Federal Court  Cour fédérale

Date: 20250219

Docket: IMM-585-21

Citation: 2025 FC 313

Ottawa, Ontario, February 19, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

ALLAH DINO KHOWAJA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by an Immigration Officer [Officer] of the Embassy of Canada, Immigration Section, in Abu Dhabi, dated January 14, 2021 [Decision]. The Officer refused the Applicant's temporary resident visa [TRV] application, finding the Applicant, a former member of the Pakistan Intelligence Bureau [IB], inadmissible to Canada pursuant to s 34(1)(f) as it relates to s 34(1)(a) (as a member of an organization that

engaged in espionage “against Canada or that is contrary to Canada’s interests”) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

II. Facts

[2] The Applicant is a 59-year-old citizen of Pakistan. At the time of the Decision, he was a very senior member of the Sindh Police force, which he joined in 1987. However, in 2009 he accepted senior-level lateral employment with the Pakistan Intelligence Bureau [IB] for two years, between July 2009 and August 2011.

[3] Some years ago, the Applicant applied for a temporary resident visa [TRV or visa]. The Applicant says he and his wife wished to visit Canada to attend an immigration selection interview to further his application for permanent residency under the Quebec provincial nominee system. The Court was told he has a permanent resident application pending elsewhere in the immigration system. There is scant information about this other application and in any event it is not the subject to this application for judicial review which only concerns his visa application from Pakistan.

[4] By way of procedural background, the Officer in this case relied on submissions of the Applicant together with open-source information from the internet and certain confidential information. Originally the Respondent advised the Court they would not rely on the confidential information in opposing judicial review. The confidential information was redacted from the Certified Tribunal Record by the Respondent, and I approved the redactions. Proceedings in this matter then were placed in abeyance with my permission, on consent, pending a decision by the

Federal Court of Appeal in what it eventually decided per *Canada (Public Safety and Emergency Preparedness) v Weldemariam*, 2024 FCA 69 [*Weldemariam*]. The Respondent having regard to matters raised in *Weldermariam,* changed its position and asked for permission to rely on the redacted confidential information, which I granted. In the result, the Court held the usual public hearing on a Zoom conference call.

[5] Subsequently I heard submissions on the confidential information from difference counsel for the Respondent without the presence of the Applicant or his counsel (*ex parte, in camera*). I have not considered or relied on any of the confidential information in deciding this case.

A. *October 2019 interview*

[6] Reverting to the merits of this case, the Applicant was eventually scheduled to be interviewed by a visa officer in October, 2019.

[7] By letter dated October 2, 2019, the visa Officer requested the Applicant attend an interview for "quality assurance purposes." He was advised not to bring any documents other than the letter and his passport.

[8] While the interview went beyond quality assurance purposes (which was an erroneous label given to it by mistake), the Applicant was previously required by letter from the visa office dated February 21, 2018, to send additional detailed information to the visa Officer re his employment both with the Pakistani police and the IB. He supplied this detailed employment information March 12, 2018.

[9] The Applicant says he did not anticipate concerns with his past employment to be raised at the interview. The Respondent says this lacks a "ring of truth." I generally agree with the Respondent on this point. As a seasoned police officer and, in addition, as a former senior IB officer, the Applicant was, and certainly together with his immigration team, should have been aware the Officer might raise admissibility issues concerning his work at the IB and /or the police (in respect of which he had also been cautioned by his legal team).

[10] While I am not completely persuaded admissibility issues would necessarily be beyond the scope of a "quality assurance" interview, it does not matter because as the interview progressed and procedural fairness letters were sent and responded to, the Applicant was given the gist of the Officer's concerns, namely espionage by the IB (of which he had been a senior member) and a full and fair opportunity to respond as discussed below.

[11] During the interview, the Applicant was asked about his work, both as a senior IB officer and as a police officer.

[12] At the interview, the Officer specifically gave notice of their concern with the Applicant's admissibility on the basis of his membership in the IB per s 34(1)(f) of *IRPA*, that is, that the IB might be or was in fact an organization in respect of which there might be reasonable grounds to believe engages, has engaged or will engage in espionage against Canada or its interests per s 34(1)(a) of *IRPA.* Indeed, at the interview the Officer read out and explained the text of *IRPA's* wording in this respect.

[13] After asking and receiving answers to numerous questions at the interview relating to his role in the IB and espionage by the IB, the Officer found the Applicant "evasive" and "not credible" in some respects. Having reviewed the transcript of the interview, I conclude these Officer's characterizations and findings of evasiveness and non-credibility are reasonable: they are justified on the record.

[14] When asked in what capacity he served in the IB, the Applicant said he "dealt with administrative issues of the whole office, financial issues and bills approval, posting transfers, compilation of reports and sending them on to headquarters." The Applicant was then asked to describe the IB's role in Pakistan. The following is part of the interview:

> Q: Tell me about the role of the Intelligence Bureau in Pakistan?
>
> A: The Intelligence Bureau is a civil intelligence agency, it collects information on different accounts. There are three sections: one is the political wing that looks after day to day governance issues and day to day affairs; one part is the counter terrorism section, and then there is the technical section, the administration section, and there is a section that deals with the foreign diplomats.
>
> Q: How does the Intelligence Bureau carry out its role in Pakistan?
>
> A: I was not dealing with it personally. There are a lot of activities going on in missions, functions and events, meetings, that are done with the political hierarchy, this is covered by the Intelligence Bureau.
>
> Q: When you say `covered by the Intelligence Bureau' what do you mean?
>
> A: For example, when diplomats go from one place to another for a meeting, the agencies report the meeting to the headquarters.
>
> Q: Are these activities conducted surreptitiously without the diplomat's knowledge or awareness?
>
> A: No, no I think they know about it.

Q: Even if they knew or discovered members of the Intelligence Bureau, the intent of the Intelligence Bureau was to conduct surreptitious or covert monitoring of these diplomats for intelligence gathering, correct?

A: No I don't think so. But I was never dealing with that branch.

…

Q: To your knowledge, did the Intelligence Bureau conduct clandestine or covert operations to achieve its objectives?

A: No. The Intelligence Bureau just provides information to the field police. It is the police who carry out these actions. The Intelligence Bureau only monitor the telephones, monitors and pass on the reports to local police.

Q: To your knowledge, has the Intelligence Bureau engaged in the monitoring of other groups besides suspected/known terrorist organizations?

A: No.

Q: Well, what about foreign diplomats that you mentioned earlier?

A: No, they would monitor meetings and attend functions with diplomats and report on those functions.

Q: Take for example me as a diplomat. If I attend a local event where there are many attendees. I do not know all of those who are invited. Am I supposed to know who is an Intelligence Bureau agent at that function?

A: Well, they are invited too.

Q: Yes, but how am I supposed to know that they are an Intelligence Bureau agent? They do not announce their presence, that makes it a clandestine, correct?

A: Maybe, but I was never a part of that.

[Emphasis added]

[15] Also during the interview, the Applicant told the Officer he was represented by counsel who had informed him that "if you are involved in any human rights violations you are not admissible to Canada":

> Q: You have counsel for this application and I believe counsel assisted you with the court review of the first decision in this visa case, correct?
>
> A: Yes.
>
> Q: Did your counsel explain any inadmissibility issues you may face with the Canadian Immigration Section or the visa office
>
> A: Yes, they explained that if you are involved in any human rights violations you are not admissible to Canada.
>
> Q: Anything else?
>
> A: No.

[16] Following this, the Officer actually read out s 34(1)(a) to the Applicant, noting he had "no concerns with subsections (b) through (e)" of 34(1), (leaving (a) the only issue):

> Q: That section you referred to is section 35 of the Immigration and Refugee Protection Act. The section before that one is Inadmissibility on Security grounds. That section has six subsections some of which I will read to you: Security under section 34(1), a permanent resident of foreign national is inadmissible on security grounds for (a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests. I have no concerns with subsections (b) through (e).
>
> [Emphasis added]

[17] The Applicant was also given notice of and an opportunity to respond to the Officer's inadmissibility concerns re s 34(1)(f) as it relates to s 34(1)(a) of *IRPA*. The Officer explained their concern was with what the IB did, not necessarily the Applicant's personal actions:

> Q: … Subsection (f) reads being a member in an organization that there are reasonable grounds to believe engages, has engaged or

will engage in acts referred to in paragraph (a), (b), (b.1) or (c). Do you understand what I have read?

A: Yes.

Q: Based on the information before me, my view is that the Intelligence Bureau's gathering of information and intelligence demonstrates the organization engages in espionage.

A: I don't agree with you.

Q: Why?

A: As I have seen they don't carry it out, espionage, one in any incidence here or in any country. This is just the collection of information and nothing done outside the borders of Pakistan; and two, as my work there I did not see or conduct any activity that hurts the interest of Canada or any other country.

Q: Ok. This section triggers inadmissibility only on the basis that a person is a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts of espionage that is against Canada or that is contrary to Canada's interests. I have heard what you've said. It is not necessarily your own personal actions; it is the actions by the organization. There is open source information that indicates the Intelligence Bureau engages in espionage, monitoring not only suspected terrorists, but political activists, opposition parties, and foreigners. I interpret these activities, along with your descriptions of what they do, as espionage. How do you respond to this allegation?

A: Intelligence gathering in your own country for security is not the same as espionage.

Q: If I were to tell you that the Canadian Courts find that espionage can be conducted in one's own country, what would you reply?

A; Well unless as I understand it, about working in HR on an administrative desk, how would that apply?

Q: As I noted, it is not your role as an HR administrator I am speaking about. You've stated Intelligence Bureau conducts monitoring of individuals in Pakistan, both nationals and foreigners. This is espionage. While you may not have personally participated in these activities, sections of the Intelligence Bureau engage in it and according to the law in Canada, any member of

> the Intelligence Bureau can be found inadmissible. How do you reply?
>
> A: The passing of administrative reports, the passing of officer reports, I don't know what the open sources say all I can say is that they were not carrying out anything negative or that hurts any foreign country.
>
> Q: How do you know that if you did not participate or have knowledge of their activities?
>
> A: Only my knowledge, I never found anything that was against the interest of those countries. The Intelligence Bureau has a limited role in intelligence as they report directly to the Prime Minister of Pakistan.
>
> Q: You've admitted membership in the Intelligence Bureau of Pakistan from 18 July 2009 to 01 August 2011, correct?
>
> A: Yes.
>
> Q: In my view of the law as it is written, the Intelligence Bureau of Pakistan is an organization that meets the requirements of section 34(1)(a) by (f): you've stated the Intelligence Bureau has engaged in acts that I consider espionage for the purposes of this section. These acts have taken place throughout the Intelligence Bureau's long history in Pakistan.
>
> A: Maybe.
>
> [Emphasis added]

[18] Having had s 34(1)(a) and s 34(1)(f) read out and explained to him, and given the lengthy and intensive discussion about the Applicant's membership in the IB and what the IB did, I find no merit in the Applicant's allegation he was not given notice of the Officer's concerns with his work in the IB, or that the IB was considered as an organization there might be (and were found to be in this case) reasonable grounds to believe engages, has engaged or will engage in acts of espionage.

[19] At the conclusion of the interview, when asked if there was anything else he would like clarified, the Applicant stated (inaccurately re 34(1)(f) and contrary to what the Officer told him):

> A: No, but I would like to say that you can take a decision on an individual basis, and not the organization as a whole. I would like to visit Canada. I attended a training course in Canada, and I completed my responsibility as a responsible citizen and I have come back. I have a distinguished career in my service, I have reached the highest level of civil service, I have never done any wrong, no human rights violations or espionage activities at all. On that I have a right to go to Canada.
>
> Q: I appreciate that sir. I have read information you've provided and online about your career. As I indicated, it is not about what you've done personally; inadmissibility under this section, 34(1)(f), covers a broad range and it is about membership in an organization that has engaged in acts, in the case of the Intelligence Bureau, the organization, acts of espionage.
>
> [Emphasis added]

B. *Two procedural fairness letters*

[20] After the interview and its procedural fairness discussion and responses, the Officer sent the Applicant two procedural fairness letters [PFLs], dated November 4, 2019 [PFL1] and February 24, 2020 [PFL2]. Given the Officer's concerns were with espionage per s 34(1)(a), in my view these were both directed at s. 34(1)(f) that is, the Applicant's membership in the IB an organization there were reasonable grounds to believe engages, has engaged or will engage in espionage as the Officer discussed at the interview.

[21] Through PFL1, the IB gave the Applicant an opportunity to provide written information to address the Officer's concerns that he may be a member of the inadmissible class of persons described in 34(1)(f) of *IRPA*.

(1) First PFL regarding inadmissibility concerns as a former IB member

[22] PFL1 states the following:

> On **October 23rd, 2019** you attended an interview at our office to discuss my concerns that there are reasonable grounds to believe that you are a member of the inadmissible class of persons described in **Section 34(1)(f)** of the *Immigration and Refugee Protection Act.*
>
> In order to continue the processing of your application, I am providing you with the opportunity to provide written information to address my concerns that you may be you are a member of the inadmissible class of persons described in **section 34(1)(f) of IRPA.**
>
> [Emphasis in original]

[23] On November 19, 2019, the Applicant requested an extension of time to respond to PFL1, alleging "the content of the procedural fairness letter is completely deficient and provides no meaningful basis or detail for the allegation of inadmissibility pursuant to section 34(1)(f) of the *Immigration and Refugee Protection Act*" [emphasis removed].

[24] The Applicant by email dated December 13, 2019 made a formal request for disclosure of the Officer's interview notes and all other evidence the Officer used to render a determination of the Applicant's admissibility.

[25] The Applicant ultimately (February 6, 2020) responded with 11 pages of submissions and a 13 document, 65 page evidence package from his legal team. These lengthy submissions are summarized in the Applicant's Further Memorandum (at para 41):

> a) That the principles of procedural fairness were violated by not disclosing to the Applicant that the purpose of his October 23, 2019 interview was for admissibility on security grounds. The Applicant's letter of invitation to the interview stated that the purpose of the interview was "quality assurance,"
>
> b) The Applicant's procedural fairness rights were further violated by the refusal to provide disclosure with regards to the documents relied upon in coming to a finding of potential inadmissibility, despite the Applicant's repeated requests for same;
>
> c) The procedural fairness letter was inadequate and lacking in sufficient detail to inform the applicant of the case they must meet, as required by law.

[26] The Applicant's submissions confirmed his recognition (which counsel termed an "assumption") that, as the visa Officer explicitly explained at the interview, the Officer was concerned with the IB's involvement in espionage against Canada or contrary to its interest. Points argued included:

> - An indication that the Applicant was making submissions under protest, as the basic level of procedural fairness had not been met, and under the assumption (from what he was able to glean from the interview questions) that the allegation of inadmissibility was espionage.
>
> - An additional request for disclosure of evidence relied on;
>
> - Country document evidence of Pakistan's cooperation with both Canada and the United States and its role as a strategic ally to both countries during the war in Afghanistan. The Applicant's invitation by the RCMP to participate in a police training workshop in 2012 was referenced as an example.

(2) Second PFL providing Applicant with hyperlinks to the open source information on the IB discussed at visa interview

[27] PFL2 states:

> On October 23, 2019 you attended an interview at our office to discuss my concerns that there are reasonable grounds to believe that you are a member of the inadmissible class of persons described in Section 34(1)(f) of the *Immigration and Refugee Protection Act.*
>
> During the interview, reference was made to open source information. This information is found at the following website addresses:
>
> Global Security.org: https://www.globalsecurity.org/intell/world/pakistan/ib.htm
>
> U.S. Department of State: https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/pakistan
>
> Asylum Research Centre (ARC), Pakistan Country Report, June 2015, available at: https://www.refworld.org/docid/558909364.html
>
> Asylum Research Centre (ARC), Pakistan Country Report, June 2018 (COI up to March 2018) at: https://asylumresearchcentre.org/wp-content/uploads/2018/06/ARC-COI-Report-on-Pakistan_-June-2018.pdf
>
> In order to continue the processing of your application, I am providing you with the opportunity to provide written information to address my concerns that you may be a member of the inadmissible class of persons described in 34(1)(f) of IRPA.

[28] On March 9, 2020, the Applicant responded to PFL2 with an additional 4 pages of submissions, and 3 documents totalling 37 pages. These submissions alleged “the reports are general in nature and often very vague as to the general activities of the IB. These cannot be the basis upon which a finding of inadmissibility can be made.” The Applicant’s response concludes:

> There is no disclosed information or basis to assume that the Applicant or the IB more broadly engaged in espionage that is contrary to Canada's interests, which is a necessary precondition to a finding of inadmissibility. In fact, the very opposite appears to be true — the IB's work is integral to the interests of Canada in the region.
>
> If adverse information exists, it ought to be brought to the attention of the Applicant so that he can directly address it. Similarly, if there are other grounds of concern aside from espionage, the Applicant ought to be given notice of the precise nature of the concern, and given an opportunity to provide further submissions.

[29] It seems to me the Applicant knew enough at that time to confront the issue. Indeed he did attempt to assuage the Officer's obvious concerns about espionage. The onus is always on the Applicant in a claim like this, and it was up to him to put his best foot forward rather than attempting to further avoid the espionage and IB issues: see *Wang v Canada (Citizenship and Immigration)*, 2024 FC 1965 at paragraph 47.

[30] In the result I conclude there is no merit in the Applicant's assertion he lacked the gist and fair notice of the case against him, and/or that he was not afforded a full and fair opportunity to respond. The Officer reasonably informed the Applicant that the concern was his membership in the IB inasmuch as the IB was an organization that engaged in espionage pursuant to s 34(1)(f) as it relates to s 34(1)(a) and did so at the interview. The Officer then provided the Applicant with the open source information discussed and relied upon at that time, and sent the Applicant two PFLs in respect of which the Applicant filed two detailed responses through counsel. There is, as discussed later, and with respect, no merit in the Applicant's assertion he was entitled to "disclosure of [the Officer's] interview notes and all other evidence" [emphasis added] they were using to render a determination of the Applicant's admissibility.

III. Decision under review

[31] The Officer found there were reasonable grounds to believe the IB engages, has engaged or will engage in espionage. The Decision found the Applicant inadmissible under s 34(1)(f) of *IRPA* because of his former membership in the IB and what the IB in relation to espionage.

[32] The Decision responded to the procedural fairness concerns, finding (as I have) that no breach occurred:

> On October 2, 2019 a letter was sent to the Applicant advising him of an interview for the purpose of quality assurance; this was an error that was not discovered until Counsel for the Applicant made preliminary objections in response to the first post-interview procedural fairness letter sent on November 4, 2019. At the interview conducted in Islamabad, Pakistan on October 23, 2019, Mr. Allah Dino KHOWAJA ("the Applicant") was advised of my concerns with this application, specifically with his service history as it relates to section 34(1)(f) of the Immigration and Refugee Protection Act.
>
> On November 04, 2019 a procedural fairness letter was sent to the Applicant allowing him the opportunity to submit additional information in response to my concerns. The Applicant requested … two extensions of time in order to submit a reply to the procedural fairness letter: one on November 29, 2019 and the other on December 11, 2019. Both extensions were granted for a total of z60 days to reply. On February 6, 2020, the Applicant submitted the following documentation: 1. Cover letter and Submissions dated February 6, 2020 (11 pages); 2. A Documentary Evidence Package, indexed but unnumbered, containing 13 documents (65 pages).
>
> By letter dated February 24, 2020, a second procedural fairness letter was sent to the Applicant outlining the open sourced materials referenced during the interview. This letter provided the Applicant an additional 15 days to respond to this information. On March 9, 2020, the Applicant replied to the second letter and provided the following documentation: 1. Cover letter and submissions by counsel (3 ½ pages) 2. A Documentary Evidence Package, with 3 documents (37 pages)

> Despite the error made with the original interview letter, the Applicant appeared for interview and answered the questions asked of him. The Applicant is best positioned to explain aspects of his employment history in Pakistan and the organizations with whom he worked; I do not expect the Applicant would require a need for preparation in this regard. While he claims he did not anticipate my concerns and was not prepared to address serious allegations of inadmissibility at the interview, I note during the interview the Applicant advised that his Counsel explained possible inadmissibility issues he may face with IRCC at some point prior to the interview. Moreover, the Applicant was provided two additional opportunities to submit any written information to address my concerns that were raised at the interview. The Applicant availed both opportunities. Procedural fairness was accorded in this case.
>
> [Emphasis added]

[33] The Officer determined the Applicant's work at the IB was voluntarily accepted and not under duress. As noted, the Officer found evasiveness and credibility issues with the Applicant's interview: "the Applicant often provided evasive responses and distanced himself from personal knowledge of most, if not all operational activities of the Intelligence Bureau… I find his claimed lack of knowledge and the evasive responses not credible given the applicant's senior rank within the organization."

[34] The Officer also considered and rejected the Applicant's arguments the IB did not engage in espionage:

> The Applicant's position is that the Intelligence Bureau did or does not engage in espionage; the organization simply collects information and has done nothing outside the borders of Pakistan. In his words "Intelligence gathering in your own country for security is not the same as espionage". I disagree with this position. Open source country information indicates that IB of Pakistan has engaged in acts referred to in paragraph 34(1)(a) of the Act [citing the documents noted above].

> …
>
> The Applicant states that the open source material I presented to him does not address how the activities of the IB can be described as against the interests of Canada and, more specifically, that there are no allegations of such activity against Canada made therein. I agree that Canada is not named in the documents; however, the use of monitoring techniques such as wiretapping, interception of electronic correspondence and opening of mail without court approval would constitute acts of espionage if committed against Canada, or contrary to Canada's interests if committed against a Canadian ally. As noted above, the Applicant admitted that the IB has a wing devoted to foreign diplomats; that their movements and attendance at local functions 'may be' clandestinely monitored and reported on to headquarters. The Applicant's reference to this internal surveillance and monitoring of foreign diplomats by the IB, which include Canadian diplomats and other allied diplomats with presence in Pakistan such as the USA and the UK, would be considered acts of espionage that are against Canada or contrary to the interests of Canada if committed against an ally.
>
> …
>
> The Applicant argues that the activities of the Intelligence Bureau inside Pakistan actually assists Canada's interests in the fight against global terrorism and security threats. I do not dispute that the sharing of information obtained by internal surveillance of a security threat or terrorist organization is a common interest between the countries; but one cannot conclude that espionage does not take place simply because of this cooperation. As noted by Dheeraj (supra) "there are examples where nations prioritized their national interests and spied on each other…a trusted ally spying on the other" (p. 146).
>
> [Emphasis added]

[35] Notably, the Officer considered and (unreasonably in my view) rejected the Applicant's submissions that the legal definition of espionage was 'narrowed' by Parliament in 2013 (in fact, that was the express purpose of the 2023 amendment to s 34(1)(a) identified by the Federal Court of Appeal later, in *Weldemariam*). The Decision states:

> The Applicant argues that the narrowing of the broad scope of section 34 and the resulting change in legislation has rendered the previous case law irrelevant. I disagree, particularly in cases where the Court has previously defined espionage. In examining the Federal Court of Appeal's definition of espionage in Qu as it relates to section 34(1) of the Act, the Honorable Justice Zinn of the Federal Court in Peer (2010 FC 752) stated:
>
> > [36] I have no doubt that many centuries ago one could not easily engage in espionage unless one travelled to a foreign land to gather the relevant information because there was no other way the information could be obtained. That is quite simply not the case now, if it ever was. If I were to accept the submission of the applicant that one cannot engage in espionage while remaining in one's own country, I would have to accept that intelligence agents who monitor telephone and internet communications from the safety of their country are engaged only in "intelligence gathering" and not in espionage, even when the information they gather relates to sensitive state secrets.
>
> The Federal Court of Appeal upheld this finding. The FCA in Peer (2011 FCA 91) held that one can be found inadmissible to Canada pursuant to section 34(1)(a) of the Act for engaging in an act of espionage even if "the person's activities consist of intelligence gathering activities that are legal in the country where they take place, do not violate international law and where there is no evidence of hostile intent against the persons who are being observed".
>
> Based upon these findings by the Court it is clear that intelligence gathering by the IB within the borders of Pakistan constitutes espionage.
>
> [Emphasis added]

[36] As will be seen, in my respectful view, the Officer (unknowingly) erred in the above. Essentially the Officer (reasonably in my view) focussed on the type of espionage activities that might constitute espionage as recognized by the Federal Court of Appeal in *Peer v Canada (Citizenship and Immigration)*, 2011 FCA 91, aff'g 2010 FC 752 [*Peer*]. However, the Officer

(unreasonably in my view) rejected the proposition that the 2013 amendment narrowed the focus of s 34(1)(a). The Officer most probably erred because, while *Peer* was not considered or impeached, they lacked the guidance of the Federal Court of Appeal in *Weldemariam*.

[37] In *Weldemariam* the Federal Court of Appeal held, contrary to the Decision, that Parliament did indeed intentionally narrow the focus of espionage to espionage "directed against Canada or that is contrary to Canada's interests." While I agree the definition of what acts may constitute espionage *per se* as decided in *Peer* remains unchanged, the focus of acts of espionage was fundamentally shifted by Parliament. In particular, the Federal Court of Appeal in *Weldemariam* instructs that "the phrase 'contrary to Canada's interests' requires a nexus to Canada's security interests" (at para 3), and there is only one reasonable interpretation of 34(1)(a):

> [118] That is, permanent residents or foreign nationals may only be found to be inadmissible to Canada under paragraphs 34(1)(a) and 34(1)(f) of *IRPA* where the espionage in which they are involved—either directly or indirectly—is directed against Canada or has a nexus to Canada's national security or security interests: *Mason* at para. 121.

[38] It is on this basis that judicial review will be granted.

IV. Issues

[39] The Applicant asks:

1. Is the Officer's assessment that the IB is engaged in espionage "against Canada or Canadian interests" reasonable?
2. Is the Officer's assessment that the IB engaged in espionage by monitoring foreign diplomats reasonable?

3. Did the Officer breach principles of procedural fairness by not disclosing the existence of CSIS and CBSA memos related to the Applicant's circumstances?

[40] In my view the central issues are whether the Decision is procedurally fair and reasonable.

V. Standards of review

[41] The parties agree, and I concur, the standard of review for the Officer's Decision on the merits of this case is reasonableness. On the issue of procedural fairness, the Applicant submits the standard is correctness. However, the Respondent submits and I agree that for procedural fairness in this immigration case, the question is whether the Applicant had the gist of and knew the case to meet and had a full and fair chance to respond.

A. *Reasonableness*

[42] With regard to reasonableness, in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, issued contemporaneously with the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 [*Vavilov*], the majority per Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the]

> conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
>
> [Emphasis added]

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

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

> [106] It is unnecessary to catalogue all of the legal or factual considerations that could constrain an administrative decision maker in a particular case. However, in the sections that follow, we discuss a number of elements that will generally be relevant in evaluating whether a given decision is reasonable, namely: the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies. These elements are not a checklist for conducting reasonableness review, and they may vary in significance depending on the context. They are offered merely to highlight some elements of the surrounding context that can cause a reviewing court to lose confidence in the outcome reached.
>
> [Emphasis added]

B. *Procedural fairness*

[44] On procedural fairness the question in this immigration visa case is whether the applicant knew the gist of the case to meet and had a full and fair chance to respond: see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraphs 55-6, and *El Rifai v Canada (Citizenship and Immigration)*, 2024 FC 524 at paragraph 4. At the visa level, procedural fairness obligations are minimal: see also *Kaur v Canada (Citizenship and Immigration)*, 2024 FC 943 and *Singh v Canada (Citizenship and Immigration)*, 2021 FC 790.

VI. Relevant legislation

[45] Sections 34(1)(a) and (f) outline the relevant grounds for inadmissibility in this case namely membership in an organization (per s 34(1)(f)) that engages in espionage against Canada or contrary to Canada's interests (per 34(1)(a)):

Security	**Sécurité**
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	**34 (1)** Emportent interdiction de territoire pour raison de sécurité les faits suivants :
(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;	**a)** être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;
...	
(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).	**f)** être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).
[Emphasis added]	[Je souligne]

VII. Submissions and analysis

[46] The Applicant submits he was denied procedural fairness by not being provided "all" the information on which the Officer relied. The Applicant also submits the Decision is unreasonable for failing to consider and apply *Weldemariam* to find the espionage committed must have a nexus to and be espionage "against Canada or that is contrary to Canada's interests" per 34(1)(a).

[47] The Respondent submits the Decision is reasonable and no breach of procedural fairness took place.

A. *Was the Applicant denied procedural fairness?*

[48] I have already applied governing procedural fairness law to the facts recited above. To summarize, I am not persuaded the Applicant has established procedural unfairness in the circumstances of this case. In my respectful view, the Applicant had adequate disclosures of the gist of the Officer's concern and a full and fair chance to respond.

[49] In further summary, the Officer's inquiry into the IB's espionage was initiated by the Applicant's statement at the interview that the ID in fact monitors diplomats, which the Officer found included Canadian diplomats. The Applicant was represented by experienced counsel and availed himself of his opportunity to respond to what he was told at the interview, and to the open source information relied on which he was given. He also had a full and fair opportunity through experienced counsel to advance whatever responses he wished to advance in response to two procedural fairness letters, and further disclosure contained in the Certified Tribunal Record of the Officer's Decision.

[50] In this connection I held in *Wang v Canada (Citizenship and Immigration)*, 2024 FC 1965:

> [38] The Respondent submits and I agree that in the immigration context the jurisprudence recently and very well supports the proposition that procedural fairness does not require disclosure of all relevant extrinsic documents, but rather that the Applicant be given an adequate understanding of the "gist of the concerns" (*El Rifai v Canada (Citizenship and Immigration)*, 2024 FC 524 at paragraph 4 [per Grammond J]. I am certainly not persuaded the Applicant, a foreign national applying for status in Canada, has the *Charter* rights of full disclosure available to criminal accused in Canada as provided in *R. v. Stinchcombe*, 1991 CanLII 45 (SCC),

> [1991] 3 S.C.R. 326; submissions to that effect are of course doctrinally unsound.
>
> [39] The following reasons of Justice Grammond are consistent with the Federal Court of Appeal's holding in *Canadian Pacific Railway*, cited above:
>
> > [4] Moreover, the fact that the officer relied on verifications with the bank and considered the fact that other fraudulent documents had similar characteristics does not constitute extrinsic evidence that had to be disclosed to Mr. El Rifai: *Kong* at paragraph 28. It is true that some decisions of this Court state that a visa officer who intends to rely on extrinsic evidence must give the applicant an opportunity to provide submissions in this regard: *Kniazeva v Canada (Citizenship and Immigration)*, 2006 FC 268 at paragraph 21; *Youssef v Canada (Citizenship and Immigration)*, 2011 FC 399 at paragraph 12; *Sharma v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 779 at paragraph 28. In such situations, however, procedural fairness does not require that all documents in the officer's possession be provided to the applicant: *Maghraoui v Canada (Citizenship and Immigration)*, 2013 FC 883 at paragraph 22; *Jemmo v Canada (Citizenship and Immigration)*, 2021 FC 1381 at paragraph 33. Rather, procedural fairness "does demand that the Applicant be given an adequate understanding of the gist of the concerns": *Geng v Canada (Citizenship and Immigration)*, 2023 FC 773 at paragraph 74. The scope of this requirement must be assessed on the basis of the circumstances of each case.
> >
> > [Emphasis added]

[51] This Court, in line with governing jurisprudence, also recognizes that procedural fairness requirements are minimal for those wishing to visit Canada temporarily on a visa: see *Kaur v Canada (Citizenship and Immigration)*, 2024 FC 943 per Grammond J at paragraph 4:

> [4] Certain principles must be kept in mind when assessing Ms. Kaur's submission. Applicants for temporary resident visas must

> satisfy the visa officer that they "will leave Canada by the end of the period authorized for their stay": *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 179(b). The onus is on applicants to provide sufficient evidence for the officer to make such a finding. The requirements of procedural fairness with respect to visa applications are minimal: *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at paragraph 16. In particular, the officer is not required to give notice to applicants of concerns related to the insufficiency of the evidence: *Singh v Canada (Citizenship and Immigration)*, 2021 FC 790 at paragraph 9.

[52] And see *Singh v Canada (Citizenship and Immigration)*, 2021 FC 790 where Justice Walker (as she then was) concluded at paragraph 9:

> [9] I am not persuaded by the Applicant's argument. While a duty of fairness to applicants exists in work permit cases, the duty does not require an officer to notify an applicant of a concern that arises directly from the legislation or related requirements (*Masam v Canada (Citizenship and Immigration)*, 2018 FC 751 at para 11; *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 37). The onus is on applicants to provide all the necessary information to support their application, not on the officer to seek it out.

[53] In this case, it seems to me the Officer gave the Applicant the gist of their concerns relating to the IB's engagement in espionage and his having been a member of the IB. It also seems to me the Applicant, in seeking full disclosure of interview notes and "all other evidence" used (as requested), is in effect asking this Court to declare foreign visa applicants outside Canada are entitled to the sort of full disclosure afforded criminal accused (supported by s 7 of the *Charter*) per *R v Stinchcombe*, 1991 CanLII 45 (SCC), [1991] 3 SCR 326. With respect, that submission is doctrinally unsound and not supported by the jurisprudence.

B. *Was the Decision reasonable?*

[54] As I understand the Applicant's submission, he alleges the Officer unreasonably interpreted or applied s 34(1)(a) of *IRPA* by failing expressly stated, define and identify a nexus between espionage intelligence gathering activities conducted by the IB (i.e. monitoring diplomats, including Canadian diplomats) and the security interests of Canada, contrary to the intention of Parliament and the teachings of the Federal Court of Appeal in *Weldemariam*.

[55] With respect, I am in general agreement with the Applicant in this respect.

[56] It is not disputed that *Hansard* (the record of Debates in the House of Commons) excerpts were provided to the Officer corroborating that the government of the day (2013) believed previous iteration of the law [s 34(1)(a) of *IRPA*] were too broad and needed to be narrowed. *Hansard* reports include the following:

> [Hon. Jason Kenney:] First, with respect to facilitating the admission of bona fide visitors and immigrants, the bill seeks to narrow the breadth of the inadmissibility provision for espionage to focus on activities carried out against Canada or that are contrary to the interests of Canada.
>
> Quite frankly, this has the effect of covering those who may have been involved in espionage for close democratic allies of Canada and who may in fact have been gathering intelligence on behalf of Canada against common security threats. We believe that the wording in the Immigration and Refugee Protection Act is unnecessarily broad and that we ought to focus the inadmissibility provision with respect to espionage on those who have been engaged in spying contrary to the interests of Canada.
>
> [Emphasis added]

[57] The Applicant also submits the case at bar is very similar to three recent cases of this Court, noting judicial review was granted in: *Weldemariam v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 631, aff'd *Canada (Public Safety and Emergency Preparedness) v Weldemariam*, 2024 FCA 69 [*Weldemariam*]; *Yihdego v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 833 [*Yihdego*]; and *Wahab v Canada (Citizenship and Immigration)*, 2024 FC 1985 [*Wahab*].

[58] I accept *Weldemariam* and *Yihdego* are relevant to the case at bar: both consider 34(1)(a) of *IRPA*. However, *Wahab* concerns s 35(1)(b) (human rights violations) which is not at issue here.

[59] Notably, the Respondent agrees that for activities to constitute espionage per s 34(1)(a), given the 2013 amendment, the espionage must be "contrary to Canada's interests," that is, the intelligence gathering activities must have a nexus to Canada's national security or the security of Canada per *Weldemariam* at paragraph 109.

[60] I also note that this is the only reasonable interpretation of s 34(1)(a) pe *Weldemariam*:

> [109] Comparing the text of the current provisions with those they replaced demonstrates that the scope of the term "espionage" as a ground of inadmissibility was narrowed in 2013. Whereas it was sufficient under the prior legislation that the act of espionage be directed against "a democratic government, institution or process as they are understood in Canada", acts of espionage must now be directed against Canada or be "contrary to Canada's interests" to render an individual inadmissible to Canada.
>
> …
>
> [115] As the Supreme Court observed in *Mason* [*v Canada (Citizenship and Immigration)*, 2023 SCC 21], "a court may conclude during a reasonableness review that 'the interplay of text,

> context and purpose leaves room for a single reasonable interpretation of the statutory provision, or aspect of the statutory provision'": above at para. 71, see also para. 120; *Vavilov*, at para. 124.
>
> [116] In my view, this is such a case.
>
> [117] I acknowledge that, as argued by the Minister, there are some interpretive constraints that would support the ID's interpretation of paragraph 34(1)(a) of *IRPA*. There are, however, critical legal constraints and principles of statutory interpretation that the ID failed to consider that lead to the opposite interpretation. These include the constraints imposed on the ID by international law, and by principles of statutory interpretation. These overwhelmingly support the conclusion that there is only one reasonable interpretation of paragraph 34(1)(a).
>
> [118] That is, permanent residents or foreign nationals may only be found to be inadmissible to Canada under paragraphs 34(1)(a) and 34(1)(f) of *IRPA* where the espionage in which they are involved—either directly or indirectly—is directed against Canada or has a nexus to Canada's national security or security interests: *Mason* at para. 121.
>
> [119] Given that there is only one reasonable interpretation of the disputed portion of paragraph 34(1)(a), it follows that the decision of the ID was unreasonable, and that it should be quashed.
>
> [Emphasis added]

[61] Also in response, the Respondent relies on the Federal Court of Appeal in *Peer*, referred to in the Decision, for the proposition that "a person is inadmissible to Canada for having engaged in espionage if the person engaged in intelligence gathering activities that are legal in the country where they take place, do not violate international law and there is no evidence of hostile intent against the persons who are being observed." In this the Federal Court of Appeal endorsed the judgment of Justice Zinn in *Peer v Canada (Citizenship and Immigration)*, 2010 FC 752, which in part states:

> [36] I have no doubt that many centuries ago one could not easily engage in espionage unless one travelled to a foreign land to gather the relevant information because there was no other way the information could be obtained. That is quite simply not the case now, if it ever was. If I were to accept the submission of the applicant that one cannot engage in espionage while remaining in one's own country, I would have to accept that intelligence agents who monitor telephone and Internet communications from the safety of their country are engaged only in "intelligence gathering" and not in espionage, even when the information they gather relates to sensitive state secrets.
>
> [Emphasis added]

[62] With respect, I do not see this line of argument as assisting the Respondent in this case. It seems to me *Peer* identified certain intelligence gathering *activities* that may constitute "espionage" *per se* for the purposes of s 34(1)(a); however, *Peer's* reference to the focus of those activities is no longer relevant because that focus was changed by Parliament in 2013. The new focus is on espionage "against Canada or that is contrary to Canada's interests."

[63] In this connection the Respondent correctly relies on the continued relevance of *Peer* in terms of what activities may constitute espionage, although not its focus. To this extent, the Decision is also reasonable in my view. *Weldemariam* left its earlier judgment in *Peer* unchanged and in full effect, although recognizing the focus of espionage per s 34(1)(a) changed in 2013. A review of the Federal Court of Appeal dossier in *Weldemariam* confirms *Peer* was not raised in written submissions, nor is *Peer* criticized or mentioned.

[64] The Respondent further submits the nexus now required between acts of espionage and the security of Canada may be established by the IB's "domestic intelligence gathering and the collection of information on foreign diplomats, opposition parties and the media… since the

unauthorized and clandestine monitoring of diplomats encompassed Canada's allies," citing *Weldemariam* at paragraph 74:

> [74] The ID also observed that the CIC's Operational Manual stated that activities that constitute espionage "contrary to Canada's interests" included the use of Canadian territory to carry out espionage activities and espionage activities committed outside Canada that have a negative impact on the safety, security or prosperity of Canada. The phrase "prosperity of Canada" included, but was not limited to, financial, economic, social, and cultural factors. Espionage activity did not have to be directed against the state, but could also "be against Canadian commercial or other private interests". According to the Manual, activity directed against Canada's allies could also be contrary to Canada's interests.
>
> [Emphasis added]

[65] With respect, I am not persuaded this assists the Respondent. In my respectful view this line of reasoning does not address the fact the Officer *expressly* disagreed with the Applicant's submission that Parliament narrowed the focus of 34(1)(a), and, more particularly, the Decision disagrees with the proposition that by amending s 34(1)(a) in 2013, Parliament enacted a new and narrower focus on espionage: espionage that is focussed "against Canada or that is contrary to Canada's interests."

[66] Judicial review is guided by constraining law (*Vavilov* at paras 99-101), which includes "constraints imposed by the governing legislative scheme, such as the statutory definitions, principles or formulas that prescribe the exercise of a discretion" (*Vavilov* at para 108). Courts may also establish law that constrains decision-makers such as the Officer in this case (*Vavilov* at paras 111-12). While decided *after* the Decision in question, the Officer's decision must still

measure up to *Weldemariam* — which confirms *IRPA* was intentionally narrowed. Reviewable error exists.

[67] Essentially, the Officer (reasonably in my view) focussed on the type of intelligence gathering actions that might constitute espionage as set out in *Peer*, but (unreasonably in my view) rejected the proposition that the 2013 amendment narrowed the focus of s 34(1)(a). In the result I am not persuaded the Officer reasonably considered or applied the narrowed scope and new focus given by Parliament in 2013 to s 34(1)(a). I am unable to find the Officer identified the necessary nexus between the reasonably identified espionage conducted by the IB being "against Canada or contrary to Canada's interests." The critical linkage is not present.

[68] As noted above, this is the only reasonable interpretation of 34(1)(a) per *Weldemariam*:

> [118] That is, permanent residents or foreign nationals may only be found to be inadmissible to Canada under paragraphs 34(1)(a) and 34(1)(f) of *IRPA* where the espionage in which they are involved—either directly or indirectly—is directed against Canada or has a nexus to Canada's national security or security interests: *Mason* at para. 121.

[69] While I was asked to read that nexus into the Decision on the basis of the record, in effect to connect the dots, I decline to do so. In my view, the assessment of the required nexus is too central and too critical in this case to be determined by this Court (*Vavilov* at paras 96-97). Therefore, and with respect, the Court will defer to the design choice Parliament made, and remanded this central determination back to the IRCC decision-maker to make on a proper record having regard to constraining law (e.g. *Weldemariam*) and the record. Notably that may

entail a further interview, another reason the Court is loath to disagree with the Applicant who requests that the Decision be set aside and remanded for determination by a different officer.

[70] Finally, while this matter is being remanded for reconsideration, I note in *obiter* (1) none of the jurisprudence relied upon by the Applicant involves foreign nationals from abroad applying to visit Canada, which is the case before the Court—the Applicant's jurisprudence involved foreign nationals already in Canada. In addition, (2) it seems to me that considerations of *non refoulement* were important in *Weldemariam.* That said, I am concerned about the relevance to visa applications such as this, of *non refoulement* and/or Canada's promises in the *United Nations Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137.

VIII. Conclusion

[71] This application for judicial review will be granted.

IX. Certified question

[72] By letter dated February 13, 2025, the Applicant proposed the following certified question:

> Do the rulings regarding statutory interpretation of sections 34(1)(e) in *Mason v Canada* (2023 SCC 21), and 32(1)(f) in *Canada v Weldemariam* (2024 FCA 69) and its companion case, *Canada v Yihdego* (2024 FCA 70) only apply in the context of Applicants who are in Canada?

[73] Given that the proposed question was raised by the Court at the hearing as noted above in *obiter*, this question is not determined by these Reasons. Therefore the question will not be

certified (see *Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 28).

X. Costs

[74] This is not a case for costs.

JUDGMENT in IMM-585-21

THIS COURT'S JUDGMENT is that:

1. The Application for judicial review is granted and the Decision is set aside.
2. This matter is remanded to a different decision-maker officer for redetermination based on such further evidence as the decision-maker permits.
3. No question of general importance is certified.
4. There is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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