Federal Court  Cour fédérale

Date: 20190820

Dockets: IMM-5532-18
IMM-5535-18

Citation: 2019 FC 1084

Ottawa, Ontario, August 20, 2019

PRESENT: The Honourable Mr. Justice Roy

Docket: IMM-5532-18

BETWEEN:

FADIA ABOU LOH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-5535-18

AND BETWEEN:

FERAS AL AWAAD

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants, mother and son, are Syrian nationals currently residing in Lebanon. They each seek the judicial review, pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [IRPA or the *Act*] of a decision of a visa officer at the Canadian Embassy in Beirut.

[2] Although they have made each a judicial review application, the narrative and the grounds for review are essentially the same. Both cases were argued by the same counsel and they were heard and argued together as if they were one case. One judgment and reasons is therefore produced as it is common to the two files and copy of these reasons will be put on each file as being the reasons for judgment.

[3] The applicants seek permanent residence in Canada as members of the Convention refugee abroad class. In decisions issued October 12, 2018, the visa officer rejected the applications because of credibility concerns that arose during the interviews of the two applicants. As will be seen, the situation is rather murky and it needs to be clarified. The judicial review application is granted for the reasons that follow.

I. Facts

[4] Fadia Abou Loh is 63 years old and her son, Feras Al Awaad, was born some 30 years ago and raised in Damascus, in Syria. Other than Mr. Al Awaad, Mrs. Abou Loh is the mother of a daughter. However, neither of the two applicants reported her existence in Schedule 2 of their

respective Generic Application Form. Both applicants claim to have been living in Lebanon since June 2015. During this time, Mr. Al Awaad's father remained at the family home in Syria, where he is an automobile parts distributor/wholesaler (Certified Tribunal Record [CTR], p. 9). According to Schedule 2 to Mrs. Abou Loh's Generic Application Form, her husband, Mr. Al Awaad's father, resides in Lebanon (CTR, p. 41). Mr. Al Awaad also suggests that his parents both reside in Lebanon in Schedule 2 to his Generic Application Form (CTR, p. 36).

[5] Prior to leaving Syria to find refuge in Lebanon, Mr. Al Awaad studied law at the Damascus University and helped his father with his automobile parts business. Mrs. Abou Loh was a school teacher until her departure from Syria (CTR, p. 15). Neither applicant is working in Beirut. They claim to subsist on their savings and money from Mr. Al Awaad's father, which he delivers to his son in person.

[6] The applicants claim to have left Damascus for Beirut in June 2015. In Schedule 2 to their respective Generic Application Forms, they briefly describe the situation in Syria which led to their departure. Mrs. Abou Loh states:

> I reside in a [sic] area called east Tijara close to areas under militias control (Jobar) that are always shooting us with mortar & exploded bullets. These militias are controlling area [sic] that are only 500m far from our home and they are considered a real threat to Christians [sic] reside in Damascus. Not withstanding [sic] that we have lost my husband's spare part warehouse in Erbin that were [sic] robed [sic] & destroyed 7-2012. This, in addition to the exploded bulletins [sic] that the militias shot on school (AlWakedi) 6-2014 where I was working made us make the decision to leave Syria seeking a better life.
>
> (Certified Tribunal Record, p. 37).

[7] Her son denotes a similar plight:

> I can't see myself living there [in Syria] anymore, there is no law. The basic state components don't exist.
>
> (Certified Tribunal Record, p. 11).

[8] The applicants left Syria for Lebanon by taxi, using the highway from Damascus to Beirut. In Beirut, the applicants reside in Naccache, with the grandmother of Mr. Al Awaad's brother-in-law (Global Case Management System [GCMS] notes, Al Awaad CTR, p. 11). From June 2015 to April 2017, it remains unclear how the applicants maintained their residence in Lebanon.

[9] Mr. Al Awaad claims to have returned with his mother to Damascus in April 2017 for roughly 48 hours before returning to Lebanon. Because Lebanese authorities refused entry to them, they resorted to using a smuggler. Mrs. Abou Loh on the other hand maintains that they never made it to Damascus and she suggests that her stay across the border of Lebanon was for a shorter period of time. On this record, the circumstances under which the crossing of the border for a quick return to Lebanon remain nebulous.

[10] On September 6, 2018, the applicants attended an interview at the Canadian Embassy in Beirut in relation to their applications for permanent residence as possible members of the Convention refugee abroad class. According to the visa officer's GCMS notes, the applicants' interviews were problematic.

[11] First, neither applicant was forthcoming about their return to Syria in April 2017. Second, when confronted about their return, their rendition of events diverged. The Court already referred to the discrepancy about the period of time they claim they remained in Syria before returning to Lebanon. Mrs. Abou Loh seemed to suggest that she and her son never made it to Damascus, and indeed, one is left with the impression that she barely went into Syria:

> Q: When was the last day that you were physically in Syria?
>
> A: We resided on the frontlines of Jobar and Qaboun so when we left we never returned since 2015.
>
> Q: What about april [sic] 2017?
>
> A: I went to the border but I returned illegally.
>
> Q: How?
>
> A: On the Syrian border, some individuals told us we can smuggle you in but you have to wait for nightfall. We had to walk through some mountainous terrain, then they asked us to sit and wait in a specific location. They assembled several other people who were being smuggled. We then walked down the mountain, and there was a vehicle waiting for us. And they crossed into Lebanon to the border town of Anjar [sic]. And we returned to Beirut. I basically had a nervous breakdown. So my son took care of everything.
>
> (GCMS notes, CTR, p. 16).

[12] In contrast, after some questioning, Mr. Al Awaad admitted to have returned to Damascus in April 2017. He says: “When they prevented us from entering Lebanon, my mother and me had to return to Damascus, and that’s where we set up a time and meeting place with the smuggler” (GCMS notes, CTR, p. 10). When the officer confronted him about the discrepancy between his story and that of his mother, he said: “maybe it wasn’t 48 hours, maybe it was 45 hrs in Damascus. I did mention that when we returned once they did not let us back into the country” (GCMS notes, CTR, p. 11). The following exchange ensued:

> Q: You said you never returned to Syria after leaving in june [sic] 2015. Your mother said the same thing.
>
> A: We did return for 45-48 hours, my mother did not lie about not livng [sic] with my father. Yes we did go back but my parents did not have any communication.
>
> Q: That may be but i [sic] asked both of you if you went back to Syria and you both said no since 2015. But you did go back to Damascus in 2017.
>
> A: We don't want you to consider it a lie, but maybe my mother didn't know how to present it. It's like when you asked me if I ever returned and I said no, but then i [sic] understood that it was 2 days in damascus [sic] that you were searching for. She just didn't know how to explain it.
>
> (GCMS notes, CTR, p. 12).

[13] In the case of Mr. Al Awaad, concerns were also raised regarding the fact that he received a Syrian passport, with his fingerprints, in October 2015. Mr. Al Awaad also obtained travel permission from the Syrian army dated September 6, 2018, the date of his interview. When the applicant was confronted about how he obtained these documents, the male applicant answered:

> the [sic] power of attorney i [sic] gave my father allowed him to get my military authorization, and the same thing for my passport and signature. they [sic] already had my fingerprint, so they used it. In regards to the document that says "handed to me" i [sic] have friends. It's just an annotation. they [sic]need to write this so the employee does not get in trouble. With some money i [sic] got it done.
>
> (GCMS notes, CTR, p. 11).

[14] When Mr. Al Awaad was confronted about why he obtained travel permission from the Syrian military on September 6, 2018, he replied: "(j)ust in case" (GCMS notes, CTR, p. 8).

II. Statutory Provisions

[15] The following provisions from the IRPA are relevant to this proceeding:

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. 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.	**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 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.
Obligation — answer truthfully	**Obligation du demandeur**
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.	**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.
Convention refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques:
(a) is outside each of their	**a)** soit se trouve hors de tout

countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	**b)** soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[16] The following provisions from the Regulations are relevant in this proceeding:

General Requirements	**Exigences générales**
139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	**139 (1)** Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
…	[…]
(e) the foreign national is a member of one of the classes prescribed by this Division;	**e)** il fait partie d'une catégorie établie dans la présente section;
…	[…]
Member of country of asylum class	**Catégorie de personnes de pays d'accueil**
147 A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because	**147** Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :
(a) they are outside all of their	**a)** il se trouve hors de tout

countries of nationality and habitual residence; and	pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;
(b) they have been, and continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.	**b)** une guerre civile, un conflit armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

III. Decision under review

[17] The first step in the reasonableness analysis is to examine the decision being reviewed because "(t)o accord this deference, a reviewing court must "stay close to the reasons given by the [T]ribunal" and pay them "respectful attention" " (*Law Society of New Brunswick v Ryan*, 2003 SCC 20, [2003] 1 SCR 247, at para 49; *Dunsmuir v New Brunswick*, 2008 SCC 9; [2008] 1 SCR 190 [*Dunsmuir*] at para 47; *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, [2018] 1 SCR 83 [*Williams Lake*] at para 36). Thus, "(t)he reviewing court must start from the Tribunal's decision and ask whether it is justified based on the authorities" (*Williams Lake*, para 36).

[18] That is the necessary order to avoid turning a reasonableness analysis into a correctness one by measuring this decision under review against that opinion formed by the reviewing court, thus "deeming the Board's interpretation unreasonable because it did not conform to its preferred interpretation" (*Canada (Attorney General) v Heffel Gallery Limited*, 2019 FCA 82 [*Heffel Gallery*], at paras 49-50). The Court of Appeal in *Heffel Gallery* spoke of engaging "in a

disguised correctness review" (para 49). Accordingly, close attention to the reasons given is warranted.

[19] On October 12, 2018, the Canadian International Migration Officer in Beirut, whose name is unknown, rejected the applicants' claims for asylum. The officer referred to the obligation to answer truthfully to all questions put (s. 16 of IRPA) before expressing concerns about the credibility of the applicants.

[20] The decision letter stated the same thing in both cases:

> Concerns were noted with your testimony. Your narrative was deemed not credible. You were confronted with these concerns during [sic] interview and I have taken into consideration your response.
>
> Having taken into consideration the totality of the evidence before me, based on a balance of probabilities, I find that your declarations are more likely false than true and that your declarations are not credible.
>
> Your declarations relate directly to your eligibility in the category in which you applied. Without true and credible testimony I am not satisfied that you meet the requirements of Article 96 or Regulation 147 of the IRPA.
>
> (Decision, Al Awaad CTR, p. 16 and Decision, Abou Loh CTR, p. 3).

There is no explanation provided to the recipient of the decision as to how the visa officer moves from s. 16 to "Article 96 or Regulation 147". It is not explained either whose credibility is an issue and how the credibility issue becomes for either applicant a violation of the obligation to answer truthfully. Credibility concerns is one thing; concluding that someone is not telling the truth is another. The officer seems to conflate the two.

[21] The visa officer then proceeded to recite paragraph 139(1)(e) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], immediately after which he concluded:

> After carefully assessing your application, for the reasons set out above, I have determined that you do not meet the requirements of A96 or R147 and therefore you do not meet the requirements of Regulation 139(1)(e).

Other than a disjointed letter which fails to articulate reasons other than referring to sections of the Act or Regulations, there is nothing of assistance that can be found in the decision letter. The officer concluded that the applicants failed to meet the requirements of paragraph 139(1)(e), which reads as follows:

139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	**139 (1)** Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
…	[…]
(e) the foreign national is a member of one of the classes prescribed by this Division;	**e)** il fait partie d'une catégorie établie dans la présente section;

[22] The form letter delivered to the two applicants is devoid of a proper articulation and is content to refer to provisions, choosing to quote from some and not others in what appears to be in a haphazard fashion. One will be searching in vain for a narrative. The following provisions are referred to in no particular order:

- Section 16 (there is a reference to the obligation to answer truthfully);
- Article 96;
- Regulation 147 of IRPA, without any indication of the actual set of regulations involved;
- Regulation 139(1); the text of the provision is reproduced;
- Subsection 11(1) of the IRPA is also reproduced;
- Subsection 2(2) of IRPA is reproduced; one cannot fathom why. It merely states that a reference to "the Act" includes the regulations. One is hard pressed to know why the decision maker saw it as imperious to refer at length to that provision.

In the result, the decision letter is much more confusing than it is enlightening.

[23] The heart of the matter was in this case why the decision maker determined that the requirements of "A96 or R147" were not met. The decision letter remains mute as to that determination. Instead, the officer cites Regulation 139(1)(e) which makes it an obligation to issue a permanent resident visa to a foreign national who "is a member of one of the classes prescribed by this Division". An applicant will be forgiven for being less than enlightened. At best, the letter provides that the classes are the Convention refugee abroad class and the Country of asylum class, without assisting the reader as to what those classes may encompass. The decision letter speaks of the requirements of Regulation 139(1)(e): what requirements? Similarly, the reference to subsection 11(1) of IRPA is less than instructive as it establishes that the officer must be "satisfied that the foreign national is not inadmissible". How that test is articulated in the particular case is left unsaid.

[24] The GCMS notes, which form part of the decision (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 44) even though they are not shared immediately with applicants, do not provide a better explanation of the reasoning behind the conclusion to deny the permanent resident visa.

[25] The record shows that the officer used his credibility concerns in order to reach a decision on the obligation of applicants to tell the truth. The credibility concerns about the applicants stem from their version of events about crossing the border between Lebanon and Syria in April 2017. The son claims that they went back to Damascus for 48 hours while the mother indicates that they crossed the border and were smuggled back into Lebanon, seemingly within a few hours. From that credibility issue, the visa officer seems to have concluded that both were untruthful, with the result that they are both disqualified and their applications dismissed.

[26] To be sure, the GCMS notes refer to other information discussed with the applicants during interviews. That adds to the lack of clarity as to the circumstances leading to the conclusion reached. Thus, it appears that the applicants were involved in “flag poling”. That would appear to be a practice of crossing the border to return immediately, or shortly thereafter. It is not clear why that would happen. On the day in April 2017 when the applicants crossed into Syria, they assert that “flag poling” was not possible as the Lebanese authorities had become stricter and did not allow for the practice. However, the matter was not explored in any depth at the interview, although, in my view, it would have been quite relevant to appreciate the circumstances of the crossing and return a few hours later or 48 hours later. Furthermore, the GCMS notes concerning the son reveal some concerns about (1) the travel permission from the

Syrian army the day the interview took place and (2) a passport issued in Syria. However, they were not even alluded to in the decision letter and it is unclear what use was made to reach the decision that was made or, for that matter, if those concerns were even applied to the matter. Indeed, there are no indication of what the concerns truly are and what weight, if any, was ascribed to them as they are not even referenced in the decision letters. Indeed, were these "concerns" used to deny the mother as well?

IV. The position of the parties

[27] The applicants make two arguments. First, they submit that the decision of the visa officer is unreasonable. According to the applicants, the visa officer's credibility findings grounded in their April 2017 return to Syria are not sufficient to support a conclusion that they are not credible. The inconsistency is trifling. It is the refusal by the Lebanese authorities which forced them to leave and be smuggled back. The officer, argue the applicants, should have assessed their profile, which was never done. Furthermore, somewhat mysteriously since the matter was never raised in the decision letter or in the notes, the applicants argue that they never re-established themselves in Syria. Moreover, "(t)he Visa Officer did not raise any concerns as to the grounds of the refugee claim …" (Memoranda of fact and law at paras 43 and 54).

[28] The respondent maintains that the applicants have failed to demonstrate that the visa officer made a reviewable error because "(o)nce an applicant has shown an intention to deceive immigration officials, it is an impossible task for the Visa Officer to disentangle truth from lies, nor is the officer required to do so, in light of ss. 11 and 16 of the IRPA" (Memorandum of fact and law at para 5).

V. Analysis

[29] There is no doubt and no dispute that the standard of review is reasonableness. A decision is reasonable if it falls within "a range of possible, acceptable outcomes which are defensible in respect of the fact and the law" (*Dunsmuir*, at para 47). That addresses the outcomes. But reasonableness also refers to the process of articulating the reasons for that outcome. As such, "reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process" (*Dunsmuir*, at para 47). It is unclear in this case if the outcome falls within the range because the second half of the *Dunsmuir* proposition is not satisfied: "as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, at para 59).

[30] The reasons do not need to be perfect. But the process in reaching a decision must be intelligible so that it can be understood, comprehensible. In the case at hand, the reasons are just about missing but, more importantly perhaps, the decision, even with the existence of the GCMS notes, remains largely incomprehensible. As the Supreme Court noted in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 [*Newfoundland and Labrador Nurses' Union*], "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met" (para 16). Here, there is no way of knowing if the decision is reasonable because the credibility findings are

never explained so that they can be understood not to be trifling. Moreover, the Court does not know how the credibility findings become violations of the obligation to answer truthfully with respect to both applicants.

[31] There were two central problems with the visa officer's form letter decisions, which were virtually identical for both applicants.

A. *The justification is lacking*

[32] To be sure, the process was less than desirable as the officer failed to explore, even minimally, the story told by the applicants. It is as if the officer found something to dislike, some discrepancy between the narratives, to then conclude expeditiously that neither one of them was to be believed to the point that neither one of them was telling the truth. In this case, it seems that credibility concerns became a violation of s. 16 of IRPA. The credibility flaw became enough to dismiss the applications altogether.

[33] Without any attempt at justifying how the credibility concern became a finding of not answering questions truthfully, there is no attempt at identifying who did not answer truthfully, the mother or the son? The decisions lack justification; the visa officer fails to substantively analyze the claims of the applicants in view of concerns about the credibility of one applicant or the other. Instead of focusing on the factual issues that were material to their claims, the visa officer focused attention on credibility matters that may have been relevant to their claims for protection. But not only we don't know about the incident and the circumstances surrounding it, but we don't know either why both applicants are disqualified on the basis of one discrepancy.

Are they both not credible? Are they both lying? If so, why? In the words of the visa officer: "Son said that they both returned to Damascus for 48 hours while his mother stated that they never entered Syria and remained at the border until they found a smuggler" (CTR, p. 8 and CTR, p. 6). But then what? Who should be believed? In my estimation, this case called for a better examination of the circumstances.

[34] The concern about some documentation regarding the son was never even alluded to in the decision, perhaps because the concerns were seemingly based, but never explained or articulated, on "local knowledge". That is not good enough. The officer chose not to explore further the discrepancy, including what "flag poling" was taking place and why. The circumstances surrounding the April 2017 crossing of the border were important and should not have been ignored. Furthermore, credibility assessments cannot be weaved out of thin air. There was a need to explain why the discrepancy between the testimonies about crossing the border in April 2017 is that important and how it must disqualify both applicants.

[35] As a general matter, the role of the decision maker is not to zealously undermine an applicant's story. The Federal Court of Appeal cemented this principle long ago in *Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168 (FCA), where Justice Hugessen wrote:

> 9 I have mentioned the Board's zeal to find instances of contradiction in the applicant's testimony. While the Board's task is a difficult one, it should not be over-vigilant in its microscopic examination of the evidence of persons who, like the present applicant, testify through an interpreter and tell tales of horror in whose objective reality there is reason to believe.

[36] Justice Gascon recently summarized the main principles governing the assessment of credibility of refugee applicants (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paras 20-26). Chiefly among these principles is that a negative credibility finding cannot be founded on "minor contradictions that are secondary or peripheral to the refugee protection claim" (para 23). Instead:

> [23] … The decision-maker must not conduct a too granular or overzealous analysis of the evidence. In other words, not all inconsistencies or implausibilities will support a negative finding of credibility; such findings should not be based on a "microscopic" examination of issues irrelevant to the case or peripheral to the claim …

I see nothing in the case law to suggest that an officer cannot seek to explore somewhat the identified discrepancies in order to understand their scope, significance or weight. It may be that the credibility issue may rise to the level of failing the obligation to answer truthfully. But the decision maker must identify who is not truthful. Indeed, in cases like these, it may be that one was perfectly truthful: why tar them with the same brush?

Similarly, in *Kanagarasa v Canada (Minister of Citizenship and Immigration)*, 2015 FC 145, Justice Diner emphasized that a minor inconsistency does not undermine a person's credibility:

> [13] To suggest that this minor discrepancy, for which a reasonable explanation was offered, is sufficient to undermine the entire assertion that the Applicant had been tortured takes an overly microscopic view of the facts. This Court has held that credibility assessments based on trivial inconsistencies are unreasonable …

Here, the inconsistency may not in the end be minor. It may be that the officer was on to something. After all, it is not like the applicants' narrative is as clear as crystal, judging from the record. But that is not the issue on these judicial reviews.

[37] In the present cases, the visa officer's negative credibility finding is grounded in the details of the applicants' return to Syria one day. Even though Mr. Al Awaad's answers were inconsistent with those of his mother, this finding is an inconsistency that deserved to be explored to ascertain if it is peripheral to the applicants' claim of persecution in Syria. Overall, the visa officer failed to substantively and materially evaluate the nexus to the Convention ground asserted by the applicants and seems to have captured the first discrepancy available without the needed explanation.

[38] The visa officer's assessment of the inconsistency was evaluated with respect to the answers of the other applicant; neither answer was deemed trustworthy. In *Cooper v Canada (Citizenship and Immigration),* 2012 FC 118, Rennie J. set out some principles in assessment of credibility. His principle "h" was described as:

> 4 Secondly, the Board's determination that the applicant lacked credibility was vague and imprecise. Prior to examining the decision in question, it is helpful to revisit some of the principles which govern the assessment of credibility:
>
> …
>
> h. Where a credibility finding is based on inconsistencies of the applicant, specific examples of inconsistency must be set out. The inconsistency must arise in respect of other evidence which was accepted as trustworthy. Put otherwise, **an inconsistency can arise in one of two ways: evidence is internally inconsistent in the testimony of the witness, or; evidence that is inconsistent with respect to the testimony of other witnesses or documents. If, in**

> **the later situation, that of external inconsistency, the evidence on which the inconsistency is predicated must be accepted as trustworthy;**
>
> [My emphasis.]

Instead, the negative credibility finding of Mr. Al Awaad was bootstrapped by the inconsistency demonstrated by the answers of Mrs. Abou Loh, and vice versa. This circularity is at odds with the principle of justification.

B. *The decisions lack transparency and intelligibility*

[39] The second reviewable error lies in the intelligibility and transparency of the decisions. The visa officer's refusal of the applicants' permanent resident applications on the basis of their credibility was itself vague and imprecise.

[40] The decision letters, addressed to the applicants, used boilerplate language that was unintelligible and opaque. Justice Norris has recently underscored the point that "there may be nothing wrong *per se* with administrative decision-makers using boilerplate language when giving their reasons" (*Song v Canada (Citizenship and Immigration)*, 2019 FC 72 at para 31). Indeed, "(u)nder the pressure of mass adjudication, decisions makers may be tempted to resort to standard or "boilerplate" language that has survived judicial review or that courts have used to describe the test that they have to apply" (*Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4 at para 9). Nevertheless, it is important that "the reasons be intelligible and that they describe a reasonable path to the decision that was made" (*Ibid*). I share that view. It should be understood that, given the number of decisions to be made, they cannot all provide chapter and verse. But an important decision for a person should provide some explanation.

[41] The decisions made concerning the applicants who are in difficult circumstances provide no such reasonable path. They are a collection of provisions, never explained, and presented without rhyme or reason. In both letters, the decision maker stated: "Without true and credible testimony I am not satisfied that you meet the requirements of Article 96 [sic] or Regulation 147 of the IRPA". After a restatement of paragraph 139(1)(e), the decision maker reformulated this thought:

> After carefully assessing your application, for the reasons set out above, I have determined that you do not meet the requirements of A96 or R147 and therefore you do not meet the requirements of Regulation 139(1)(e).

[42] There are no such reasons set out above. It is unclear whether the applicants have failed to meet the requirements of section 96 of the IRPA or section 147 of the Regulations – or both. It is even more unclear how the applicants fail to meet the requirements. It is "boilerplate" language that fails to say anything intelligible.

[43] The further difficulty is that the decision letters are framed in such a way as to leave the impression that the applications were considered on their merits. They were not. The refusals were based on the one identified discrepancy. The verbiage around the classes was superfluous and potentially misleading: it seems to have led the applicants to believe that an underlying issue was potentially their re-establishment.

[44] By putting in the same decision letter a number of disparate matters (answer truthfully, credibility, s. 96, Regulation 147, Regulation 139, Convention refugee abroad class, Country of

asylum class, satisfied that not admissible), the decision is nothing more than a melting pot. That may well be the opposite of "transparent and intelligible within the decision-making process".

[45] Finally, the reasons of the decision maker are not illuminated in light of the record before the decision maker. The Supreme Court of Canada observed in *Newfoundland and Labrador Nurses' Union* that the "courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome" (para 15). However, the record in these applications is thin. Many more questions ought to have been asked of the applicants to determine the significance of the discrepancies, if any.

VI. Conclusion

[46] Accordingly, these judicial review applications are granted concerning the two decisions issued on October 12, 2018, one concerning Mr. Al Awaad, the other concerning Mrs. Abou Loh, with respect to their applications for permanent residence in Canada. The matter is returned to a different decision maker for a new determination to be effected.

[47] The parties agree that this case turns on its facts. The Court shares their view that there is no question to be certified pursuant to section 74 of the IRPA.

JUDGMENT in IMM-5532-18 and IMM-5535-18

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted. There is no question to be certified.
2. The matter is returned to a different decision maker for a new determination to be effected.
3. Copy of these reasons will be put on each file, IMM-5532-18 and IMM-5535-18, as being the reasons for judgment.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-5532-18 AND IMM-5535-18
STYLE OF CAUSE:	FADIA ABOU LOH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION and FERAS AL AWAAD v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUÉBEC
DATE OF HEARING:	JUNE 10, 2019
JUDGMENT AND REASONS:	ROY J.
DATED:	AUGUST 20, 2019

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