

Federal Court



Cour fédérale

**Date: 20140120**

**Docket: IMM-10582-12**

**Citation: 2014 FC 51**

**Ottawa, Ontario, January 20, 2014**

**PRESENT: The Honourable Madam Justice Simpson**

**BETWEEN:**

**HARITH AHMAD SALAHALDIN AND  
NADIA IBRAHIM ISMAIL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER  
(Delivered orally in Toronto on December 17, 2013).**

[1] This application for judicial review of a decision of a Visa Officer (the Officer) dated September 10, 2012 (the Decision) involves the Officer's denial of the principal Applicant's application for permanent residence on the basis of inadmissibility pursuant to s. 35(1) (b) of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27), s. 16 of the *Regulations* (SOR/2002-227), and Immigration Manual ENF 18 at s. 8.2, category 2.

[2] The issue is the reasonableness of the Officer's determination that the principal Applicant was a prescribed senior official in the service of the Iraqi government.

[3] The Applicant is a medical doctor whose career has centered on teaching and practicing his profession. The details follow:

- 1968: The principal applicant received his Bachelor of Medicine from the University of Baghdad, College of Medicine.
- 1968-1970: The principal Applicant worked as a general practitioner with the Ministry of Health and practiced medicine in rural areas in Iraq.
- 1975: The principal Applicant received a Diploma in Otolaryngology from the University of Baghdad, College of Medicine.
- October 1975: The principal Applicant began working as an ear, nose and throat specialist at the Sulaymania General Hospital in Iraq.
- October 1978-June 1982: The principal Applicant received a scholarship from the University of Salford in England to complete a Master's of Audiology, specializing in the rehabilitation and care of hearing impaired individuals.
- June 1982-August 1988: The principal Applicant accepted a position as an Ear, Nose, and Throat specialist and Audiologist at the Yarmouk Teaching Hospital.
- 1982: The principal Applicant was accepted for consultancy work with the Ibin Sina Hospital in Baghdad.
- 1984-1996: The principal Applicant opened his own private medical clinic where he treated deaf patients. He specialized in ear, nose and throat ailments, and audiology.
- 1988: The principal Applicant was chosen to work as an assistant lecturer at the College of Medicine at the University of Al Mustansiriya.
- 1989: The principal Applicant began working as a placement doctor with the Handicap Diagnosis Committee for the Department of Labour and Social Welfare, which falls under the Ministry of Labour and Social Affairs (MOLSA).
- 1992: The principal Applicant was promoted to full lecturer in audiology at the University of Baghdad, College of Medicine.

- October 22, 1992-February 10, 1995: The principal Applicant was selected for a part-time position as the local Project Manager for the Childhood Disability Project (the Project). The Project was coordinated and organized by UNICEF and the MOLSA. The evidence is not clear about whether the MOLSA and/or UNICEF funded the Project and it is not clear how the principal Applicant was paid for his work on the Project. However, it is clear that the Minister of the MOLSA (the Minister) and UNICEF personnel supervised the Project and that, in his role as Project Manager, the principal Applicant attended regular meetings with the Minister and his staff and representatives of UNICEF.
- 1992-1996: During the Project, the principal Applicant also lectured at the University of Baghdad, College of Medicine.

### *The Decision*

[4] The Officer concluded that the principal Applicant became a senior official in the Iraqi government as a result of his work on the Project and reached this conclusion largely because the principal Applicant met regularly with the Minister.

### *Conclusion*

[5] In my view the Decision does not meet the test for reasonableness established by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, because the evidence shows that the principal applicant's access to the Minister was only by reason of his part-time position on the Project. He was never a Ministry official. He had no title within the Ministry and his name did not appear on the list of those who held senior government positions which was prepared by the government of Iraq after the U.S. invasion in 2003.

### *Certification*

[6] No question was posed for certification.

**ORDER**

**THIS COURT ORDERS that:**

The application for judicial review is allowed and the matter is to be redetermined by a different Visa Officer. New evidence may be submitted on the reconsideration.

“Sandra J. Simpson”

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Judge

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

**DOCKET:** IMM-10582-12

**STYLE OF CAUSE:** HARITH AHMAD SALAHALDIN AND NADIA  
IBRAHIM ISMAIL v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 17, 2013

**REASONS FOR ORDER AND  
ORDER:** SIMPSON J.

**DATED:** JANUARY 20, 2014

**APPEARANCES:**

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