Federal Court  Cour fédérale

Date: 20140808

Docket: IMM-3086-13

Citation: 2014 FC 790

Ottawa, Ontario, August 8, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

SUBITHA THIRESA XAVIER DE SILVA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The challenge is to a decision made by a Visa Officer whereby he concluded that "I am not satisfied that you are not inadmissible as required by subsection 11(1), and the application is refused." The applicant claims that she should have been admitted. She claims that it did not

suffice that the Visa Officer "was not satisfied that she was not admissible." Rather she contends that the Visa Officer had to declare her inadmissible.

[3] In her written submissions, the applicant referred to obtaining orders in the nature of *mandamus* and prohibition. However, in the order sought in her conclusion, the applicant limits herself to an order requiring a new determination of the matter, presumably by a different visa officer. It is on that basis that the Court proceeded.

I. Facts

[4] Ms Xavier de Silva is seeking a permanent resident visa to Canada after she has been selected by the Province of Quebec in their investor category. She was granted a *Certificat de sélection du Québec*. In spite of that certificate, she was refused, by Immigration Canada. The decision, dated February 7, 2013, raises a number of reasons why she was refused the required visa. In support of that decision is also a significant amount of notes kept in the Computer Assisted Immigration Processing System (CAIPS) which supplement the reasons given in support of the refusal.

[5] The decision letter of February 7, 2013 complained of a lack of clear, complete and accurate declaration of the applicant's personal background. Three issues are raised. First, while the applicant claimed to have been an employee of a company, in spite of specific questions about the applicant's employment, it remained impossible to ascertain precisely when the applicant was working for that company because of contradictions and evasiveness. Then, the account given by the applicant of her employment with the Bank of Credit and Commerce

International [BCCI] was also shrouded in cloudiness. While the Visa Officer asked about the date when the applicant joined, the positions she held, what were her duties and tasks, the applicant referred only to having trained in various domains. Finally, the applicant did not clearly and readily disclose her residential address history.

[6] The CAIPS notes can be used by the reviewing courts to supplement the reasons for the decision made (*Veryamani v Canada (Citizenship and Immigration)*, 2010 FC 1268; *Ziaei v Canada (Citizenship and Immigration)*, 2007 FC 1169; *Toma v Canada (Minister of Citizenship and Immigration)*, 2006 FC 779; *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298). They cover many pages in this case. Once read in their entirety, they leave one with the unmistaken sense that there was not insignificant back and forth between Immigration Canada and the applicant. Furthermore, the motivation behind the specific questions asked emerges. For instance, we can read:

> a) PA to provide full details of her employment with Bank of Credit and Commerce International (BCCI) from 1978 to 1986: date of joining, positions held and duties performed for each position, promtions [*sic*] she received, offices/branches/subsidiaries worked in/for and their locations, whether she was ever loaned money by any of the global parts of BCCI, reasons for leaving BCCI in 1986, and whether she has been contacted, questioned, subpoenaed, prosecuted (civilly or criminally) or otherwise involved with regulatory, liquidation or criminal proceedings involving BCCI companies or its officers or employees. (Notes of August 2, 2012)
>
> b) Regarding her previous work for Bank of Credit and Commerce International (BCCI), this institution is notorious for its illegal activities over a large swathe of the globe, including the USA, Europe, the Middle East and South Asia (including Sri Lanka) until it was closed down and dissolved from 1992. Although the PA has indicated her employer as "Bank of Credit and International Commerce" on her forms, she has not corrected my identification of BCCI as her employer and has referred to her employer as BCCI in her response, so I am satisfied that she did in

> fact work for BCCI in Sri Lanka. Given the well-known issues surrounding BCCI, she was asked specific questions in my letter of 27 August 2012 regarding the date she joined, the positions she held, her duties and tasks, etc. Her response is vague and does not offer any of the details requested, instead referring only to training in various domains with an "etc" at the end, and does not address several of the requested subjects. (Notes of October 12, 2012)

For something that would appear to be rather straightforward as the residence history of an applicant, it seems to have caused some difficulties. One can read in the case notes:

> c) In reviewing her newly submitted Schedule A form, I have also noted that her residence address history has changed significantly, with changes such as residence in the USA being added during the period before the original application was submitted. Although we came to know of the fact the PA was residing in the USA in the course of processing, it is clear that she failed to properly disclose this at the time she applied in 2010. (Notes of October 12, 2012)

[7] A more complete assessment of the application is also found in the CAIPS notes of October 12, 2012:

> The applicant has a duty under the Act to answer completely and truthfully to questions put to her as part of her examination, and I do not find that her answers thus far have met that obligation, even though she has been offered ample opportunity. Since the particulars of her work for a bank which was a well-known criminal institution continue to be obscure, as well as the contradictory and unclear details of her other work experience and her residence address history being uncertain, I am not satisfied that she is not inadmissible as required by A.11(1), and the application is refused.

II. Arguments

[8] The applicant takes issue with the decision because, she claims, the Visa Officer had to declare her inadmissible. In her view, merely being "not satisfied that she was not inadmissible" is not sufficient. The Visa Officer had to go one step further and declare on what specific basis the applicant was "inadmissible".

[9] In essence, the applicant's argument boils down to claiming that the Visa Officer could only declare her inadmissible on one of the grounds found in Division 4 of Part 1 of the Act (sections 33 to 43). There was no such finding in this case.

[10] The applicant finds comfort in paragraph 12(b) of the *Canada–Québec Accord* concluded February 5, 1991 (*Canada-Québec Accord: Relating to Immigration and Temporary Admission of Aliens*. Hull, Québec: Employment and Immigration Canada, 1991. [the *Accord* or the *Canada-Québec Accord*]) The section reads as follows:

Immigrants 12. Subject to sections 13 to 20, (a) Québec has sole responsibility for the selection of immigrants destined to that province and Canada has sole responsibility for the admission of immigrants to that province. (b) Canada shall admit any immigrant destined to Québec who meets Québec's selection criteria, if the immigrant is not in an inadmissible class under the law of Canada.	Les immigrants 12. Sous réserve des articles 13 à 20 : a) Le Québec est seul responsable de la sélection des immigrants à destination de cette province et le Canada est seul responsable de l'admission des immigrants dans cette province. b) Le Canada doit admettre tout immigrant à destination du Québec qui satisfait aux critères de sélection du Québec, si cet immigrant n'appartient pas à une catégorie inadmissible selon la

	loi fédérale.
(c) Canada shall not admit any immigrant into Québec who does not meet Québec's selection criteria.	c) Le Canada n'admet pas au Québec un immigrant qui ne satisfait pas aux critères de sélection du Québec.

[11] The *Canada-Québec Accord* provides for the selection of persons who wish to reside permanently or temporarily in Quebec and their admission in Canada. As can be seen from section 12(b) of the *Accord*, Quebec selects immigrants but they must not be inadmissible in Canada.

[12] Given that the *Accord* speaks of an inadmissible class, the applicant contends that Canada can only exclude those who are captured in an inadmissible class, that is those defined in Division 4.

[13] Alternatively, Ms Xavier de Silva argues that the discrepancies, omissions and difficulties encountered by the respondent in getting the information it requested did not constitute findings that could reasonably have justified inadmissibility. The *Dunsmuir* analysis on reasonableness applies.

[14] The respondent, not surprisingly, takes the view that the Visa Officer's decision must stand. The so-called "fairness letters" sent to the applicant on July 27, 2012 and August 27, 2012 allowed the applicant the opportunity to respond fully to the questions that were raised and were rather explicit. The failure to respond fully was in contravention of the obligation to answer truthfully found at section 16 of the Act. As a result, the Visa Officer, using the language from subsection 11(1) of the Act made the only decision that could have been made in the

circumstances. The decision was reasonable. Furthermore, it was clear from the requested information that the Visa Officer was preoccupied by what has been presented in the *factum* as "criminal inadmissibility". The Visa Officer did not have to find inadmissibility specifically and, in the view of the respondent, there were discrepancies in the applicant's story such that the Officer was right to find that he did not have the complete picture of the applicant's background.

III. Standard of Review

[15] The applicant argues that the standard of review concerning her first issue is correctness as it deals with the proper interpretation of statutes and regulations. The only authority referred to is *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]. She concedes that the second issue is reviewable on the standard of reasonableness.

[16] The respondent asserts that the first issue is one of lack of jurisdiction to refuse an application because the person had been selected as an investor in the business category by the Province of Quebec. A standard of correctness would be appropriate. There is agreement that the second issue is to be reviewed on the standard of reasonableness.

IV. Analysis

[17] The first question which must be addressed is that of the appropriate standard of review. There is agreement that the issue of whether the facts support the decision about the admissibility of the applicant should be reviewed on a standard of reasonableness. I agree. Questions of fact, or of fact and law, attract the reasonableness standard (*Dunsmuir*, para 51).

[18] However, the first issue must also be reviewed on a standard of reasonableness, contrary to the positions expressed by the parties. In my view, *Dunsmuir* already established that four categories of questions of law require a review on a standard of correctness. My colleague Gleason J provided a useful analysis of the Supreme Court of Canada case law since *Dunsmuir* in *Diabate v Canada (Citizenship and Immigration)*, 2013 FC 129. Paragraphs 11 to 14 of her Reasons for Judgement are worth reproducing in their entirety:

> [11] However, recent jurisprudence of the Supreme Court of Canada indicates that where, as here, a decision-maker is interpreting his or her home statute, the reasonableness standard of review should apply (see *Celgene Corp v Canada (Attorney General)*, 2011 SCC 1 at para 34, [2011] 1 SCR 3 [*Celgene*]; *Alliance Pipeline Ltd v Smith*, 2011 SCC 7 at para 28, [2011] 1 SCR 160 [*Smith*]; *Dunsmuir* at para 54; *Canada (Attorney General) v Mowat*, 2011 SCC 53 at para 16, [2011] 3 SCR 471 [*Mowat*]; *ATA v Alberta (Information and Privacy Commissioner)*, 2011 SCC 61 at para 30, 339 DLR (4th) 428) [*Alberta Teachers*]. See also the reasoning of my colleague Justice Mactavish in *Canadian Human Rights Commission v Canada (Attorney General)*, 2012 FC 445 at paras 231-241, 215 ACWS (3d) 439 [*Caring Society*]).
>
> [12] More specifically, beginning in *Dunsmuir*, the Supreme Court recognized that, "[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity" (at para 54). This was reiterated in *Khosa v Canada (Minister of Citizenship & Immigration)*, 2009 SCC 12 at para 44, [2009] 1 SCR 339 [*Khosa*], a case under the IRPA: "*Dunsmuir* … says that if the interpretation of the home statute or a closely related statute by an expert decision-maker is reasonable, there is no error of law justifying intervention." *Khosa* involved a discretionary decision of the Immigration Appeal Division [IAD] deciding whether H&C consideration was warranted in a situation of exclusion for criminality. The nature of the decision made was quite similar to that in this case – and the Supreme Court held that the reasonableness standard was applicable.
>
> [13] In *Celgene*, the Supreme Court of Canada again challenged the previous notion that correctness should apply to statutory interpretation, noting:

> 34 This specialized tribunal is interpreting its enabling legislation. Deference will usually be accorded in these circumstances… Only if the Board's decision is unreasonable will it be set aside. And to be unreasonable, as this Court said in *Dunsmuir*, the decision must be said to fall outside "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (para. 47). Far from falling outside this range, I see the Board's decision as unassailable under either standard of review.

[14] The majority in *Smith* made the same statement, with Justice Fish recalling *Dunsmuir* by stating that interpretation of a home statute "will usually attract a reasonableness standard of review" as per *Dunsmuir* and subsequent case law (at para 28). Similarly, in *Mowat*, the Court observed, "if the issue relates to the interpretation and application of its own statute, is within its expertise and does not raise issues of general legal importance, the standard of reasonableness will generally apply and the Tribunal will be entitled to deference" (at para 24). Finally, in *Alberta Teachers* (at para 30), the majority stated the following with respect to statutory interpretation:

> […] There is authority that "[d]eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity" […] This principle applies unless the interpretation of the home statute falls into one of the categories of questions to which the correctness standard continues to apply, i.e., "constitutional questions, questions of law that are of central importance to the legal system as a whole and that are outside the adjudicator's expertise, ... questions regarding the jurisdictional lines between two or more competing specialized tribunals [and] true questions of jurisdiction or *vires*' […]." [citations omitted]

[19] Even more recently yet, the Supreme Court found that issues concerning the interpretation of statutes are reviewed on a reasonableness standard (*McLean v British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 SCR 895). After stating that his analysis is not

based on anything new and that "it is designed to bring a measure of predictability and clarity to that framework" (para 20), Moldaver J, for a unanimous Court, concludes:

> [32] In plain terms, because legislatures do not always speak clearly and because the tools of statutory interpretation do not always guarantee a single clear answer, legislative provisions will on occasion be susceptible to multiple *reasonable* interpretations (*Dunsmuir*, at para. 47; see also *Construction Labour Relations v. Driver Iron Inc.*, 2012 SCC 65, [2012] 3 S.C.R. 405). Indeed, that is the case here, as I will explain in a moment. The question that arises, then, is *who gets to decide among these competing reasonable interpretations?*

(See generally "Wither the Correctness Standard of Review? Dunsmuir six years later", by Wihak, Lauren J. (2014) 27 CJALP 173.)

[20] The standard of review in any given case has its importance. As the Court found in *Dunsmuir*, (*supra*):

> [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.

[21] As is well known now, the reasonableness standard carries a measure of deference towards the decision made. And deference has a meaning in law. In *Dunsmuir*, the Court gave the following guidance:

> [48] … What does deference mean in this context? Deference is both an attitude of the court and a requirement of the law of judicial review. It does not mean that courts are subservient to the determinations of decision makers, or that courts must show blind

> reverence to their interpretations, or that they may be content to pay lip service to the concept of reasonableness review while in fact imposing their own view. Rather, deference imports respect for the decision-making process of adjudicative bodies with regard to both the facts and the law. The notion of deference "is rooted in part in a respect for governmental decisions to create administrative bodies with delegated powers" *(Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554, at p. 596, per L'Heureux-Dubé J., dissenting). We agree with David Dyzenhaus where he states that the concept of "deference as respect" requires of the courts "not submission but a respectful attention to the reasons offered or which could be offered in support of a decision": "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286 (quoted with approval in *Baker*, at para. 65, *per* L'Heureux-Dubé J.; Ryan, at para. 49).

[22] A reviewing court, whether its review centres on questions of fact or questions of fact and law, or questions of law in the nature of statutory interpretations of a tribunal's own statute or statutes closely connected to its function, will be "concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law." (*Dunsmuir*, para 47)

[23] Accordingly, both issues in this application for judicial review must be examined on a standard of reasonableness with a measure of deference towards the decision made.

[24] The argument offered by the applicant is that the combination of sections 9 and 11 of the Act, together with section 12 of the *Accord* would somehow require that there be a finding of inadmissibility with respect to a specific class. The applicant argues that the finding was not explicit enough.

[25] The examination of the statutory interpretation issue must of course begin with the governing legislation. Section 9 of the Act provides for the splitting of responsibilities between the two orders of government where there is a federal-provincial agreement as contemplated by section 8. The person selected by a province must be granted permanent resident status unless the person is inadmissible. The federal role is limited to the decision on admissibility. The selection of candidates is a provincial responsibility, but the federal government retains the duty to decide their admissibility. Paragraph 9(1)(a) reads:

Sole provincial responsibility — permanent residents	**Responsabilité provinciale exclusive : résidents permanents**
9. (1) Where a province has, under a federal-provincial agreement, sole responsibility for the selection of a foreign national who intends to reside in that province as a permanent resident, the following provisions apply to that foreign national, unless the agreement provides otherwise:	9. (1) Lorsqu'une province a, sous le régime d'un accord, la responsabilité exclusive de sélection de l'étranger qui cherche à s'y établir comme résident permanent, les règles suivantes s'appliquent à celui-ci sauf stipulation contraire de l'accord :
(a) the foreign national, unless inadmissible under this Act, shall be granted permanent resident status if the foreign national meets the province's selection criteria;	a) le statut de résident permanent est octroyé à l'étranger qui répond aux critères de sélection de la province et n'est pas interdit de territoire;

[26] In order to obtain permanent resident status, the foreign national will have to have obtained a visa prior to arrival in Canada. It is subsection 11(1) which governs:

Application before entering Canada	**Visa et documents**
11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations.	11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les

The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

The Act requires that the officer be satisfied that the foreign national is not inadmissible. The French version speaks in terms of issuing visas once there is proof that the foreign national is not inadmissible. Thus subsection 11(1) establishes that it is for the foreign national to discharge the burden of showing that she is not inadmissible.

[27] The Act creates an obligation to answer truthfully when the foreign national makes an application:

Obligation — answer truthfully 16. (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**Obligation du demandeur** 16. (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[28] The applicant argues that there is some discrepancy between these sections. With respect, I cannot find any significant daylight between paragraphs 9(1)(a) and subsection 11(1). The French versions of both are the same: "n'est pas interdit de territoire" is the condition that must be met. The English version of paragraph 9(1)(a) speaks of "unless inadmissible under this Act" while subsection 11(1) uses a more convoluted form of words in stating the test as "the officer is

satisfied that the foreign national is not inadmissible". But the meaning is the same. Whatever the decision made by the province in selecting candidates, the federal process continues to apply in order to deal with the issue of admissibility of the chosen candidate.

[29] In *R v Quesnelle*, 2014 SCC 46, the Supreme Court recently reaffirmed that "[i]t is a rule of statutory interpretation that where the version in one language can bear two meanings, only one of which is consistent with the version in the other language, the shared meaning governs: *R. v. Daoust*, 2004 SCC 6, [2004] 1 S.C.R. 217, at para. 28." In the case at bar it is very much unclear what different meaning could be ascribed to subsection 11(1). The more convoluted form of words merely conveys that the burden is on the applicant to convince that he/she is not inadmissible; that meaning is conveyed in the French version by "délivrer sur preuve … que l'étranger n'est pas interdit de territoire". That burden was not discharged in this case as the Visa Officer was not satisfied that the applicant was not inadmissible. Under subsection 11(1), it suffices that the burden has not been discharged.

[30] The applicant submits that subsection 9(1)(a)'s interpretation is not complete without a reference to the *Canada-Québec Accord* because of the words "unless the agreement provides otherwise" at subsection 9(1). With respect to the allocation of responsibilities between the two orders of government, it is section 12 of the *Canada-Québec Accord* which is relevant. As will be seen, section 12 speaks of exclusion by Canada "if the immigrant is not in an inadmissible class under the law of Canada". To the applicant, that must mean that she can be admitted because she is not in an inadmissible class.

[31] However, the examination of section 12 is not complete without a reference to Annex D of the *Canada-Québec Accord*, which forms part of the *Accord* pursuant to section 34 of the said *Accord*. It is paragraph 3a) of Annex D which is relevant. It provides that "[w]here an immigrant investor satisfies the requirements of the Québec regulations respecting the selection of foreign nationals … Canada shall then, subject to statutory requirements for admission to Canada, issue that immigrant an immigrant visa." Thus, while section 12 refers to the requirement that the foreign national not be in an inadmissible class, the Annex speaks of the statutory requirements for admission to Canada.

[32] What is a Visa Officer to do faced with these requirements? Has the applicant shown that the decision is unreasonable? Clearly, the Visa Officer was not satisfied with the answers he received to legitimate questions the applicant was under a duty to answer truthfully. Section 40 of the Act makes a foreign national inadmissible not only if misrepresentations are made, but also if material facts are withheld. Paragraph 40(1)(a) of the Act states:

Misrepresentation	**Fausses déclarations**
40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40. (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
…	…
Non-compliance with Act	**Manquement à la loi**
41. A person is inadmissible for failing to comply with this	41. S'agissant de l'étranger, emportent interdiction de

Act	territoire pour manquement à la présente loi tout fait — acte ou omission — commis directement ou indirectement en contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.
(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act; and (b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.	

[33] The applicant's sole argument is that the inadmissibility must be in relation to an inadmissible class. I agree that the inadmissibility issue must be determined on the basis of Division 4. In my view, this is the common thread between section 12 of the *Canada-Québec Accord* and sections 9 and 11 of the Act.

[34] However, both the formal decision letter of February 7, 2013 and the CAIPS notes show that the Visa Officer was not satisfied that the application was not inadmissible, as is required in accordance with subsection 11(1), because of a failure to answer truthfully questions asked which, in the circumstances of this case, would constitute withholding material facts. That constitutes a ground for inadmissibility, "an inadmissible class under the law of Canada" in the words of section 12 of the *Canada-Québec Accord*. It seems to me that the purpose of section 12 is to ensure that the only reason a candidate chosen by the Province of Quebec would otherwise be excluded is if the candidate is inadmissible because of anything other than the Act makes her

inadmissible as falling in one of the categories under the Act. It limits the scope of reasons raised to exclude a candidate.

[35] The duty of the Visa Officer is to determine the admissibility of a chosen candidate. The Officer must apply section 11(1) of the Act. Because the candidate was chosen by a province, that determination must be performed by the Visa Officer on the basis of the categories of inadmissibility found in Division 4.

[36] The Visa Officer considered that the withholding of material facts justifies the conclusion that he was not satisfied the applicant is not inadmissible, which is the test provided in legislation. I can find nothing in the record to suggest that this would not be an inadmissible class; in fact, on this record, this would not be a sustainable inference. Such construction is made even more solid when is added the fact that Annex D to the *Canada-Québec Accord* speaks merely of the "statutory requirements for admission to Canada". At the end of the day, these provisions call for Canada to determine admissibility. That is what the Visa Officer did and he merely used the words of the Act ("satisfied that the foreign national is not inadmissible") in reaching the conclusion.

[37] The language in subsection 11(1) serves the purpose of confirming that the burden is on the foreign national to satisfy the officer that she is admissible. When dealing with a foreign national who has been selected by a province, the only issue at the federal level is to ascertain that the person is not inadmissible, that is she is not a person captured by the provisions of Division 4. Hence, a person who has withheld material facts is inadmissible for

misrepresentation. It would also be true of section 41 of the Act which makes someone inadmissible for failing to comply with the Act.

[38] The applicant has relied somewhat on *Chen v Canada (Minister of Citizenship and Immigration)*, 2007 FC 41. In an *obiter*, as he himself acknowledged, Kellen J stated, without any analysis, that not being satisfied that the applicant is not inadmissible is not the same as finding that the applicant is inadmissible. He found that the Visa Officer could have found the applicant to be inadmissible under sections 40 and 41, which was not done formally. That may be somewhat surprising in view of the decision in that case where the Visa Officer referred specifically to sections 11, 16 and 34 to 42 of the Act.

[39] Nowadays, perfection in the reasons given by an administrative tribunal is not expected. Indeed, even the adequacy of reasons is not a stand-alone basis for finding a decision to lack reasonableness. At any rate, this *obiter* is hardly persuasive given that there is no analysis or reasoning to support it.

[40] During the hearing the applicant has taken issue with the reasons given by the Visa Officer, considering them to be not adequate. That, in and of itself, will not suffice on judicial review. The matter has been addressed squarely by the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Nurses' Union*]. It seems to me that the Court can hardly be clearer than what is found at paragraph 14 of the decision:

> [14] Read as a whole, I do not see *Dunsmuir* as standing for the proposition that the "adequacy" of reasons is a stand-alone basis

> for quashing a decision, or as advocating that a reviewing court undertake two discrete analyses — one for the reasons and a separate one for the result (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at §§12:5330 and 12:5510). It is a more organic exercise — the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

Reviewing courts have to consider the record as well as the submissions and the process. It is worth reproducing paragraph 18 from *Nurses' Union*:

> [18] Evans J.A. in *Canada Post Corp. v. Public Service Alliance of Canada*, 2010 FCA 56, [2011] 2 F.C.R. 221, explained in reasons upheld by this Court, (2011 SCC 57, [2011] 3 S.C.R. 572) that *Dunsmuir* seeks to "avoid an unduly formalistic approach to judicial review" (para. 164). He notes that "perfection is not the standard" and suggests that reviewing courts should ask whether "when read in light of the evidence before it and the nature of its statutory task, the Tribunal's reasons adequately explain the bases of its decision" (para. 163). I found the description by the Respondents in their Factum particularly helpful in explaining the nature of the exercise:
>
> > When reviewing a decision of an administrative body on the reasonableness standard, the guiding principle is deference. Reasons are not to be reviewed in a vacuum – the result is to be looked at in the context of the evidence, the parties' submissions and the process. Reasons do not have to be perfect. They do not have to be comprehensive. [para. 44]

[41] In fact, reviewing judges are not looking for imperfections, discrepancies or reasons to disagree with the decision-maker. On the contrary they are invited to supplement reasons, not subvert them. This passage from Professor Dyzenhaus' influential "The Politics of Deference:

Judicial Review and Democracy", referred to by the Court in *Nurses' Union*, was referred to again very recently in *Sattva Capital Corp c Creston Moly Corp*, 2014 CSC 53, at paragraph 110:

> "Reasonable" means here that the reasons do in fact or in principle support the conclusion reached. That is, even if the reasons in fact given do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them. For if it is right that among the reasons for deference are the appointment of the tribunal and not the court as the front line adjudicator, the tribunal's proximity to the dispute, its expertise, etc, then it is also the case that its decision should be presumed to be correct even if its reasons are in some respects defective. [Emphasis added by Abella J.; para. 12.]
>
> (Quotation from D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 304.)

In the case at hand, it is that very kind of analysis that makes the Court conclude that the decision is reasonable. It could have been more explicit. But the lack of explicitness does not detract from the true decision that was made: the applicant did not satisfy the Visa Officer that she is not inadmissible because she withheld material facts relating to a relevant matter.

[42] It was for the Visa Officer to apply section 11 of the Act. He can hardly be faulted for having used the language provided for by Parliament. The Officer's finding was not at odds with section 9 of the Act. The two provisions must be read together. In interpreting a statute, we do not presume that there are gaps and contradictions, but rather "… that the provisions of an Act all fit together to form a coherent and workable scheme." (Ruth Sullivan, *Sullivan and Driedger on The Construction of Statutes*, 4th ed (Markham: LexisNexis Butterworths Canada, 2002) at page

283). That approach has found a clear description in *Melnychuk v Heard* (1963), 45 WWR 257, at 263:

> The court must not only consider one section but all sections of an Act including the relation of one section to the other sections, the relation of a section to the general object intended to be secured by the Act, the importance of the section, the whole scope of the Act and the real intention of the enacting body.

[43] The second issue raised is concerned with the materiality of the alleged misrepresentations, in the words of the applicant, which could be more accurately described as withholding of information by not answering legitimate questions.

[44] The burden on the applicant, once again, is to show these findings to be unreasonable. Such demonstration has not been made. Someone who wants to immigrate to this country as a member of the investor category has to expect questions about investments and employment. In *Kasisavanh v Canada (Citizenship and Immigration)*, 2007 FC 1090 this Court found questions to that effect to be legitimate. The same conclusion was reached by the Federal Court of Appeal in *Biao c Canada (Minister of Citizenship and Immigration)*, 2001 FCA 43 where it answered the certified question by the negative:

> [1] We consider that this appeal should be dismissed with costs and that this question certified by the motions judge should be answered in the negative:
>
> Does the Canada-Quebec Accord limit the jurisdiction of the visa officer to question the source of funds of a Quebec-destined applicant for permanent residence in Canada, in order to establish the applicant's admissibility?
>
> It seems clear to the Court that there is no incompatibility in the powers and duties of the two signatories of the Canada-Quebec Accord regarding immigration to Quebec. Clause 12 of that Accord states that the federal government has the authority to

> admit immigrants to Quebec and that it is the Government of Quebec which has the responsibility and powers of selecting immigrants wishing to settle in Quebec. Naturally the selection by the Quebec authorities is made and conducted from among the eligible immigrants.

Indeed, the Federal Court of Appeal elaborated as follows:

> [2] On the actual merits of the appeal, we feel that the motions judge made no error when he concluded that the visa officer was justified in denying the application for permanent residence in Canada made by the appellant on the ground that the latter had not provided the necessary documents establishing that his admission to Canada did not contravene the *Immigration Act*, R.S.C. 1985, c. I-2, as amended, and the regulations made thereunder, as required in ss. 8 and 9 of the said Act.

[45] The obligation to answer is clear. Is equally clear from the record that the applicant chose not to answer. It is hard to fathom that someone who immigrates to Canada in the investor category could reasonably avoid informing the Visa Officer of her involvement during eight years with a financial institution "notorious for its illegal activities over a large swathe of the globe". Similarly, questions about employment and residence should not have been difficult to answer. In the circumstances of this case, it was reasonable to ask questions and the lack of answers, in spite of repeated attempts to get them, justifies not being satisfied that the applicant is not inadmissible. The applicant has not discharged her burden.

[46] As a result, the application for judicial review is dismissed.

[47] The parties have submitted two different questions for certification. The applicant resiled from the question she originally submitted and suggested another one. What the respondent on

the other hand proposed is that the question originally submitted by the applicant be the one certified. In both cases, they argued their case on the basis that it was governed by a correctness standard and, therefore, there was only one correct answer. It is not the basis on which this matter is addressed by the Court.

[48] The Federal Court of Appeal has stated that "[i]n order to be certified pursuant to s. 83(1), a question must be one which, in the opinion of the motions judge, transcends the interests of the immediate parties to the litigation and contemplates issues of broad significance or general application" (*Liyanagamage v Canada (Minister of Citizenship and Immigration)* (1994), 176 NR 4). In my view, this case does not meet the requirements of the test. The facts of this case are peculiar and I fail to see how it contemplates issues of general application. Indeed, the proposed questions do not transcend the interests of these litigants. This is a case where the Visa Officer chose to express himself using the words of the legislation. Looking at the record as a whole, the Visa Officer could only come to his conclusion by finding that the applicant had withheld material facts, which constitutes misrepresentation under section 40 of the Act: "(1) … a foreign national is inadmissible for misrepresentation".

[49] On the facts of this case and on this particular record, this is the decision that was taken. Having a standard of reasonableness and considering the record in its entirety, the reasons adequately explain in this case the basis of the decision. The Court put it this way in *Nurses' Union*:

> [14] … It is a more organic exercise — the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes. This, it seems to me, is what the Court was saying in *Dunsmuir* when it

> told reviewing courts to look at "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes" (para. 47).

[50] This is what makes this case something that does not transcend the interests of the parties. It was reasonable on this record to find as the Visa Officer did.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3086-13
STYLE OF CAUSE:	SUBITHA THIRESA XAVIER DE SILVA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	MARCH 18, 2014
JUDGMENT AND REASONS:	ROY J.
DATED:	AUGUST 8, 2014

APPEARANCES:

Me Stéphanie Riccio Me Ingrid Emanuela Mazzola	FOR THE APPLICANT
Me Lyne Prince	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Rochefort & Associés Barristers and Solicitors Montréal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT