Federal Court  Cour fédérale

Date: 20180202

Docket: IMM-2466-17

Citation: 2018 FC 115

Ottawa, Ontario, February 2, 2018

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ODAI MOHAMMAD KABRAN

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES, AND CITIZENSHIP

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a Visa Officer's decision, dated February 6, 2017, refusing the Applicant's application for a permanent resident visa in the Convention refugee abroad or country of asylum class, defined in ss 145 and 147 of the *Immigration Refugee Protection Regulations*, SOR/2002-227 ("IRP Regulations"). The Applicant alleges the Officer breached procedural fairness and that the decision is unreasonable.

Background

[2] The Applicant is a 24 year old Syrian national. His mother, younger brother, and he applied for permanent residence from Jordan. An older sister separately applied.

[3] The family were initially interviewed by the Officer in Jordan on January 25, 2016. The Officer noted that both sons looked much younger than their claimed ages of 21 and 23, their mother indicated that the Applicant had a thyroid problem but that the younger son did not. When asked about this, the Applicant stated that it was not the thyroid but another gland that did not develop properly. This was discovered when he was about 5 years old and it was noticed that his brother looked older than him. He received treatment in Syria but found it not to be useful. Treatments in Jordan resulted in a better appetite and an improvement of sexual related functions.

[4] The Applicant and his brother indicated that they left Syria when they were 18 and 16, respectively. The Applicant had been injured in a shooting on May 5, 2012 and was carried across the border on a stretcher, arriving in Jordan on May 29, 2012. Their mother and sister followed the next day. They indicated that their father died at the end of April 2012, a few days before the Applicant's injury. The Applicant's mother indicated that there was no connection between the death of her husband, who was selling groceries using his truck, and the Applicant's injuries. She stated that she did not know how her husband died, he could have had a stroke or been shot. She had tried to call him but someone else answered and told her he had died, she did not know if there had been a funeral, the person on the phone told her that her husband had

already been buried. Although her sons often went with their father when he was selling groceries, on that day they had not. This was because her younger son had epilepsy and the Applicant took care of him.

[5] The Officer asked the Applicant questions. She noted the family's application indicated that the Applicant had been shot by snipers. The Applicant stated he did not know who shot him. He stated that he used to stay with his brother and they were in a taxi to get things that were needed at home. When asked if his family was being targeted, he denied this. When asked about his father's disappearance and if there was any connection to the Applicant being shot, he said no, because of the war in Syria this happened all of the time. When the Officer indicated that these events occurred in 2012 at which time the conflict had not escalated to that point, the Applicant replied that the beginning of the bad events occurred in Daraa, where they were much worse. The Officer also noted the application indicated that in 2007 the Applicant had been hit by a car and sustained skull damage. The Applicant confirmed this, stating that he and his brother were selling items when he was hit by a car on a roundabout. The Applicant indicated that he was not employed because of the injury to his legs and that he needed an operation because of shrapnel in his legs. When asked how he had gotten shrapnel in his legs if he was shot with a bullet, he indicated that he did not know exactly what he was shot with, he was sitting in front with the taxi driver, he was shot from the left side and the bullet went through both legs. The Officer also asked the younger son for more information. The Officer then explained that the family's application was being accepted, contingent upon finding a sponsor given their high level of need (including medical needs), and that a background check and medical examination had to be completed before a final decision was made. The Officer

indicated in the Global Case Management System notes ("GCMS Notes") that the family were prima facia Syrian refugees but listed as a concern the need for a comprehensive security screening.

[6] Subsequently, physical examinations were carried out. A GCMS Information Request: Matching Centre Resettlement Needs document indicates, with respect to the Applicant, that on physical examination his status was abnormal, and he would need post arrival services, being consultation within weeks. However, as to cognitive impairment or other impairment, it indicated "no" and under activities of daily living, it indicated "independent".

[7] In the family's application for refugee protection, the Schedule A, Background section pertaining to the Applicant indicates that he is the dependent child aged 18 years or older of the principal applicant, his mother. The box asking if he suffered serious disease or physical or mental disorder is checked off as "yes", requiring explanation, which was that in May 2012, he was shot by snipers in both legs and in May 2007, he was hit by a car and suffered skull damage. Schedule A also indicates that the Applicant had five years of elementary school education. The application itself states his intended occupation as an electronic technician student. The Schedule A pertaining to his younger brother also identified his younger brother as a dependant, with a serious disease or physical or mental disorder, being epilepsy as a result of being beaten in February 2012 while in detention.

[8] A February 2, 2016 entry in the GCMS Notes indicates that although the United Nations High Commission on Refugees ("UNHCR") had not formally designated Syrians fleeing the

conflict in that country as prima facia refugees, from Canada's perspective the situation was consistent with that determination. As such, and based on the information then available, the family's case met the requirements of ss 145 and 147 of the IRP Regulations.

[9] The Applicant was interviewed a second time on December 4, 2016. The GCMS Notes indicate that the Officer advised the Applicant that the purpose of the interview was to clarify background information, confirmed that the Applicant understood the interpreter, advised him to be truthful and to advise the Officer if there was something he did not understand or if he was having difficulties, but that no issues were raised during the interview. The GCMS Notes indicate that the Officer asked the Applicant about his injuries, he responded that he was injured by a sniper in Syria and was brought to Jordan via stretcher, however, when he was asked for details of his injury, he was not forthcoming. Few details were offered about location, circumstances, or possible perpetrators.

[10] The Applicant was then asked about social media. He responded that he had a Facebook profile. When asked if the Officer could view his profile, he agreed. He then confirmed that the profile shown to him was his account, he had 652 friends. The Officer showed him several photos he had "liked" and commented upon. Specifically, a photo of a deceased and mutilated person on which the Applicant had offered condolences. When asked who the person was, the Applicant denied knowing the person or making the comment. When shown a picture of a Facebook friend holding a gun, the Officer asked the Applicant why he had "liked" that photo, but the Applicant denied knowing the person or liking the photo. When shown a Facebook friend's profile and asked why he "liked" a photo of a masked militant holding a weapon, he

again denied knowing the person or liking the photo. He later disclosed that he had met this person on Facebook, contacted him and solicited funds as he had seen that he was a part of a charity and thought he would get money from him. When asked if he had received funds from that person or others on Facebook, he advised that he had not. The Applicant was then directed to another Facebook friend with a profile picture of a young armed man who appeared to be a rebel fighter and was asked who he was and how he knew him, the Applicant denied knowing the person. Similarly, when shown another photo of a Facebook friend, an armed rebel which he had "liked", the Applicant denied knowing the person or liking the photo. The GCMS Notes indicate that throughout the interview the Applicant was not forthcoming and that the Officer was concerned that he was not being truthful in relation to his contacts and friends. The Officer was not satisfied that he was being truthful in relation to his prior comments and actions on social media or in relation to the circumstances surrounding his injuries sustained in Syria. The Officer recorded that the Applicant had been provided with several opportunities to be forthcoming and overcome the Officer's concerns, but had not done so.

Decision Under Review

[11] By letter of February 6, 2017, the Officer advised the Applicant that she was not satisfied that the Applicant was a member of the Convention refugee abroad class or the country of asylum class. During his interview, he had given contradictory responses about his knowledge of and relationship with members or supporters of armed groups in Syria. He had provided responses about his activities on social media which were contradicted by the information found on social media sites. The Officer stated that she was not satisfied that the Applicant had been truthful in all of his responses in relation to his interaction with armed groups in Syria. As a

result, the Officer was not satisfied that the evidence presented was credible. Further, that concerns over the credibility of the information provided by the Applicant were made known to him and he was given an opportunity to respond, however, his response did not allay the Officer's concerns. Therefore, the Officer was not satisfied that there were reasonable grounds to believe that the Applicant possessed a well-founded fear of persecution based upon his race, religion, nationality, membership in a particular social group or political opinion and was not satisfied that he met the requirements of the *Immigration Refugee Protection Act,* SC 2001, c 27 ("IRPA") or that he was not inadmissible to Canada.

[12] On the same date, the Applicant's mother was advised that the Applicant had been refused and that he would be separated from her file. She stated that she knew the Officer refused the Applicant because of Facebook but asserted that his phone had been stolen a year ago and his Facebook account hacked. She was very disappointed and saddened but stated that she would travel to Canada without him. The Officer was advised of the Applicant's mother's claim and reconsidered the decision. The GCMS Notes indicate the Officer weighed that information along with the totality of the information before her, in particular the interview at which the Applicant confirmed that the Facebook account shown to him was his current Facebook account and did not mention his phone being lost or his account hacked. Weighing the two conflicting statements, the Officer concluded, on a balanced of probabilities, that the mother's statement was not credible and maintained the original decision.

Issues and Standard of Review

[13] In my view, five issues arise from the Applicant's submissions, the first three being preliminary evidentiary issues:

1. Is the July 28, 2017 Affidavit of Rawdah Ali Shame, the Applicant's mother, admissible?
2. Is the November 22, 2017 Affidavit of Rawdah Ali Shame, the Applicant's mother, attaching a Psychiatric Report of Dr. Walid M. Shnaigat, dated October 1, 2017, admissible?
3. Is the academic paper entitled "Taking Facebook at face value: The Refugee Review Tribunal's use of social media evidence" ("Facebook Article") admissible?
4. Was the Applicant denied procedural fairness in the interview process?
5. Was the Officer's decision reasonable?

[14] The parties submit and I agree that issues of procedural fairness are to be reviewed on the correctness standard (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Mission Institution v Khela*, 2014 SCC 24 at para 79; *Qarizada v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1310 at para 18 ("*Qarizada*"); *Nassima v Canada (Minister of Citizenship and Immigration)*, 2008 FC 688 at para 10 ("*Nassima*")) and that whether or not the Applicant meets the requirements of the IRPA or is not inadmissible is a question of mixed fact and law and is reviewable on a standard of reasonableness (*Wardak v Canada (Citizenship and Immigration)*, 2015 FC 673 at para 12 ("*Wardak*"); *Qarizada* at para 15). The Officer's credibility assessment and factual findings are also reviewable on the reasonableness standard (*Wardak* at para 12; *Qarizada* at para 17; *Nassima* at para 9; *Gebrewldi v Canada (Citizenship and Immigration)*, 2017 FC 621 at paras 14 and 17 ("*Gebrewldi*")).

Analysis

Procedural fairness

[15] For purposes of context, it is perhaps easiest to summarize the parties' positions on the issue of procedural fairness and then address the admissibility issues.

[16] In that regard, the Applicant submits that the Officer breached procedural fairness by refusing to allow the Applicant's mother to attend the second interview. According to the Applicant, he is a dependent child, as defined in s 2 of the IRPA, with physical and psychological disabilities and was therefore not capable of appreciating the nature of the interview process or fully and fairly presenting his case. Further, his mother raised these concerns with the Officer but was ignored and the Officer incorrectly treated him as an adult. Moreover, the Applicant's intellectual disability also placed a higher duty of fairness on the Officer.

[17] Conversely, the Respondent submits that as required by OP5 Selection and Processing of Convention Refugees Abroad Class (ss 10.4 and 25.5), the Officer interviewed the Applicant as a member of a family in the application for protection. Further, the Applicant's mother's assertion that the Applicant suffers from a cognitive disability was made after the Officer rendered her decision and is not supported by the evidence that was before the Officer.

[18] The disputed July 28, 2017 Affidavit of Rawdah Ali Shame ("Affidavit #1") is 61 paragraphs in length. It asserts that the Applicant has an intellectual deficit and the mentality of

a child, is developmentally delayed, has multiple psychiatric problems and that he is, and always has been, dependent upon his mother. It also speaks to the circumstances surrounding the second interview, the allegedly lost and/or hacked phone, the reasons for delay in bringing the application for judicial review and many other matters.

[19] I would first note that, as stated by the Federal Court of Appeal in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 ("*Association of Universities*"), in determining the admissibility of an affidavit in support of an application for judicial review the differing roles played by the Court and the administrative decision-maker must be kept in mind. Parliament gave the administrative decision-maker, and not the Court, jurisdiction to determine certain matters on their merits. Because of this demarcation of roles, the Court cannot allow itself to become a forum for fact-finding on the merits of the matter. Accordingly, as a general rule, the evidentiary record before a reviewing Court on judicial review is restricted to the evidentiary record that was before the decision-maker. Evidence that was not before the decision-maker and that goes to the merits of the matter is, with certain limited exceptions, not admissible.

[20] In *Association of Universities*, Justice Stratas listed three such exceptions and noted that the list may not be closed. The exceptions are an affidavit that provides: general background in circumstances where that information might assist the Court in understanding the issues relevant to the judicial review; brings to the attention of the reviewing court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker so that the reviewing court can fulfill its role of reviewing for procedural unfairness; and, highlighting the

complete absence of evidence before the administrative decision-maker when it made a particular finding (*Association of Universities* at paras 19-20; *Bernard v Canada (Revenue Agency),* 2015 FCA 263 at paras 17-19 ("*Bernard*")).

[21] In *Bernard*, Justice Stratas restated the general rule that evidence that could have been placed before the administrative decision-maker is not admissible before a reviewing court (para 13) and discussed the exceptions to that general rule. This included the exception that concerns evidence relevant to an issue of natural justice, procedural fairness, improper purpose or fraud that could not have been placed before the decision-maker and does not interfere with the role of the decision-maker as the merits decider (*Bernard* at paras 25-27).

[22] To the extent that Affidavit #1 spoke to the delay in bringing the application for judicial review, its content was admissible and the request for an extension of time, which was not opposed by the Respondent, was granted by the Order of Justice Diner dated October 24, 2017. Similarly, to the extent that the affidavit speaks to the allegation of a breach of procedural fairness that cannot otherwise be ascertained from the record, it is admissible. However, much of the affidavit is concerned with assertions, facts and evidence that were not before the Officer and which do not fall within an exception. These are not admissible and are therefore afforded no weight.

[23] As seen from the background set out above, there was no information before the Officer indicating that the Applicant suffered an intellectual impairment of any kind. The application itself indicates that there was no mental disorder and identifies the two injuries that the Applicant

himself addressed in the first interview. The GCMS Notes of that interview do not suggest that the Applicant was in any way unable to understand the questions put to him. This included questions concerning his growth problems to which he indicated that it was not his thyroid, as his mother had stated, but another gland that caused this problem. This is confirmed by the panel physician's Medical Assessment ("Medical Assessment"), discussed below, which indicated the problem was hypopituitarism. Nor do the GCMS Notes indicate any concern raised by the Applicant's mother at the first interview as to the Applicant's mental capacity, which is in direct contrast to her detailed and multiple assertions contained in Affidavit #1.

[24] As to the second interview, the Applicant's mother deposes in Affidavit #1 that a call from the Canadian Embassy requested the Applicant to attend. When she asked the purpose of this interview she was told that the Applicant would have to be checked by a committee of doctors. However, he was instead met by the Officer and an interpreter. The Applicant's mother states she was told she had to leave the room. Further, when the interview went on for an hour and a half, she became concerned as she knew the Applicant would not be capable of responding to questions and must be confused. She then entered the room to ask what was going on and stated that the Applicant had a broken skull and did not know what he was saying. She said this in Arabic but the interpreter was present. The Officer told her to leave the room and not to say anything more. She asserts that later the Applicant told her that the Officer was yelling at him and that he was scared and confused. She asserts that the Applicant has a grade three or four education, barely knows how to read and write and could not have written statements on social media, that a third party had access to the Applicant's phone, and that it additionally was stolen by another third party.

[25] Affidavit #1 also states that as soon as the negative decision was received the Applicant's mother took the Applicant to a psychiatrist in Jordan who provided a letter describing his many psychological problems, that he has developmental issues which have deteriorated due to the war, and his short stature due to hypopituitarism. However, when she took the letter to the Canadian Embassy in Jordan and tried to appeal the decision, she was not allowed entry. Further, the affidavit states that she had been examined by a doctor in Jordan before leaving for Canada and brought the Applicant with her. This doctor could see that the Applicant was sick and could not believe he would be left alone in Jordan. The doctor contacted the Canadian Embassy but was told it was not her business. The Applicant's mother deposed that her son is now in the care of a neighbour but, as the neighbour does not have room for him, he lives alone on the roof of her house. The neighbour is having difficulty dealing with him, advises his memory is deteriorating, he is being targeted because of his disabilities and is unhappy and confused.

[26] The Officer also filed an affidavit in this matter, dated August 28, 2017. The Officer deposes that at the outset of the second interview she confirmed that the Applicant understood the translator, she advised the Applicant to be truthful and to inform the Officer if there was something the Applicant did not understand or if he was having difficulties but that no issues were raised by the Applicant. This confirms the content of the contemporaneous GCMS Notes. The Officer also addressed Affidavit #1 and states that at the time of the interview the Applicant did not appear to have an intellectual disability. Further, that he was medically assessed by a panel physician in January 2016 which assessment disclosed no indication of intellectual or developmental disability. The Applicant was diagnosed with a nervous system disorder and

hypopituitarism (resulting in short stature). In terms of his medical history, while he suffered head trauma in 2006, according to the panel physician's notes he was "fully recovered". And while he had gun shots and shrapnel in both feet, the notes indicate it is not "affecting his activities or mobility". A copy of the Medical Assessment is attached as an exhibit to the Officer's affidavit. The Officer also points out that the Schedule A to the application concerning the Applicant does not make mention of a mental disorder.

[27] The Officer deposes that while the Applicant's mother asserts that it should have been obvious that the Applicant had a mental disability because he speaks slowly and stumbles through his speech, the Applicant's level of speech was not unusual, he did not indicate difficulty in understanding questions and his words were not slurred.

[28] The Officer also deposed that while the Applicant's mother claims that she was initially with him at the interview and was asked to leave and that she entered the interview a second time and said that her son had a skull injury, neither of these statement are accurate. His mother did attend at the Embassy but did not enter the interview room or participate in the interview. She waited in the waiting room as is the normal process. And while Affidavit #1 states that after the interview she attended at the Embassy with a letter from the Applicant's psychologist but was not allowed to enter the Embassy, access is restricted to those with interviews or who are requested to attend or provide documents, nor is there any record of the attempted entry or additional medical assessments. As to the assertion that the mother's doctor attempted to follow up on the Applicant's behalf with the Embassy but was refused, the Officer stated that she had conducted a complete file review but that Immigration, Refugees and Citizenship Canada has no

medical records or submissions beyond the initial immigration medical examination in 2016. The Officer also denies the Applicant's mother's allegations that she was yelling at the Applicant.

[29] In my view, Affidavit #1 is to be afforded no weight as regards the Applicant's intellectual incapacity as all of the issues his mother alleges are, according to her, long standing, serious and resulted in his total dependence upon her from a young age. If true, this was information that was known to the Applicant's mother before the first interview and would have been a major concern to her, but was not raised with other identified health issues. In that regard, it is of note that during the first interview the Applicant's mother stated that it was the Applicant's role to look after his younger brother, who has suffered from epilepsy since an injury while in detention, a task unlikely to be left to a person with the impairments she describes in Affidavit #1.

[30] While the Applicant argues that there are many possible explanations as to why his alleged mental disability was not disclosed at an earlier stage, this is speculation. Even if the Applicant was unable to do so, his mother was interviewed and offers no explanation in Affidavit #1 as to why this was not raised. She deposes only that when the family was seeking to be certified by the UNHCR as asylum seekers she told them that she had always been responsible for her sons. This may be so and may explain why they are indicated as dependents on the application. However, s 2(b) of the IRP Regulations defines a dependent child, in respect of a parent, as a child who is in one of two situations of dependency. Either the child is less than 22 years of age and is not a spouse or common-law partner, or, is 22 years of age or older and has

depended substantially on the financial support of the parent since before attaining the age of 22 years and is unable to be financially self-supporting due to a physical or mental condition. A UNHCR Asylum Seeker Certificate was issued to the Applicant's mother on October 7, 2015. This appears to be a family registration number and also identifies her two sons. It is probable that at the time the family applied for UNHCR Asylum Seeker status, both sons were less than 22 years old. Thus, identifying the Applicant on the application for refugee protection in Canada as a dependent child does not in and of itself establish a mental condition. I also note that the family's application identified him as a child of the principal applicant who would accompany her to Canada, but that nothing is entered under "dependant type".

[31] In summary, the allegations of an intellectual disability and other concerns with the Applicant's psychological health were not, according to Affidavit #1, new information. They could have been but were not raised at the first interview. Thus, this evidence was not before the Officer when she made the decision. I also prefer the evidence of the Officer concerning the Applicant's ability to respond to questions put to him, which is also reflected in the GCMS Notes, as well as the Officer's evidence concerning the assertions of the Applicant's mother as to her intervention in the second interview; her attempt to file a psychiatrist's report after the Applicant was rejected (a copy of which was not attached to her affidavit); and, her physician's rebuffed attempt to contact the Canadian Embassy (of which there was no record). The latter was also not consistent with the Officer's response to events following the second interview when the Applicant's mother asserted that her son's phone had been stolen and hacked. When that information was relayed to the Officer, she reconsidered her decision in light of it. In the result, the evidence contained in Affidavit #1 concerning the alleged intellectual disability of the

Applicant is not admissible under the procedural fairness exception to the general rule that the Court can only consider the record that was before the decision-maker, because that evidence could have been placed before the Officer during the first interview, but was not. And, in any event, given the evidence in the record and the Officer's affidavit evidence, I am not persuaded that it establishes a breach of procedural fairness or that the decision deprived the Applicant of natural justice.

[32] As to the November 22, 2017 Affidavit of Rawdah Ali Shame ("Affidavit #2") attaching a handwritten psychiatric report of Dr. Walid M. Shnaigat ("Psychiatrist's Report"), dated October 1, 2017, the report post-dates the Officer's decision. It states that the Applicant has been a patient of Dr. Shnaigat since February 9, 2017, when the Applicant came to the clinic with his neighbour. He presented as an anxious, irritable person, it noted his hypopituitarism and his claim to have been physically mistreated by the Syrian police (which the Applicant had not asserted when seeking refugee protection). It states that upon psychiatric assessment, he was found to be severely depressed, anxious, worried, with multiple phobias and persecution delusions and that his being left alone in Jordan deteriorated his psychological condition. The report goes on to state that the Applicant has limited cognitive capabilities; he cannot explain or look after himself properly; has poor judgment; is not fully aware of the current situation; and, is not insightful. The Applicant therefore has difficulty concentrating on answering questions meaningfully. Severe depression, post-traumatic stress disorder, paranoid disorder and low IQ are diagnosed. The report does not indicate the basis of the assessment, that is, if any psychological testing was undertaken, the duration of the assessment or reference any past psychological history or treatment.

[33] The medical evidence on the record that pre-dates the Officer's decision is the Medical Assessment. While the Applicant argues that this was merely a physical assessment, it is of note that the GCMS Information Request: Matching Centre Resettlement Needs is intended to identify the needs of a refugee that would require attention upon arrival in Canada. As regards to the Applicant, this specifically states that there is no cognitive impairment and that he is capable of independent living. Similarly, it is difficult to accept that an assessing physician would not address a significant mental disability, particularly when noting the prior skull injury and full recovery from it. In my view, considered in the context of the evidence in whole, in particular the medical record evidence and the Officer's affidavit evidence, the Psychiatrist's Report, even if admissible, would be of limited weight in supporting the Applicant's post-decision claim of mental impairment.

[34] The Applicant submits that this Court has previously accepted extrinsic evidence which was not before the decision-maker in cases where there has been a violation of the principles of fairness (*Ontario Assn of Architects v Assn of Architectural Technologists of Ontario*, 2002 FCA 218 at para 30; *Nyoka v Canada (Citizenship and Immigration)*, 2008 FC 568 at paras 17-18 ("*Nyoka*")). However, both of these cases pre-date the more recent decisions of the Federal Court of Appeal in *Association of Universities* at para 20, *Bernard* at para 17, and *Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 151 at para 15. And, in any event, *Nyoka* concerned the admission of new evidence which established militant groups were active at a particular time. This directly contradicted the tribunal's finding based on evidence it found when conducting its own research. That evidence also contradicted the applicant's own evidence, but the contradiction was not put to the applicant. This resulted in a breach of natural justice. In my

view, this is not such a situation. There was no evidence before the Officer as to any mental incapacity of the Applicant and the Psychiatrist's Report does not serve to demonstrate an error in the Officer's findings. It is simply new evidence intended to support a claim of procedural unfairness on a basis that was raised only after the Officer made her decision.

[35] In these circumstances, I cannot conclude that the Officer breached the duty of procedural fairness by interviewing the Applicant in his mother's absence nor that the Psychiatrist's Report demonstrates that the outcome of the decision is a gross breach of natural justice as the Applicant submits.

Reasonableness

[36] The Applicant also challenges the Officer's decision on the basis that her reasons were inadequate. He submits that while alone this is insufficient basis to quash the decision, the quality of the reasons goes to the reasonableness of the decision. Here, the Officer failed to state what the specific grounds were for her belief that the Applicant was inadmissible. Nor do the reasons provide any analysis as to why the Applicant failed to meet the requirements of the IRPA and the IRP Regulations. For example, there were no reasons to support the absence of grounds to believe that the Applicant possessed a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion. Thus, the Applicant could not understand why his application was refused. And, while the Officer questioned the Applicant's truthfulness, her reasons do not provide the basis for this belief.

[37] In the Applicant's reply memorandum he asserts that it was unreasonable to conclude, because he allegedly "liked" photos posted by someone else, that he supports armed groups in Syria. In this regard, the Facebook Article suggests that social media rarely conveys accurate or consistent information about an individual. Viewed in the context of that article, the Applicant's explanation that he did not know the people he was asked about was reasonable and it is not clear why the Officer dismissed the explanation.

[38] In my view, the Officer's reasons were adequate. The Applicant's claim for protection, as a person fleeing the conflict in Syria, had already been deemed to prima facia meet the requirements of ss 145 and 147 of the IRP Regulations, subject to security and other clearances. Further, the Officer clearly indicated in the GCMS Notes, which form a part of the reasons (*Gebrewldi* at para 29; *Qarizada* at para 30) that when asked for details of the Applicant's injuries by sniper fire, he offered little detail about the surrounding circumstances and was not forthcoming. Similarly, when asked about his Facebook profile, the Applicant denied making the comment or knowing who the indicated persons were. Nor did he explain why he "liked" certain photos. The Officer concluded that throughout the interview the Applicant was not forthcoming. The Officer was concerned about the Applicant's truthfulness as to his social media activities and the circumstances surrounding his injuries and found that the Applicant had not overcome those concerns. In the result, the decision turned on credibility, and the Officer's negative credibility findings are to be afforded deference (*Mezbani v Canada (Citizenship and Immigration)*, 2012 FC 1115 at para 26; *Aguebor v Canada (Minister of Employment and Immigration)* (1993), 160 NR 315 at para 4 (FCA); *Wardak* at para 12). Similarly, an applicant's failure to provide a complete picture of their background may result in an officer being unable to

determine if the applicant is not inadmissible; the officer does not need to make a specific finding of inadmissibility (*Alkhairat v Canada (Citizenship and Immigration)*, 2017 FC 285 at para 9; *Ramalingam v Canada (Citizenship and Immigration)*, 2011 FC 278 at para 37 ("*Ramalingam*"); *Ye v Canada (Citizenship and Immigration)*, 2014 FC 647 at para 23).

[39] The Applicant asserts that the Officer was compelled to provide grounds for being inadmissible, referencing s 34 of the IRPA which sets out the basis for a finding of inadmissibility on security grounds. However, the section that applies in this matter is s 11(1) which states that a visa or document shall be issued if, following an examination, the officer is satisfied that the foreign national "is not inadmissible" and meets the requirements of the IRPA. Further, a similar argument as to the necessity of making a specific finding of inadmissibility was recently addressed by Justice Southcott in *Noori v Canada (Citizenship and Immigration)*, 2017 FC 1095 at paras 17-18 ("*Noori*"):

> [17] Finally, the Applicants argue that the Decision is unreasonable because the Officer asked the Principal Applicant no questions about his admissibility to Canada and conducted no analysis of his admissibility. The Respondent's position on this argument is that the inconsistencies in the Principal Applicant's evidence caused the Officer's sufficient concerns about the veracity of his testimony that further inquiries were precluded and the Officer was unable to conduct an admissibility assessment.
>
> [18] I agree with the Respondent's characterization of this aspect of the Decision. The GCMS notes expressly state that the discrepancies in the Principal Applicant's evidence identified by the Officer and his lack of truthfulness after repeated questioning raised concerns about the veracity of the rest of the testimony the Principal Applicant had provided during the interview. The notes state that, as a result, the Officer was unable to be satisfied that the Principal Applicant is eligible and is not inadmissible. An immigration officer can reject an application without a specific finding of inadmissibility, on the basis that he or she cannot actually determine that the applicant is not inadmissible (see *Ramalingam v Canada (Citizenship and Immigration)*, 2011 FC

> 278 at para 37). If an applicant is untruthful, this can affect the reliability of the whole of his or her testimony, and an officer may be unable to conclude that the applicant is not inadmissible (see *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105 at para 33).

[40] In my view, this is a factually similar circumstance.

[41] As to the Facebook Article, while the Respondent asserts that the article should not be admitted on the basis that the Applicant attempts to split his case by filing it in reply, in my view the article is merely a secondary source general article that does not relate to the Applicant specifically. It is not expert evidence. And while it points out that people are frequently not as they appear based on their Facebook profile, the problem in the Applicant's case was his failure to meet his onus of alleviating the Officer's concerns about his Facebook interactions (*Kumarasekaram v Canada (Citizenship and Immigration)*, 2010 FC 1311 at para 9; see also *Malit v Canada (Citizenship and Immigration)*, 2018 FC 16 at para 13). The blanket denial of knowledge of the friends referred to by the Officer, a comment made and of liking photos was simply insufficient and, where the information sought is not provided, the onus does not shift to the Officer to pursue the matter further. The concern was not so much with the content of the Facebook profile, but the absence of sufficient explanations for the Applicant's social media activity.

[42] In that regard, when appearing before me the Applicant emphasized that the Officer failed to explain to the Applicant the underlying rationale for her questions and breached procedural fairness by failing to clearly put her security concerns to the Applicant, thereby denying him the opportunity to respond to them. According to the Applicant, such opaque

questioning would give rise to a question of procedural fairness even in the absence of his alleged intellectual disability. In my view, this is really a question of the reasonableness of the Officer's credibility assessment. That assessment was based on the Officer's first hand observation of the Applicant's demeanour during the interview and his blanket denials and lack of forthcomingness, it is owed deference.

[43] For the reasons set out above, the Officer's decision falls within the range of possible, acceptable outcomes defensible in light of the facts and the law.

Certified Question

[44] The Applicant proposes the following two questions for certification pursuant to s 74(d) of the IRPA:

1. Where an officer decides to convoke an interview in respect of a visa application in order to present evidence of possible inadmissibility, does procedural fairness require a visa officer to identify to the Applicant the specific inadmissibility/ies contemplated prior to refusing a visa application?
2. Where an officer refuses a visa application under s.11(1) of the IRPA for reasons that the officer is not satisfied that the foreign national is not inadmissible, does procedural fairness require a visa officer to identify to the Applicant the specific inadmissibility/ies in the decision to refuse a visa application?

[45] The Respondent opposes the certification of the proposed questions as they do not arise on the facts and have been answered by existing jurisprudence.

[46] The Federal Court of Appeal in *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 recently revisited the criteria that must be met for certification of a proposed question:

> [46] This Court recently reiterated in *Lewis v. Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para. 36, the criteria for certification. The question must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance. This means that the question must have been dealt with by the Federal Court and must arise from the case itself rather than merely from the way in which the Federal Court disposed of the application. An issue that need not be decided cannot ground a properly certified question (*Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21, 29 Imm. L.R. (4th) 211 at para. 10). Nor will a question that is in the nature of a reference or whose answer turns on the unique facts of the case be properly certified (*Mudrak v. Canada (Citizenship and Immigration)*, 2016 FCA 178, 485 N.R. 186 at paras. 15, 35).
>
> [47] Despite these requirements, this Court has considered that it is not constrained by the precise language of the certified question, and may reformulate the question to capture the real legal issue presented (*Tretsetsang v. Canada (Citizenship and Immigration)*, 2016 FCA 175, 398 D.L.R. (4th) 685 at para. 5 per Rennie J.A. (dissenting, but not on this point); *Canada (Citizenship and Immigration) v. Ekanza Ezokola*, 2011 FCA 224, [2011] 3 F.C.R. 417 at paras. 40-44, affirmed without comment on the point, *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 S.C.R. 678). Any reformulated question must, of course, also meet the criteria for a properly certified question.

[47] In my view, the proposed questions are not suitable for certification. As discussed above, in this matter the Officer found the Applicant not to be credible. This Court has previously found that an officer can reject an application without a specific finding of inadmissibility, on the basis that the officer cannot actually determine that the applicant is not inadmissible (*Noori* at para 18; *Ramalingham* at para 37). Thus, the questions do not arise from the facts of the case nor are they dispositive.

JUDGMENT IN IMM-2466-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

3. No question is certified.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2466-17
STYLE OF CAUSE:	ODAI MOHAMMAD KABRAN v THE MINISTER OF IMMIGRATION, REFUGEES, AND CITIZENSHIP
PLACE OF HEARING:	OTTAWA, ONTARIO (BY VIDEOCONFERENCE)
DATE OF HEARING:	JANUARY 22, 2018
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	FEBRUARY 2, 2018

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