Federal Court  Cour fédérale

Date: 20100630

Docket: IMM-249-08

Citation: 2010 FC 716

Ottawa, Ontario, June 30, 2010

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

FEREIDOUN GHASEMZADEH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Fereidoun Ghasemzadeh (the applicant) is an industrial engineer and a citizen of Iran who applied to immigrate to Canada in 1996. He has refused to answer questions asked of him during interviews with Canadian Security Intelligence Service (CSIS) agents and a Canadian visa officer regarding projects he worked on as an employee with the Iranian Defense Industries Organization (DIO) from 1982-1989 as part of his compulsory military obligations as a citizen of Iran. Michel Dupuis, Counsellor and Operations Manager of Immigration at the Canadian Embassy in Damascus, Syria, ("Counsellor Dupuis") determined that the applicant was inadmissible to

Canada on the basis of misrepresentation, pursuant to subsection 40(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*). The applicant seeks to quash by way of this application for judicial review this decision made on November 29, 2007,

[2] The decision was communicated to the applicant by way of letter, dated November 29, 2007 and the reasons consist of both the Computer Assisted Immigration Processing System (CAIPS) notes and the information supplied in the letter.

[3] The core reason expressed by Counsellor Dupuis for refusing the applicant is succinctly expressed in the CAIPS note which he wrote on November 29, 2007 after reviewing the file. I reproduce his entire entry into the CAIPS notes:

> I have reviewed the file and the case notes.
>
> It is clear to me that the applicant has provided misleading information or that he was withholding information during various interviewsd [sic].
>
> In 1997 he refused to provide information which was specifically requested. [T]his information concerning with whom he was working and the prupose [sic] of trips to several countries was important information to assess eligibitlity [sic] and admissibility (the hiding of information by an applicant makes it very heard [sic] if not impossible to make a determination if an applicant is inadmissible or not.
>
> In 1998 the applicant admitted the fact that he was withholding information and he provided some explanation about fear of reprisal etc. The interview was held in a safe place (in 1998 in the USA) I see no reason why the applicant would categorically refuse to talk about his work at the Iranian Defense Industries. This was covering a period of 7 years enough to have a serious impact on his eligibility or his admissibility. However despite specific request [sic] the applicant refused and is still refusing to provide any information concerning

> his 7 years there. The question is: is the applicant admissible or not? It is impossible to be certain because the applicant decided to hide information from us despite several requests. The applicant was given ample opportunities to address our concerns and to provide the required information.
>
> The applicant choose [sic] to withheld information from us: the applicant had several opportunities over the course of 10 years to provide the required information so that we can make a decision on his admissibility.
>
> [I]n my opinion the applicant is withholding material information that are [sic] necessary to make a decision on his applicant [sic]; accepting the applicant on the basis of the informaiton [sic] provided (and on the basis of missing important information) could have indiced [sic] an error in the administration of IRPA in that it is possible that the applicant is inadmissible.
>
> For that [sic] reasons I am refusing this applicant as per Section 40(1)(a) of the Act and the applicant is inadmissible for 2 years as per subsection (1).
>
> [A]pplication refused.

[4] It has been more than two years since the applicant was notified by Counsellor Dupuis that his application for permanent residency had been refused. The issue of mootness was not discussed by either party in their respective submissions but raised by the Court. However, counsel were in agreement when considering this issue for the first time at the hearing there remains a live issue underlying this application and that I should exercise my discretion and hear the case (*Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342). I agreed.

[5] Section 40(1) of *IRPA* reads:

Misrepresentation	**Fausses déclarations**
40. (1) A permanent resident or	**40. (1)** Emportent interdiction

a foreign national is inadmissible for misrepresentation	de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;	b) être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;
(c) on a final determination to vacate a decision to allow the claim for refugee protection by the permanent resident or the foreign national; or	c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile;
(d) on ceasing to be a citizen under paragraph 10(1)(a) of the Citizenship Act, in the circumstances set out in subsection 10(2) of that Act.	d) la perte de la citoyenneté au titre de l'alinéa 10(1)a) de la Loi sur la citoyenneté dans le cas visé au paragraphe 10(2) de cette loi.
[Emphasis added]	

[6] The following is a summary of the factual context in which the questions referred by Counsellor Dupuis arise:

- In 1982, the applicant obtained a Bachelor of Science degree.
- From 1982 to 1989 Mr. Ghasemzadeh performed his military obligations working at the Defense Industries Organization ((DIO). During this time he worked with the then Iranian President's son, Mohsin Rafsanjani (Mohsin).

- In 1989, with two other colleagues he established a management consulting company under the name Nazmiran which is still operating today.
- From 1989 to 1993 he was employed at the Special Investigation Office (SIO) attached to the office of the President of Iran. At the time the applicant joined SIO, Mohsin Rafsanjani was the head of the unit.
- From 1993 to 1998 he studied in Canada at McMaster University in Hamilton earning his PhD in Information Systems. Moshin played a part in obtaining a state scholarship for him. He introduced the applicant to Iran's ambassador to Canada whom the applicant visited in Ottawa.
- From 1998 he was CEO and Project Manager of Afranet Company, a company in which the Iranian Development and Reconstruction Organization has a 40% interest, the remainder of the interest being held by the applicant, his family and two other co-founders. This company provides internet, e-commerce and voice over services.
- Since 1998, Mr. Ghasemzadeh has been a Professor at Sharif University of Technology teaching courses on electronic commerce and business models and decision support systems.

[7] Counsellor Dupuis did not interview the applicant. In his decision, he identifies two subject matters which the applicant refused to disclose at the first interview with a CSIS officer on October 1, 1997 (hereinafter, the "1997 Interview") in Buffalo, New York, USA:

> (1) The identities of three colleagues at Nazmiran Company; and
>
> (2) Details regarding the purpose of official trips to China, France and Spain in 1989 related to the applicant's employment at the SIO.

[8] The applicant was again interviewed by a CSIS officer on August 13, 1998 (hereinafter, the "1998 Interview") in Buffalo, New York, USA and on May 28, 2006 (hereinafter, the "2006 Interview") in Damascus, Syria. The notes of those interviews indicate Mr. Ghasemzadeh refused to provide answers on: details relating to employment at the Iranian DIO from 1982 to 1989.

[9] During the 2006 Interview, the applicant provided all the previously withheld information on subject matters (1) and (2) and provided explanations for why he had not disclosed. Despite his

ultimate disclosure, Counsellor Dupuis relies on the previous refusals as indicative of a "pattern of non-cooperation". Ultimately, he determined that the "misrepresentation or withholding of the above-cited material facts could have induced errors in the administration of the Act because they could have resulted in an inaccurate assessment of [Mr. Ghasemzadeh's] inadmissibility under Division 4 of Part 1 of the Act."

[10] Counsellor Dupuis was not cross-examined on his affidavit filed in support of the respondent's position. He asserts that his decision was based on his review of the CAIPS notes and particularly those of the May 28, 2006 interview which he says shows:

> […] the Applicant was informed that his unwillingness to answer questions about his previous work and partners was part of the problem in why a decision could not be made in his application. The Applicant's repeated refusal to answer questions made it impossible to determine whether the Applicant was admissible to Canada and it is still the case today.
>
> ….
>
> Our office has been unable to more fully probe the nature of the Applicant's work with the DIO because he has repeatedly refused and continues to refuse to answer questions on the nature of his work. In my opinion, such a denial does not rule out the Applicant's involvement in other matters that could affect Canada's security.
>
> …

> The Applicant had been interviewed five times and he was told that he must answer all questions put to him. When the file was given to me for decision, I found that I had enough information on file to render a decision and it was not necessary to convoke the Applicant for a sixth interview in order to tease out answers that he had refused to provide in the past. It was my conclusions that there was ample evidence in the Applicant's file to determine that the Applicant was withholding material facts relating to a relevant matter.
>
> [Emphasis added]

I. The Legal Framework for Section 40

[11] Throughout the immigration process, the onus is on the applicant to show that he meets the requirements of *IRPA*. Section 16(1) of *IRPA* imposes a duty on the applicant to answer truthfully all questions asked during an examination. A visa may be issued if, following an examination, an officer is satisfied that a foreign national is not inadmissible and meets the requirements of *IRPA* (*IRPA*, s.11). To facilitate the visa officer's decision, the applicant is required to answer truthfully all questions put to him for the purposes of the examination (*IRPA*, s.16). Should the Minister deny the visa on the basis of inadmissibility, the onus is on the Minister to show the grounds for a finding of inadmissibility.

[12] In addition to the discrete grounds of inadmissibility such as security (s.34), serious criminality (s.36) or health (s.38), is the broader ground of misrepresentation (*IRPA*, ss.40(1)(a)). That section can apply to direct misrepresentation (e.g. providing false information to an officer) and indirect misrepresentation (e.g. information provided by a person other than that who is rendered inadmissible) or to a withholding of material facts which is the situation in this case. In

order to rely on the latter, the Minister must be satisfied that the following elements of withholding are made out:

(1) that there is a withholding, and
(2) that the withholding is of material fact relating to a relevant matter, and
(3) the withholding induces, or could induce an error in the administration of the Act.

(See, *Bellido v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 452, [2005] F.C.J. No. 572, at para. 27 [*Bellido* cited to FC], quoted with approval in *Zhang v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1313, [2005] F.C.J. No. 1594 at para. 17).

[13] In general terms, an applicant for permanent residence has a duty of candour to disclose all material facts during the application process as well as and after a visa is issued (*Baro v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299, [2007] F.C.J. No. 1667 at para. 15 [*Baro*]). To omit material facts may constitute a misrepresentation in the form of a withholding. For example, where an applicant's marital status has changed and the applicant has failed to alert immigration officials to this information, the Court has found an applicant to have withheld material information such that he is now inadmissible because of misrepresentation (*Baro*, at paras. 18-19). However, as the Federal Court affirmed, in *Baro*, above, an exception arises where an applicant can show reasonable belief that he or she was not withholding material information (*Medel v. Canada (Minister of Citizenship and Immigration)*, [1990] 2 F.C. 345 cited by *Baro*, at para. 15). Thus, the duty of candour is not unbounded: "there is no onus on the person to disclose all information that might possibly be relevant" (*Baro*, at para. 17). The facts of each case will illustrate whether the applicant can rely on this exception.

[14] As will be become clear in these reasons, Mr. Ghasemzadeh was put on notice the CSIS and visa officers were concerned about his employment activities while at DIO. As a result, this exception cannot apply on these facts.

II. Issues and Standard of Review

[15] There are two issues before me:

A. Did Counsellor Dupuis breach the applicant's right to procedural fairness in making his decision without interviewing the applicant thereby denying him an opportunity to address Counsellor Dupuis' concerns?

B. Did Counsellor Dupuis err in applying paragraph 40(1)(a) of *IRPA*?

[16] An allegation of breach of procedural fairness is reviewed on a standard of correctness (*Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3 [*Suresh*]). In most cases, a breach of procedural fairness will be determinative of the application for judicial review. The applicant submits that there are two grounds upon which I may find a breach of procedural fairness, in both cases, the right allegedly breached is the right to be heard, or *audi alteram partem*.

[17] As regards the second issue, the Court will accord deference to the decision-maker on findings of fact or mixed law and fact. As explained by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9 [*Dunsmuir*], a question posed to an administrative tribunal may

"give rise to a number of possible, reasonable conclusions" (para. 47). This Court is tasked with reviewing the qualities that make a decision reasonable, including both the process of articulating the reasons and the outcomes (*ibid*). Where the decision is not defensible with respect to the facts or law this Court should exercise its discretion to intervene.

[18] According to Justice Judith A. Snider's analysis in *Bellido*, above, which was pre-*Dunsmuir*, the necessary elements of misrepresentations constitute determinations of fact and are reviewable on a standard of patent unreasonableness, a standard of review which *Dunsmuir* eliminated by collapsing it into the reasonableness standard. In *Koo v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 931, [2008] F.C.J. No. 1152 the reasoning in *Dunsmuir* was applied to *Bellido* and the Federal Court determined the applicable standard of review to be reasonableness (at para. 20, affirmed in *Mugu v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 384, [2009] F.C.J. No. 457, at para. 36 [*Mugu*]).

[19] A nuance should be brought into the analysis. *Dunsmuir* concerned a judicial review of a provincial tribunal, not a federal one. Federal tribunals are governed by section 18 of the *Federal Courts Act*, R.S. 1985, c. F-7, (the "Act") in judicial review matters. Section 18.1 (4)(d) of that Act provides that this Court may set aside a decision of a federal tribunal if that decision was "based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the evidence." The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 [*Khosa*], held that paragraph 18.1(4)d) of the Act was not a legislated standard but nevertheless "provided legislated guidance as to "the degree of

deference" owed to the [federal tribunal's] findings of fact" (*Khosa*, para. 3). The Court explained further at paragraph 46: "Parliament intended administrative fact finding to command a high degree of deference. This is quite consistent with *Dunsmuir*. [s.18.1(4)(d)] provides legislative precision to the reasonableness standard of review of factual issues in cases falling under the *Federal Courts Act*."

III. Evidence before Counsellor Dupuis

[20] The purpose of the CSIS interviews in 1997 and 1998 was to provide Citizenship and Immigration Canada (CIC) with a security assessment as part of the immigration process.[1]

The following facts were disclosed by the applicant in 1997 Interview regarding his work at DIO:

- His employment at DIO was in fulfilment of his compulsory military service. He opted to serve six years with pay instead of two years without pay at the front lines of the Iraq/Iran war because he had recently married and needed income.
- He worked as a systems analyst and industrial engineer and was classified as an engineer developing organizational and flow charts.
- He did work on classified projects. He was unsure of his security level but guessed he had the lowest of the four possible levels.
- He indicated, in response to direct questions, he did not work in relation to arms – chemical, biological or delivery systems.
- He explained that he travelled during his employment overseas. He provided details as to how the trips were financed, his method of travel, the location and purpose. He explained why he was selected for this travel trip and refused to disclose the names of others team members and did not provide additional information as to the details.
- He refused to provide details of actual work on classified projects.[2]

[21] In the 1998 Interview, the CSIS officer noted the "[s]ubject was questioned about his employment with the [DIO]…and again refused to provide any details because he felt it was

[1] Notes from the 1997 Interview, Application Record, p.86 at p.103.
[2] Notes from the 1997 Interview, Application Record, p.86 at pp.87-88.

unethical."[3] The applicant denied that he was being pressured to conceal information and stated that his refusal to cooperate was personal. The CSIS officer quoted the applicant's explanation for non-disclosure as follows: "there is a death penalty for disclosing information, even minor social information and I prefer not to get into things that will risk my life and my family's life".[4] Further, the CSIS officer noted that the applicant referred to a recent case where an Iranian was sentenced to death for giving economic information to Japan.

[22] After these interviews, a security Memorandum was provided to the Immigration Section in Buffalo on March 28, 2002 (hereinafter, the Memorandum). The purpose of which was to provide guidance on issues arising from possible inadmissibility under sub-paragraph 19(1)(f)(iii)(A) of the *Immigration Act*, R.S.C. 1985, c. I-2 (eff October 23, 2000 to June 27, 2002). It was the opinion of the security analyst that:

> Subject may be inadmissible under A19(a)(f)(iii)(A) and should be re-interviewed by the visa officer in order to try and obtain further information concerning his activities with the DIO. His repeated refusal in revealing information is making it difficult to determine any inadmissibility in this case. However, close scrutiny should be given before rendering a final decision.[5]
>
> [Emphasis added]

[3] Notes of the 1998 Interview, Application Record, p.101.
[4] *Ibid*.
[5] Certified Tribunal Record, p.82.

[23] The applicant was re-interviewed four years later in May 2006 in Damascus, Syria by a visa officer. Mr. Ghasemzadeh was again asked about his work at DIO. The following further details emerged:[6]

- He indicated that he worked in Industrial Engineering at DIO.
- He did not work at ammunitions factory because he was not a mechanical engineer.
- His main duties at DIO were things like line balancing to increase production, organizational charts, production procedures and documentation.
- He stated that he worked with Ammunition Company (Muhimmat Sazi) which was built by Germans, Israelis and Swiss and listed on the Ministry of Defence site.
- However, he was not willing to disclose the activities of the company because this information is on the web site and he is not comfortable to talk about what they were producing.[7]
- Again, he denied seeing chemical or biological weapons developed.

A. *Did Counsellor Dupuis Breach the Applicant's Right to Procedural Fairness?*

[24] It is settled law: "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case. All of the circumstances must be considered" (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at page 837, [*Baker*]). As noted in *Baker*, the content of the duty of procedural fairness "depends on an appreciation of the context of the particular statute and the rights affected".

[25] Thus, identifying the context in which IRPA operates is important in determining the scope of procedural fairness or fundamental justice. "The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in Canada." (*Canada (Minister of Employment and Immigration) v. Chiarelli*, [1992] 1 S.C.R. 711 at page 733). "The Government has the right and duty to keep out and to expel aliens from this country if it

[6] Notes from the 2006 Interview, CAIPS Notes, Certified Tribunal Record, pp.9-10.
[7] *Ibid*., p.9.

considers it advisable to do so." (*Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779 at page 834).

[26] The applicant submits that the visa officer breached his right to procedural fairness in one of two ways: 1) he was not afforded an opportunity to respond to the officer's concerns about his refusal to answer questions about DIO and/or 2) he was not provided an opportunity to respond to the officer's concerns regarding his explanation for past refusals.

[27] An oral hearing is not always necessary for a visa officer to fulfill his duty of procedural fairness. "The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations" (*Baker*, above, page 843). What the duty requires is that the applicant be afforded a meaningful opportunity to present the various types of evidence relevant to his or her case and have it fully and fairly considered. Generally, where there are credibility issues, a person is entitled an opportunity to address the issues which may form a credibility finding in some meaningful way (*Mukamutara v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 451, [2008] F.C.J. No. 573 at para. 24 [*Mukamutara*]). As I will explain, however, the lack of a full oral hearing did not constitute a violation of the requirements of procedural fairness to which the applicant was entitled in these circumstances.

[28] The applicant's repeated refusals to answer questions regarding his specific work activities at the DIO concerned Canadian officials. At each of the successive interviews with CSIS officers and visa officers the applicant provided more details to past questions he had refused to answer, but

on his review of the file, Counsellor Dupuis was ultimately unsatisfied that the applicant was not inadmissible.

[29] With respect to the first alleged breach, it is clear from the CAIPS notes of the May 28, 2006 interview with a visa officer that the applicant was well aware that his refusal to answer questions was a concern.

[30] As regards the second alleged breach, Counsellor Dupuis was notably not persuaded by the applicant's explanation for his past and present refusals to answer. The applicant submits that this caused the decision to be couched in an unfavourable credibility assessment of the applicant. Since the applicant was not interviewed by Counsellor Dupuis, the applicant asserts that negative credibility findings constitute a breach of the duty of procedural fairness.

[31] I would emphasize that Counsellor Dupuis' decision was not based on the applicant's credibility but rather, on the fact of misrepresentation. The applicant refused to answer questions. The applicant submits that in circumstances where the answers to questions would endanger the life of a person, as is alleged here, he cannot be expected to provide an answer. I would agree. But, a reasonable explanation for a refusal does not change the fact that the applicant is withholding information. The jurisprudence provides just one basis on which an applicant's state of mind is relevant; that is, when it is reasonable to believe one is not withholding material information. This cannot apply to the circumstances of this case: the applicant was asked about his work at DIO and

he refused to answer. It is clear that the visa officer and CSIS officers wanted to know what work he had completed or been involved in at DIO.

[32] Therefore, Counsellor Dupuis' assessment of the applicant's explanation for refusing to answer questions which the applicant submits was based on an unfavourable assessment or extrinsic evidence is not accurate and has no relevance to his finding of withholding. Consequently, not providing a further interview to the applicant is not a breach of procedural fairness by Counsellor Dupuis in the circumstances of this case.

B. *Did Counsellor Dupuis Err in Applying Paragraph 40(1)(a) of IRPA Such that There Was No Finding of Materiality of the Withholding?*

[33] It is not disputed that the refusal to answer questions constitutes a withholding of information for the purposes of s.40(1)(a) of *IRPA*.

[34] The applicant submits the questions regarding the work the applicant did while at DIO would not yield material facts relevant to his application for permanent residence. His counsel asserts there is no evidence that Counsellor Dupuis conducted an analysis of the materiality of the withholding; therefore, he could not rely on s. 40(1)(a) of *IRPA*. The applicant relies on Justice Douglas Campbell's decision in *Ali v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 166, [2008] F.C.J. No. 212 [*Ali*] in support of this argument. I agree with my colleague's decision but it is completely distinguishable.

[35] In *Ali*, above, the misrepresentation was not a refusal to answer a question put to the applicant for the purposes of an examination, but rather it was the fact that a fraudulent school record had been submitted. The decision to apply s.40(1)(a) of *IRPA* was based on the following premise: because school records are used as evidence of "age, identity, and relationship to the family member in Canada" a fraudulent document could induce an error in the Act. Importantly, Justice Campbell found that none of these characteristics of the individual were in doubt prior to the detection of the fraud. The visa officer had not considered materiality of that document and could not assume any fraudulent document is evidence for the purposes of making out a misrepresentation pursuant to s.40(1)(a) of *IRPA*. In sum, Justice Campbell found that the fraudulent document had no impact on the visa officer's decision to the children's admission to Canada.

[36] The misrepresentation in this case is a withholding of information by way of refusal to answer certain questions regarding past employment activities. While the materiality of the answers to those questions cannot be assessed for obvious reasons no answers were given, the scope of the inquiry can be. In refusing the applicant's permanent residence application, Counsellor Dupuis reasoned the withholding of answers related the applicant's work at DIO could have resulted in an inaccurate assessment of his inadmissibility. In *Biao v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 43, [2001] F.C.J. No. 338 [*Biao*], the Federal Court of Appeal held that a visa officer would be justified in denying an application for permanent residence if the approval would contravene the Act. The Court determined the applicant's failure to provide necessary documents to establish his admissibility to Canada did not contravene the *Immigration Act* but

rather constituted an appropriate basis for the officer's decision to deny the application (*Biao*, at para. 2). This same reasoning should apply to the facts of this case.

[37] The applicant also argues materiality of the withholding cannot be justified because there are no reasonable grounds for suspicion of Mr. Ghasemzadeh's inadmissibility. Specifically, the applicant argued the government of Iran was not designated a human rights violator at relevant times, the applicant did not hold a chain of command position, and there is no allegation of his engagement (or that of his government) in war crimes or crimes against humanity. Thus, relying on the applicant's refusal to answer questions regarding his work at DIO is unreasonable for the same reasons as in *Sinnaiah v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1576, [2004] F.C.J. No. 1908 [*Sinnaiah*]. I disagree.

[38] Firstly, in *Sinnaiah*, above, the issue before the court was not concerning the reasonableness of applying the misrepresentation provision but rather the reasonableness of the officer's inference that the applicant was a member of a terrorist organization. Second, in *Sinnaiah*, the applicant had denied membership and the Court found there was not a "scintilla of evidence" before the officer that could meet the threshold of reasonable grounds for membership in a terrorist organization (para. 17). The Court analyzed the evidentiary record and intervened on the basis that there was insufficient evidence for the officer's conclusion that he was a member of a terrorist organization. The applicant's attempt to use the Court's dicta regarding reasonableness of the officer's line of questioning in that context is of no assistance to the applicant.

[39] Counsel for the applicant relied on a number of other cases in support her proposition in this case there was no connection between the withholding and his application to become a permanent resident of Canada. She relied on *Baseer v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1005, [2004] F.C.J. No. 1239 [*Baseer*]; *Walia v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 486, [2008] F.C.J. No. 622 [*Walia*] and *Mukamutara*, above. With respect, none of the cases listed are of assistance to the applicant. *Baseer* was decided on the basis there was no evidence to support a misrepresentation. *Walia* was based on the fact the evidence did not establish the facts relevant to admissibility which was also the case in *Mukmuatara*.

[40] It is true that Counsellor Dupuis did not cite the specific ground of inadmissibility, e.g. security, or criminality, terrorism or war crimes. This omission does not constitute an error because of the totality of the facts leads to only one reasonable conclusion: he knew he was a security concern and remains so. (See, *Boulis v. Canada (Minister of Manpower and Immigration)*, [1974] S.C.R. 875 at page 885 for the legal proposition that the Court refrain from reading a Board's reasons microscopically; and note, the following pages in the applicant's record are evidence the applicant knew perfectly well the concern which the Canadian officials had with his employment at DIO and SIO and the circumstances surrounding those employments (e.g. links with high officials in the Iranian government) were security concerns related to his admissibility - see pages 71 to 108 and in particular page 103).

[41] Despite the able arguments of the applicant's counsel, the materiality of the questions regarding his activities at DIO is without doubt. As in *Mohammed v. Canada (Minister of*

Citizenship and Immigration.), [1997] 3 F.C. 299, the effect of refusal, specifically the failure to disclose his employment activities, was to foreclose or avert further inquiries. Ultimately, the purpose of the officer's inquiry regarding inadmissibility is frustrated. The withholding could have induced an error in the determination of the applicant's inadmissibility under *IRPA*, as Counsellor Dupuis identified.

[42] I considered the parties' requests for costs related to bad faith. Since that matter was not pursued by counsel for the applicant, I do not see the special reasons criteria required by Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22, has been met.

[43] I close by mentioning that the respondent had made a motion under section 87 of *IRPA* for non-disclosure of materials in the Certified Tribunal Record which had been redacted. Counsel for the applicant countered with an application to appoint a special advocate. Those motions were not pursued after the respondent agreed with the Court that the decision-maker had not relied on any redacted material to make the decision he did.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES THAT this judicial review application is dismissed without costs. Either party may, on or before, July 9, 2010, submit one or more questions for certification with right of reply served and filed on or before July 16, 2010

"François Lemieux"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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