

Federal Court



Cour fédérale

**Date: 20190514**

**Docket: IMM-5223-18**

**Citation: 2019 FC 703**

**Ottawa, Ontario, May 14, 2019**

**PRESENT: Madam Justice McVeigh**

**BETWEEN:**

**NAGHMA CLEMENT**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] Naghma Clement [the “Applicant”] applies for judicial review of a decision that denied her a temporary resident visa [“TRV”] on July 9, 2018.

[2] Throughout this matter, the Applicant’s brother, Nadeem Dean, has been active, both in providing evidence and essentially serving as the self-represented litigant on his sister’s behalf.

In an order dated April 24, 2019, Justice Diner allowed Mr. Dean to appear on behalf of the Applicant at the judicial review hearing on April 30, 2019 as the Applicant does not hold a valid visa that would allow her to enter Canada and represent herself.

## II. Background

[3] The Applicant, Naghma Clement, is a citizen and resident of Pakistan. Her stated purpose to obtain a TRV is to visit her brothers and their families in Canada. She wishes to meet her sister in law for the first time, as she was unable to attend Mr. Dean's wedding. As well, the Applicant wishes to visit Mr. Dean's child. She is the only remaining sister of the family, as the older sister, Roohi Tariq, has passed away, and her brothers desperately want her to meet their families who reside in Canada.

[4] She has been denied a TRV on three previous occasions:

- (a) Her first TRV application was denied on June 11, 2015. There is no indication that an application for leave and judicial review was filed;
- (b) Her second TRV application was denied on January 22, 2017, and an application for judicial review was granted on consent, returning the matter to a different visa officer for re-determination;
- (c) Upon re-determination, the visa officer denied the TRV application on November 10, 2017, and an application for judicial review was filed. On consent, the application for judicial review was granted, but denied to issue a directed verdict, and the matter was returned once again to a different visa officer for re-determination.

[5] On July 9, 2018, the Applicant's TRV application was again denied. The visa officer [the "Officer"] made the following observations:

- (a) The Applicant is married and has three biological children as well as five adopted children;
- (b) The purpose of the Applicant's visit was to see her family and to meet her brother's newborn child;
- (c) The Applicant is employed as a teacher and earns a low income of 314,000 Pakistani Rupees ["PKR"] annually;
- (d) The Applicant's spouse earns 322,000 PKR annually;
- (e) The Applicant's household income is bolstered by tutoring and interest income and totals under 1,200,000 PKR annually, or approximately \$13,000 CAD annually; and
- (f) Lifetime savings were 1.5 mil PKR and in October 2017, the family had saved over 80,000 PKR since the beginning of the year, which is less than \$900 CAD.

[6] The Officer found that "[b]ased on the evidence submitted, on balance of probabilities, when considering [the Applicant]'s economic establishment in [her] current country of residence, [her] economic establishment in [her] country of citizenship, and [her] social ties against the economic and social incentives that would be available in Canada, I am not satisfied that [her] economic and social establishment outside of Canada is sufficient to motivate [her] departure from Canada at the end of the authorized period stay". In a letter sent to the Applicant, there was a further statement that the Officer was not satisfied that the primary purpose was as a TRV and

that she was not an intending immigrant. She was offered an opportunity to provide additional documentation to demonstrate her economic and social ties outside of Canada.

[7] After reviewing the additional documentation filed by the Applicant on July 9, 2018, the Officer remarked that the family income was a low amount of about \$12,607 CAD and that the household savings of \$16,479 CAD were relatively low. The Officer noted that the Applicant was pursuing her master's degree and has many family members in Pakistan, and that she claims she wants to go to Canada just to visit her brother and sister in law and their newborn son. Nonetheless, and in light of the other evidence available, the Officer refused her TRV application.

[8] Nadeem Dean and the Applicant filed before the Federal Court a number of affidavits which included new evidence that was not before the Officer. At the outset of the hearing, the parties were told that I would only rely on the information contained in the certified tribunal record ["CTR"]. At that time, it was confirmed that a few pages were missing from the CTR and they will be considered. As well, I confirmed that I would only hear arguments on issues that were contained in the memorandums of argument.

### III. Issues

[9] The issues are:

- A. Did the Officer err in refusing the TRV application?
- B. Was there a breach of procedural fairness?

#### IV. Standard of Review

[10] In *Hafiz v Canada (Citizenship and Immigration)*, 2018 FC 1273 [*“Hafiz”*], Justice Favel held that a visa officer’s decision refusing a TRV involves questions of mixed fact and law reviewable on the reasonableness standard (*Hafiz* at para 9). Reasonableness means that the reviewing court must show deference to the decision under review, so long as it is justified, transparent and intelligible and falls “within the range of acceptable and rational solutions” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). The expertise of the visa officers and the discretionary nature of the decisions are such that the Court should show deference when reviewing those decisions (*Obeng v Canada (Citizenship and Immigration)* 2008 FC 754 at para 21).

[11] With regards to procedural fairness, the standard of review is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*“Khosa”*] at para 43; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34, 36). In *Hafiz*, Justice Favel also stated that the “the procedural fairness owed by visa officers is on the low end of the spectrum” (*Hafiz* at para 25).

#### V. Analysis

##### A. *Did the Officer err in refusing the TRV application?*

[12] The Applicant’s brother indicated that there were “many unjustified conclusions that the Visa Officers have come to regarding [his] sister’s case”. Examples provided were that the

Officer believed that his sister was his mother and that there are two married sisters rather than two brothers in Canada.

[13] With respect, both of those examples were from other previous visa applications decisions and not the visa decision before the Court. In this decision, the Officer clearly identifies each brother in Canada as being Qamar and Nadeem and indicates that the invitee is Nadeem, her brother. For this reason, those submissions will be disregarded.

[14] The Applicant also argued that the Officer erred by failing to notice that the Applicant's combined family income is approximately 10 times more than the per capita income of an average household in Pakistan. The Applicant suggests that the Officer applied an unfair test by comparing her household income to that of an income in Canada, which is unreasonable.

[15] Part of that argument was that the Officer did not mention that the Applicant's children had reduced school fees and that her agricultural land would allow them to harvest produce, thus their family expenses were less than the norm so their income would go further.

[16] The jurisprudence is clear that the Applicant has the burden of providing all of the relevant evidence to satisfy the Officer that the statutory requirement of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ["IRPA"] is met (*Rahman v Canada (Citizenship and Immigration)*, 2016 FC 793 at para 16; *Chhetri v Canada (Citizenship and Immigration)*, 2011 FC 872 at para 9).

[17] As pointed out at the hearing, there was no evidence before the Officer that the family income was 10 times more than in Canada, or specifics regarding the family planting and harvesting the agricultural land, thus having fewer expenses for food. A statement was found in a narrative that they grew food but without further evidence. And even with that taken into consideration, the combined family income has to support 2 parents, 3 biological children, 5 adopted children and pay the tuition fees for the Applicant's Master of Education (pp. 125-126 of the CTR). It was reasonable for the Officer to find that this is a low income.

[18] The Applicant argued that since the Officer was locally engaged, he would know Pakistan customs and did not need further evidence. I disagree, as the onus is on the Applicant to provide evidence, and she was even given an extra opportunity to do so when the Officer asked her to provide further documentation on July 6, 2018. The Officer was located in Abu Dhabi and cannot be expected to know all of the local customs of Pakistan even though they do have localized expertise.

[19] Each visa is issued on a family's particular circumstances and on the facts presented in the evidence, and it is for the Applicant to provide the evidence. Visa officers cannot be faulted for not knowing material that was not before them or for surmising an applicant's circumstances and certainly there is no obligation to investigate further on a TRV application. Based on the material that was before the Officer, the determination of the Applicant's economic establishment outside of Canada was reasonable.

[20] The Applicant submitted that the Officer's consideration of "[her] social ties against the economic and social incentives that would be available in Canada" would make it impossible for anyone from Pakistan to obtain a TRV to come to Canada. As Canada simply has better economic and social incentives than a developing country like Pakistan, the Applicant argued that it is an error to simply apply Canadian standards.

[21] The Officer did not apply a standard unreachable by a Pakistani national. But the Applicant does have the onus to satisfy the Officer that they are a *bona fide* temporary visitor. It is not for the Court to re-weigh the factors and I am cognizant that the visa officer has discretion that I am only to review on a reasonableness standard.

[22] In this case, there was evidence to support the finding that the Applicant did not have economic establishment in Pakistan to a level that would ensure her return to Pakistan. The Officer did record in the notes that the Applicant was taking graduate studies and was employed, so they did not ignore the evidence but weighed it against other factors. There were also a number of other factors that went into the decision making process, such as her lack of travel.

[23] Next, the Applicant argued that the Officer did not take into account that she had significant social ties in Pakistan in the form of her husband and children, none of whom were coming to Canada. Given that, the Applicant submitted that it was unreasonable for the Officer to find that she had weak social ties in Pakistan.



[24] Contrary to this argument, I find that the Officer did note and consider the Applicant's family members in Pakistan as well as the family members in Canada. However, he did not find that these were social ties that ensured she would leave Canada at the end of her stay.

[25] The Applicant submitted that the Officer should have explained why the present TRV denial was different from the previous two refusals.

[26] The Officer does not need to do this, as each TRV application is decided on its own facts and evidence. Every TRV application is unique because of the duration and the reasons for a visit. For example, a TRV could be applied to visit an ill relative that resides in Canada. Then, two years later, an application could be made to attend a professional conference. An individual could have no children when they first apply and have several when they next apply for a TRV. Each TRV is very individualized and attracts a low level of procedural fairness. There is no obligation on the Officer to explain the difference or to provide a running score of concerns (*Grewal v Canada (Citizenship and Immigration)*, 2017 FC 955 at para 16).

[27] Moreover, the Applicant argued that the remaining factors were so positive that it was an error not to grant this TRV. The Applicant stated that her parents had come to Canada to visit her siblings and had returned to Pakistan, and none of the negative factors that affected her TRV application seemed to affect their application for a TRV.

[28] Her brother, Nadeem argued that he even offered to provide a bond to guarantee that she would return to Pakistan, and the Officer did not even mention this before denying the TRV. To not do so, he argued, was a reviewable error.

[29] I was not provided any case law or legislative authority indicating that the provision of a bond could necessitate a TRV being granted. Further, when I asked for submissions to determine whether it was material and should have been noted by the Officer, I was referred to Nadeem Dean's affidavit dated October 11, 2017 at para 13:

I guarantee by my personal assurance that Naghma Clement will leave Canada at the end of the period authorized for her stay. I am willing to sign a bond on her behalf.

[30] The Applicant submits that it is clear from her two brothers' affidavits that they were inviting her to Canada and they were prepared to support her. The Officer did not refer in the reasons to each document or statement that was filed. I do not find it an error that the Officer did not specifically mention that one brother said he would be prepared to sign a bond, as that is not provided for necessarily in the context of a TRV application.

[31] As indicated by the Supreme Court of Canada, as long as the reasons allow the Court to understand why the decision maker made its decision and permits it to determine whether the conclusion is within the range of acceptable outcomes, reasons do not need to refer to "all the arguments, statutory provisions, jurisprudence or other details" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).

[32] The Applicant's arguments regarding her family ties in Pakistan and in Canada as well as other connections in Pakistan all relate to weight. It cannot be argued that the Officer ignored evidence relating to the social ties of the Applicant to Pakistan. Rather, the Officer carefully canvassed the fact that the Applicant has a family of 5 in Pakistan, and numerous other family members. Despite that, the Officer's conclusion was that the purpose of the trip was not compelling. Such a decision is only reviewable if the decision lacks justification, transparency, and intelligibility.

[33] In sum, the Applicant is asking for this Court to re-weigh the evidence, but that is not the role of the Court on judicial review (*Khosa* at para 61; *Pei v Canada (Citizenship and Immigration)*, 2007 FC 391 at para 14). The onus was on the Applicant to prove that she would leave Canada at the end of the requested period of stay. She did not satisfy the Officer that she would.

B. *Was there a breach of procedural fairness?*

[34] Most of the procedural fairness arguments raised by the Applicant do not concern procedural fairness and have already been examined.

[35] As stated above, the level of procedural fairness required on a TRV application is very low and in this case, the Officer went above what was necessary by giving the Applicant 7 days to file additional material to address a concern he had.

[36] Procedural fairness also requires that decisions be made free from a reasonable apprehension of bias (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 45).

[37] The Applicant asserted that the Officer's observation that the Applicant was a Christian in a Muslim majority country, and that the Applicant teaches at a Christian school, leads to a reasonable apprehension of bias. The Applicant argued that it was a grievous error for the Officer to use her religion as a determining factor in denying her TRV application. The Applicant stated that "[she is] shocked to see that the Visa Officer identifies [her] as "Christian". The religion of the Applicant or the lack thereof should be irrelevant to a TRV application".

[38] The Applicant further stated that her brother "was extremely hurt". Those comments, the Applicant argued, reveal that the Officer was biased by the fact that the Applicant was a Christian. The Applicant submitted that her religion is irrelevant as it is not mentioned in Regulation 179, and that this sweeping generality is against the indications found in section 5.10 of the document titled "OP11 Temporary Residents".

[39] The Applicant alleged that she was treated discriminatorily contrary to section 15(g) of the *Canadian Human Rights Act*, RSC 1985, c H-6.

[40] Further, the Applicant submitted that it was not obvious she was a Christian, and that it was not a factor she listed in her application, so it should not have been noted.

[41] First, I disagree that it was not obvious that she was a Christian. All of the material filed regarding her employment as a teacher indicated in the letter head that the school is the Cathedral Higher Secondary School and that the Chairman is a Bishop of Lahore (pp. 77, 92 of the CTR); the marriage certificate indicates she was married in St. Francis Church and that a priest officiated; and the registry of marriage is kept at the Catholic Mission Station of the St. Francis Church (p. 78 of the CTR). In a narrative supplied by the Applicant, she said: “We thank the Lord Jesus Christ that he continues to provide for our family” (p. 27 of the CTR). Then, at page 96 of the CTR, the Applicant herself says she was married in a Catholic Church.

[42] Further, I do not see the statement in the notes as anything other than a statement of fact, just as it is noted that she has three natural born children and 5 adopted children. It is just a fact and does not enter into the deliberation of the Officer or the reasons as evidenced in the CTR.

[43] The genesis for the modern formulation of the reasonable apprehension of bias test is contained in the dissenting judgment of Justice de Grandpré in *Committee for Justice and Liberty et al v National Energy Board et al*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at page 394: the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. The words of the Supreme Court were adopted by the Federal Court of Appeal: the test is “what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude” (*Patanguli v Canada (Citizenship and Immigration)*, 2015 FCA 291 at para 49).

[44] No informed person, viewing the matter realistically, would conclude that the notation that the Applicant is a Christian constitutes religious discrimination, because of the subsequent conclusion that there are strong reasons for the Applicant to stay in Canada.

VI. Conclusion

[45] I cannot say whether I would have determined this TRV application the same way, but I can say that on a continuum or spectrum of decisions, this was a reasonable, transparent and intelligible decision. For that reason, I am dismissing this application despite the excellent oral arguments of the Applicant's brother. Of course, this decision in no way prevents the Applicant from applying for a TRV in the future.

[46] The judicial review application is dismissed.

VII. Costs

[47] The Applicant's brother sought costs, as he indicated it was costly to attend this hearing and prepare material. He also pointed to the enormous emotional cost to litigate this matter.

[48] The Applicant was not successful, so she will not be awarded costs. The Respondent did not seek any costs, as section 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 indicates that costs will only be awarded in special circumstances.

VIII. Certified Question

[49] The Applicant presented this certified question: *Is it ok for the visa officer to notice the religion of the applicant?*

[50] An immigration judicial review can only be appealed if a question is certified. Para 74(d) of the IRPA states that an appeal can only occur if the judge “certifies that a serious question of general importance is involved and states the question”.

[51] The common law has explained that a certified question must satisfy a number of requirements. A certified question must be:

- 1) a question of general importance. This means it “transcends the interests of the immediate parties to the litigation and contemplates issues of broad significance or general application” (*Liyangamage v Canada (MCI)* (1994), 176 NR 4 (FCA) at para 4);
- 2) dispositive of the appeal (*Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at para 11);
- 3) brought up in the Federal Court hearing where it must first be dealt with (*Lai v Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21 at para 4).

[52] A certified question of general importance will be a question of law, because facts are specific to the parties (*Dotsenko v Canada (Minister of Citizenship and Immigration)*, 258 NR 131, 2000 CarswellNat 1515 (FCA) at paras 6-7).

[53] This question will not be certified, as it relates to the facts in this case. It is not a serious question of general importance that transcends the interests of the immediate parties and contemplates issues of broad significance or general application.



**JUDGMENT IN IMM-5223-18**

**THIS COURT'S JUDGMENT is that:**

1. The matter is dismissed.
2. No question is certified.
3. No costs are awarded.

“Glennys L. McVeigh”

Judge

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

**DOCKET:** IMM-5223-18

**STYLE OF CAUSE:** NAGHMA CLEMENT v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** APRIL 30, 2019

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**DATED:** MAY 14, 2019

**APPEARANCES:**

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