

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Permanent Residents

Judicial review of decision by visa officer denying application for permanent residence on basis that applicant had been senior official in Iraqi government, pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 35(1)(b) — Applicant, engineer, employed by, *inter alia*, Iraqi Atomic Energy Commission, Iraqi Ministry of Industry and Minerals between 1998-2000 — Experiencing instances of religious persecution in Iraq — Moving to Jordan with family after death threats — Applicant, wife applying for permanent residence as sponsored refugees under Convention Refugees Abroad Class — Visa officer concluding applicant, wife meeting definition of Convention refugees, but reserving decision with respect to applicant pending results of further investigation into nature of applicant's employment — Iraqi government engaged in serious human rights abuses between 1969-2003 — Visa officer concluding reasonable grounds to believe that applicant had been senior official in designated regime — Visa officer appearing to rely in part on National Security Screening Division Inadmissibility Assessment — Issue whether visa officer unreasonable in holding that applicant senior official within Iraqi government — Visa officer's conclusion that applicant senior official in designated regime unreasonable — Visa officer having to undertake two-stage analysis when determining if individual prescribed senior official within meaning of Act, s. 35(1)(b) — Visa officer first having to look to see whether individual held one of the positions enumerated in *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 16 — If yes, visa officer then having to proceed to application of s. 35(1)(b) — First stage not necessarily straightforward — Several positions enumerated in Regulations, s. 16 not clearly defined, including s. 16(d), "senior members of the public service" — For such subsections, may not be clear from individual's job title alone whether they hold or held enumerated position — Past Federal Court decisions establishing proper approach for this further examination with respect to s. 16(e) relating to senior members of military — However, that approach not appearing to have been adopted in respect of s. 16(d) — Given that civil hierarchy may be less structured than military hierarchy, when considering whether a civil appointment constitutes senior member of public service, more fulsome examination should be done both from purposive viewpoint, contextually — Visa officer should examine evidence of individual's responsibilities, duties, as well as nature of position held — Citizenship and Immigration Canada's *Enforcement Manual (ENF)*, Chapter ENF 18: War crimes and crimes against humanity, stating that position considered senior if demonstrated that position in top half of organization — Where evidence suggesting that individual unable to yield meaningful influence or benefit from position, relying on Top Half Test alone unreasonable — Visa officer finding irrelevant evidence put forward by applicant that he was unable to exert significant influence due to religious beliefs, lack of membership in Ba'ath party — Relying solely on Top Half Test — Applying inappropriately technical approach to analysis that should have been purposive, contextual — Question certified — Application allowed.

KASSAB V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-1975-18, 2018 FC 1215, Manson J., judgment dated December 4, 2018, 14 pp.)