

Federal Court



Cour fédérale

**Date: 20121213**

**Docket: IMM-7340-11**

**Citation: 2012 FC 1472**

**Ottawa, Ontario, December 13, 2012**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**MOHAMMED HANIF SHOEB CHOWDHURY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Chowdhury seeks to set aside a decision of a visa officer of the High Commission of Canada in Singapore dated September 14, 2011, refusing his application for permanent residence in Canada. In the officer's opinion, Mr. Chowdhury's daughter Suraiya, who has a severe visual impairment, was inadmissible because she "might reasonably be expected to cause excessive demand on health or social services." *Immigration and Refugee Protection Act*, SC 2001, c 27, paragraph 38(1)(c).

[2] In October 2008, Mr. Chowdhury applied for permanent residence in Canada in the Investor class. On July 23, 2009, the Officer sent Mr. Chowdhury a fairness letter outlining the following:

- his understanding of Suraiya’s medical condition and that it was expected to exist throughout her life;
- that Suraiya would need special education and would benefit from an integrated program under the supervision of a team of specialists to optimize her development and potential;
- that he and his wife would be eligible for respite services, which are in high demand;
- that, based on information from the Quebec Ministry of Education, the costs of the above-mentioned services would total at least \$126,139 over the next ten years;
- that these costs might reasonably be expected to exceed the average Canadian per capita costs over five to ten years; and
- that, as a result, Suraiya “might reasonably be expected to cause excessive demand on social services in Canada.”

[3] The fairness letter also invited Mr. Chowdhury to:

“[S]ubmit additional information that addresses any or all of the following:

- The medical condition identified;
- Social services required in Canada for the period indicated above; and
- [The] individualized plan to ensure that no excessive demand will be imposed on Canadian social services for the entire period indicated above and your signed Declaration of Ability and Intent.”

[4] The fairness letter finally noted that “in order to demonstrate that your family member will not place an excessive demand on social services [...] you must establish to the satisfaction

of the assessing officer that you have a reasonable and workable plan, along with the financial means and intent to implement this plan, in order to offset the excessive demand [...].”

[5] By letter dated October 8, 2009, Mr. Chowdhury responded to the fairness letter, saying:

- that Suraiya has been and will continue to be cared for, as long as is required, by Dr. Trese in Michigan, USA, at his sole expense;
- regarding “Early Intervention/Occupational Therapy,” that he had found “several options” for private health care providers to supplement his wife’s full-time care costing around \$5,000 to \$10,000 per year, and would seek a reference from a medical specialist upon arrival to Canada;
- because Suraiya’s education was his highest priority, she would be placed in a low teacher-student classroom at a private school, and that he had “looked at several schools in the Montreal area and St. George’s School of Montreal seems to be the best choice.”
- that St. George’s offers individual learning plans and special needs services like those that will be required for Suraiya, will cost \$13,500 - \$15,000 per year in tuition, and that educational assistance, respite care, and psychological assessment (for which he would use a private health care provider) would cost an additional \$40,000 - \$60,000 “during this time period;”
- that he was “fully able and willing to pay all costs and fees associated with any service that is provided to [his] daughter (please see signed Declaration of Ability and Intent),” understanding that as per the Officer’s letter, that amount may exceed \$127,000;
- that his net worth was in excess of \$1,170,000 CAD, the majority of which was in the form of property and stock that he planned to liquidate in order to settle his family in Canada; and
- that all of his family’s living expenses, including those relating to Suraiya, will continue to be paid for by his successful trading company.

[6] In a June 7, 2011, CAIPS entry the Officer briefly outlined the history of Mr. Chowdhury's application, including the fairness letter and the response thereto, and outlined several outstanding concerns as to the application.

[7] First, in his response to the fairness letter, Mr. Chowdhury said that Suraiya was, and would thereafter be in the care of Dr. Trese in Michigan. The information received by the officer indicated that Suraiya's next appointment was in November 2009, but Mr. Chowdhury had not provided additional information to show that she was returned to the doctor at this time or thereafter.

[8] Second, while Mr. Chowdhury said his wife had been caring, and would care for Suraiya on a full-time basis, he also previously said she was a director in his company since 2003. From this, it was unclear to the Officer whether his wife could or would provide full time support to the child in Canada.

[9] Third, although Mr. Chowdhury stated he would use the services of private health care providers, it was "not clear how and where he would source for such services," and it he had "not demonstrated [...] that such private services are available in Quebec and such services are not subsidized and funded by the government."

[10] Fourth, although Mr. Chowdhury stated he had looked at several schools in Montreal and found St. George's to be best, he did not provide any evidence that he contacted St. George's to

enquire if they would accept his daughter and on what conditions. The Officer also noted that St. George's was also "NOT equipped to receive students with a handicap (there are stairs and no elevator, no special equipment)," and could not confirm having spoken with Mr. Chowdhury concerning his child.

[11] On the basis of these concerns, the Officer found that Mr. Chowdhury's plan was "speculative at best and [...] entirely insufficient:" it was not detailed or individualized, and there is no evidence that Mr. Chowdhury has done proper research on what social services Suraiya would be entitled to and if those could be repaid by him. However, the Officer also said in these notes that "an interview is required to give [Mr. Chowdhury] another opportunity to address these concerns in person."

[12] A June 26, 2011, CAIPS' entry shows that Mr. Chowdhury was phoned and asked to come for an interview on July 11, 2011. There is no evidence that the caller relayed the above concerns to Mr. Chowdhury prior to the interview.

[13] On July 11, 2011, the interview was held and on September 14, 2011, the officer sent Mr. Chowdhury a letter refusing his application for permanent residence on the basis of his daughter's inadmissibility.

[14] Mr. Chowdhury raises three issues: Whether the decision is reasonable; whether the officer breached the duty of procedural fairness by not informing Mr. Chowdhury of his

concerns prior to, or during the interview; and whether the officer was biased, having concluded that Mr. Chowdhury was inadmissible before the interview.

[15] In my view, the only issue with merit is the procedural fairness issue. Based on the information provided by Mr. Chowdhury in his response to the fairness letter and in the interview, the officer's decision was reasonable and there is no evidence of bias.

[16] However, the officer decided that Mr. Chowdhury was to be given "another opportunity to address [the concerns of excessive demand] in person" and decided to hold an interview. The respondent submits that the interview was merely a continuation of the first fairness letter and therefore the applicant had been alerted to the issues to be addressed at the interview. It is only with the advantage of hindsight that we can see that the interview arose from the same issues as the first fairness letter. Would the applicant, not having been informed of the purpose of the interview, have reasonably known that? I find, on the balance of probabilities, that the applicant would not have known that. There was no reason for him to assume that the interview arose from the previous letter or his response to it. He does say that his counsel tried to find out what the interview would be about in advance, and I take it that he was unable to do so. This supports a finding that the applicant was not aware of the purpose of the interview. Accordingly, I find that he was denied procedural fairness and the officer's decision must be set aside.

[17] Neither party proposed a question for certification.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application is allowed, the officer's decision is set aside, and the applicant's application for permanent residence in Canada is to be re-determined by a different officer.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-7340-11

**STYLE OF CAUSE:** MOHAMMED HANIF SHOEB CHOWDHURY v. THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** October 29, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** ZINN J.

**DATED:** December 13, 2012

**APPEARANCES:**

Cecil L. Rotenberg Q.C. FOR THE APPLICANT

Michael Butterfield FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

CECIL L. ROTENBERG Q.C. FOR THE APPLICANT  
Barrister & Solicitor  
Toronto, Ontario

WILLIAM F. PENTNEY FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Toronto, Ontario