Immigration and
Refugee Board of Canada

Immigration Appeal Division

Commission de l'immigration
et du statut de réfugié du Canada

Section d'appel de l'immigration

IAD File No. / N° de dossier de la SAI : VB5-01236

Client ID no. / N° ID client : 5528-2282

Reasons and Decision – Motifs et décision

MINISTER'S APPEAL

Appellant(s)	The Minister of Public Safety and Emergency Preparedness	**Appelant(e)(s)**
and		
Respondent(s)	Farhan MAHMOOD (Also Known As Muhammad IRFAN)	**Intimé(e)(s)**
Date(s) of Hearing	January 12, 2016	**Date(s) de l'audience**
Place of Hearing	**Vancouver, BC**	**Lieu de l'audience**
Date of Decision	February 2, 2016	**Date de la décision**
Panel	**George Pemberton**	**Tribunal**
Counsel for the Respondent(s)	Martin Stoyanov **Barrister and Solicitor**	**Conseil(s) de l'intimé(e)/ des intimé(e)(s)**
Designated Representative(s)	N/A	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	Zonia Tock	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] These are the reasons and decision of the Immigration Appeal Division (the "IAD") in the appeal of the Minister of Public Safety and Emergency Preparedness (the "appellant"), against the March 27, 2015, decision of the Immigration Division (the "ID") finding Farhan MAHMOOD, also known as Muhammad IRFAN (the "respondent") not inadmissible for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* (the "*Act*").[1]

BACKGROUND

[2] The appellant submits that the respondent previously used the name Muhammad IRFAN ("IRFAN"). Under that name he entered Canada on a temporary resident permit in 2003. He was refused work permits in 2003 and again in 2004. The respondent then applied for a work permit under the name Farhan Mahmood. He failed to disclose that he had been previously refused entry to Canada under the name Irfan.

[3] The Respondent submits that he first entered Canada on November 13, 2005. He denies that he previously entered Canada using the name Irfan, and denies that he and Irfan are the same person.

[4] A hearing was held before the ID on March 20, 2015. The respondent and the Canada Border Services Agency ("CBSA") tipster, Tariq CHAUDHRY ("Mr. Chaudhry") testified. The appellant provided documentary evidence including statutory declarations from witnesses and a Facial Recognition Image Comparison Report (the "Comparison Report"). The appellant provided additional documentary evidence for this hearing.[2] The respondent testified at this hearing. I have taken into consideration the witness testimony, the documents provided by the appellant and the contents of the Record.

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[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
[2] Exhibits A-1 and A-2.

ISSUE

[5] The issue is whether the ID erred in law or in mixed fact and law by finding the respondent not inadmissible.

[6] The respondent acknowledged that he is not a permanent resident or protected person. That is confirmed by the documents. If the appellant's appeal is allowed, the IAD does not have jurisdiction to grant special relief. Therefore the only issue before me is the legal validity of the ID decision.

DECISION

[7] The appeal is allowed. The respondent is a person described in subsection 40(1)(a) of the *Immigration and Refugee Protection Act* (the "*Act*"). Pursuant to subsection 67(2) of the *Act* and subsection 229(1)(h) of the *Immigration and Refugee Protection Regulations*, the IAD makes an exclusion order against him.

ANALYSIS

[8] It is not in dispute that the respondent was granted admission to Canada in 2005 under a work authorization in the name Mahmood. That authorization was renewed several times between then and 2013. The respondent was employed for at least some of the time by Mr. Chaudhry. In 2014 the respondent filed a civil suit against Mr. Chaudhry and his companies for abusive labour practices. Shortly after the suit was filed, Mr. Chaudhry reported to CBSA that the respondent's real name was Muhammad Irfan. CBSA conducted a follow-up investigation. The investigation included a comparison of driver's license photos of Irfan (the "Irfan image") and Mahmood (the "Mahmood images") by an examiner assigned to the Government of Alberta Facial Recognition and Document Examination Team. The examiner, Gord Bryant ("Mr. Bryant") concluded that the photos are "the strongest possible match."

[9] The ID made a finding of fact that Irfan and Mahmood are one and the same person. However, the ID found that there was not reliable evidence on a balance of probabilities that the respondent had ever been asked if he had previously been refused a visa, or that he had given a false answer. The appellant submits that the evidence establishes that the question was put to the respondent and that he answered falsely. The respondent submits that he and Irfan are not the same person and therefore there has been no misrepresentation. Respondent's counsel submits that the Comparison Report should not be relied on.

Identity

[10] The respondent has steadfastly denied that he is Irfan. The evidence that he and Irfan are the same person comes from two sources: Mr. Chaudhry and the Comparison Report.

[11] Respondent's counsel submitted that I should give Mr. Chaudhry's testimony no weight. Mr. Chaudhry's testimony to the ID was, at times, combative and self-serving and lacking credibility in many areas. On the whole I give little weight to Mr. Chaudhry's testimony. However it was Mr. Chaudhry's tip to CBSA that the respondent had previously been in Canada under the name Irfan. The results of CBSA's subsequent investigation must be assessed in view of the fact that it was not just random chance that Irfan's name and photo surfaced.

[12] The crux of the appellant's case is the Comparison Report. Without it there is little evidence. Even to an untrained eye the Irfan image and Mahmood images have striking similarities. However, that could apply to many photos. An expert comparison is necessary to the appellant's case. Respondent's counsel submitted that due to deficiencies in the Comparison Report it should not be considered reliable. Considering the gaps and deficiencies in the Comparison Report, he submitted that it could be found that Mr. Bryant simply gave CBSA the answer they wanted.

[13] Mr. Bryant is a peace officer and the supervisor of the Province of Alberta's Facial Recognition and Document Examination Team. He is independent from CBSA and has no vested

interest in the respondent being removed from Canada. He set out his training and experience in the field of facial recognition. I find that Mr. Bryant has expertise in the area of facial recognition and comparison, expertise otherwise unavailable to the tribunal. He explained, in terms and to the degree to which a relatively informed layperson could understand, the process by which he reached his conclusions. A more detailed explanation of the algorithms or statistical models underlying the analysis would, I find, be incomprehensible to any but the most knowledgeable reader. Mr. Bryant was forthright in identifying shortcomings and inconsistencies in the analysis. He provided reasonable explanations.

[14] Respondent's counsel submitted that Mr. Bryant may have been influenced by CBSA's wishes. First, that does not explain step one in the comparison. Mr. Bryant explained that the Irfan image was input into the system as a "probe photo". The system returned two images of Mr. Mahmood, one photo taken in 2007 and another in 2012, as the two closest matches. There is no basis to believe that the computer was manipulated or influenced to select the Mahmood images as the closest matches. Second, Mr. Bryant has explained the empirical basis for his conclusions. Third, another analyst at Mr. Bryant's unit conducted an independent peer review and came to the same conclusions. On the basis of the evidence before me, I find no grounds to believe that Mr. Bryant's conclusions were based on anything but an objective analysis.

[15] The respondent testified that he was in Pakistan, not Canada, in 2003. He testified that he was married on February 14, 2003, and that his daughter was born later that year. Respondent's counsel submits that this is evidence that the respondent could not be Irfan, because Irfan was in Canada in 2003. I give little weight to this argument. It was open to the respondent to provide a marriage certificate or birth certificate evidencing these facts. He did not. Such documents would have confirmed the relevant dates and would have provided evidence of what name the respondent used at the time of his marriage and for the registration of his daughter's birth – Irfan or Mahmood. The respondent chose not to provide these documents. I therefore give little weight to his testimony surrounding those events. Citizenship and Immigration Canada's ("CIC") records, known by its acronym "GCMS,"[3] indicate that Irfan reported having been in Canada

[3] Record, pp. 87 – 89.

from February until September 2003. GCMS shows that he left Canada on September 23, 2003. Even if he was married on February 14, 2003, as he testified, that does not preclude him from having entered Canada later in February.

[16] I find that the Comparison Report is credible evidence. I find that it establishes, on a balance of probabilities, that the Irfan image and the Mahmood images are photos of the same person. There is little credible evidence to the contrary. I find, on a balance of probabilities, that the respondent and Irfan are the same person.

Misrepresentation

[17] GCMS records establish that the respondent, using the name Irfan, was refused a work permit on May 3, 2004.[4] The appellant alleges that the respondent, using the name Mahmood, applied for a work permit or extensions of a work permit on April 25, 2005; November 30, 2007; September 28, 2009; October 14, 2010; January 12, 2012; and, October 18, 2013.

[18] In the Record, the respondent provided GCMS documents respecting the respondent's October 18, 2013 and April 25, 2005, applications.[5] The respondent provided a statutory declaration from an officer explaining why CIC no longer had the original applications, and stating that GCMS records showed that the respondent had answered "No" when asked whether he had ever been refused a visa. The ID Member found that was not sufficient evidence to establish that the question had been asked and answered as alleged.

[19] At this hearing the appellant provided further documentary evidence from GCMS along with a statutory declaration explaining the information contained in the GCMS notes.[6] I find that the documentary evidence establishes, on a balance of probabilities, that the respondent was asked in his applications whether he had "ever been refused any kind of visa, admission, or been ordered to leave Canada or any other country", and that he answered that he had not. His answers were not true.

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[4] Record, p. 89.
[5] Record, pp. 127 – 129, 137 – 138.
[6] Exhibit A-1, pp. 2 – 6.

[20] In any case, whether the respondent was asked or not is immaterial. Applicants have a duty of candour. That duty goes beyond simply asking questions put to them. The respondent knew, or ought to have known, that having previously been refused entry to Canada was a fact that would be material to his applications. He had a duty to disclose that fact.

[21] The appellant provided a declaration from the CIC employee who processed the respondent's October 18, 2013, extension application. She stated that had she known that the respondent had previously been refused admission she would have conducted further enquiries and the respondent may not have been issued an extension to his work permit. While this declaration adds greater certainty to the situation, it is unnecessary. Even without this declaration, I would find that by failing to disclose a previous refusal the respondent foreclosed or averted further enquiries by a visa officer. He withheld a material fact relating to a relevant matter that induced or could have induced an error in the administration of the *Act*.

CONCLUSION

[22] I find that the appellant has established, on a balance of probabilities, that the respondent was refused a visa to enter Canada in 2004. He failed to disclose that refusal on the work permit applications he made between 2005 and 2013. I find that the respondent withheld material facts relating to a relevant matter that induced or could have induced an error in the administration of the *Act*.

[23] The appeal is allowed. The decision of the ID is set aside. I find that the respondent is a person described in subsection 40(1)(a) of the *Act*. Subsection 67(2) of the *Act* requires that the IAD make a removal order against the respondent. I therefore make an exclusion order against him.

NOTICE OF DECISION

The appeal is allowed. The respondent is a person described in paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* (the "*Act*"). Pursuant to subsection 67(2) of the *Act* and paragraph 229(1)(h) of the *Immigration and Refugee Protection Regulations*,[7] the Immigration Appeal Division makes an exclusion order against him.

The following person is included in this order: Farhan MAHMOOD, born January 10, 1978, also known as Muhammad IRFAN, born February 12, 1977.

(signed) **"George Pemberton"**

George Pemberton

February 2, 2016

Date

Judicial Review – Under section 72 of the *Immigration and Refugee Protection Act*, you may make an application to the Federal Court for judicial review of this decision, with leave of that Court. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.

[7] *Immigration and Refugee Protection Regulations*, SOR/2002–227.