

**Date: 20080303**

**Docket: IMM-2246-07**

**Citation: 2008 FC 280**

**Ottawa, Ontario, March 3, 2008**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**SAYADA MOHSINA  
SAMIA MOHSIN  
MERAJ MOHSIN**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

(Judgment delivered from the Bench at Toronto, Ontario, on February 28, 2008)

[1] This is an application for judicial review of a decision of a visa officer refusing an application brought by Sayada Mohsina to allow her to sponsor her two children on humanitarian and compassionate grounds, notwithstanding that they had not been disclosed on her application for permanent residence.

[2] Having considered the submissions of counsel for the applicant and for the respondent, I find that the decision under review was unreasonable, and should be set aside for the following reasons:

1. The visa officer noted that there was “some incoherence” between the applicant’s sponsorship immigration history, the affidavits signed by the children’s father, and the explanations provided in the applicant’s submissions. Not only is there no indication as to what these areas of “incoherence” were, there were no affidavits provided by the children’s father in the record before the visa officer.
2. The visa officer found that the claims that the children faced undue hardship in Bangladesh were undermined by the fact that their mother had waited until such time as she had become a Canadian citizen before trying to sponsor the children. However, a review of the record discloses that Ms. Mohsina filed her application for an H&C exemption in relation to her sponsorship of her children before she had obtained her Canadian citizenship, rendering this finding patently unreasonable.
3. The visa officer noted a “serious contradiction” in the evidence provided by the applicants with respect to the alleged abduction of the children by their father, noting that the children had been in continuous attendance at the same school in Bangladesh since October of 1998. The children were allegedly abducted by the father in February of 1998. As a consequence, the fact that the children had attended

the same school for some years after their abduction did not contradict the applicants' story in any way.

4. The visa officer failed to come to grips with the reality of the children's situation in Bangladesh, finding that the children had both family support and a social network in that country. This finding was made in the face of uncontradicted evidence that the children had been abandoned by their father, their grandmother had died, and they were living with an aunt who did not want them. Moreover, the finding that the children would have a social network because they were students is based on nothing more than speculation.
5. The visa officer did not address the explanation provided by Ms. Mohsina for her failure to seek H&C relief earlier, namely that it was not clear that such relief was even available to a person in her situation prior to the decision of the Federal Court of Appeal in *De Guzman v. Canada (Minister of Citizenship and Immigration)*, [2005] F.C.J. No. 2119.
6. It was unreasonable for the visa officer to discount evidence with respect to the children's living conditions in Bangladesh, and to conclude that they were living in circumstances that were "at least in the upper middle class", based upon photographs of the children with their mother in an unidentified location.

7. While the above considerations provide a sufficient basis for setting aside the visa officer's decision, I would also note that there are also issues as to the fairness of the process followed by the visa officer, as it appears from the CAIPS notes that the visa officer had concerns with respect to the applicants' application which were not shared with them.

[3] As a consequence, the application for judicial review is allowed, and the matter is remitted to a different visa officer for reassessment, such reassessment to commence forthwith.

#### **Certification**

[4] Neither party has suggested a question for certification, and none arises here.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is allowed, the application for judicial review is allowed, and the matter is remitted to a different visa officer for reassessment, such reassessment to commence forthwith; and
2. No serious question of general importance is certified.

“Anne Mactavish”

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Judge

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

**DOCKET:** IMM-2246-07

**STYLE OF CAUSE:** SAYADA MOHSINA ET AL v.  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** February 28, 2008

**REASONS FOR JUDGMENT  
AND JUDGMENT:** MACTAVISH, J.

**DATED:** March 3, 2008

**APPEARANCES:**

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Ms. Leanne Briscoe FOR THE RESPONDENT

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