

Federal Court



Cour fédérale

**Date: 20240122**

**Docket: IMM-5180-23**

**Citation: 2024 FC 98**

**Ottawa, Ontario, January 22, 2024**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**JAMAL DARWISHEH**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] A visa officer refused Mr. Darwisheh's application for permanent residence in the Convention refugees abroad class, because he admitted at his interview that he was a member of the Muslim Brotherhood, a subversive organization. Mr. Darwisheh is now seeking judicial review of this decision, arguing that the officer breached procedural fairness and unreasonably disregarded his submission that the purported admission was the result of a misunderstanding. I

am granting the application, because the officer's failure to disclose the interview notes to Mr. Darwisheh was procedurally unfair in the specific circumstances of the case.

I. Background

[2] Mr. Darwisheh is a citizen of Syria. For more than forty years, he has been living outside his country because he fears persecution at the hands of the regime of Hafez el-Assad and Bachar el-Assad. He currently lives in Lebanon, while his wife and daughters are in Saudi Arabia. In 2017, he applied for permanent residence in the Convention refugees abroad class.

[3] In December 2019, Mr. Darwisheh was interviewed at the Canadian embassy in Beirut. An Arabic interpreter was present, as Mr. Darwisheh has a limited command of the English language. The interview was not recorded, but the notes the officer entered in the Global Case Management System [GCMS] shortly afterwards contain the following exchange:

OFFICER QUESTION: Are you part of a group/organization?

APPLICANT RESPONSE: Muslim Brotherhood (Al Ikhwan Al Muslimin).

OFFICER QUESTION: What branch of the Muslim Brotherhood do you belong to?

APPLICANT RESPONSE: It is just one party, the Muslim Brotherhood.

OFFICER QUESTION: What is your position within the Muslim Brotherhood?

APPLICANT RESPONSE: I am just a regular member.

OFFICER QUESTION: Since when have you been a member of the Muslim Brotherhood?

APPLICANT RESPONSE: Before the 1980s, since I was in school.

[4] The processing of Mr. Darwisheh's application took time. In December 2022, another officer reviewed the file and formed the opinion that Mr. Darwisheh could be inadmissible for being a member of an organization that engaged in the subversion by force of the government of Syria, pursuant to paragraphs 34(1)(b) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. He thus sent Mr. Darwisheh a procedural fairness letter [PFL], which stated the following:

During your interview, you have declared that you are a member of the Syrian Muslim Brotherhood. You indicated that you have been a member of the Syrian Muslim Brotherhood since you were in school, prior to the 1980s. You cited that it is due to this affiliation that you are unable to return to Syria as the Syrian regime began targeting members of the Muslim Brotherhood in 1979 and considers you to be part of the opposition. You also indicated that you have been working as a teacher since 2012 at the Mujama Salahaddin Association – a cultural centre operated by the Muslim Brotherhood in Lebanon.

[5] The PFL, however, did not include a transcript of the interview. In particular, the excerpt reproduced above was not communicated to Mr. Darwisheh.

[6] In response to the PFL, Mr. Darwisheh did not challenge the fact that the Muslim Brotherhood is an organization engaged in the subversion by force of a government. However, he stated that he has never been a member of the Muslim Brotherhood and that, at the interview, he did not admit that he was. He suggested that there was a translation error or a misunderstanding. He added that, at the interview, he mentioned that the Syrian authorities falsely accused him of being a member of the Muslim Brotherhood.

[7] In April 2023, the officer reviewed Mr. Darwisheh's response to the PFL and the supporting documents and found that Mr. Darwisheh was inadmissible to Canada. The officer noted that Mr. Darwisheh did not raise any issue with the interpretation during the interview and that "his statements made at several points at the interview indicate a clear and unambiguous relationship between the applicant and the Syrian Muslim Brotherhood." The officer added, "I do not find it reasonable that the applicant would erroneously state on multiple occasions his belonging to the Syrian Muslim Brotherhood."

[8] Mr. Darwisheh now seeks judicial review of the officer's decision.

## II. Analysis

[9] I am granting this application, because the failure to disclose the interview notes gave rise to a breach of procedural fairness. I need not address the substantive unreasonableness of the decision.

[10] It is useful to state at the outset what is not in dispute in this application. First, Mr. Darwisheh does not challenge the finding that the Syrian Muslim Brotherhood is an organization that has engaged in the subversion by force of the government of Syria, within the meaning of paragraph 34(1)(b) of the Act.

[11] Second, the parties generally agree as to the legal framework for determining whether a person is a member of an organization pursuant to paragraph 34(1)(f) of the Act. In *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paragraph 27, [2005] 3 FCR

487, the Federal Court of Appeal stated that the concept of membership should be given an “unrestricted and broad interpretation.” Formal membership is not required. To determine if a person is in fact a member of a subversive organization, “three criteria that should be considered include the nature of the person’s involvement in the organization, the length of time involved, and the degree of the person’s commitment to the organization’s goals and objectives”: *B074 v Canada (Citizenship and Immigration)*, 2013 FC 1146 at paragraph 29. However, when a person admits being a member of such an organization, the inquiry ends there and there is no need to consider the factors identified above: *Foisal v Canada (Citizenship and Immigration)*, 2021 FC 404 at paragraph 11; *Wasta Ismael v Canada (Citizenship and Immigration)*, 2022 FC 1520 at paragraph 41; *Harara v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 307 at paragraphs 37–38. This principle must be kept in mind when assessing the fairness of the process followed by the officer.

A. *Procedural Fairness*

[12] Mr. Darwisheh argues that the officer breached the duty of procedural fairness by failing to disclose a report prepared by the Canada Border Services Agency [CBSA] and the transcript of the interview.

[13] The duty of procedural fairness is, among other things, meant to provide “an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker”: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paragraph 22 [*Baker*]. To achieve this, an applicant must know the “case to meet,” that is, the evidence on which the decision maker intends to rely: *Kane v University of*

*British Columbia*, [1980] 1 SCR 1105 at 1114–16. Without such knowledge, an applicant is unable to respond meaningfully to the concerns of the decision maker.

[14] In the context of visa applications, it has generally been held that the relevant factors outlined in *Baker* point to a relatively low requirement of procedural fairness. Thus, this Court has decided that a visa officer need not provide an applicant with the documents or other evidence on which the officer intends to rely, as long as the PFL provides a sufficient description of this evidence and the applicant is able to understand their gist: *Maghraoui v Canada (Citizenship and Immigration)*, 2013 FC 883 at paragraph 22; *Jemmo v Canada (Citizenship and Immigration)*, 2021 FC 1381 at paragraph 33; *Geng v Canada (Citizenship and Immigration)*, 2023 FC 773 at paragraph 74.

[15] However, where a visa application is based on the Convention refugees abroad class, the decision is bound to have a greater impact on the applicants' lives as compared to other categories of visa applications. This factor calls for a heightened level of procedural fairness: *Ha v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 49 at paragraph 61, [2004] 3 FCR 195.

(1) Failure to Disclose CBSA Report

[16] When the certified tribunal record was filed, it came to light that the officer received an Inadmissibility Assessment Report prepared by the CBSA a few days before issuing the PFL. This report contains a review of the facts alleged by Mr. Darwisheh in his application or disclosed at the interview. It also contains an extensive review of open-source information

concerning the Syrian Muslim Brotherhood. Based essentially on his admission of membership in the Muslim Brotherhood, the report concludes that Mr. Darwisheh is inadmissible to Canada. Mr. Darwisheh does not argue that procedural fairness required the officer to disclose these parts of the report.

[17] However, Mr. Darwisheh expressed strong concerns regarding a portion of the report that reviews his Facebook activity. The report notes that three of Mr. Darwisheh's Facebook friends posted contents related to Hamas or Al-Qaida, that he follows an account linked to the Free Syrian Army [FSA] and that he liked several pages with contents related to the FSA.

[18] The officer would have breached procedural fairness if they had relied on information not disclosed to Mr. Darwisheh to reach their decision. However, the record indicates that the evidence regarding Mr. Darwisheh's Facebook activity played no role in CBSA's recommendation or in the officer's decision.

[19] In the CBSA report, the conclusions regarding Mr. Darwisheh's membership in the Muslim Brotherhood are based on his admission, other statements made during the interview and the fact he is currently working at a centre operated by the Muslim Brotherhood. There is no reference to his Facebook activity in this section of the report. In fact, the review of his Facebook activity did not reveal anything related to the Muslim Brotherhood. The report mentions the Facebook activity in a section styled "other concerns," which comes after the conclusion that Mr. Darwisheh is inadmissible to Canada pursuant to paragraphs 34(1)(b) and 34(1)(f) of the Act.

[20] There is no indication that Mr. Darwisheh's Facebook activity played any role in the visa officer's decision. The PFL does not mention this activity as a ground of inadmissibility. The GCMS notes do not make any mention of it. It is thus reasonable to conclude that the officer did not view this information as relevant to a finding of membership in the Muslim Brotherhood, did not intend to rely on it and did not consider it in making the decision. See, by way of analogy, *Hamid v Canada (Citizenship and Immigration)*, 2016 FC 1115.

[21] Accordingly, in the circumstances of this case, Mr. Darwisheh did not need this information to know the "case to meet."

[22] Mr. Darwisheh nevertheless argues that the information was so inflammatory or detrimental to his case that he needed to be apprised of it. I am unable to agree. There is every indication that the officer was of the view that Mr. Darwisheh's Facebook activity was irrelevant to his inadmissibility. The requirements of procedural fairness are not meant to enable Mr. Darwisheh to start a debate on what was in reality a side issue.

(2) Failure to Disclose Interview Notes

[23] In contrast, in the specific circumstances of the present case, the failure to disclose Mr. Darwisheh's interview notes gave rise to a breach of procedural fairness.

[24] I am mindful that procedural fairness does not always require that interview notes be disclosed to an applicant. As in *Guerrero v Canada (Citizenship and Immigration)*, 2015 FC



1048 at paragraph 40, however, the crucial factor is the role that this evidence played in the officer's decision-making process.

[25] Mr. Darwisheh's admission was the decisive factor in the officer's reasoning. Without this admission, it is doubtful that the officer would have reached the same conclusion. Moreover, the admission is contained in the answers to four questions. It is a small portion of the interview. The issue of his actual implication with the Muslim Brotherhood was not explored at any length. Therefore, the actual wording of what Mr. Darwisheh said matters significantly.

[26] If Mr. Darwisheh did not make such an admission, it is very difficult for him to argue that what the officer noted resulted from a misunderstanding if he does not have access to the notes. Three years after the interview, Mr. Darwisheh would be hard-pressed to remember the exact words he used and to explain how they were misunderstood.

[27] In the GCMS notes explaining the final decision, the officer quoted the questions and Mr. Darwisheh's answers verbatim. If the officer saw it necessary to do this, it is probably because the precise wording of the notes was crucial to the decision.

[28] Lastly, this visa application was based on the Convention refugees abroad class. As mentioned earlier, it has more impact on Mr. Darwisheh's life than other kinds of visa applications. This reinforces the need for the disclosure of the interview notes.

[29] Therefore, I am of the view that there was a breach of procedural fairness in this case.

B. *Substantive Reasonableness*

[30] As I am of the view that there was a breach of procedural fairness, I do not need to decide whether the officer's decision was unreasonable. I cannot speculate as how Mr. Darwisheh would have presented his case had he been aware of the interview notes. It would be unwise to try to assess the reasonableness of an actual decision against hypothetical submissions.

C. *Remedy*

[31] A remedy must be tailored to address the precise wrong that was committed. The parts of the process that were unaffected by the wrong may be left undisturbed.

[32] Here, Mr. Darwisheh does not argue that a breach of procedural fairness occurred at the interview. Rather, it is the officer's failure to disclose the interview notes when sending the PFL to Mr. Darwisheh that constituted a breach.

[33] This breach has now been cured. The notes have been disclosed in the course of this application for judicial review.

[34] What is now required is a process that will erase what was done after the breach and that will build upon what was done before. Therefore, the decision will be set aside, but only with respect to the issue of Mr. Darwisheh's membership in the Muslim Brotherhood. That specific issue will be reconsidered by a different officer, who will not conduct an interview, but will

rather base their decision on the existing record. Mr. Darwisheh will have an opportunity to provide additional submissions with respect to his alleged admission.

III. Disposition

[35] For the foregoing reasons, the application for judicial review will be granted and the matter will be remitted to a different officer for reconsideration according to the process outlined above.

**JUDGMENT in IMM-5180-23**

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

1. The application for judicial review is granted.
2. The decision of the visa officer regarding the applicant's application for permanent residence is set aside with respect to the issue of the applicant's membership in the Muslim Brotherhood.
3. The matter is remitted to a different visa officer for reconsideration according to the following process:
  - a) No new interview of the applicant will be conducted;
  - b) The applicant may file additional submissions regarding his purported admission of membership;
  - c) The application will be determined based on the evidence already in the record and the applicant's additional submissions.
4. No question is certified.

"Sébastien Grammond"  
\_\_\_\_\_  
Judge

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

**DOCKET:** IMM-5180-23

**STYLE OF CAUSE:** JAMAL DARWISHEH v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTREAL, QUEBEC

**DATE OF HEARING:** JANUARY 15, 2024

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