Federal Court  Cour fédérale

Date: 20200313

Docket: IMM-2810-19

Citation: 2020 FC 373

Ottawa, Ontario, March 13, 2020

PRESENT: Mr. Justice Russell

BETWEEN:

ABDULAZIZ ABDULLAH AL FARES
IMAN HASSAN AL SAWAL
ODAY AL FARES

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] Abdulaziz Al Fares [Principal Applicant] with his wife and son [together with the Principal Applicant, the Applicants], seek judicial review pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] of a decision of a Migration Officer [Officer] dated March 2, 2019. The Officer interviewed the Principal Applicant in Beirut, Lebanon, and

was not satisfied that his testimony was true and credible. Consequently, the Officer concluded that the Applicant did not meet the requirements of s 96 of the *IRPA* and of s 147 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Thus, the Officer was unable to be satisfied that the Applicant is eligible in Canada and not inadmissible as required by the Act.

II. BACKGROUND

[2] The Applicants are citizens of Syria who have been living in Lebanon since 2013. They are all registered with the United Nations Refugee Agency [UNHCR] as Syrian refugees.

[3] The Principal Applicant is allegedly a conscript of the Syrian army, where he served as a corporal from 2010 to 2013. He alleged that he had a general training in 2010, followed by an assignment to a specialization in tanks. However, he says that his duty in the Syrian army consisted primarily of administrative works in the registrar's office. During this time, the war broke out in Syria, and until 2013, the Syrian army sent the Principal Applicant to different areas but he says he did not engage in any combat.

[4] In 2013, the Principal Applicant claims that the Syrian army assigned him to a tank battalion where he was expected to kill civilians and bomb civilian neighbourhoods near Tell Abyad. He alleges that he refused to engage in targeting civilians. Therefore, once back in the military camp, the Principal Applicant says he was beaten publicly because he disobeyed orders. He claims that his leg was broken during the beating. The Syrian army then allegedly imprisoned the Principal Applicant, but he escaped with the help of a prison guard.

[5] Later, between July and October 2013, the Principal Applicant says he attempted to enter Lebanon on a fake passport and, consequently, he was detained for three months. He says his brother, who was living in Lebanon, paid to release him. Once released, the Principal Applicant immediately went to register as a Syrian refugee at the UNHCR. He has lived in Lebanon ever since. The Female Applicant entered Lebanon when she learned that the Principal Applicant was there. This was during the time when the Lebanese authorities had detained him. Not long after, their son was born in Lebanon. The Principal Applicant still does not have a legal status in Lebanon, but his wife and son do.

[6] The Applicants then applied for permanent residence in Canada as members of the Convention refugee abroad class, or as members of the humanitarian-protected persons abroad designated class. In his refugee application, the Principal Applicant indicated that he had been a corporal in the Syrian army for three years between 2010 and 2013. However, he did not have copies of his Syrian identification documents or his Syrian military service booklet. Nonetheless, he did complete a Details of Military Service document.

[7] In November 2017, the Canadian government approved the sponsors' application to sponsor a Syrian family. On January 16, 2018, the Canadian government also approved the sponsors' application to sponsor the Applicants. Therefore, on February 8, 2019, the Officer proceeded with the interview of the Principal Applicant in Beirut, Lebanon.

III. DECISION UNDER REVIEW

[8] The Officer concluded that the Principal Applicant did not meet the requirements under s 96 of the *IRPA* or s 147 of the *IRPR*. Therefore, he did not meet the requirements of s 139(1)(e) of the *IRPR*. The Officer noted that statements and information provided by the Principal Applicant were at times incompatible or contradictory. Consequently, on a balance of probabilities, the Officer concluded that the Principal Applicant's declarations were more likely false than true because they were not credible.

[9] First, the Officer noted that the Principal Applicant stated that his military service included six months of training, including a specialization in tanks. However, he did not know what kinds of shells were on the tank that the Syrian military asked him to fire. In addition, later during the interview, the Officer noted that the Principal Applicant stated that he did not receive the specialized training because the Syrian army transferred him to the registrar's office. This contradiction caused some credibility concerns for the Officer.

[10] Second, given that the combat operation involved significant pieces of equipment such as tanks, the Officer found it difficult to believe that the Syrian military would have untrained military personnel involved in bombing the community of Tell Abyad. In this regard, the Principal Applicant had explained to the Officer that the Syrian military was short of trained personnel and, therefore, they asked him to play the role of sighting/targeting rather than being the tank gunner. While occupying this role, the Principal Applicant submitted that he received

the order to fire on civilians, to which he objected. He explained that he did not have the skills to do this and, even if he had, he would have refused.

[11] The Principal Applicant also answered the Officer's concerns by explaining that, when he entered the military, he received basic training for six months and then he was transferred to the registrar's office. He also explained that there are four different roles to operating a tank: 1) the commander; 2) the person who aims and shoots, which was supposed to be him; 3) the driver of the tank; and 4) the person who handles the ammunition. When the battalion was ready to go on a mission, the Principal Applicant explained that a person would call out randomly who is responsible for each role. He also stated that the Syrian military did not care whether a person received training or not because there was insufficient numbers of soldiers, which is the reason he was removed from his position at the registrar's office.

[12] Furthermore, to corroborate his testimony that he served in the Syrian military, the Principal Applicant provided three leaves of absence from his serving time. However, the Officer noted that they all indicated different unit numbers.

[13] Therefore, the Officer concluded that he had received contradictory information from the Principal Applicant of having received, and then not received, training on how to fire a T-55 tank. Despite his latter answer that he did not receive the training, the Syrian military put him into a tank to fire on civilians. The Officer found that this story was not credible. In addition, the Officer found that the Principal Applicant had no military documentation to support his application. Consequently, because the Principal Applicant's application was based on his own

statements, the Officer was not satisfied that, on a balance of probabilities, the information he provided was credible. Thus, the Officer was not satisfied that the Applicant is eligible to enter Canada and “not inadmissible” as required by the Act.

IV. PRELIMINARY MATTER

[14] As a preliminary matter, the Respondent raises the issue of whether this Court should give any weight to the Affidavit of Michelle Mallard.

[15] The Respondent submits that an applicant seeking a judicial review of an immigration decision must file a supporting affidavit verifying the facts on which the applicant relies to support the application. The Respondent also alleges that an applicant who has a personal knowledge of the decision-making process must swear this affidavit because it serves as a primary source of information on which the Court refers. The Respondent opines that an affidavit from a third party who does not have personal knowledge of the process should receive no weight by this Court.

[16] Consequently, as a preliminary matter, the Respondent argues that this Court should give no weight to the affidavit filed by Michelle Mallard because it contains hearsay.
Michelle Mallard is a member of the steering committee of the Brooklin Refugee Mission, a community group who came together to sponsor a Syrian refugee family. Therefore, the Respondent alleges that she has no personal knowledge of the facts related to the interview and, in the absence of an affidavit by the Applicants, the Court has sufficient reasons to dismiss the

application (*Ismail v Canada (Citizenship and Immigration)*, 2016 FC 446 at paras 20-21; *Zhang v Canada (Citizenship and Immigration)*, 2017 FC 491 at para 13).

V. ISSUES

[17] The issues raised in this application are as follows:

1. Did the Officer breach the Applicants' rights to procedural fairness?
2. Whether the Officer's credibility findings are reasonable?
3. Whether the Officer had a duty to consider the Principal Applicant's profile?
4. Whether the Officer justified his finding that the Principal Applicant was inadmissible because he had lied?
5. Whether there are special reasons to depart from the general rule that no costs follow in an application under the *IRPA* or to issue directions?

VI. STANDARD OF REVIEW

[18] This application was argued following the Supreme Court of Canada's recent decisions in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] and *Bell Canada v Canada (Attorney General)*, 2019 SCC 66. However, the Applicants' memoranda were provided prior to these decisions. The Applicants' written submissions on the standard of review were therefore made under the *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] framework. However, given the circumstances in this matter, and the Supreme Court of Canada's

instructions in *Vavilov* at para 144, this Court found that it was not necessary to ask any of the parties to make additional written submissions on the standard of review. I have applied the *Vavilov* framework in my consideration of the application and it does not change the applicable standards of review in this case nor my conclusions.

[19] In *Vavilov*, at paras 23-32, the majority sought to simplify how a court selects the standard of review applicable to the issues before it. The majority did away with the contextual and categorical approach taken in *Dunsmuir* in favour of instating a presumption that the reasonableness standard applies. However, the majority noted that this presumption can be set aside on the basis of (1) clear legislative intent to prescribe a different standard of review (*Vavilov*, at paras 33-52), and (2) certain scenarios where the rule of law requires the application of the standard of correctness, such as constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies (*Vavilov*, at paras 53-64).

[20] The Applicants submitted that the standard of correctness applies to this Court's review of the alleged breach of procedural fairness and any pure questions of law arising in this application for judicial review. As for this Court's review of the merits of the Decision, the Applicants submitted that the standard of reasonableness applies.

[21] Meanwhile, the Respondent argued that the standard of reasonableness applied to this Court's review of: (1) the Officer's Decision refusing the application of a Convention refugee abroad or an application from a country of asylum class; (2) whether the Applicants meet the

requirements under ss 11(1) and 16(1) of the *IRPA*; and (3) the substance of the Officer's Global Case Management System [GCMS] notes or the reasons of the Decision in general.

[22] But for the alleged breach of procedural fairness, I agree that the standard of reasonableness applies to this Court's review of the issues in this case as there is nothing to rebut the presumption that the standard of reasonableness applies.

[23] Some courts have held that the standard of review for an allegation of procedural unfairness is "correctness" (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61 [*Khosa*]). The Supreme Court of Canada's decision in *Vavilov* does not address the standard of review applicable to issues of procedural fairness (*Vavilov*, at para 23). However, a more doctrinally sound approach is that no standard of review at all is applicable to the question of procedural fairness. The Supreme Court of Canada in *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 stated that the issue of procedural fairness:

> requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation (*Moreau-Bérubé*, para 74).

[24] Concerning the standard of review applicable to this Court's review of the Officer's credibility findings, the application of the standard of reasonableness is consistent with the jurisprudence prior to *Vavilov*. See, for example, *Ikeme v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 21 at para 15 and *George v Canada (Citizenship and Immigration)*, 2019 FC 1385 at para 27.

[25] As regards the application of the standard of reasonableness to the Officer's assessment of the evidence in this case, the application of the standard of reasonableness is also consistent with the jurisprudence prior to *Vavilov*. See, for example, *Iqbal v Canada (Citizenship and Immigration)*, 2018 FC 299 at para 12 and *Saifee v Canada (Citizenship and Immigration)*, 2010 FC 589 at para 25.

[26] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with whether it "bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para 99). Reasonableness is a single standard of review that varies and "takes its colour from the context" (*Vavilov*, at para 89 citing *Khosa*, at para 59). These contextual constraints "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (*Vavilov*, at para 90). Put in another way, the Court should intervene only when "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov*, at para 100). The Supreme Court of Canada lists two types of fundamental flaws that make a decision unreasonable: (1) a failure of rationality internal to the decision-maker's reasoning process; and (2) untenability "in light of the relevant factual and legal constraints that bear on it" (*Vavilov*, at para 101).

VII. STATUTORY PROVISIONS

[27] Section 96 of the *IRPA* reads as follows:

Convention refugee	**Définition de réfugié**
96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

[28] Furthermore, ss 139(1) and 147 of the *IRPR* are also relevant and read as follows:

General	**Dispositions générales**
General requirements	**Exigences générales**
139 (1) A permanent resident visa shall be issued to a foreign national in need of refugee protection, and their accompanying family members, if following an examination it is established that	139 (1) Un visa de résident permanent est délivré à l'étranger qui a besoin de protection et aux membres de sa famille qui l'accompagnent si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) the foreign national is outside Canada;	a) l'étranger se trouve hors du Canada;

(b) the foreign national has submitted an application for a permanent resident visa under this Division in accordance with paragraphs 10(1)(a) to (c) and (2)(c.1) to (d) and sections 140.1 to 140.3;

b) il a fait une demande de visa de résident permanent au titre de la présente section conformément aux alinéas 10(1)a) à c) et (2)c.1) à d) et aux articles 140.1 à 140.3;

(c) the foreign national is seeking to come to Canada to establish permanent residence;

c) il cherche à entrer au Canada pour s'y établir en permanence;

(d) the foreign national is a person in respect of whom there is no reasonable prospect, within a reasonable period, of a durable solution in a country other than Canada, namely

d) aucune possibilité raisonnable de solution durable n'est, à son égard, réalisable dans un délai raisonnable dans un pays autre que le Canada, à savoir :

(i) voluntary repatriation or resettlement in their country of nationality or habitual residence, or

(i) soit le rapatriement volontaire ou la réinstallation dans le pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle,

(ii) resettlement or an offer of resettlement in another country;

(ii) soit la réinstallation ou une offre de réinstallation dans un autre pays;

(e) the foreign national is a member of one of the classes prescribed by this Division;

e) il fait partie d'une catégorie établie dans la présente section;

(f) one of the following is the case, namely

f) selon le cas :

(i) the sponsor's sponsorship application for the foreign national and their family members included in the application for protection has been approved under these Regulations,

(i) la demande de parrainage du répondant à l'égard de l'étranger et des membres de sa famille visés par la demande de protection a été accueillie au titre du présent règlement,

(ii) in the case of a member

(ii) s'agissant de l'étranger

of the Convention refugee abroad class, financial assistance in the form of funds from a governmental resettlement assistance program is available in Canada for the foreign national and their family members included in the application for protection, or

qui appartient à la catégorie des réfugiés au sens de la Convention outre-frontières, une aide financière publique est disponible au Canada, au titre d'un programme d'aide, pour la réinstallation de l'étranger et des membres de sa famille visés par la demande de protection,

(iii) the foreign national has sufficient financial resources to provide for the lodging, care and maintenance, and for the resettlement in Canada, of themself and their family members included in the application for protection;

(iii) il possède les ressources financières nécessaires pour subvenir à ses besoins et à ceux des membres de sa famille visés par la demande de protection, y compris leur logement et leur réinstallation au Canada;

(g) if the foreign national intends to reside in a province other than the Province of Quebec, the foreign national and their family members included in the application for protection will be able to become successfully established in Canada, taking into account the following factors:

g) dans le cas où l'étranger cherche à s'établir dans une province autre que la province de Québec, lui et les membres de sa famille visés par la demande de protection pourront réussir leur établissement au Canada, compte tenu des facteurs suivants :

(i) their resourcefulness and other similar qualities that assist in integration in a new society,

(i) leur ingéniosité et autres qualités semblables pouvant les aider à s'intégrer à une nouvelle société,

(ii) the presence of their relatives, including the relatives of a spouse or a common-law partner, or their sponsor in the expected community of resettlement,

(ii) la présence, dans la collectivité de réinstallation prévue, de membres de leur parenté, y compris celle de l'époux ou du conjoint de fait de l'étranger, ou de leur répondant,

(iii) their potential for employment in Canada, given their education, work experience and skills, and

(iv) their ability to learn to communicate in one of the official languages of Canada;

(iii) leurs perspectives d'emploi au Canada vu leur niveau de scolarité, leurs antécédents professionnels et leurs compétences,

(iv) leur aptitude à apprendre à communiquer dans l'une des deux langues officielles du Canada;

(h) if the foreign national intends to reside in the Province of Quebec, the competent authority of that Province is of the opinion that the foreign national and their family members included in the application for protection meet the selection criteria of the Province; and

h) dans le cas où l'étranger cherche à s'établir dans la province de Québec, les autorités compétentes de cette province sont d'avis que celui-ci et les membres de sa famille visés par la demande de protection satisfont aux critères de sélection de cette province;

(i) subject to subsections (3) and (4), the foreign national and their family members included in the application for protection are not inadmissible.

i) sous réserve des paragraphes (3) et (4), ni lui ni les membres de sa famille visés par la demande de protection ne sont interdits de territoire.

…

…

Member of country of asylum class

147 A foreign national is a member of the country of asylum class if they have been determined by an officer to be in need of resettlement because

(a) they are outside all of their countries of nationality and habitual residence; and

(b) they have been, and

Catégorie de personnes de pays d'accueil

147 Appartient à la catégorie de personnes de pays d'accueil l'étranger considéré par un agent comme ayant besoin de se réinstaller en raison des circonstances suivantes :

a) il se trouve hors de tout pays dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

b) une guerre civile, un conflit

continue to be, seriously and personally affected by civil war, armed conflict or massive violation of human rights in each of those countries.	armé ou une violation massive des droits de la personne dans chacun des pays en cause ont eu et continuent d'avoir des conséquences graves et personnelles pour lui.

VIII. ARGUMENTS

A. *Applicants*

(1) Whether the Officer's credibility findings are reasonable

[29] First, the Applicants allege that the Officer failed to conduct a global credibility assessment because he did not consider the totality of the evidence (*Jamil v Canada (Citizenship and Immigration)*, 2006 FC 792). Instead, the Applicants say that the Officer only focused on the type of military training that the Principal Applicant received. In this matter, the Applicants argue that, even though one contradiction occurred regarding the military training of the Principal Applicant, the Officer cannot use it to disbelieve the rest of the claim.

[30] In addition, the Applicants allege that it is not clear whether the Principal Applicant did contradict himself. More precisely, they criticize the Officer for not maintaining an accurate record of his questioning of the Principal Applicant throughout the entire interview, which would allow a reviewing court to understand the basis of the credibility determination.

[31] In this matter, the Applicants submit that the Program Delivery Instructions on "Recording an Interview" instruct officers to ensure that notes "are detailed and reflect what transpired at the interview…." The Applicants allege that nothing in the "question and answer"

portion of the Rule 9 response allows the Court to note where the Principal Applicant contradicted himself. They allege that neither the Principal Applicant's narrative nor his "Details of Military Service" form mention anything about any type of tank.

[32] By failing to provide a proper record of the part of the interview that contains the contradiction, the Applicants allege that the Officer breached natural justice and deprived the Principal Applicant of his right to a meaningful judicial review.

[33] The Applicants also submit that the Officer seems to rely on the Details of Military Service form to note a contradiction with the Principal Applicant's testimony. However, given that this form is undated, unsigned, and it was completed with an unidentified person at an office that is not the Canadian Embassy, the Applicants submit that it was improper for the Officer to rely upon it.

[34] The Applicants also argue that the Officer speculated and disregarded the country evidence when concluding that the Principal Applicant was not plausible. The Applicants add that the Officer cites no documentation to support his speculation that the Syrian military would not send untrained personnel to combat. In addition, citing *Valtchev v Canada (Citizenship and Immigration)*, 2001 FCT 776, a decision-maker should make a plausibility finding only in the clearest of cases, which is not the case here. In fact, the Applicants opine that the country documentation that the Officer was expected to consider reports that Syria was notorious for using untrained soldiers for combat because of dodging, desertions and defections. The Officer did not offer an opportunity to the Principal Applicant to respond to the Officer's plausibility

concerns by allowing him to file documentation. Therefore, the Applicants argue that the Officer breached procedural fairness.

(2) Whether the Officer had a duty to consider the Principal Applicant's profile

[35] The Applicants allege that the Officer failed to consider the country documentation and chose not to assess the Principal Applicant's risk of persecution. The Applicants submit that, even though the Officer disbelieved the Principal Applicant that he defied orders, he still had to assess other grounds of possible risk of persecution. In this matter, the Applicants argue that the evidence clearly shows that the Principal Applicant faces risk in Syria as a military deserter and as a man of conscription age. In this matter, the Applicants opine that the Officer does not appear to doubt that the Principal Applicant was in the military. Therefore, given the evidence that the Principal Applicant fled to Lebanon, there can be little doubt that he deserted.

(3) Whether the Officer justified his finding that the Principal Applicant was inadmissible because he had lied

[36] The Applicants argue that the following finding made by the Officer is unintelligible:

> Your declarations also relate directly to your admissibility to Canada. Without true and credible testimony I am not satisfied that you are not inadmissible to Canada.
>
> I am not able to be satisfied that the applicant is eligible and not inadmissible as required by the Act.

[37] The Applicants say that the two different ways that the Officer phrased his finding make it impossible to understand what the Officer actually found.

[38] In addition, the Applicants submit that, if the finding is one of inadmissibility, it is also unintelligible because it is too general. They say that the Officer had to identify the specific basis for his inadmissibility concerns but he failed to engage in any analysis of the legal requirements for any type of inadmissibility. Therefore, the Applicants allege that the Officer denied natural justice to the Principal Applicant because it is not for him to guess the basis of his inadmissibility. They further allege that this Court cannot properly review the admissibility concerns without knowing their basis.

[39] In the alternative, if the Officer's finding is a statement that he cannot conduct an admissibility assessment, then the Applicants submit that this finding is also erroneous. In this matter, the Applicants argue that an officer cannot simply assert that his admissibility assessment has been obstructed; he must at least indicate the *prima facie* inadmissibility concerns that he cannot assess.

(4) Whether there are special reasons to depart from the general rule that no costs follow in application under the *IRPA* or to issue directions

[40] The Applicants argue that the particular circumstances of this case warrant an award of costs given the above errors noted and the Officer's denying the Applicants protection (*Johnson v Canada (Citizenship and Immigration)*, 2005 FC 1262 at para 26; *Qin v Canada (Citizenship and Immigration)*, [2002] FCJ No 1576 at para 34).

B. *Respondent*

(1) Whether the Officer's credibility findings are reasonable

(a) *The Officer reasonably found that the Principal Applicant is not credible*

[41] The Respondent alleges that s 11(1) of the *IRPA* requires applicants to provide the necessary information to satisfy an officer that they meet the requirements for immigrating to Canada (*Alkhairat v Canada (Citizenship and Immigration)*, 2017 FC 285 at para 11; *Muthui v Canada (Citizenship and Immigration)*, 2014 FC 105 at para 33).

[42] The Respondent also argues that this Court should give deference to the credibility finding made by the Officer who had the benefit of interviewing the Principal Applicant (*Aguebor v Canada (Citizenship and Immigration)*, [1993] FCJ No 732 at para 4 (FCA); *Samandar v Canada (Citizenship and Immigration)*, 2019 FC 1117 at para 31 [*Samandar*]).

[43] In the present matter, the Respondent points out that the Principal Applicant gave inconsistent evidence as to his military training. Therefore, because the Principal Applicant was not a credible witness, the Officer was unable to determine whether he was inadmissible to Canada. In addition, the Respondent argues that the record supports the Officer's conclusions on credibility. Indeed, the Principal Applicant's interview, his narrative and his Details of Military Service form all stated that he received tank and gun training. However, later in the interview, the Principal Applicant changed his version saying that he did not receive the training. In addition, the Respondent points out that the Principal Applicant changed his story once again

when the Officer confronted him with this contradiction. Moreover, the Respondent submits that there was no evidence to corroborate which version of the Principal Applicant's story was true. Therefore, it was reasonable for the Officer to conclude that it was not possible to determine whether the Principal Applicant was not inadmissible to Canada.

[44] Furthermore, the Respondent argues that the Officer also had to ascertain whether the Principal Applicant's story that he refused to obey orders and shoot on civilians was credible. Given that the Principal Applicant stated that he was a corporal in a battalion that was engaged in killing civilians, the Respondent submits that this story is at the heart of the application. Therefore, in light of the contradiction and the lack of corroborative evidence, the Respondent opines that it was reasonable for the Officer to conclude that he could not be satisfied that the Principal Applicant is not inadmissible.

(b) *The GCMS notes are reliable evidence regarding the interview*

[45] The Respondent alleges that there is a presumption that the GCMS notes recorded at the time of an interview are accurate and are to be preferred over affidavits sworn at a later date, particularly in this case, since the Principal Applicant filed no affidavit (*Sidhu v Canada (Citizenship and Immigration)*, 2017 FC 1139 at para 13; *Bashir v Canada (Citizenship and Immigration)*, 2002 FCT 868 at para 4).

[46] The Respondent argues that there are no requirements that an officer must record his notes in a certain format. In this matter, officers determining visa applications are not subject to the same standards as administrative tribunals (*Ozdemir v Canada (Citizenship and*

Immigration), 2001 FCA 331 at para 11; *Kumarasamy v Canada (Citizenship and Immigration)*, 2010 FC 203 at para 47). Therefore, the Respondent asserts that even though some of the Officer's notes are in question-and-answer format while others are not, the notes are thorough and detailed as to what the Principal Applicant said about his training. The Respondent argues that these notes contain specific information, which leaves little room for speculating about what the Principal Applicant said (*Wei v Canada (Citizenship and Immigration)*, 2019 FC 982 at para 23 [*Wei*]).

[47] The Respondent says that the Officer's notes meet the requirements of being justified, transparent and intelligible, thus allowing the Court to determine the rationale for the decision (*Noori v Canada (Citizenship and Immigration)*, 2017 FC 1095 at paras 8 and 12 [*Noori*]; *Vavilov*, at paras 81 and 84).

(c) *The Officer findings are not inconsistent with country conditions*

[48] The Respondent submits that it was open to the Officer to find that it was unlikely that the Syrian military would put an untrained soldier in charge of operating expensive military equipment. Moreover, the Officer was entitled to use his knowledge of local conditions in Syria and nothing in the country evidence submitted by the Applicants states that the Syrian military put untrained soldiers in charge of operating substantial pieces of army equipment such as tanks (*Al Hasan v Canada (Citizenship and Immigration)*, 2019 FC 1155 at paras 10-11; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781).

[49] The Respondent further submits that the Officer made this finding while he was trying to determine which version of the Principal Applicant's evidence was more likely to be true. Therefore, it was open to the Officer to conclude that it was implausible that the Syrian military would have asked the Principal Applicant to operate a tank to shoot at civilians without any prior training with the equipment (*Garcia Porfirio v Canada (Citizenship and Immigration)*, 2011 FC 794 at para 46).

(2) Whether the Officer had a duty to consider the Principal Applicant's profile

[50] The Respondent alleges that the Officer did not have to determine whether the Principal Applicant was at risk in Syria as a military deserter or as a man of conscription age. Instead, the Officer simply had to determine whether the evidence as to his military background was credible. Because the Principal Applicant was untruthful, he failed to satisfy that he was not inadmissible. Therefore, the Officer did not have to provide reasons as to whether the Principal Applicant met the requirements under ss 139, 145 and 147 of the *IRPR* (*Kabran v Canada (Citizenship and Immigration)*, 2018 FC 115 at paras 36 and 38 [*Kabran*]; *Samandar*, at paras 21-24).

[51] Moreover, the Respondent says that the fact that the Officer did not determine whether the Applicants may face a future risk in Syria would not have changed the outcome of the application. The Respondent points out that s 139(1) of the *IRPR* requires that members of both the Convention refugee abroad and the humanitarian-protected persons abroad class must satisfy the Officer that they are not inadmissible. Therefore, even if the Officer would have analyzed whether the Applicants met the requirements of the *IRPA*, the Applicants did not meet the

requirements under s 139(1)(i) of the *IRPR*. Consequently, the Respondent submits that the matter ended there.

(3) Whether the Officer justified his finding that the Principal Applicant was inadmissible because he had lied

[52] The Respondent says that there is no ambiguity as to what the Officer meant when he concluded that the Principal Applicant failed to satisfy him that he was "not inadmissible." Without credible evidence regarding the Principal Applicant's background, it was not possible for the Officer to determine whether the Principal Applicant is inadmissible or not (*Kabran*, at paras 38-39, 47; *Noori*, at paras 17-18).

(4) Whether there are special reasons to depart from the general rule that no costs follow in an application under the *IRPA* or to issue directions

[53] The Respondent notes that the Applicants did not provide written submissions regarding any directions they are seeking. They should not be allowed to advance arguments at the hearing that were not included in their written submissions (*Radha v Canada (Citizenship and Immigration)*, 2003 FC 1040 at paras 16-18; *Dunova v Canada (Citizenship and Immigration)*, 2010 FC 438 at paras 18-20). In this matter, the Respondent submits that the Federal Court of Appeal has held that directions depart from the logic of judicial review (*Yansane v Canada (Citizenship and Immigration)*, 2017 FCA 48 at at para 18).

[54] Moreover, the Respondent says that the Applicants fail to explain or establish any special reasons to award costs as required under s 22 of the *Federal Courts Citizenship, Immigration and*

Refugee Protection Rules, SOR/93-22. In the present case, it is reasonable for the Respondent to defend the Officer's decision and, even if the Court grants the judicial review, the Respondent's position still has merit (*Dhaliwal v Canada (Citizenship and Immigration)*, 2011 FC 201 at para 33; *Alam v Canada (Citizenship and Immigration)*, 2017 FC 639 at paras 23-26). The Respondent adds that it has not acted in an unfair, oppressive, or improper manner, or in a manner that is accentuated by bad faith. The Respondent says that no costs are appropriate since the threshold for establishing the existence of special reasons is high and the Applicants have not met it.

IX. ANALYSIS

A. *Introduction*

[55] It may be that an unfortunate mistake or misunderstanding has occurred in this case but, on the admissible evidence before me on the record, that has not been established.

[56] The GCMS notes are clear that there was an important contradiction in the Principal Applicant's evidence before the Officer that gave rise to credibility concerns that the Principal Applicant, after being given the opportunity to do so, was not able to dispel.

[57] In her affidavit, Ms. Mallard attempts to introduce refutory evidence on behalf of the Principal Applicant that is clearly inadmissible for the purposes of this application and that, in some respects, contradicts what the Principal Applicant is recorded to have said in the GCMS notes.

[58] I appreciate the difficulties outlined in paragraph 2 of Ms. Mallard's affidavit and why the Applicants do not wish to appear before officials, lawyers and notaries in Lebanon to swear an affidavit. However, this does not mean that the Court can simply allow her to provide hearsay evidence on the central issue that the Respondent cannot challenge by way of cross-examination.

[59] In any event, even if such evidence had come directly from the Applicants, it is unlikely that it would have overcome the general jurisprudence of this Court that GCMS notes are presumed to be accurate because they are a contemporaneous (or near contemporaneous) record of what transpired at the interview and officers are highly trained and have no personal interest in the outcome of an application. As the Court recently pointed out in *Wei* :

> [23] Generally, it is a very rare case where a highly self-interested applicant will be able to convince the Court that a trained visa officer falsified records in his or her contemporaneous notes without very clear evidence to support the allegation. The Court must defer to an employee who has developed an expertise in assessing these types of economic claims in terms of determining that there is insufficient persuasive evidence to conclude that there is a likelihood that the applicant will follow up on his business plans after obtaining permanent residency. To do otherwise would involve the Court reweighing the evidence.

[60] Counsel for the Applicants has made a valiant and able effort to overcome the obvious problems for the Applicants in this case, and I will address the points raised in turn.

B. *Errors in Credibility Findings*

(1) Single Contradiction

[61] The Applicants say that the Officer's entire credibility analysis is based upon a single alleged contradiction: "The Applicant provided contradictory information about having received, and then not received, training on how to fire the gun of a T-55 tank."

[62] The Applicants argue that

> 28. Even if this contradiction occurred, which is disputed, the Officer cannot use it to disbelieve the entire claim. He had to conduct a global credibility assessment that considered the totality of the evidence, rather than focus on one aspect of the case and use this to disbelieve the rest of it.

[63] There is no admissible evidence before me to suggest that an important contradiction in the Applicants' evidence did not occur, or that this contradiction was not central to the issue of the Applicants' admissibility.

[64] As the GCMS notes show, the Officer had "concerns with the credibility of the applicant's statements around his military service" because the Principal Applicant "provided contradictory information about having received, and then not received, training on how to fire the gun of a T-55 tank." The information on his military training was "internally contradictory and PA has no documentation to support either version of contradictory events."

[65] The GCMS notes then record that the Officer explained his concerns about this contradiction to the Principal Applicant and gave him an opportunity to respond.

[66] The GCMS notes also record the Principal Applicant's verbatim response. His first words were "No, no, *what you said was completely true*" (emphasis added). So the Principal Applicant acknowledged that the Officer's account of what he had actually said was "completely true." It is not reassuring in the present application that the Principal Applicant – through Ms. Mallard and counsel's submissions – now takes the position that "he never told the Officer that he had been trained to aim or to fire the gun of the tank," and he "did not change his answer about the tank training during the interview."

[67] The Principal Applicant did not say to the Officer "I never said that" or "You misunderstood me," which would have been the obvious response if there had been a mistake over what he actually said.

[68] This means that the Principal Applicant is asking the Court to believe, without any evidence, that the Officer is lying and that the GCMS notes are concocted in the way that they record a contradiction that never occurred and, even worse, that the words "what you said was completely true" are another lying interpolation by the Officer.

[69] Needless to say, the Court does not accept this kind of groundless and unproven assertion.

[70] In my reading of the GCMS notes, the Principal Applicant accepts the Officer's concerns about what he said, but he then goes on to offer a clarification: "I want to clarify something. I did not change my story."

[71] The Principal Applicant then goes on to provide a "clarification" which, when considered against what he acknowledged he had said earlier, is, in fact, a change in his story and a change to his Details of Military Service that say the Principal Applicant "was given extra military training session [*sic*], and exercises, and extra training in tank shooting" (Certified Tribunal Record, p 103). He changed his story to say that he did basic training for six months but was then transferred to the "registrar's office" so that he did not receive "specialized training." However, this does not clarify or resolve the central contradiction that is the basis for the Officer's credibility concerns. As I read the explanation, the Principal Applicant says that he only did basic training for six months but did not receive any specialized tank training. However, in the narrative to his application for permanent residence, the Principal Applicant had written:

> After the six months of general training, we were assigned to specializations for training. I was assigned to the armoured soldier specialization (tank driver) under Col. Asaad Muhriz of the 98th battalion. In my specialization, I learned first how to drive and then how to drive tanks specifically. In the Syrian army, specializations are assigned to you. I had no say in which specialization I was assigned.

[72] So the problem for the Officer was that the "applicant has provided contradictory information about having received, and then not received, training on how to fire the guns of a T-55 tank."

[73] Clearly then, for the purposes of determining admissibility, the Officer was obliged to ascertain the Principal Applicant's military role. The Principal Applicant had already made it clear that he had received some kind of specialized training in tanks and tank shooting.

[74] The clarification offered by the Principal Applicant to the Officer's concerns over this important issue is to the effect that he only did basic training and was then transferred to the registrar's office. This does not explain why the Principal Applicant had earlier indicated some specialized tank training and "extra training on tank shooting."

[75] So, it was entirely reasonable for the Officer to have concerns about the Principal Applicant's military role and what the record suggests were attempts by the Principal Applicant to minimize that role. As the Officer indicates, after reviewing "the application, the interview, the supporting documentation, and the applicant's responses to my concerns at interview," he was not satisfied, on a balance of probabilities, that

> the information provided is credible, particularly in this high fraud/corruption environment, and that A16 has been complied with. In the absence of credible information I am not able to be satisfied that the applicant is eligible and not inadmissible as required by the Act.

[76] Given the record before the Officer, there is nothing unreasonable about this finding. The Principal Applicant's military role is clearly of the utmost importance for purposes of determining admissibility to Canada and the Principal Applicant clearly attempted to minimize that role in a way that led to contradictions in his evidence that he failed to resolve to the reasonable satisfaction of the Officer.

[77] The Principal Applicant now denies those contradictions and asserts that, even if such contradictions existed, the Officer was obliged "to conduct a global assessment."

[78] The assessment conducted by the Officer was sufficient to address the key "admissibility" issue. Whether or not the Principal Applicant was truthful about other aspects of the claim (e.g. the risks he faced) is not relevant to admissibility. The Principal Applicant may face such risks but this does not mean he is admissible to Canada.

(2) Failure to Keep a Proper Record

[79] The Applicants assert that the Officer failed to keep a proper record of the interview, making it impossible to assess whether the Principal Applicant contradicted himself or not.

[80] The contradiction finding was not just based upon the interview. The Officer makes it clear that he also took into account the application and supporting documentation.

[81] The Applicants also assert that "Neither the Rule 9 response nor the file that the Applicant obtained through the Access to Information Act contains the complete and accurate record of the interview that the Officer should have kept."

[82] There is simply no evidence to support that the information relied upon by the Officer and/or the GCMS notes were inaccurate or deficient in any material way about the Principal Applicant's military training.

[83] The Program Delivery Instructions simply direct officers to ensure that the case notes "are detailed and reflect what transpired at the interview."

[84] There is no evidence before me to support that the Officer did not comply with this direction or that I do not have before me an adequate record to determine whether the Applicants received a full and fair assessment by the Officer in relation to their admissibility.

(3) Speculation

[85] The Applicants assert that the Officer speculated and disregarded the country evidence in order to find it not plausible that the Principal Applicant would have been sent into combat without enough training.

[86] It is true that the Officer expresses incredulity that the Syrian military "would put untrained personnel into combat operation of a significant piece of equipment," but the country evidence cited by the Applicants to undermine the Officer's credibility findings does not support that the Syrian military put untrained conscripts or others into tanks. The basis for the Officer's incredulity is the obvious one that operating a tank and directing tank fire cannot be done by someone who has had no training with the equipment. An untrained soldier might be able to fight on foot, but it is difficult to see (without some explanation from the Principal Applicant) how they can operate a tank in the context of a battle.

C. *Failure to Consider Risk*

[87] The Applicants assert that, even if there was some reasonable basis for the Officer's disbelief that the Principal Applicant defied orders, this should not have ended his assessment. He still had to address all grounds of possible risk of persecution.

[88] This assertion is inaccurate in two ways. The Decision is not based upon the Officer's disbelief that the Principal Applicant defied orders. The Decision is principally based upon inconsistent evidence provided by the Principal Applicant regarding his military training.

[89] Secondly, the Officer was not obliged to address all grounds of possible risk of persecution. This is because the Officer's findings in relation to s 11(1) of the *IRPA* were determinative of the application (see *Kabran)*, at paras 36, 38; *Samandar*, at paras 21-24).

[90] The Principal Applicant failed to satisfy the Officer that he was "not inadmissible." Under s 139(1) of the *IRPR*, applicants under both the Convention refugee abroad class and the humanitarian-protected persons abroad class must, *inter alia*, establish that they are not inadmissible. As the Decision makes clear, the Applicants in this case did not meet the requirements of s 139(1)(i). So even if the Principal Applicant faces a future risk in Syria, this does not mean that the Applicants were "not inadmissible" and there is no obligation on the Officer to cite a particular ground of inadmissibility. Without reliable information as to the Principal Applicant's role in the Syrian army, it was not possible for the Officer to determine

whether the Principal Applicant was not inadmissible under any of the grounds of inadmissibility.

[91] The Applicants have made numerous assertions to the effect that the Officer was obliged to identify the specific basis of their inadmissibility concerns, but have cited no relevant authority for this assertion that, in my view, does not accord with the case law of the this Court (see *Zeweldi v Canada (Citizenship and Immigration)*, 2020 FC 114 at para 81; *Samandar* at paras 21-24).

D. *Costs*

[92] The Applicants have requested costs in this case but have not established any special factors that would justify such an award.

E. *Certification*

[93] Counsel agree there is no question for certification and I concur.

JUDGMENT IN IMM-2810-19

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

3. No costs are awarded.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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