Federal Court  Cour fédérale

Date: 20211208

Docket: IMM-6937-19

Citation: 2021 FC 1381

Ottawa, Ontario, December 8, 2021

PRESENT: Hon. Mr. Justice Henry S. Brown

BETWEEN:

MOHAMED JAMIL JEMMO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision of a visa officer [Visa Officer] at the Canadian Embassy at Abu Dhabi, United Arab Emirates [Embassy]. The Visa Officer refused the Applicant's refugee application pursuant to subsections 11(1) and 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] [Decision] primarily due to

concerns in that the Applicant's application was similar to and had identical graphics as another visa application Immigration, Refugees and Citizenship Canada [IRCC] received.

II. Procedural history

[2] The Order granting leave to apply for judicial review required the Respondent to file a Certified Tribunal Record [CTR]. The Respondent did so but unilaterally redacted its CTR. The redactions were not sanctioned by this Court. During the course of the judicial review it was noted there was no Order allowing such redacted filing, nor did the Respondent seek the Court's permission, under seal or otherwise, to file the redacted copy. The Respondent argued the redactions were made pursuant to the *Privacy Act*, RSC, 1985, c P-21.

[3] After hearing argument on the merits, the Court asked whether it should proceed with judicial review on the unilaterally redacted CTR. After considering detailed and thoughtful submissions from both parties, I held that proceeding on a unilaterally redacted CTR would not be proper: see Reasons for Judgment and Order in *Jemmo v Canada (Citizenship and Immigration)*, 2021 FC 965. Essentially, the Minister's obligation to file a CTR under section 17 of *IRPA's Federal Courts Citizenship, Immigration and Protection Rules*, SOR/93-22 *[Immigration Rules]* does not permit unilateral redactions, and that if redactions are sought, a motion must be brought under Rule 151 of the *Federal Courts Rules*, SOR/98-106, section 87 of *IRPA*, sections 37 of the *Canada Evidence Act*, RSC, 1985, c C-5, or otherwise.

[4] I remained seized of the matter, and to allow the proper determination of this matter, Ordered granted the Respondent leave to apply for an Order approving the redactions adding that

once that matter was decided, I would complete the determination of this application for judicial review.

[5] Subsequently, the Minister filed a motion under Rule 369 of the *Federal Courts Rules*, SOR/98-106 allowing the filing of the redacted material under seal. On November 26, 2021, I granted the motion and made a protective confidentiality Order on consent, restricting access to the sealed material to the Court and counsel for the parties (upon delivering undertakings respecting non-disclosure). I also allowed additional time to make final written submissions based on the now disclosed unredacted record. Neither party made further submissions.

[6] I proceed now to determine the merits of this application.

III. Facts

[7] The Applicant is a citizen of Syria residing in Saudi Arabia. In 2016, he applied for resettlement to Canada as a privately sponsored refugee. He was assisted by a certified immigration consultant [Consultant] who made the required filings.

[8] The application was processed by an IRCC visa officer [First Officer] in Riyadh, Saudi Arabia to interview the Applicant on December 1, 2016. The First Officer accepted his refugee claim, subject to a security check.

[9] However, the Global Case Management System [GCMS] notes that in early 2017 an investigation began regarding the Applicant's application and another similar application. The GCMS notes state: "DO NOT DISCLOSE".

[10] The Applicant was interviewed a second time on October 9, 2017 by a different officer [Second Officer] who asked questions about the Consultant used by the Applicant. Questions included how the Consultant assisted to prepare the application, and how the Consultant was paid. During the course of this interview, the Applicant was informed that portions of his application including pictures regarding his treatment in Syria were "identical" to that in another unrelated application. The Applicant stated that was impossible because he told his own story. The Second Officer informed the Applicant IRCC had doubts of his story and credibility, and specifically told him it was not possible for two different applicants to come up with the exact same report including drawings and to have produced those documents themselves. The Second Officer asked the Applicant if he had any friends who also had refugee applications with Canada, but the Applicant said no. The Second Officer told the Applicant that IRCC would review his file and make a final decision. The GCMS notes disclose the Applicant repeated his story and was adamant he was telling the truth. The Applicant also told the Second Officer that when he wrote the report he took pictures from Google and sent them to his Consultant to use.

[11] In this connection the following is set out in the GCMS notes of the Second Officer:

> I asked PA why his Schedule 2 is identical as well as the pictures, to another independent application we received. PA said he does not know how this could be possible as this is his story, he wrote the story in Arabic and sent it to the consultant. PA said he has a copy of the email he sent the Arabic schedule 2, and will send me a copy of this email. I explained to the PA that I have my doubts of

> his story and credibility, and that it was not possible for two different applicant to come up with the exact same report including drawings, and have produced those documents themselves. PA said all he can say is this is my story. I asked PA if he had any friends who also have refugee applications with Canada; PA replied no. I explained to PA we will review his file and make a final decision. PA said that the story provided was his story and was adamant that he is telling the truth. PA then said that when he wrote the report he took cli[p [*sic*] art pictures from google and sent the pics to the consultant to use.

[12] The next day the Applicant emailed what he described as his original Arabic version of his narrative directly to the Second Officer.

[13] On September 28, 2018, the Embassy's visa section sent the Applicant a procedural fairness letter concerning the other application resembling the Applicant's:

> I have now completed the assessment of your application and I have determined that you may not meet the requirements of *Immigration and Refugee Protection Act*.
>
> Subsection 16(1) of the *Immigration and Refugee Protection Act* states that 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.
>
> Section 70 (1) of the Regulations states that an Officer shall issue a permanent resident visa to a foreign national if, following an examination, it is established that
>
> (e) the foreign national and their family members, whether accompanying or not, are not inadmissible.
>
> Included in your application you have submitted a schedule 2 Refugee Outside Canada form describing the events causing you to leave Syria. You stated that you wrote the schedule 2 in your native tongue, Arabic, and sent this report to your representative who in turn produced the document in English. As noted to you, at your second interview with Immigration Refugee and Citizenship Canada in Riyadh on 9 October 2017, this document closely

> resembles a Schedule 2 Document submitted on a separate application not related to yours. I am not satisfied that your account of events is accurate and truthful, thereby raising doubts to the credibility of your story. Furthermore given your personal history and countries you have lived in including Syria, Yemen and Saudi Arabia, I am not satisfied that you are not inadmissible to Canada.
>
> Subsection 11(1) of the Act provides that a foreign national must, before entering Canada, apply to an officer for a visa or any other document required by the regulations. The 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 this Act.
>
> You have 30 days from the date of this letter to submit any additional information to disabuse me of my concerns. If you choose not to respond with additional information I will make my decision based on the information before me, which may result in the refusal of your application.

[14] On October 25, 2018, the Consultant purported to reply to the procedural fairness letter on behalf of the Applicant. The Consultant did not answer the concerns in the procedural fairness letter. Instead, the Consultant requested a copy of the other application:

> In reply to your letter of Procedural Fairness of September 28, 2018 please disclose a copy of what it is that you have referred to that "closely resembles a schedule 2 document…" so that the Applicant can prepare his response with full awareness of what you have before you or have reviewed in making your decision. We also ask that we be permitted 30 days from the date we receive this disclosure to prepare the response.
>
> Moreover, given that you have raised an issue that may concern the conduct of our office in this matter, disclosure is also necessary for the Applicant to ascertain if he needs to seek new representation in this matter.
>
> Finally, please clarify how the Applicant's personal history and countries he has lived in is relevant to any inadmissibility concerns you may have.
>
> Your urgent reply to this letter is greatly appreciated.

[15] On April 15, 2019, the Consultant sent a further email:

> We're sending this electronic mail to kindly remind you that our office representing this applicant G000124441 has already responded to your letter of Procedural Fairness dated September 28, 2018 on October 25, 2018. Since then the application has remained dormant with no communication received from your end.
>
> This state of dormancy has created confusion and/or psychological issues, placed the refugee applicant in limbo and increased his vulnerability.
>
> We kindly request a response to our letter of clarification to better respond to your letter of Procedural Fairness and have a decision on this application which started to be processed on October 23, 2016.

[16] The GCMS indicates an officer asked the Visa Officer to review the purported response to the procedural fairness letter; I say purported because the two emails sent by the Applicant's Consultant did not respond to the Officer's concerns.

[17] The Applicant did not receive a response to his Consultant's letter or email except the resulting Decision.

[18] While neither the Applicant nor his consultant ever responded to the merits of the procedural fairness letter, after he was turned down both he and his Consultant filed affidavits on this application, which are discussed later. In essence these affidavits disclose information that should have been disclosed in response either to the interview or the procedural fairness letter.

[19] As found below, the time to file the information in these affidavits has long since passed; this information should have been filed before the Decision was made. A response to a

procedural fairness letter should be sent as soon as reasonably possible after the procedural fairness letter itself.

IV. Decision under review

[20] On September 16, 2019, the Visa Officer refused the Applicant's application:

> I have now completed the assessment of your application for resettlement as a refugee and I have determined that you do not meet the requirements of either the Convention refugee abroad class or the country of asylum class.
>
> A11(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.
>
> A16(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.
>
> You were interviewed on 2016/12/01 and again on 2017/10/09 by a migration officer at the Canadian Embassy in Riyadh, Kingdom of Saudi Arabia (KSA). You were provided with an interpreter fluent in both English and Arabic. You did not indicate that you had any difficulty understanding the interpreter. You were reminded of your obligation to be truthful in your interview answers.
>
> I have review the application, supporting documents, the first interview notes, the second interview notes, PFL and response to PFL. I share the concerns of the reviewing officer that there are concerns related to the credibility of your story.
>
> Included in your application, you submitted a word document entitled "Schedule 2 - Refugees Outside Canada" that describes in detail the events that compelled your departure from Syria. At your second interview on 2017/10/05, you stated that you had independently written the text of the above mentioned document in your native language of Arabic, and that your contact in Canada sent the pages to an immigration consultant named Abdulrahman

> AL JARSHA, who in turn produced the word document in English. As expressed to you at your second interview, this word document appears similar to a separate word document of the same title, submitted on a separate and unrelated resettlement application.
>
> Further review of both word documents revealed comparable narrative arcs related to your detention and mistreatment by Syrian authorities, including but not limited to identical text passages, and identical images of torture practices. On balance, I do not find it plausible that different persons would utilise the same descriptive figures and literary style in the telling of their separate experiences. I therefore set aside the word document as I am not satisfied on balance that it is a credible account of events. After reviewing the remaining application documents and interview notes, I am not satisfied that I have sufficient information to make a decision regarding your eligibility for resettlement to Canada as a refugee.
>
> I am therefore refusing the application as per A11(1) and A16(1).

[21] Subsection 11(1) and subsection 16(1) of *IRPA* state as follows:

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	**16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre

them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	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.

V. Issues

[22] The only issue is whether there was a breach in procedural fairness.

VI. Standard of Review

[23] Questions of procedural fairness are reviewed on the correctness standard: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, per Binnie J at para 43. That said, I wish to note in *Bergeron v Canada (Attorney General)*, 2015 FCA 160, [*Bergeron*] per Stratas JA at para 69, the Federal Court of Appeal says a correctness review may need to take place in "a manner 'respectful of the [decision-maker's] choices' with 'a degree of deference': *Re*: *Sound v Fitness Industry Council of Canada*, 2014 FCA 48, 455 N.R. 87 at paragraph 42." But, see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [per Rennie JA]. In this connection I note the Federal Court of Appeal's recent decision which held judicial review of procedural fairness issues is conducted on the correctness standard: see *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship*), 2020 FCA 196 per de Montigny JA [Near and LeBlanc JJA concurring]:

> [35] Neither *Vavilov* nor, for that matter, *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, have addressed the standard for determining whether the decision-maker complied with the duty of procedural fairness. In those circumstances, I prefer to rely on the long line of jurisprudence, both from the

> Supreme Court and from this Court, according to which the standard of review with respect to procedural fairness remains correctness.

[24] I also understand from the Supreme Court of Canada's teaching in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23 that the standard of review for procedural fairness is correctness:

> [23] Where a court reviews the merits of an administrative decision (i.e., judicial review of an administrative decisions other than a review related to a breach of natural justice and/or the duty of procedural fairness), the standard of review it applies must reflect the legislature's intent with respect to the role of the reviewing court, except where giving effect to that intent is precluded by the rule of law. The starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness.
>
> [Emphasis added]

[25] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 50, the Supreme Court of Canada explains what is required of a court reviewing on the correctness standard of review:

> [50] When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

VII. Analysis

[26] The Applicant submits five instances of procedural fairness:

A. Portions of the Certified Tribunal Record were redacted pursuant to subsection 8(1) of the *Privacy Act*, RSC 1985, c P-21 without the IRCC or the Respondent seeking permission to do so.

B. This Court requested under Rule 9 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 that reasons be prepared and portions of the GCMS are redacted.

C. The decision to disregard the decision of the First Officer who had accepted the Applicant as a refugee in December 2016. It does not appear the First Officer had any further involvement in the case.

D. IRCC sent the Applicant a procedural fairness letter and invited a response for the Applicant but did not respond to the Applicant's request for disclosure.

E. The Applicant was interviewed by the First Officer and found credible. He was then interviewed by the Second Officer who had concerns. However, the Visa Officer made the Decision even though he was not the person who interviewed the Applicant and made his own credibility findings.

[27] Issues A and B were dealt with as outlined in the Procedural history portion of these reasons, above. They are not issues with the Decision but with processes in this Court.

[28] The legal principles in a case like this are set out in *Hamid v Canada (Citizenship and Immigration)*, 2016 FC 1115 [LeBlanc J, as he was then] [*Hamid*]:

> [15] It is clear that a visa applicant must be made aware of the "case to be met" and that the information known to the visa officer must be made available to him or her. The Respondent's own guidelines provide as such (Immigration, Refugee and Citizenship Canada, *Overseas Processing Manual*, Chapter OP-1: Procedures, s. 8 "Procedural fairness", Ottawa, March 15, 2016, at 42). However, as is well-settled too, the discharge of a visa officer's duty of fairness in any given case must be assessed on a case-by-case basis. As the Supreme Court of Canada held recently in *Canada (Attorney General) v Mavi*, 2011 SCC 30 [*Mavi*], a number of factors help in determining the content of procedural

> fairness in a particular statutory and administrative context but the "obvious point is that the requirements of the duty in particular cases are driven by their particular circumstances" (*Mavi*, at para 42).
>
> [16] This Court has consistently held that to trigger the duty to disclose extrinsic evidence in the immigration context, this evidence must be important in the sense that it may impact the outcome of the decision. In other words, the issue to be determined in such cases is whether "meaningful facts essential or potentially crucial to the decision had been used to support a decision without providing an opportunity to the affected party to respond to or comment upon these facts" (*Yang v Canada (Minister of Citizenship and Immigration)*, 2013 FC 20, at para 17); see also: *Muliadi v Canada (Minister of Citizenship and Immigration)*, [1986] 2 FC 205 (FCA); *Majdalani v Canada (Citizenship and Immigration)*, 2015 FC 294, at para 37 [*Majdalani*]).
>
> [17] The duty to disclose extrinsic evidence for an immigration visa officer is therefore not absolute; it is a function of the importance of that evidence in the officer's decision-making process, the ultimate goal being to ensure that the applicant was given the opportunity to participate in a meaningful manner in that process (*Majdalani*, at para 58).

[29] The Applicant submits the Visa Officer relied on extrinsic evidence and made the Decision without disclosing that evidence to the Applicant, despite a clear request by the Applicant for documentary disclosure. Given his reliance on *Hamid*, it appears the Applicant submits that meaningful facts essential or potentially crucial to the Decision were used without having been provided to him so as to enable him to respond to or comment on that evidence.

[30] If this is the case, judicial review must be granted. However, and with respect, this is not the case.

A. *Was there adequate disclosure to the Applicant of the case he had to meet?*

[31] The CTR reveals another Syrian national made a similar refugee application; this other application is found in IRCC's file in this matter and thus it is in the CTR in redacted form (now unredacted). The Applicant submits IRCC should have provided a redacted copy of the other narrative to the Applicant when asked in 2018. Since the other schedule 2 has now been disclosed albeit redacted (and now in unredacted form), the Applicant says there is no reason why IRCC should not have done the same when his Consultant requested disclosure.

[32] The Applicant submits the onus was on the Respondent, should he wish to rely on undisclosed evidence, to disclose a sufficient portion of that evidence to provide him with the opportunity to participate in a meaningful manner in the process.

[33] I generally agree with this submission based as it is on *Hamid*. But, and with respect, I do so with an important caveat, namely that it is not necessary to provide actual document(s) relied upon by the decision-maker. It is well-established a summary of documentary evidence may be provided instead: *AB v Canada (Citizenship and Immigration)*, 2020 FC 461 [Fothergill J] at paras 8, 26-27, 30-32; *Amiri v Canada (Citizenship and Immigration)*, 2019 FC 205 [Mactavish J as she then was] at paras 33-35.

[34] When a summary is provided, the law remains the same as to what must be disclosed, and the issue becomes the adequacy of the summary: per *Hamid*, disclosure must be made of

"meaningful facts essential or potentially crucial to the decision had been used to support a decision" at para 16.

[35] The Respondent, on the other hand, submits the Applicant was provided with adequate disclosure on not one but two occasions. The first was during the second interview in 2017 when the Second Officer told the Applicant IRCC was concerned about his application and why:

> I asked PA why his Schedule 2 is identical as well as the pictures, to another independent application we received. PA said he does not know how this could be possible as this is his story, he wrote the story in Arabic and sent it to the consultant. PA said he has a copy of the email he sent the Arabic schedule 2, and will send me a copy of this email. I explained to the PA that I have my doubts of his story and credibility, and that it was not possible for two different applicant to come up with the exact same report including drawings, and have produced those documents themselves. PA said all he can say is this is my story. I asked PA if he had any friends who also have refugee applications with Canada; PA replied no. I explained to PA we will review his file and make a final decision. PA said that the story provided was his story and was adamant that he is telling the truth. PA then said that when he wrote the report he took cli[p [*sic*] art pictures from google and sent the pics to the consultant to use.

[36] The second disclosure provided was the actual procedural fairness letter dated September 28, 2018. This letter disclosed:

> I have now completed the assessment of your application and I have determined that you may not meet the requirements of *Immigration and Refugee Protection Act*.
>
> Subsection 16(1) of the *Immigration and Refugee Protection Act* states that 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.

> Section 70 (1) of the Regulations states that an Officer shall issue a permanent resident visa to a foreign national if, following an examination, it is established that
>
> (e) the foreign national and their family members, whether accompanying or not, are not inadmissible.
>
> Included in your application you have submitted a schedule 2 Refugee Outside Canada form describing the events causing you to leave Syria. You stated that you wrote the schedule 2 in your native tongue, Arabic, and sent this report to your representative who in turn produced the document in English. As noted to you, at your second interview with Immigration Refugee and Citizenship Canada in Riyadh on 9 October 2017, this document closely resembles a Schedule 2 Document submitted on a separate application not related to yours. I am not satisfied that your account of events is accurate and truthful, thereby raising doubts to the credibility of your story. Furthermore given your personal history and countries you have lived in including Syria, Yemen and Saudi Arabia, I am not satisfied that you are not inadmissible to Canada.
>
> Subsection 11(1) of the Act provides that a foreign national must, before entering Canada, apply to an officer for a visa or any other document required by the regulations. The 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 this Act.
>
> You have 30 days from the date of this letter to submit any additional information to disabuse me of my concerns. If you choose not to respond with additional information I will make my decision based on the information before me, which may result in the refusal of your application.

[37] The issue is whether this disclosure was adequate, that is, did it disclose "meaningful facts essential or potentially crucial to the decision had been used to support a decision" per *Hamid* at para 16.

[38] In my respectful view, and as discussed below, the disclosure of summary information in this case satisfies the *Hamid* test. I find the Applicant had adequate disclosure of the case he had to meet. As such, he did not need to see the documentary narrative schedule 2 form from the other refugee claimant.

[39] From these disclosures, the Applicant knew there was another Syrian refugee application that "closely resembles" (language used in the procedural fairness letter) the one his Consultant filed, or was nearly "identical" to it (language based on the GCMS notes of the interview). The Applicant knew the other refugee applicant was a Syrian national. He knew the two applications had identical graphics in them. He knew IRCC had doubts about his story and credibility. He knew IRCC was concerned, and indeed he was told it was not possible for two different applicants to come up with the exact same report including drawings, and have produced those documents themselves.

[40] In my respectful view, all the Applicant had to do was pass this information to his Consultant, who would know if he had filed any other similar refugee claims with these features and graphics. That could and should have been done; in fact the Applicant did pass this information to his Consultant after the interview with the Second Officer on October 9, 2017. Further it could and should have been done, and again was done after receipt of the procedural fairness letter. I say this because it is well-known the onus is on the Applicant to make his case for refugee status.

[41] The Applicant now deposes in his affidavit he spoke with his Consultant a day or so after the interview, and told the Consultant about the concerns raised. In my opinion, if there was any doubt, that conversation squarely put the onus on the Consultant, and thus on the Applicant who is responsible for acts and omissions of his Consultant, to address those concerns. The failure to do so is fatal to this aspect of the Applicant's case.

[42] We also know that the Applicant sent the procedural fairness letter dated September 28, 2018 to his Consultant, because it was the Consultant who replied. This, once again, confirms the onus was squarely on the Applicant and his Consultant to file a meaningful response.

[43] In my view, the nub of the Applicant's problem is that neither the he nor his Consultant did anything to address what I consider the legitimate concerns raised in both the interview and the procedural fairness letter. Instead, the Consultant wrote asking to see "the other claim":

> In reply to your letter of Procedural Fairness of September 28, 2018 please disclose a copy of what it is that you have referred to that "closely resembles a schedule 2 document…" so that the Applicant can prepare his response with full awareness of what you have before you or have reviewed in making your decision. We also ask that we be permitted 30 days from the date we receive this disclosure to prepare the response.
>
> Moreover, given that you have raised an issue that may concern the conduct of our office in this matter, disclosure is also necessary for the Applicant to ascertain if he needs to seek new representation in this matter.
>
> Finally, please clarify how the Applicant's personal history and countries he has lived in is relevant to any inadmissibility concerns you may have.
>
> Your urgent reply to this letter is greatly appreciated.

[44] In my view, this request to see the other claim was not a sufficient answer to the serious concerns and questions disclosed to the Applicant by IRCC about the two similar refugee applications. I say this for several reasons. First, the Applicant was not entitled to see the other Syrian refugee application; he was only entitled to a material summary of the concerns it raised. Second, the onus was on the Applicant to make his case for refugee status. Third, while he had no obligation to provide information, he or his Consultant would or should have known a failure to respond to either the procedural fairness letter or the concerns raised in the interview could prejudice his case.

[45] Both the Consultant and the Applicant provided affidavits on this judicial review. In both they depose facts they could easily have disclosed to IRCC at the time. It appears they decided amongst themselves not to address IRCC's concerns.

[46] For example, the Consultant now discloses he had some fifteen other Syrian refugee files, ten at the same Embassy. If he could disclose that now, he could, and to discharge the onus on his client, he should have informed IRCC when he learned of its concerns, be it after the interview in 2017 or after the procedural fairness letter in 2018.

[47] The Consultant also now deposes he recommended the Applicant use some images to illustrate the torture described by the Applicant. He said these images are publicly available online on the web. There is no explanation for why this was withheld by the Applicant and Consultant after the procedural fairness letter.

[48] In my view, the Consultant did not need to see the other refugee claim to respond to the concerns of IRCC. The Consultant knew what he filed for the Applicant and what he filed for other Syrian refugee clients including graphics. The Consultant could tell if there was a match from his files and should have responded accordingly.

[49] The refugee process is not a game of cat and mouse played out in serial litigation, with information legitimately requested by IRCC withheld from the RPD - only to be filed with the Federal Court on judicial review. In addition, in my view this is improper new evidence on judicial review: see *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 [Stratas JA] at para 20.

[50] The Applicant also filed an affidavit on judicial review. He now discloses additional information, which in my view should have disclosed after the 2017 interview, and certainly after receipt of the procedural fairness letter. The Applicant deposes he told the Second Officer images he used in his submissions were available on Google and showed how the Applicant was being treated. I note this is along the lines of what he told the Second Officer in the 2017 interview; I do not understand why he did not disclose that in response to the procedural fairness letter of 2018. The Applicant deposes he knows many people were tortured in Syria by the government, so it did not surprise him these images of torture techniques are shared online. This should have been disclosed. He deposes after the interview he contacted the Consultant who reassured him that he wrote the Applicant's truthful story, not that of another person. The Consultant also told him he uses the public images for other clients if they describe the same

types of torture. This information should have been disclosed; the Court is given no reason for withholding it then and revealing it now.

[51] While not raised in his memorandum, at the hearing counsel alleged a further breach of procedural fairness in that the Visa Officer made the Decision, but the interview was conducted by a different officer without further input from the First Officer. No cases were referred to by the Applicant to support his submission. I am unable to accept this argument. The jurisprudence establishes immigration officers may rely on notes prepared by other officers in the GCMS system (*El-Souri v Canada (Citizenship and Immigration)*, 2012 FC 466 [Phelan J] at paras 13-15; *Ching v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 839 [Diner J] at paras 186 and 189; *Zhang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1381 [de Montigny J, as he then was].

[52] I am not persuaded there was a breach of procedural fairness in this case. Therefore judicial review must be dismissed.

VIII. Certified question

[53] Neither party proposed a question for certification, and none arises.

JUDGMENT in IMM-6937-19

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question is certified and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6937-19
STYLE OF CAUSE:	MOHAMED JAMIL JEMMO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	JUNE 2, 2021
JUDGMENT AND REASONS:	BROWN J.
DATED:	DECEMBER 8, 2021

APPEARANCES:

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Brett J. Nash	FOR THE RESPONDENT

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