Federal Court  Cour fédérale

Date: 20090925

Docket: IMM-1459-09

Citation: 2009 FC 967

Ottawa, Ontario, September 25, 2009

PRESENT: The Honourable Mr. Justice Kelen

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

REHMAN ABUBAKAR ABDUL

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Immigration Appeal Division (the IAD) of the Immigration and Refugee Protection Board dated February 25, 2009 that the respondent's application to sponsor his mother should not have been denied by the visa officer based on medical inadmissibility grounds under subsection 38(1)(c) of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 (IRPA) because the mother's moderately mentally retarded 45 year old son might reasonably be expected to cause excessive demand on social services.

FACTS

[2] The respondent is a citizen of Canada who emigrated from Pakistan in 1997. In 2005 the respondent sponsored his mother, Mrs. Farhat Begum (hereinafter referred to as the "mother") for permanent residence in Canada under the "family class". The mother, in her application for permanent residence, listed her 45 year old son, Khatib Ur Umar Rehman (hereinafter referred to as the "son"), as a dependent because he is "moderately mentally retarded". The mother submitted a doctor's certificate that the son was dependant upon the mother for this reason.

[3] A medical officer (a physician authorized by the Minister and employed by the government of Canada to provide immigration medical assessments) examined the son and confirmed that the son suffered from moderate mental retardation which would make him eligible for a variety of social services in Canada that are "wait-listed", and thus would reasonably be expected to cause an excessive demand on Canada's social services. For this reason, the medical officer determined that the son was inadmissible under subsection 38(1) (c) of IRPA.

[4] On August 17, 2006 the visa officer sent a "fairness" letter to the mother and to the respondent setting out the findings of the medical officer that the dependant son could be expected to cause excessive demand on Canada's health or social services and for that reason may be inadmissible under subsection 38(1) of IRPA. The fairness letter invited the mother to submit additional information or documents relating to the son's condition and addressing the issue of excessive demand. The letter included the following passage relating to the findings of the medical officer that I reproduce for convenience:

> This information raises concerns that your dependant (can be expected to cause excessive demands on health or social services in Canada). For this reason, you may be a member of the inadmissible class under section 38 (1) of the *Immigration and Refugee Protection Act* and your application for permanent residence could be refused.
> …
> Before I make a final decision, you may submit additional information or documents relating to the above medical condition, diagnosis or opinion. You may submit any information addressing the issue of excessive demand if it applies to your case.

[5] The mother responded in a letter dated October 12, 2006 stating that she would delete her son from her application for permanent residence (as she had been invited to do by the visa officer in earlier correspondence).

[6] On December 5, 2006 the visa officer rendered a decision that the mother is inadmissible because of her medically inadmissible dependant child and that the dependant child cannot be deleted from the application. The visa officer stated that he came to that decision after receiving no information that would indicate that the medical officer's assessment was incorrect.

[7] The respondent then appealed to the IAD.

Decision under Review

[8] On February 25, 2009 the IAD decided that the visa officer erred in law in denying the mother's application for permanent residence and that sufficient humanitarian and compassionate grounds existed to warrant a grant of special relief.

[9] In its decision the IAD found that the failure of the mother to tender evidence to offset the adverse medical findings of the son was due to the confusing nature of the letters that were sent by the visa officer.

[10] The IAD found that the determination of the medical officer was too general and that the visa officer could not reasonably rely on it. It analyzed the decision of the visa officer and held that it failed to carry out an individualized assessment of the applicant as required by the Supreme Court of Canada's decision in *Hilewitz v. Canada (MCI)*, 2005 SCC 57, [2005] 2 S.C.R. 706:

> ¶ 26 The medical officer's failure to inquire into the appellant family's intention, ability and willingness to pay for the social services likely to be used by Khatib and the resulting failure to meaningfully individualize the relevant assessment of Khatib made it impossible for the medical officer to determine realistically what "demands" will be made as a result of his medical condition on social services. Indeed, the medical officer's finding that his medial condition might reasonably be expected to cause excessive demands on social services was based on mere conjecture and speculation, and more likely than not was derived inter alia from an unsupported conclusion based on Khatib's mere eligibility for social services.

[11] Having found that the decision of the visa officer was invalid in law, the IAD proceeded to make its own assessment, based on the evidence in front of it, whether the son could be reasonably expected to cause excessive demand on social services. The IAD found that the son will not create an excessive demand on social services.

[12] The respondent provided *viva voce* and documentary evidence that sought to rebut the medical officer's findings regarding the son's expected demand for social service. The respondent testified in relation to his financial means, and the intention to support the son. The IAD readily accepted the respondent's testimony:

> ¶ 34 Putting together the appellant's testimony, which the panel found highly credible, with Dr. Masroor's opinion, the panel is satisfied that the appellant's evidence has demonstrated the kind of individualized assessment which had been open to for the medical notification for the visa office to provide.
> ...
> ¶ 35 ...However, it [the panel] finds on a balance of probabilities that the appellant has established that Khatib will not create an excessive demand on social services, and it wishes to make clear that this finding is a finding on the substantive decision of the visa officer, and not simply on the technical flaws in the analysis of the officer.

[13] The IAD also held that sufficient H&C grounds existed to grant "special relief". The best interests of the respondent's 22 month old child would have been affected by the decision to grant the mother permanent residence, who would then take over some of the child rearing duties from the respondent. Family reunification and the son's continuing development under the respondent's care were also listed as positive H&C factors that favour the granting of special relief. The IAD concluded that a direction to the visa officer to process the mother's application in accordance with its reasons was an appropriate "special relief".

LEGISLATION

[14] Section 12 of the IRPA allows foreign nationals to be selected as permanent residents if they have family ties to Canada:

12. (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other	12. (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident

prescribed family member of a Canadian citizen or permanent resident.	permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.

[15] Section 38(1) of the IRPA lists the grounds of inadmissibility based on health grounds:

38. (1) A foreign national is inadmissible on health grounds if their health condition ... (c) might reasonably be expected to cause excessive demand on health or social services.	38. (1) Emporte, sauf pour le résident permanent, interdiction de territoire pour motifs sanitaires l'état de santé de l'étranger constituant vraisemblablement ... ou risquant d'entraîner un fardeau excessif pour les services sociaux ou de santé.

[16] Section 42 of the IRPA deems family members of dependent inadmissible persons to be inadmissible as well:

42. A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if (a) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; or (b) they are an accompanying family member of an inadmissible person.	42. Emportent, sauf pour le résident permanent ou une personne protégée, interdiction de territoire pour inadmissibilité familiale les faits suivants: a) l'interdiction de territoire frappant tout membre de sa famille qui l'accompagne ou qui, dans les cas réglementaires, ne l'accompagne pas; b) accompagner, pour un membre de sa famille, un interdit de territoire.

[17] Section 63(1) of the IRPA grants a right of appeal to applicants who have their family class visa refused:

63. (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.	63. (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.

[18] Section 67 of the IRPA sets out the remedial powers of the IAD upon if an appeal is allowed:

67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, (a) the decision appealed is wrong in law or fact or mixed law and fact; (b) a principle of natural justice has not been observed; or (c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	67. (1) Il est fait droit à l'appel sur prevue qu'au moment où il en est disposé: a) la décision attaquée est erronée en droit, en fait ou en droit et en fait; b) il y a eu manquement à un principe de justice naturelle; c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de measures spéciales. (2) La décision attaquée est cassée; y est substituée celle, accompagnée, le cas échéant,

(2) If the Immigration Appeal Division allows the appeal, it shall set aside the original decision and substitute a determination that, in its opinion, should have been made, including the making of a removal order, or refer the matter to the appropriate decision-maker for reconsideration.	d'une mesure de renvoi, qui aurait dû être rendue, ou l'affaire est renvoyée devant l'instance compétente.

ISSUES

[19] The applicant raised four issues with regard to the IAD's decision:

1) Did the IAD erroneously find that the officer erred by failing to conduct an individualized assessment?

2) Did the IAD erroneously substitute its own substantive finding on excessive demand rather then determining whether the officer's decision was reasonable at the time that it was made?

3) Did the IAD fail to take into account several important factors in determining whether the circumstances of the case warranted the granting of equitable relief, and did the IAD fail to provide adequate reasons in this regard?

4) Did the IAD conduct a breach of procedural fairness by using boilerplate reasons from another decision with a similar set of facts?

ANALYSIS

Standard of Review

[20] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, 372 N.R. 1, the Supreme Court of Canada held at paragraph 62 that the first step in conducting a standard of review analysis is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of [deference] to be accorded with regard to a particular category of question."

[21] The first three issues relate to questions of fact or mixed law and fact. In *Vashishat v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1346, 77 Imm. L.R. (3d) 220, Justice Mosely held at para. 18 that the standard of review of a decision of the IAD reviewing a decision of medical inadmissibility rendered by a Visa Officer was reasonableness. Accordingly, the first three issues are reviewable on a standard of reasonableness.

[22] The last issue touches upon procedural fairness and as such is reviewable on standard of correctness (see *Baker v. Canada (MCI)*, [1999] 2 S.C.R. 817; *Sketchley v. Canada (Attorney General)*, 2005 FCA 404, [2006] 3 F.C.R. 392; *Council of Canadians with Disabilities v. Via Rail Canada Inc.*, [2007] 1 S.C.R. 650; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at para. 43).

Issue No. 1: <u>Did the IAD erroneously find that the officer erred by failing to conduct an individualized assessment?</u>

[23] The applicant submits that the IAD erred in finding that the visa officer failed to conduct an individualized assessment because the respondent chose not to file any rebutting evidence with the visa officer when requested to do so.

[24] The applicant does not question the applicability of the Supreme Court's decision in *Hilewitz, supra*, which held that visa officers must conduct an individual assessment of whether the applicant's health might reasonably be expected to cause excessive demand or social services. At para. 56-57 of that decision Justice Abella held:

¶54 Section 19(1)(*a*)(ii) calls for an assessment of whether an applicant's health would cause or might reasonably be expected to cause excessive demands on Canada's social services. The term "excessive demands" is inherently evaluative and comparative. Without consideration of an applicant's ability and intention to pay for social services, it is impossible to determine realistically what "demands" will be made on Ontario's social services. The wording of the provision shows that medical officers must assess likely *demands* on social services, not mere eligibility for them.

¶ 55 To do so, the medical officers must necessarily take into account both medical and non-medical factors, such as the availability, scarcity or cost of publicly funded services, along with the willingness and ability of the applicant or his or her family to pay for the services.

¶ 56 This, it seems to me, requires individualized assessments. It is impossible, for example, to determine the "nature", "severity" or probable "duration" of a health impairment without doing so in relation to a given individual. If the medical officer considers the need for potential services based only on the *classification* of the impairment rather than on its particular manifestation, the assessment becomes generic rather than individual. It is an approach which attaches a cost assessment to the disability rather than to the individual. This in turn results in an automatic exclusion for all individuals with a particular disability, even those whose admission would not cause, or would not reasonably be expected to cause, excessive demands on public funds.

¶ 57 The issue is not whether Canada can design its immigration policy in a way that reduces its exposure to undue burdens caused by potential immigrants. Clearly it can. But here the legislation is being interpreted in a way that impedes entry for all persons who are intellectually disabled, regardless of family support or assistance, and regardless of whether they pose any reasonable likelihood of excessively burdening Canada's social services. Such an interpretation, disregarding a family's actual circumstances, replaces the provision's purpose with a cookie-cutter methodology. Interpreting the legislation in this way may be more efficient, but an efficiency argument is not a valid rebuttal to justify avoiding the requirements of the legislation. *The Act calls for individual assessments. This means that the individual, not administrative convenience, is the interpretive focus* [emphasis added].

[25] The applicant relies on *Gau v. Canada (M.C.I.)*, 2006 FC 1258, 152 A.C.W.S. (3d) 897, per Justice Mactavish where she held at paragraph 17 that a medical officer "can only assess the willingness and ability of parents to pay for social services based upon the information that is available on this point." The applicant argues that to fault the visa officer for not conducting an individualized assessment based on information not provided by the mother runs contrary to the basic tenets and proper functioning of the immigration system.

[26] The applicant's reliance upon *Gau* is mistaken. The visa officer did not make a clear inquiry of the mother to elicit adequate information to conduct an individualized assessment with respect to whether the moderately retarded son might reasonably be expected to cause excessive demands on Canada's health and social services. The IAD finding in this respect was reasonably open to it, and the Court upholds the IAD decision in this respect. The visa officer's notification: "You may submit any information addressing the issue of excessive demand if it applies in your case" inadequately explains or invites the information which the visa officer must elicit to conduct the individualized assessment required by the Supreme Court jurisprudence.

[27] Accordingly, this ground for the application must be dismissed.

Issue No. 2: <u>Did the IAD erroneously substitute its own substantive finding on excessive demand rather then determining whether the officer's decision was reasonable at the time that it was made?</u>

[28] The applicant submits that the only role of the IAD in a challenge of the legal validity of the visa officer's decision is to determine the reasonableness of the officer's decision on excessive

demand at the time that the decision is made. The IAD therefore exceeded its jurisdiction by not limiting itself to assessing the reasonableness of the officer's decision at the time it was made. The applicant cites *Ahir v. Canada (MCI)*, [1984] 1 F.C. 1098 (C.A.), *Canada (MEI) v. Jiwanpuri* (1990), 10 Imm. L.R. (2d) 241 (F.C.A.), and *Mohamed v. Canada (MEI)*, [1986] 3 F.C. 90 (C.A.) in support of its argument.

[29] In my view the applicant has mischaracterized the role of the IAD in an appeal under subsection 67(2) of IRPA.

[30] None of above cited decisions supports the applicant's position. Nowhere in these decisions does the Court adopt an approach that would fetter the IAD's discretion to make substantive determinations which may or may not lead it to substitute its own assessment.

[31] For example, in *Jiwanpuri*, *supra*, Justice Marceau states at page 247:

> However, this Court has found that it is within the province of the Board to inquire into the reasonableness of the opinion of the officers (cf *Ahir v. M.E.I.* (1983), 49 N.R. 185, 2 D.L.R. (4th) 163). And although the Board is bound to assess that reasonableness as of the time when the visa officer made his decision, since it is that decision which is being appealed (cf. *Mohamed v. M.E.I.* (1986), 68 N.R. 220, [1986] 3 F.C. 90), it can do so with the help of any relevant evidence that may be adduced before it. The Act having provided for an appeal on any ground of law or fact (subsection 77(3))which could be supported by any evidence found relevant and trustworthy (paragraph 69.4(2)(c)) it can hardly be assumed that the reasonableness of the opinion was to be assessed strictly on the basis of the facts as they appeared to the visa officers or the medical officers without any possibility of showing that those facts were wrongly seen or interpreted, or that they were insufficient to lead to

> the conclusion drawn. The role of the Board could not be so limited and its discretion so fettered.
> …
> In view of the very special nature of the health impairment diagnosed, "mental retardation", it cannot be said that the questioning of the reasonableness of the medical opinion constituted an ill-advised incursion into a domain reserved to medical specialists, and the Board, it appears to me, did not need further medical evidence to arrive at its conclusion since the facts which, in its view, had to be considered were simple and ordinary facts. It is true that the Board took into consideration evidence that was not before the medical officers or the visa officer, but that new evidence, as I understand it, was not used to found directly the conclusion of unreasonableness (which could have been debatable) but to show that the facts relied on by the officers were insufficient to lead to the conclusion reached and should have been seen as requiring precision or clarification.

[32] Both *Ahir, supra,* and *Mohamed, supra,* contain similar passages that decline to constrain the jurisdiction of the IAD to that of a judicial review body.

[33] The jurisdiction of the IAD on appeal is broad, allowing for consideration of errors of law, fact, or mixed law and fact (see Subsection 67(1)(a) IRPA). One cannot divorce an administrative and procedural review of a visa officer’s decision from substantive factual determinations that the IAD is empowered to make in a *de novo* hearing under subsection 67(2) of IRPA.

[34] The nature of the proceedings under subsection 67(2) of IRPA grants discretion to the IAD to consider new evidence that was not before the visa officer regardless of the reason for the omission.

[35] The IAD considered both parties' submissions and came to the conclusion that the medical officer's determinations were fundamentally flawed and that the mother's failure to rebut those findings was due to confusing correspondence from the visa officer. (This confusion was not the fault of the mother.)

[36] The IAD's findings in this regard are all factual. The applicant may disagree with the IAD's factual determinations, but as long as those findings were reasonably open to the IAD, this Court must uphold them. I hold that those findings were reasonably open to the IAD. Accordingly, the IAD was entitled to find that the decision of the visa officer was invalid in that it failed to conduct a personalized assessment, and to substitute its own determination.

[37] The IAD found the decision of the visa officer was unreasonable because it failed to individually assess the son. Only after it determined the reasonableness of the visa officer's decision did the IAD conduct its own assessment. There is nothing unreasonable about the IAD's reliance upon credible oral testimony and supporting documentation in coming to its own determination on this point. Subsection 67(2) of IRPA provides that the IAD shall substitute its own determination that it considers should have been made by the visa officer.

[38] Accordingly, this ground of review must fail.

Issue No. 3: **Did the IAD fail to take into account several important factors in determining whether the circumstances of the case warranted the granting of equitable relief, and did the IAD fail to provide adequate reasons in this regard?**

[39] The applicant submits that the decision of the IAD to grant "special relief" was unreasonable in that the circumstances did not raise sufficient H&C grounds. The Court finds that the IAD did not need to grant "special relief" in view of its mandate in subsection 67(2) of IRPA. Accordingly, this application will not be affected by this issue. In any event, I will deal with this issue.

[40] The applicant specifically objects to the failure of the IAD to deal with the militating factors the Minister's counsel submitted during the hearing against granting "special relief" to the mother.

[41] The presumption that the tribunal weighed all the evidence is rebuttable when the tribunal fails to mention an important piece of evidence that is highly relevant to the decision, in which case a court could infer that the tribunal made an erroneous finding of fact without regard to the evidence (see *Cepeda-Gutierrez v. Canada (MCI)*, [1998] F.C.J. No. 1425 (QL), 157 F.T.R. 35, per Justice Evans at para. 17).

[42] The applicant in this case isolates a number of submissions advanced at the hearing which were not mentioned or adequately reasoned away. I paraphrase the following points:

1. the respondent's 22 month-old child cannot be seriously said to be impacted by the decision to a degree that engages the best interest of the child;

2. no evidence was adduced by the respondent with respect to his argument that certain services covered by the Province were no longer available and now required to be paid for;

3. while the respondent indicated an intention and willingness to look for employment for his moderately mentally retarded child, no evidence that the responded has actually approached anyone in that regard was presented. Similarly, no plan was filed with the visa officer;

4. the respondent's brother lived in a society that accepted him in Pakistan, enjoying the sympathy of his neighbours. Canada is a cruel society where he could be made fun of;

5. removing the respondent's brother from his home of 42 years would be traumatizing;

6. once the mother dies, the respondent's brother will be all alone because the respondent and his wife work all day; and

7. the mother was willing to drop the son from her application in order to get into Canada. She therefore demonstrated that she is willing to "foist" her son on her children that reside in Pakistan, as opposed to entrusting him to the care of the respondent.

[43] The applicant urges the Court to quash the positive IAD decision in accordance with this Court's decision in *Canada (MCI) v. Charles*, 2007 FC 1146, per Justice O'Keefe's at para. 34, where it was held that the reasons of the IAD did not achieve their purpose, namely ensuring that the reasoning upon which the decision was made was well articulated. Alternatively, the applicant referred the Court to *Canada (MPSEP) v. Philip*, 2007 FC 908, 160 A.C.W.S. (3d) 525, per Justice Dawson where it was held that failure to mention or consider the *Ribic* factors led the Court to infer that the IAD reached its findings without regard to the evidence.

[44] I agree with the applicant's submissions. The IAD did not articulate sufficient or adequate reasons with respect to these H&C considerations. H&C considerations are those where the parties would suffer some unusual, underserved and disproportionate hardship if not allowed to immigrate to Canada. The evidence in this case does not support an H&C finding. The mother and son have

family and support in Pakistan, and there is no evidence that they are suffering any unusual, undeserved or disproportionate hardship by not being allowed to immigrate.

[45] Moreover, I agree with the applicant that the IAD's finding that the best interests of the child in Canada were engaged is unreasonable. The child lives in Canada with his Canadian parents. While having a "built-in" grandmother is an advantage, it is not determinative of an H&C.

[46] Because this issue was not necessary for the IAD decision, this ground of review is moot.

Issue No. 4: Did the IAD conduct a breach of procedural fairness by using "boilerplate reasons" from another decision with a similar set of facts?

[47] The applicant submits that the IAD breached procedural fairness by using "boiler plate" language borrowed from another IAD decision authored by the same panel member, *Ooi v. Canada (MCI),* [2008] I.A.D.D. No. 2822, No. TA7-10249.

[48] I note at the outset that *Ooi* was affirmed on judicial review by Justice Hansen in a decision dated June 29, 2009 (see *Canada (MCI) v. Ooi* (2009), IMM-95-09, unreported).

[49] The applicant correctly points out that many paragraphs in the present decision are identical to the *Ooi* decision. Paragraph 24 of the IAD's decision even contains a clerical error that identifies "Adrian", the subject of the case in the *Ooi* decision, instead of Khatib. The applicant argues that the IAD relied on its reasons in *Ooi* and the use of those reasons in a boiler plate manner gives rise to

issue of whether the IAD misapprehended facts and ignored the particular circumstances of this case.

[50] Case law reveals that appending part of the reasons of one panel to the reasons of another panel is a shortcut that should not be used (see *Koroz v. Canada (MCI)*, (2000) 261 N.R. 71, 9 Imm. L.R. (3d) 12, per Justice Linden at para. 4). Boilerplate type reasons may give rise to some suspicion (*Mohacsi v. Canada (MCI)*, [2003] F.C.J. No. 586 (QL), per Martineau J. at para. 64).

[51] Before a panel can safely rely on the findings in another panel on state protection, the panel must first be satisfied that the facts are sufficiently similar and it must make sure that no evidence that was overlooked in the other panel's decision will be similarly overlooked in the current decision (*Ali v. Canada (MCI)*, 2006 FC 1360, 58 Imm. L.R. (3d) 202, per Justice Gauthier at para. 25).

[52] On the other hand, a panel may adopt the reasoning of another panel with respect to country conditions or internal flight alternatives when the documentary evidence is identical, but care must be taken to avoid blindly following the factual findings of other panels (*Koros*, *supra*, at para. 3).

[53] A panel may also adopt the structure of another panel's decision and make some clerical errors with respect to the subject person's qualification and personal details, as long as those mistakes are corrected in later part of the decision, and as long as "the specific factual

circumstances of the respective claimants in each case are fully explored and considered in the board's reasons" (*Gil v. Canada (MCI)*, 2005 FC 1418, per Justice Layden-Stevenson at para. 13).

[54] I compared the decision on review and the *Ooi* decision. It appears that the IAD adopted the architecture of the *Ooi* decision which was then slotted with the relevant factual details of the current case. Many paragraphs begin in a similar or identical manner in both decisions, but their content varies when it comes to factual information. For example, para. 11 in the *Ooi* decision begins with the words "there was considerable detail provided about Adrian through the appellant's oral testimony", which is identical to the start of para. 14 in the current decision, except that "Adrian" is substituted with "Khatib". Apart from that sentence both paragraphs are completely different in terms of content and size.

[55] There may be some concern by the clear usage of boiler plate language in the legal analysis section between paras. 18-31 of the current decision, which roughly corresponds to paras. 15-29 in the *Ooi* decision. However, a closer look at the language reveals that the legal principles at stake were identical. The majority of replicated paragraphs consist of mechanical regurgitation of legal reasoning that transcends the two decisions. The same the legal reasoning applied in both cases and there was no need for the IAD to re-invent the wheel in that regard.

[56] Nowhere did the IAD adopt the factual findings in *Ooi*, except when it held that the medical officer's determination was invalid because it did not assess the anticipated cost over a period of five consecutive years (see para. 23 of the IAD decision, para. 20 of the *Ooi* decision).

[57] Furthermore, the identical legal determinations in both cases relating to the failure to conduct individualized assessments are not erroneous because in both cases individualized assessments did not occur because the visa officers did not have any evidence from the sponsoring parties.

[58] In my view, any confusion or appearance of procedural unfairness is cured in paragraphs 32-34 and 36-40 in the decision under review and paras. 30, 32 and 33 in the *Ooi* decision, where the panels launch into specific factual discussions of the circumstances and claims of the parties. The inclusion of those paragraphs demonstrates that the IAD did not co-mingle the evidence before it and rely on the determinations in the *Ooi* decision, but rather conducted a parallel inquiry which utilized, however suspiciously, a considerable amount of the legal principles that were equally applicable to both cases.

[59] For these reasons, this ground for the application must be dismissed.

COSTS

[60] Before asking the parties for submissions on costs, I would ask the parties to advise the Court in 4 weeks (October 26, 2009), on whether the applicant has expedited the processing of this matter. The Court is concerned about the past delays at the visa post and about the further delays caused by this appeal. The mother has been waiting for 4 years to come to Canada.

CERTIFIED QUESTION

[61] Both parties advised the Court that this case does not raise a serious question of general importance which ought to be certified for an appeal. The Court agrees.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed; and

2. The Court will reserve its judgment on whether submissions will be requested on costs until the parties advise the Court in 4 weeks whether the applicant has expedited the processing of this matter.

"Michael A. Kelen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Mr. Jamie Todd	FOR THE APPLICANT
Mr. Ali M. Amini	FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE APPLICANT
Ali M. Amini Barrister & Solicitor	FOR THE RESPONDENT