of Employment and Immigration)*, [1994] FCJ No 578 (QL), per Nadon J at para 4; *Ghofrani v Canada (Minister of Citizenship and Immigration)*, 2008 FC 767, per Zinn J at para 30. The Applicants also submit that where reasons are insufficient, it is

not up to a court to rewrite them: *Canada (Attorney General) v Kane*, 2012 SCC 64, per the Court at para 9; *Korolove v Canada (Minister of Citizenship and Immigration)*, 2013 FC 370, per Strickland J at paras 40–46; *Qin v Canada (Minister of Citizenship and Immigration)*, 2013 FC 147, per Gleason J at para 44.

[52] With respect, I agree with the Applicants on this point. The transaction reported in the CBC story is different from the one made by the Applicants. While it is apparent the Officer had unalleviated concerns with the story, what is missing is an intelligent and transparent route to that decision. Therefore this aspect of the Decision is not reasonable.

[53] The Applicants submit the Officer erred in basing her finding, in part, on FTC's failure to provide source of funds. The Applicants submit the Officer never asked for specific proof, therefore it was unfair to refuse applications on the basis: *Ge v Canada (Minister of Citizenship and Immigration)*, 2017 FC 594, per Southcott J at paras 29–30, 34–35; *Bushra v Canada (Minister of Immigration, Refugees and Citizenship)*, 2016 FC 1412, per Brown J at paras 14–15; *Yonten v Canada (Minister of Citizenship and Immigration)*, 2016 FC 588, per Heneghan J at paras 25–28. In my respectful view, there is no merit to this submission. The Officer made many requests and it avails them nothing to have replied, when asked for the source of funds, that they would supply the source if asked. They were asked, they elected not to answer, and may not blame the Officer for their decision.

[54] The Applicants submit the Officer erred in concluding there were insufficient funds because there is clear evidence sufficient funds were held in trust for the refugees' settlement. I

agree with the Applicants on this submission. The settlement funds were in the bank in trust for the lead Applicant, and it appears the same is true for the other Applicants as well. The Officer did not dispute the sufficiency of the funds on deposit in the Canadian bank in trust for the Applicants. Therefore I am unable to see a sufficiency-of-funds issue. For the same reasons - the funds are in trust in the bank - I am unable to see how the argument that 'the funds might not being forthcoming' arises in this case. Likewise there is no issue with what happens in the event of a default in funding: the answer is the money is in trust in the bank. While these arguments were advanced by the Respondent, in my respectful view they are not relevant.

[55] The Officer was concerned about *where* those "sufficient funds" came from, i.e., their source. The Respondent submits the source of funds is important to enable the Respondent to prevent the exploitation of vulnerable people. In my view, this is an important consideration for the Respondent when measuring a sponsored refugee claim. However, the Officer did not refer to exploitation in the GCMS notes. Nor did the Officer refer to the possibility of exploitation of vulnerable people in these notes. The Respondent's submission in this respect is after-the-fact in the sense it is a reason for dismissing the applications not mentioned by the Officer.

[56] More importantly, the Officer did not refer to possible exploitation of vulnerable people in any of the three PFs. Had this been the case, such a reference would raise an issue of procedural fairness. In my view, if these were the Officer's concerns, notice should have been given to FTC, in connection with which, a relevant inquiry might have considered the claimant's ability to pay the cost of their own settlement assistance. In this case, the Applicants were not

given an opportunity to address these issues. On the Respondent's theory, then, this aspect of the case would put a cloud of unfairness over of the Officer's paragraph 154(1)(a) determination.

[57] The refugee's ability to pay the cost of their own settlement is dealt with in "Appendix A – Financial Guidelines" in the Private Sponsorship of Refugees (PSR) Application Guide (IMM 5413) [PSR Guide] setting out the Respondent's guidelines for privately sponsored refugees:

> - Sponsoring groups will not accept the payment of funds from the refugees for the submission of a sponsorship, either before or after their arrival in Canada. However, the refugee's relatives in Canada may contribute funds to the resettlement.
>
> - Refugees have no legal obligation, and cannot be made to enter into a legal or informal obligation, to prepay or repay their sponsoring groups for lodging, care, and settlement assistance and support.
>
> ...
>
> - Sponsoring Groups are expected to provide the refugees with both financial and settlement support for a period of up to 12 months. ...Sponsored refugees who bring financial resources to Canada should manage their own finances and are expected to contribute to their own settlement costs. ...
>
> [Emphasis added]

[58] The first bullet is the closest one gets to a statement of what a sponsored refugee claimant may pay in terms of sponsorship costs. As I understand it, the Respondent submits the first bullet prohibits a refugee claimant from paying the cost of his or her own sponsorship. If it does, the Respondent submits that the lead Applicant is off-side the guideline. As for the non-lead Applicants, in connection to the first bullet, the majority of them rely on their relatives and

friends; many of whom may also be off-side the guideline because, as the Respondent submits, many of them relied-upon relatives who sent funds are not "in Canada."

[59] I am not persuaded this interpretation is defensible. The flaw is that this guideline does not say a claimant may not pay the cost of his or her sponsorship. It says only that sponsoring groups "will not accept the payment of funds from the refugees <u>for the submission</u> of a sponsorship, either before or after their arrival in Canada" [emphasis added]. The words "for the submission of a sponsorship" must have a defensible interpretation; yet, the Respondent's submission reads these words out of the guideline. In my respectful view, these words must remain in the guideline and be applied as written. They prohibit payment of funds for the *submission* of a sponsorship, not *payment* for settlement assistance itself.

[60] The relevant provisions of the current PSR Guide have been amended materially. The amended 2019 version of the PSR Guide, now titled "Guide for Sponsorship Agreement Holders to privately sponsor refugees (IMM 5413)", seems to better reflect the position the Respondent is taking in this case. The 2019 PSR Guide now provides:

> <u>Sponsoring groups will not</u>:
>
> ...
>
> - <u>accept funds from the refugees</u> for any of the situations below, either before or after the refugees arrive in Canada:
>
> - as payment for submitting a sponsorship;
> - <u>as a prepayment or repayment for lodging, care and settlement assistance</u>;
> - as a deposit to guarantee the refugees will stay with the sponsor for one year after they arrive.
>
> [Emphasis added]

[61] The amended version differentiates between paying for the "submission" of a sponsorship versus paying for settlement assistance, which supports my finding to that effect. Importantly, the amended PSR Guide appears to directly prohibit prepaying the cost of settlement assistance, while the version applicable in the cases at bar did not explicitly make that point.

[62] On balance, on the issue of financial resources, I am not persuaded the Officer's finding is reasonable. I will therefore proceed to consider the decision regarding 'settlement assistance' as outlined by paragraph 154(1)(b) of the *IRPR*.

B. *Issue 2 – Whether the Officer acted unreasonably in finding FTC failed to provide sufficient evidence that it would be able to provide settlement assistance to the refugees being sponsored.*

[63] The Applicants, to succeed, must establish that both of the Officer's findings are unreasonable, namely the Officer's determination under paragraph 154(1)(a) regarding financial resources *and* the Officer's determination under paragraph 154(1)(b) concerning settlement assistance.

[64] The second relevant requirement for sponsorship application approval is adequate arrangements for settlement assistance, per paragraph 154(1)(b) of the *IRPR*:

Approval of application	**Autorisation de la demande**
154 (1) An officer shall approve an application referred to in paragraph 153(1)(b) if, on the basis of the documentation submitted with the application, the officer determines that	154 (1) L'agent autorise la demande visée à l'alinéa 153(1)b) s'il conclut, sur la foi de la documentation fournie avec la demande, que :

…	…
(b) the sponsor has made adequate arrangements in anticipation of the arrival of the foreign national and their family members in the expected community of settlement.	b) d'autre part, le répondant a pris des dispositions convenables en prévision de l'arrivée de l'étranger et des membres de sa famille dans la collectivité d'établissement.

[65] The Officer was not satisfied FTC met the requirements of paragraph 154(1)(b) of the *IRPR*, concluding FTC will in 'no way' be involved in the fulfilment of the settlement plan:

> In my first procedural letter sent to Fast to Canada on June 19th 2017, I approached them with my concerns that Syrian Active Volunteer (SAV) was the only organization designated to provide all Settlement assistance and FTC was not included in the Settlement Plan. FTC added SAV as a co-sponsor in all their applications submitted to us which failed to alleviate my concerns as FTC, the sponsor, was not participating in any way in the settlement of the refugees they were sponsoring. As per our PSR guide "Where co-sponsors are involved in the sponsorship, discuss settlement arrangements and responsibilities together and jointly fill out the settlement plan" and as per our IP3 guide "Section 39: Co-sponsor share responsibility with the CS for providing settlement support (either financial or non-financial) to the refugee for the duration of the sponsorship. Community Sponsors are expected to play an active role with the co-sponsor to deliver settlement support. In my second procedural letter sent to Fast to Canada on September 22nd 2017, I approached them with my concerns that as a community sponsor they will not be able to provide settlement assistance, emotional and social support to the refugees because they were not included in the settlement plan and they only have 7 staff's [sic] in their organization which is a small amount of people to provide settlement assistance to the 30 families they are sponsoring considering that they are all working and have other duties outside their work obligation. In their response, FTC stated that SAV will be the main organization supporting the refugees they are sponsoring. <u>This failed to alleviate my concerns as again it appears that FTC, the sponsor, will in no way be involved in the fulfillment of the settlement plan.</u>
>
> [Emphasis added]

[66] In my respectful view, the Officer went too far in concluding FTC "will in no way be involved in the fulfillment of the settlement plan." This conclusion is not defensible on the facts. FTC provided evidence of its involvement in settlement assistance, namely, placing refugees in temporary accommodations and helping them find permanent ones. FTC would also conduct an orientation sessions for the Applicants as they arrived. In this connection the 3rd Settlement Plan stated FTC would: "provide orientation to the refugees about (public transportation, opening bank accounts, getting their SIN, applying for child tax benefits, enrolling their children at schools, connecting them with newcomer centres and recruitment centers [sic] to help them settle and find jobs."

[67] Moreover, even on the lead Applicant's record, which does not include the 3rd Settlement Plan, FTC checked off all 24 boxes describing various Settlement Needs including both Start-up Costs and Settlement Assistance, while SAV checked off only 15, namely those under Settlement Assistance. This checklist is part of the application form used to "identify who will be providing for the settlement needs of the refugees you sponsor." Both the Sponsor (FTC) and Co-sponsor (SAV) signed the form; that is, FTC's asserted responsibilities were corroborated by SAV. It is worth recalling that it was the Officer who 'strongly suggested' FTC arrange to have SAV as a co-sponsor, which FTC did.

[68] In short, the Officer's determination respecting settlement assistance is not defensible in that it does not come within the range of possible, acceptable outcomes which are defensible in respect of the facts.

VIII. Conclusion

[69] I have determined the Officer's findings under both paragraphs 154(1)(a) and 154(b) are unreasonable. Stepping back and looking at the Decision as an organic whole, I find the Decision does not fall within a range of possible, acceptable outcomes that are defensible in respect of the facts and law as required by the Supreme Court of Canada in *Dunsmuir*. Therefore judicial review will be ordered. A copy of these Reasons shall be placed in the Court files of each Applicant shown on the style of cause.

IX. Certified question

[70] The hearing ran beyond the scheduled time. Therefore, in that unusual circumstance I allowed counsel to file draft questions to certify after the hearing; as is well known, counsel are normally expected to come to the hearing with such questions in hand.

[71] Thus, after the hearing, the Applicants requested the Court to certify two questions for consideration by the Federal Court of Appeal:

> Can the Minister through an instruction manual add a processing criterion for an application which is not provided for in the Act and Regulations. Is this within an administrative prerogative or does it constitute a fetter on the officer's statutory power of decision making?
>
> Can an officer's decision be said to be reasonable when the officer has imposed on a sponsor a standard of conduct for which no notice has been provided in advance to sponsors and applicants?

[72] In my respectful view neither question should be certified. The first does not arise; while fettering of discretion was raised as the third issue in this application, these Reasons do not consider it. The second is a variant of the first and likewise does not arise in this case. Thus, neither would be dispositive of an appeal. In the result no question may be certified: *Liyanagamage v Canada (Secretary of State)* (1994), 176 NR 4 at paras 4–6; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 paras 7–10, and *Zazai v Canada (Citizenship and Immigration)*, 2004 FCA 89 at paras 11–12.

JUDGMENT in IMM-1011-18

THIS COURT'S JUDGMENT is that:

1. Judicial review is granted.
2. The Decision is set aside as are the decisions in all the applications referred to in the style of cause.
3. All applications referred to in the style of cause are remanded to a different decision-maker in accordance with these reasons.
4. No question of general importance is certified.
5. There is no order as to costs.
6. A copy of these Reasons shall be placed in the Court files of each Applicant shown on the style of cause.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1011-18
STYLE OF CAUSE:	SAM IBID AND ABDULLAH ZAID ISMAIL v THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MARCH 6, 2019
JUDGMENT AND REASONS:	BROWN J.
DATED:	MARCH 22, 2019

APPEARANCES:

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