Federal Court  Cour fédérale

Date: 20130207

Docket: IMM-8416-11

Citation: 2013 FC 134

Ottawa, Ontario, February 7, 2013

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

A.B.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by Geneviève Cloutier, Officer, dated November 3, 2011 with Citizenship and Immigration Canada ["CIC" and "Officer Cloutier"] declaring the Applicant inadmissible at stage 2 of his permanent residence application based on humanitarian and compassionate grounds. The Applicant was refused for misrepresenting or withholding material facts under section 40 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ["IRPA"] and on security grounds under section 34 of the IRPA. Prothonotary Morneau granted a Confidentiality Order on December 5, 2012 whereby the name of the Applicant and names, addresses, and birth dates of third parties that could, if present, identify the Applicant should

remain confidential. Those protected persons are therefore referred to as Mr. 1, Mr. 2, Mr. 3, etc. in this decision. In addition, under the Confidentiality Order, any other information pertaining to the file that could permit identification of the Applicant is also protected.

I. Facts

[2] The Applicant currently lives in Canada, where he first arrived with a false passport. His application for refugee protection in 1996 was refused; leave to challenge the refusal before this Court was denied on April 16, 1999. His application on humanitarian and compassionate grounds was filed in 2003 but was delayed until criminal proceedings against him were concluded in February 2006. It included an undertaking from his wife, a Canadian citizen who he married on April 8, 2004.

[3] The application on humanitarian and compassionate grounds was granted and the Minister proceeded with background check to determine if the Applicant satisfied stage 2.

[4] During this process, the Canadian Security Intelligence Service ["CSIS"] interviewed the Applicant three times: once in November 2008 and twice in May 2009. A report was prepared by the Canada Border Service Agency ["CBSA"], which contains 11 pages of opinion and analysis. The Certified Tribunal Record ["CTR"] also includes a memorandum written by the CSIS, which includes a summary of the interviews with the Applicant and refers to evidence, opinion and analysis.

[5] On January 6, 2010, the Applicant applied to the Federal Court for a mandamus order but his application was denied at leave stage on April 26, 2010. He applied again for a mandamus order on August 10, 2011 but filed a notice of discontinuance on November 8, 2011.

[6] On September 16, 2011, Officer Cloutier advised the Applicant that she would interview him on October 6, 2011, specifying that section 34 of the IRPA was at issue and stating that:

> "The goal of the interview is for us to share our concerns with you and let you respond. Please note that pursuant to Canadian immigration legislation, you have the responsibility to prove you do not belong to an inadmissible class. Attached, you will find certain categories of inadmissible persons."
>
> [Our translation and emphasis added.]

Officier Cloutier also annexed sections 33 to 37 of the IRPA to the letter.

[7] On September 26, 2011, counsel for the Applicant requested that Officer Cloutier provide further detail on her concerns, the evidence that she would be relying on in invoking section 34 of the IRPA and a copy of the Report on Inadmissibility that may have been drafted pursuant to section 44 of the IRPA. Finally, counsel for the Applicant asked Officer Cloutier to identify the subsection(s) of section 34 of the IRPA that she would be relying on.

[8] On September 28, 2011, Officer Cloutier responded that the documents relied on could not be provided to the Applicant because they were subject to national security privilege and that, under section 44 of the IRPA, reports are issued by CBSA and not CIC. As for the Applicant's request to be made aware of the specific subsection of section 34 of the IRPA that is at issue, the Officer stated

that she was not in a position to disclose such information to him at that "stage" and that the purpose of the interview would be to determine whether the Applicant is inadmissible under section 34 of the IRPA.

[9] On that same day, counsel for the Applicant replied to Officer Cloutier by requesting that she specify the legal provision relied upon when refusing to tender the classified documents.

[10] On October 6, 2011, Officer Cloutier held an interview with the Applicant, who was accompanied by counsel. No documentary evidence was disclosed to the Applicant.

[11] On November 3, 2011, Officer Cloutier denied the application for permanent residence on the basis of sections 34 and 40 of the IRPA.

[12] On November 7, 2011, counsel for the Applicant requested a reconsideration of the matter because the Officer did not give notice that she would rely on section 40(1)(*a*) of the IRPA or specify which subsection of section 34 of the IRPA was at issue. The result of this latter omission, counsel argued, was that the Applicant was unable to make submissions on this specific matter or request an exemption from a potential inadmissibility.

[13] On November 29, 2011, an agent of CIC informed the Applicant that he had until December 5, 2011 to make submissions on a request for reconsideration. On December 3, 2011, counsel for the Applicant made additional submissions regarding an exemption to the Applicant's

inadmissibility, based on humanitarian and compassionate grounds. He also withdrew his request for reconsideration.

[14] On December 21, 2011, Officer Cloutier advised counsel that, if the Applicant wished to seek an exemption, he had to submit a new application for permanent residence on humanitarian and compassionate grounds.

[15] An application for leave for judicial review was filed on November 18, 2011 and leave was granted. Following the Order granting leave, Officer Cloutier provided parties with a copy of the CTR that was partially redacted on grounds of national security privilege. The CTR includes a number of documents, namely a report by the CSIS, communications by the CBSA, various articles published on the internet related to various individuals that are referred to by the Officer in her decision and articles on a certain group.

[16] Further redactions were lifted following an *ex parte* hearing based on section 87 of the IRPA. The remaining redactions are minimal and included in an Annex to a Court Order dated September 10, 2012.

[17] Since the Court was faced with a motion under section 87 of the IRPA and the Applicant requested that a special advocate be appointed, the Court requested in a teleconference on July 4, 2012 that Officer Cloutier provide the parties with an affidavit explaining the relevance of the redacted materials in relation to the decision made. As noted above, some redactions were validated while others were not. The Motion to appoint a special advocate was denied (see *A.B. v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1140, 221 ACWS (3d) 971). In an affidavit

produced in August 2012, Officer Cloutier explained how all of the redactions were either disclosed indirectly to the Applicant or formed no basis for her decision. As argued by the Applicant, the affidavit of Officer Cloutier was required for the sole purpose of the section 87 motion and was not to be used for the analysis of the case on its merits. As this is a judicial review of the decision, any information not before a decision-maker cannot be accepted except to address an argument based on a breach of procedural fairness. The affidavits of the Applicant were filed for that purpose and therefore may be relied upon (see *Khwaja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 522, at para 13, 148 ACWS (3d) 307).

II. Decision under review

[18] Officer Cloutier found the Applicant inadmissible because he misrepresented or withheld material facts under section 40 of the IRPA and because his application raises security concerns under section 34 of the IRPA. The decision reads as follows:

> "Following a thorough analysis of the elements in your file including the October 6, 2011, interview, I came to the conclusion that you are inadmissible for misrepresentation pursuant to paragraph 40(1)(*a*) of the IRPA. Moreover, you did not meet the burden of proving you are not an inadmissible person under section 34 of the IRPA."
>
> [Our translation.]

[19] Four main concerns formed the basis of Officer Cloutier's denial of the application for permanent residence: (i) specific persons known by the Applicant, (ii) whether the Applicant knows people tied to Islamic extremists, (iii) contradictions regarding his ties to Mr. 1 and Mr. 2 and (iv) contradictions relating to prior statements.

[20] Confronted with contradictions between statements made to Officer Cloutier and statements previously made to the CSIS agents, the Applicant explained that a number of questions asked by the CSIS agents were unclear, open-ended and that he did not even remember whether some questions were asked. Officer Cloutier found these explanations unsatisfactory. Indeed, in her decision she explained that the CSIS agents who conducted these interviews were competent and objectively capable of asking clear questions in order to obtain answers to their concerns and that questions asked to the Applicant were not confusing.

[21] In her decision, Officer Cloutier stated that given the Applicant's lack of truthfulness, she had more questions that she would have found appropriate to ask and listed a number of pending concerns:

> "[W]hat did he hear at his meetings with these people? Was he asked to contribute to their activities? If so, what contributions did he make? These underlying questions are essential elements the CIC must consider in order to conduct a full security assessment."
>
> [Our translation.]

III. Applicant's submissions

A. *Preliminary Remarks Regarding Post Decision Communications*

[22] As noted at paragraph 17, the concern about new evidence raised by the Applicant was dealt with in line with the arguments submitted by counsel for the Applicant. It is not necessary to summarize the arguments made.

1. Sufficiency of Reasons as to Why Request for Disclosure Was Denied

[23] The Applicant submits that Officer Cloutier's statement that the request for communication of evidence was denied on the basis of national security privilege is insufficient and that more compelling reasons should have been given to the Applicant. Moreover, the Applicant is of the view that the Officer's decision not to disclose the evidence seems contradictory because, after leave was granted by this Court, she submitted a copy of the CTR in which most of the evidence that was not previously disclosed was included. Therefore, it seems that part of the evidence contained in the CTR was not protected by national security privilege.

2. Failure to Disclose Extrinsic Evidence to the Applicant

[24] The Applicant submits that the Officer's failure to disclose the evidence amounts to a breach of procedural fairness as Officer Cloutier was under a duty to disclose extrinsic and novel evidence on which her concerns were based. Although it has been recognized by this Court that disclosure may occur indirectly, in the circumstances, such indirect disclosure or indirect confrontation did not provide sufficient information to allow the Applicant to meet his case. At the hearing, the Applicant specified that disclosure of extrinsic evidence should have occurred before the interview.

[25] The Applicant also points out that some evidence, such as the CBSA and the CSIS reports, was not disclosed at all. The Applicant was unaware of the existence of the reports and submits that they have such a degree of influence on the decision that they needed to be disclosed to him to allow him to properly defend himself (*Bhagwandass v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 49 at para 22, 199 DLR (4th) 519).

[26] The Applicant submits that the Officer failed to disclose extrinsic evidence that was relied on and that it was insufficient to indirectly confront him with the evidence. As such, the Applicant did not know the source and nature of the information against him.

[27] Moreover, the Applicant generally submits that procedural guarantees apply in proportion to the rights and interests at stake. The Applicant submits that important rights and interests are at stake in the present case because a finding of inadmissibility based on section 40 of the IRPA would render him inadmissible for a period of two years, because he faces the risk of being removed from Canada and because an inadmissibility finding based on section 34 of the IRPA will make it difficult for him to obtain residence in Canada. Moreover, a finding that the Applicant lied to officials or that he is inadmissible under section 34 of the IRPA is serious because it would cause his family considerable hardship. Therefore, the Applicant submits that a high degree of procedural fairness is owed to him.

[28] The Applicant further submits that the duty to disclose extrinsic evidence is absolute in the context of a permanent residence application based on humanitarian and compassionate grounds even if the rights at stake are minimal.

[29] The Applicant cites four examples of pieces of evidence that were not disclosed to him and that impacted both the decision and the fairness of the proceedings.

[30] First, the Applicant submits that Officer Cloutier did not question him on his possible implication with a certain group. This concern seems to have been of importance to Officer

Cloutier, given research in the CTR on this group. This group was only mentioned when the Applicant responded to questioning on the truthfulness of his refugee claim. The Applicant argues that Officer Cloutier suspected that he was a member of a certain group and that this suspicion influenced her decision under section 34 of the IRPA. Since this information was unknown to him and should have been brought to his attention, the Applicant argues that a breach of procedural fairness occurred.

[31] Second, the Applicant submits that he was never informed of the existence of evidence showing that he facilitated the illegal entry of Mr. 1 into Canada. The question posed to the Applicant - whether or not he picked Mr. 1 up at the airport - differed from the evidence before the Officer that he facilitated the illegal entry of Mr. 1 into Canada.

[32] Third, the Applicant submits that Officer Cloutier never informed him that she had evidence that Mr. 2 was a source of aid for him. As Mr. 2 has been identified as a terrorist, the Applicant is of the view that such information should have been disclosed in order to allow him to make submissions on this specific matter.

[33] Fourth, the CTR shows that Officer Cloutier possessed the CSIS's summaries of the interviews conducted with the Applicant. The Applicant submits that the CTR should have contained not only the summaries of the interviews but the notes of the interviews and that these documents should have been provided to him. Moreover, the Applicant is of the view that Officer Cloutier was unreasonable to rely solely on summaries of interviews because some of the

Applicant's responses at these interviews are not properly reflected in the summaries. Therefore, the Officer's credibility findings cannot be found to be reasonable.

3. Duty to Give Notice That Section 40(1)(*a*) of the IRPA Would Be Relied upon

[34] The Applicant submits that he should have been given notice that section 40(1)(*a*) of the IRPA would have been relied upon. Such notice would have allowed him to make submissions and to be aware of the case that he had to meet and should have been given before or after the interview.

4. Insufficient Notice That Section 34 of the IRPA Is at Issue

[35] The Applicant argues that the notice provided by Officer Cloutier was insufficient because procedural fairness required her to identify the specific subsection on which her concerns were based. Section 34 of the IRPA is drafted broadly and encompasses many grounds of inadmissibility. Officer Cloutier's refusal of the Applicant's request for specification had the effect that he was not aware of the case that had to be met.

IV. Respondent's submissions

A. *Reasonability of the Decision*

[36] Although the Applicant does not challenge directly the reasonability of the decision by Officer Cloutier, the Respondent makes submissions on the reasonability of the Officer's findings.

[37] The Respondent submits that the Officer's decision is mainly based on the Applicant's misrepresentations and that her concerns on section 34 of the IRPA originated in the Applicant's relationship with specific individuals and his lack of candor on these relationships. Officer Cloutier

rightly found that the Applicant's relationship with Mr. 2 (a recognized terrorist who was removed from Canada in 1999), Mr. 3 (a Canadian citizen sentenced to eight years of prison for participating in a criminal association for the purpose of preparing an act of terrorism), Mr. 4 and Mr. 5 raise serious concerns.

[38] The decision is reasonable as the Applicant made numerous contradictory statements in his interviews with the CSIS and with CIC on his ties to a particular group, his relationship with individuals connected to Islamic extremist movements, his relationship with Mr. 2 and his relationship with Mr. 1, who secured his false passport. At no point, when confronted with such contradictory statements did he provide an explanation satisfactory to Officer Cloutier.

B. *Procedural Fairness*

1. Sufficiency of Reasons As to Why Request for Disclosure Was Denied

[39] The Respondent disagrees with the Applicant's argument and submits that it is incorrect to allege that information eventually disclosed without redactions in the CTR should have been disclosed prior to the Officer's decision on the matter. Indeed, the Officer rightly denied the request for disclosure because she was not in a position to unilaterally decide which pieces of information could be disclosed during the decision-making process. In support of this argument, the Respondent states that redactions in the CTR are made after consultation with agencies such as the CBSA and the CSIS.

2. Failure to Disclose Extrinsic Evidence to the Applicant

[40] The Respondent submits that Officer Cloutier satisfied her duty of procedural fairness by disclosing the information contained in a document to give the Applicant an opportunity to know the concerns of the decision-maker and to respond to them. He adds that no actual documents need to be tendered, as set out by this Court in *Nadarasa v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1112, 2009 CarswellNat 3458.

[41] In the present case, the content of the reports by the CBSA and the CSIS were disclosed to the Applicant and he was given an opportunity to respond to inconsistencies in his answers. Therefore, it cannot be alleged that a breach of procedural fairness occurred as there was no element of surprise in the interview.

[42] First, on the Applicant's submission that he should have been informed that Officer Cloutier suspected him to be a member of a certain group, the Respondent counters that nothing in the Officer's decision indicates that she came to this conclusion. Moreover, the CBSA document included in the CTR states that there are no reasonable grounds to believe that the Applicant was a member of such group.

[43] Second, on the Applicant's submission that Officer Cloutier did not ask me if he facilitated the illegal entry of Mr. 1 in Canada, the Respondent submits that there is no indication that Officer Cloutier came to the conclusion that he did. Moreover, the fact that the Applicant picked up Mr. 1 at the airport was addressed during the interview.

[44] With regard to the Applicant's position that he should have been made aware that Mr. 2 has been identified as a terrorist, the Respondent is of the view that given his relationship with the Applicant, it is probable that he was already aware of Mr. 2's status. Moreover, in any event, Officer Cloutier's decision is focused on the Applicant's contradictions as to the nature of his relationship with Mr. 2.

[45] Finally, as for the Applicant's submission that the CSIS's notes of the interview should have been provided to him, the Respondent replies that the Applicant's request is tardy as it should have been directed to Officer Cloutier. Therefore, the Applicant is not in a position to argue that a breach of procedural fairness occurred. Moreover, in any event, the Officer had no duty to provide notes from the CSIS interviews.

3. Duty to Give Notice That Section 40(1)(*a*) of the IRPA Would Be Relied upon

[46] The Respondent submits that there is no duty to give formal notice to the Applicant that all questions need to be answered truthfully since it is generally accepted that misrepresenting bears consequences under the IRPA. The Respondent adds that, in any event, the Applicant was told at the beginning of the interview that he had to answer all questions truthfully.

4. Insufficient Notice That Section 34 of the IRPA Is at Issue

[47] The Respondent submits that Officer Cloutier was not under a duty to refer to a specific subsection of section 34 of the IRPA. The Respondent is of the view that it would be inconsistent to require that an Officer be more precise in her convocation letter than in her eventual decision.

[48] Moreover, the Respondent submits that the present case is distinguishable from *Ghofrani v Canada (Minister of Citizenship and Immigration)*, 2008 FC 767, 73 Imm LR (3d) 221 because Officer Cloutier sent a general letter informing the Applicant that an interview would take place to determine if he was inadmissible. In the present case, the Applicant was aware of the grounds for inadmissibility at issue.

[49] The Respondent further argues that the Applicant's failure to be truthful at an interview may warrant a finding of inadmissibility without the need to include a specific finding of inadmissibility and cites *Ramalingam v Canada (Minister of Citizenship and Immigration)*, 2011 FC 278, 386 FTR 108 in support.

V. Issues

[50] The present judicial review raises the following issues:

1. Did the Officer commit an error when she failed to disclose extrinsic evidence to the Applicant?

2. Did the Officer fail by not specifying precisely why the Applicant was under scrutiny pursuant to section 34 of the IRPA when requested?

3. Did the Officer fail to provide the Applicant with notice that she would be invoking section 40(1)(*a*) of the IRPA?

4. Did the Officer fail to provide the Applicant with sufficient reasons as to why the request for disclosure was denied?

VI. Standard of review

[51] As all the issues raised by the Applicant relate to a breach of procedural fairness, the applicable standard of review is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339).

VII. Analysis

[52] Issues 1 and 2 will be dealt with according to the following analysis. Since they are determinative, it will not be necessary to decide the other issues raised in the application. The issues 1 and 2 relate to the Officer's breach of the duty of procedural fairness in refusing the Applicant's written requests for documents from the Officer before the interview and to specify the precise "nature" of her "concerns" under section 34 of the IRPA. Officer Cloutier refused the latter request because she was not in a position to provide more detail at that "stage." As the CTR shows, no further information was given except for the refusal letter, which did not reveal the information sought by the Applicant.

[53] For the reasons that follow, I find that on the facts and circumstances of this case, the Officer breached her duty of procedural fairness by failing to provide the Applicant with some of the information relied upon and on which her "concerns" were based. Part of this information should have been disclosed before the interview to give him an opportunity to comment on the information during the interview or afterwards, if necessary.

[54] I also find that the Officer should have specified the precise "nature" of the allegations against the Applicant under section 34 of the IRPA. If she could not specify the precise sub-section prior to the interview, she must have been able to do so afterwards and therefore, she should have informed the Applicant. The Court notes that the CBSA brief on the Applicant ["CBSA brief"] dated February 15, 2010 refers to subsection 34(1)(*f*) of the IRPA, although not conclusively, and refers specifically to the possibility that the Applicant may be a member of a terrorist group. This information was available before the interview scheduled for October 6, 2011 and failing to disclose it breached the Officer's duty of procedural fairness.

[55] There is no doubt that this H&C application and decision based on national security inadmissibility is of utmost importance for the Applicant, his wife and family. Officer Cloutier was under a duty to ensure that the Applicant had a meaningful participation in the process, that he was provided with the opportunity to deal with matters at play, which includes having knowledge and access to the pertinent documentation available to the decision maker that is not protected under national security privilege or for other reasons (see *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 31-33, 243 NR 22).

[56] Specific written requests were made by the Applicant and subsequently denied. As the CTR shows, newspaper articles concerning certain individuals, groups related to terrorism and their activities were before the Officer. The CTR also contained information on a specific terrorist group. This was public information that the Officer collected. There was no reason to withhold it. The CTR also contains the H&C application, the first stage H&C documentation and the approval letter dated December 15, 2006. These documents were already known and available to the Applicant.

[57] But most importantly, the CTR contains the CBSA brief and also a CSIS document dated August 31, 2009 on the Applicant. It is noteworthy that this last document indicates that the information provided by the Applicant to CSIS investigators during interviews can be used by officials when dealing with him. Furthermore, part of this document is classified. One paragraph stipulates that it must not be reclassified or disseminated without the consent of the CSIS.

[58] In her September 16, 2011 letter to the Applicant, the Officer requested an interview to inform him of her "concerns" and to give him an opportunity to respond to them. It also informed the Applicant that inadmissibility based on national security grounds, which is encompassed by section 34 of the IRPA was possible without further specification. As seen previously, the Applicant's counsel requested that the Officer provide the documentation on which her "concerns" were based and to specify the precise subsection(s) of section 34 at issue.

[59] Having read the CBSA and the CSIS briefs and having reviewed the CTR as a whole, it is clear that that the briefs were of utmost importance to the Officer. Her "concerns" were based in large part - if not totally - on these documents. They contain the information that formed the basis of the decision made.

[60] Such documents initially contained protected information. As seen in this file and as a result of a section 87 review, redactions were lifted while some information still remain redacted but it is information that is known to the Applicant through other avenues such as questions asked during the CSIS interviews or other means. In such cases, it may be appropriate to consider the issuance of

a summary of the content in order to protect national security assets such as human, technical sources. This was not necessary in the present case.

[61] These documents, as seen previously, were minimally redacted as a result of the process under section 87 of the IRPA. Before the interview with the Applicant and as requested by the Applicant's counsel, the Officer should have sent a redacted version of the briefs. When assessing an H&C application, the Minister's representative benefits from a broad discretionary power and the decision made is not subject to appeal. In such situations, the Officer, in order to give the Applicant a meaningful opportunity to respond to her concerns should have provided the unprotected documentation available to her. Basic procedural fairness calls for such a disclosure (see *Bhagwandass v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 49 at para 22, 201 FTR 140; *Mekonen v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1133 at paras 19, 26 and 27, 66 Imm LR (3d) 222; *Krishnamoorthy v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1342 at paras 37-38, 6 Imm LR (4th) 67).

[62] The Applicant's request to know the precise subsection of section 34 of the IRPA at issue was denied although the CBSA brief referred to section 34(1)(*f*), and raised the possibility that the Applicant was a member of a specific terrorist group. Although requested to give precisions, none were given.

[63] A reading of section 34 of the IRPA shows that the subsections deal with different serious scenarios. There may be a world of differences between engaging in terrorism (subsection 34(1)(*c*) of the IRPA), being a danger to the security of Canada (subsection 34(1)(*d*) of the IRPA) or being a

member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in (*a*), (*b*) or (*c*) (subsection 34(1)(*f*) of the IRPA). For any person being suspected of falling under the category of persons inadmissible to Canada, it is of utmost importance to know exactly the kind of evidence the person has to respond to when such information is available.

[64] The Officer's duty of procedural fairness required her to identify serious concerns to the Applicant. Unless this obligation is met, the Applicant does not have the opportunity to fully participate in the process (see *Khwaja*, supra at paras 16-17). The Officer knew what her "concerns" were and she should have communicated them on request.

[65] In our particular situation, a request for specifics pursuant to section 34 of the IRPA was made but refused by Officer Cloutier, who explained that she was not in a position to give further details at that "stage." As noted, the CBSA brief refers to section 34(1)(*f*) of the IRPA, alleging that the Applicant was a member of a terrorist group. Also, the Tribunal's record contains public information on this group.

[66] The Officer, at the time of the request for specifics, was aware of the CBSA brief (which predated the request) that referred to section 34(1)(*f*) of the IRPA, although not conclusively, and had public information about the relevant terrorist group on file. Therefore, she was in a position to respond positively to the request for specifics but decided to deny it. This was a breach to the procedural fairness owed to the Applicant. Not having that information, the Applicant was not in a position to participate meaningfully to the interview.

[67] Finally, I conclude for all the reasons mentioned above, that the Applicant as requested by the Applicant's counsel should have received from the Officer the public information contained in the CTR, the redacted CBSA and CSIS briefs and any other information not protected that the decision maker had which was relevant and important to the decision to be made. I also conclude that the Applicant, as requested, should have received specific information on the national security inadmissibility concerns that the Officer was considering pursuant to section 34 of the IRPA.

[68] In conclusion, the application is granted and the matter is remitted for reconsideration by a different Officer. No serious question of general importance was proposed and none will be certified.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the decision by Officer Cloutier dated November 3, 2011 is hereby set aside.

2. The matter is remitted for re-determination by a different Immigration Officer.

3. No question is certified.

"Simon Noël"

_____

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8416-11
STYLE OF CAUSE:	A.B. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montreal, Québec
DATE OF HEARING:	December 18, 2012
REASONS FOR JUDGMENT AND JUDGMENT:	NOËL J.
DATED:	February 7, 2013

APPEARANCES:

Peter Shams	FOR THE APPLICANT
Daniel Latulippe	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Peter Shams Lawyer Montreal, Quebec	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT