

Federal Court



Cour fédérale

**Date: 20220726**

**Dockets: IMM-3763-21  
IMM-3783-21**

**Citation: 2022 FC 1102**

**Ottawa, Ontario, July 26, 2022**

**PRESENT: The Honourable Mr. Justice Zinn**

**Docket: IMM-3763-21**

**BETWEEN:**

**RAHAT SAMUEL  
ASHMARA SAMUEL  
JASSICA SAMUEL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**Docket: IMM-3783-21**

**AND BETWEEN:**

**HAROON ALEXANDER**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

## **JUDGMENT AND REASONS**

[1] Before the Court are two applications for judicial review of two decisions of a Migration Officer, both dated April 14, 2021, rejecting the Applicants' applications for permanent residence in Canada as members of the Convention refugee abroad and country of asylum classes. The Applicants are members of a single family.

[2] Court Docket IMM-3763-21 relates to the application of Rahat Samuel, who is the mother of the other Applicants. That application omitted to name her daughters, Ashmara and Jassica, who were included on her application. The style of cause in that matter will be amended with immediate effect to add them as Applicants. Court Docket IMM-3783-21 relates to the application of Haroon Alexander, the son of Rahat Samuel.

[3] Both applications for permanent residence were considered together, and the Court ordered that they be heard jointly. A single set of reasons is being issued for both and is to be placed on each Court file.

[4] For the reasons that follow, both applications will be granted.

### **Background**

[5] All of the Applicants are citizens of Pakistan who are currently living in Thailand without status. The Applicants claim to face persecution in Pakistan due to Ms. Samuel's work supporting women's rights and due to their Christian faith.

[6] In Pakistan, Ms. Samuel volunteered with the National Peace Committee for Interfaith Harmony, where she claims she was the President of its Women's Wing. As part of her work with this group, she says that she helped a Muslim woman, Razia, make a police report against her husband for sexual assault. Razia's husband was ultimately released and began to threaten Ms. Samuel. Ms. Samuel claims that, on June 15, 2012, Razia's husband and his friends attempted to kidnap her. As a result, she ceased activities with the National Peace Committee for Interfaith Harmony and was told to lay low. She changed her phone number and the threats stopped.

[7] In March 2013, Muslim extremists attacked the Christian neighbourhood of Joseph Colony, attempting to burn down several houses. This was apparently because a resident of the community being charged with blasphemy. The Applicants were living either in or very close to Joseph Colony. In the aftermath, Ms. Samuel participated in a protest against violence towards Christians and gave a media interview. After doing so, the threats resumed.

[8] Ms. Samuel fled to Thailand and her children joined her several months later. Ms. Samuel and her children have been living in Thailand without status, relying on the charity of a local church. Her husband, Samuel Victor remains in Pakistan. He claims he remained to wind up the family's affairs, but he was then unable to obtain authorization to enter Thailand and could not join his family.

[9] In September 2019, Ms. Samuel and Mr. Alexander made separate applications for permanent residence. Both applications were sponsored by the Roman Catholic Archdiocese of

Toronto. Ashmara and Jassica were 21 and 16 years old at the time, respectively, and were included on their mother's application. Mr. Alexander was 23 years old.

[10] On March 10, 2021, Ms. Samuel and Mr. Alexander received separate letters requesting their attendance for an interview on April 8, 2021, to be held via Zoom. Ms. Samuel's letter also requested the attendance of Ashmara, who was 22 at the time of the interview. Jassica was 18 at the time of the interview, but was not requested to attend.

[11] At the interview, Ms. Samuel was asked several questions by a Migration Officer. Mr. Alexander and Ashmara were not asked any questions.

[12] During the interview, the officer told Ms. Samuel that there were concerns with the credibility of her narrative. The officer raised several inconsistencies and asked Ms. Samuel for her explanations for them.

[13] On April 14, 2021, the officer sent two decision letters to the Applicants: one to Ms. Samuel [the Samuel Decision] rejecting her application and one to Mr. Alexander [the Alexander Decision] rejecting his.

#### *The Samuel Decision*

[14] The Samuel Decision notes that Ms. Samuel was interviewed on April 8, 2021. It sets out the relevant requirements for the Convention refugee abroad class (section 145 of the

*Immigration and Refugee Protection Regulations*, SOR/2002-277 [the Regulations] and section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]) and the country of asylum class (section 147 of the Regulations).

[15] The Samuel Decision then notes that:

After carefully assessing all factors relative to your application, I am not satisfied, on balance, that you have established a well-founded fear of persecution or that you have been seriously and personally affected by civil war, armed conflict, or a massive violation of human rights. I am therefore not satisfied that there is a reasonable chance or good grounds that you are a member of any of the classes prescribed for the following reasons:

[16] The officer sets out several credibility concerns with Ms. Samuel's testimony. The officer notes Ms. Samuel's inability to provide a detailed explanation of her role with the National Peace Committee for Interfaith Harmony. The officer writes that Ms. Samuel's explanation for why she did not follow up with Razia, that she felt unsafe doing so and was told to keep a low profile, is inconsistent with Ms. Samuel giving a media interview when protesting the attack on Joseph Colony. The officer also writes that Ms. Samuel was unable to explain the inconsistencies between her and her spouse's written narratives.

#### *The Alexander Decision*

[17] The Alexander Decision begins in the same manner as the Samuel Decision. It notes, incorrectly, that Mr. Alexander was interviewed on April 8, 2021, sets out the relevant legislative provisions, and states that the officer is not satisfied that Mr. Alexander has met the requirements of those provisions. The Alexander Decision gives the following reasons for this finding:

Your basis of refugee claim was linked to your mother. Due to inconsistencies noted in the narrative during the interview, your mother was assessed not to meet the definition of a member of the Convention refugee abroad class or the country of asylum class. Therefore, you do not meet the requirements of this paragraph.

## Issues

[18] The Applicants raise eight issues in these applications. The question of whether these applications should be granted can be determined based on one issue: whether there was a breach of procedural fairness.

[19] The Court also has some concerns with the Samuel and Alexander Decisions that will be addressed. Specifically, the Court will examine whether the officer unreasonably failed to fully consider whether the Applicants are refugees or members of the country of asylum class. My comments on this second issue are intended to assist the officer who will be making the decision anew, as these applications will be sent back for redetermination.

[20] The parties agree that the appropriate standard of review is reasonableness. However, the proper standard of review for questions of procedural fairness is akin to correctness. For questions of procedural fairness, the reviewing court asks “whether the procedure was fair having regard to all of the circumstances” (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

## Analysis and Discussion

### 1. Procedural Fairness

[21] The failure to interview Mr. Alexander was a clear breach of his procedural fairness rights. The officer's conduct relegated Mr. Alexander to the role of a mere spectator at his own hearing, with no opportunity to respond to the officer's credibility concerns. These concerns were the basis of the refusal of Mr. Alexander's application.

[22] The Respondent accepts that Mr. Alexander was present at the hearing and that he was not asked any questions. The Respondent submits that it was not an error to ask Mr. Alexander no questions because his application was "totally dependent on his mother's experiences in Pakistan" and his fate was tied to hers. The Respondent asks, "what could the Applicant [Mr. Alexander] have said to rehabilitate his mother's testimony?"

[23] The answer to the Respondent's question is "We cannot know because he was not questioned." Even if he had nothing to offer, he was entitled to a fair and proper procedure, and that included the right to be asked questions.

[24] Justice Manson's decision in *Ismailzada v Canada (Minister of Citizenship and Immigration)*, 2013 FC 67 [*Ismailzada*], makes it clear that where there are multiple applicants at an interview, the officer must give all applicants an opportunity to respond to credibility

concerns. This would not just include Mr. Alexander, whose application was separate from his mother's. Ashmara should have also been questioned.

[25] Furthermore, the Court notes that the officer's conduct was contrary to the Minister of Citizenship and Immigration's own guidelines. Both parties rely in their submissions on guideline *OP 5: Overseas Selection and Processing of Convention Refugees Abroad Class and Members of the Humanitarian-protected Persons Abroad Classes* [the OP-5 Guideline].

[26] Section 13.3 of the OP 5 Guideline states the following:

If the principal applicant does not qualify as a member of the Convention refugee abroad class, the officer must assess the eligibility and admissibility of the spouse, common-law partner and of any family members. It cannot be assumed that a spouse, common-law partner or a child, particularly an older one, does not have their own story to tell. Each family member must be given the opportunity to tell their story; officers must explore all possibilities. Where any one family member qualifies, that status applies to all other family members. If none of the family members qualify, proceed to Section 27, Refusing applications.

[27] The officer was required to assess the eligibility of each of the Applicants. If the officer had concerns with the credibility of the Applicants' claims, each of the Applicants who were present at the interview were entitled to be given the opportunity to address the credibility concerns.

[28] It is telling that the Samuel Decision makes no mention of Ashmara or Jassica. The officer seemed to be under the impression that their eligibility, like Mr. Alexander's, was inextricably linked to Ms. Samuel's.



[29] In my view, the officer should have requested the attendance of Jassica at the interview so that her claim could be assessed. I recognize that at the time of the applications, Jassica was a minor. However, at the time of the interview she was 18 years old and an adult. I again highlight section 13.3 of the OP 5 Guideline, which states: “It cannot be assumed that a spouse, common-law partner or a child, particularly an older one, does not have their own story to tell.” [emphasis added]

## 2. *A Full Consideration of the Claims*

[30] The Applicants submit that the officer failed to fully consider all of the grounds of persecution that they face in Pakistan. In particular, they submit that the officer erred by only assessing whether Ms. Samuel faced persecution because of her activities with the National Peace Committee for Interfaith Harmony and did not consider the persecution she and her family face as Christians.

[31] The Applicants submit that there were submissions and country condition evidence before the officer about the treatment of Christians in Pakistan and that their narrative highlighted persecution that they faced in Pakistan. The Applicants note in particular that their home in Joseph Colony was threatened due to their religion and the protest where Ms. Samuel gave an interview was in response to violence against Pakistan’s Christian minority.

[32] The Applicants further submit that the officer completely neglected to assess whether they were eligible for the country of asylum class.

[33] In reply, the Respondent submits that the officer's findings were based on the answers that Ms. Samuel gave in the interview. When Ms. Samuel was asked by the officer to explain why she left Pakistan, she made no mention of religious persecution. The Respondent further notes that while the country condition documents highlight challenges faced by Christian women in Pakistan, the Applicants did not indicate that they personally faced these challenges.

[34] The Respondent submits that the officer did consider the country of asylum class. The Respondent notes that in both the Samuel and Alexander Decisions, the officer set out the relevant classes and then indicated that they were "not satisfied that there is a reasonable chance or good grounds that you are a member of any of the classes prescribed."

[35] The Respondent submits that the officer reasonably rejected the applications because certain fundamental aspects of the evidence lacked credibility. The Respondent submits that "[b]eing unable to establish that she [Ms. Samuel] was credible, the Officer was obliged to reject the application." The Respondent submits that, per the OP 5 Guideline, the assessment is a four-stage process, with the assessment of credibility being the first stage and the assessment of eligibility of the specific classes being the third.

[36] The Samuel and Alexander Decisions are unreasonable. Not only did the officer fail to consider whether the Applicants face religious persecution, the officer does not give any explanation as to why the Applicants are not members of the Convention refugee abroad or country of asylum classes.

[37] The only finding that the officer made was that Ms. Samuel was not credible. The Respondent's argument that this finding is determinative is incorrect. Unlike a claimant's identity, credibility is not determinative of a refugee claim (or a country of asylum application). Even if Ms. Samuel's testimony is not credible, she and her family may still be members of the relevant classes.

[38] Ms. Samuel could still be found to be a refugee on objective evidence accepted by the officer or based on parts of the testimony that were undisputed. For example, nowhere does the officer dispute the evidence of the treatment of Christians in Pakistan or that the Applicants are Christians.

[39] While the Respondent submits that the Applicants did not demonstrate they face the treatment described by in the country conditions documents, this finding was not made by the officer. Counsel is improperly buttressing the officer's reasons. Furthermore, the Applicants alleged that their neighbourhood had been attacked on religious grounds. The officer does not explain why this incident does not demonstrate persecution.

[40] Had Ms. Samuel's children been given an opportunity to testify, one or more of them could have been found to be a member of a relevant class. The Respondent's submissions on procedural fairness note that the officer's credibility concerns were with respect to events that did not involve Mr. Alexander and occurred when he was a minor. Mr. Alexander lived in Joseph Colony during the alleged attack. While a minor at the time, he was still a teenager. Those events, if true, would likely have been traumatic, and he may have indelible memories of

the attack. His testimony, if accepted, would have helped to establish that he and his family face religious persecution in Pakistan.

[41] As with the Convention refugee aboard class, at no point does the officer explain how the Applicants do not meet the requirements of the country of asylum class. While the Applicants may not be members of this class, the officer was required to explain why this was the case.

[42] I do not accept the Respondent's submission that the OP 5 Guideline suggests that credibility is a threshold issue and that once an officer has determined an applicant is not credible, the inquiry ends. This interpretation is inconsistent with the OP 5 Guideline itself. It is true that section 13 of the OP 5 Guideline sets out a 4-stage procedure and that "Assessing credibility" is the first. However, during the third phase, when assessing whether an applicant is a member of the Convention refugee aboard class, one of the factors that an officer must take into account is "the credibility of the applicant" (see OP-5 Guideline at s 13.3). If a negative credibility finding were determinative, there would be no need for an officer to assess credibility at this later stage of the analysis.

[43] Finally, I wish to comment on the Respondent's submission that Ms. Samuel did not raise religious persecution in her interview.

[44] The officer is not to assess a claim on the interview alone. The interview serves to supplement a claim, providing officers with an opportunity to seek further detail and to assess the credibility of claimants. Just because Ms. Samuel did not mention religious persecution of her

own volition in the interview does not mean that it was abandoned as a basis of claim. If the officer had doubts as to the sincerity of the Applicants' faith, the officer ought to have questioned the Applicants on this point. The Applicants' evidence with respect to their identity remained uncontested.

[45] For these reasons, both applications will be allowed. No question was posed for certification.

**JUDGMENT in IMM-3763-21**

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

1. The style of cause is amended with immediate effect to add as Applicants  
Ashmara Samuel and Jassica Samuel;
2. The application is allowed;
3. The Applicants' application for permanent residence in Canada as members of the  
Convention refugee abroad and country of asylum classes is to be redetermined  
by a different officer in keeping with these reasons; and
4. No question is certified.

**JUDGMENT in IMM-3783-21**

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

1. The application is allowed;
2. The Applicant's application for permanent residence in Canada as a member of  
the Convention refugee abroad and country of asylum classes is to be  
redetermined by a different officer in keeping with these reasons; and
3. No question is certified.

\_\_\_\_\_  
"Russel W. Zinn"

Judge

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

**DOCKET:** IMM-3763-21

**STYLE OF CAUSE:** RAHAT SAMUEL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**AND DOCKET:** IMM-3783-21

**STYLE OF CAUSE:** HAROON ALEXANDER v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 16, 2022

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** JULY 26, 2022

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