

CANADA / JUDGMENT

Thon v. Canada (Citizenship and Immigration)

2026 FC 558

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Ottawa, Ottawa, April 28, 2026

PRESENT: The Honourable Mr. Justice Roy

Docket: IMM-23802-24

BETWEEN:

NYANTED MADIT THON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-23806-24

AND BETWEEN:

ADENG DUOT DENG MALUAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

- [1] In this motion in writing, made pursuant to rule 369 of the Federal Courts Rules, SOR/98-106, the two Applicants seek to have supplemented the Certified Tribunal Record [CTR] assembled for the purpose of their judicial review applications.
- [2] They are both related to Dr. Daniel Madit Thon Duop, a naturalized Canadian. Mrs. Malual is married to Dr. Thon Duop while he is the father of Ms. Thon. Mrs. Malual is Ms. Thon's stepmother. Both Applicants reside in Nairobi, Kenya. Neither of them is a Canadian citizen nor a permanent resident of Canada. They were both refused temporary resident visas. They challenge the decisions. They also challenge the finding in each case that they are now inadmissible to Canada for a period of five years by reason of misrepresentation having to do with the use of an undisclosed representative in seeking to obtain their respective temporary resident visas [TRVs]. The inadmissibility for misrepresentation is made pursuant to paragraph 40(1)(a) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA].
- [3] As is appropriate, each Applicant challenged the refusal in separate files (rule 302). However, the two cases are identical, and the two motions were drafted together. One set of reasons for judgement is accordingly provided. A copy of this judgment and reasons is to be filed in each Court record.

I. The Facts [4] The facts that have led to what is now somewhat protracted litigation are simple. It should be stressed at the outset that this motion does not in any way reflect on the merits of the judicial review. That is for another day. The only issue before the Court is the motion the purpose of which is to ascertain whether the certified tribunal record is complete, or whether it should somehow be supplemented. The brief outline of the facts of the case is to supply the background that might be necessary to situate the actual matter before the Court.

- [5] The two Applicants sought to obtain temporary resident visas in order to visit Canada. Neither one of the Applicants is a Canadian citizen nor a permanent resident of Canada. One of the Applicants, Nyanted Madit Thon, was born in Cuba. Her father, Dr. Daniel Madit Thon Duop, is a naturalized Canadian citizen who, at the time he was assisting in obtaining visas for his spouse and his daughter, was working in South Sudan. He is married to the other Applicant, Adeng Duot Deng Malual. Together, they have five children; they all are Canadian citizens.
- [6] In September 2023, Dr. Thon Duop was trying to organize a family visit to Canada. He was therefore in the process of obtaining travel documents for his wife and children. As for the five Canadian children, he was seeking proof of citizenship for some and Canadian passports. As for Mrs. Deng Malual and her stepdaughter, at the time residents of Nairobi, in Kenya, they needed a TRV since they were neither citizens nor permanent residents. The record shows that the Direction of Program and Projects for Samaritan's Purse Canada (a registered charity) wrote to the High Commission in Nairobi on September 16, 2023, to confirm having invited the two Applicants for a visit to Canada. Accommodation and expenses while in Canada were provided for.
- [7] The expenses incurred to obtain travel documents for the five children depleted the financial resources available in the bank account held by the parents. Because payments had to be made online in order for proof of payment to be included in applications, the debit card connected to a bank account held in Nairobi was used. Dr. Thon Duop also holds a bank account in South Sudan; however, it could not be used to complete the electronic transfer necessary to pay for the visas sought for his daughter and spouse.
- [8] Thus, on September 27, 2023, Dr. Thon Duop travelled by taxi to a neighbourhood in Nairobi to meet with his daughter to collect her passport, with a view to scan and upload the documentation needed to complete the TRV applications.
- [9] Not having a printer or scanner in Nairobi, he planned to find an internet café or business centre nearby once he was in possession of his daughter's passport. He found such a business centre across the street, the Pacific Blue Travel & Tours. For a fee, he was allowed to use their equipment. As for the payment of the amounts due to obtain the TRVs, he used the Pacific Blue Travel & Tours credit card and facilities.
- [10] Dr. Thon Duop compensated Pacific Blue Travel & Tours in cash for the use of its equipment. He used its credit card because he could not use to make online payments his Nairobi debit card, nor the bank account in South Sudan. He reimbursed Pacific Blue, also in cash, for the amount put on its credit card. It is said by him that proceeding in this manner is customary in Africa. Dr. Thon Duop claims that he did not receive any assistance from Pacific Blue Travel & Tours, other than access to their equipment for a fee in order to upload the documentation needed to obtain the TRVs and use the credit card.

II. The Decision [11] After the TRVs were issued by the Canadian authorities in Nairobi, they were cancelled because the Respondent was of the view that the Applicants may have been assisted by a representative in their effort to obtain the travel visas. That would have constituted not having truthfully answered all the questions put to them. That failure might result in an inadmissibility to Canada for five years on the basis of misrepresentation for withholding material facts (s. 40 of the IRPA). An investigation was conducted. The decision came in a letter dated October 31, 2024. As is now well known, the reasons for the decision are supplemented in the Global Case Management System [GCMS], in which notations are made that provide details of the investigation and the reasons for the decision (see *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para. 44 [Baker]).

[12] The GCMS notes reveal that after the visas had been approved, information came to light that the services of a representative, also known as a “ghost agent or ghost consultant”, had been used in order to facilitate the application and to pay the requested fees. That prompted a reassessment of the applications for possible misrepresentation.

[13] The said reassessment included a procedural fairness letter [PFL] according to which the Applicants were advised that they had not truthfully answered all questions put to them. The initial PFL was dated January 26, 2024. A new letter, bearing the date of February 13, was issued to give the Applicants more time to address the concerns. The response came on March 13, 2024, and it ran for 47 pages. Specifically the PFL referred to paragraph 10(2) (c.1) of the Immigration and Refugee Protection Regulations, SOR/2002-227 which requires that representation in connection with an application be disclosed. The PFL stated the concern:

Based on your submissions, I have concerns that you have omitted to declare that you used a compensated representative to facilitate the submission of your application. Your application contains evidence that it was facilitated by the same person or entity as many other applications received by this office. Based on our research, this is a compensated representative. I therefore have concerns that you misrepresented this information either through omission or through failing to indicate that the representative was compensated.

[14] In essence, the response to the PFL contended that the Applicants had completed their applications themselves, using a third party solely for the use of their scanner and internet services, and their credit card for online payment. There was no intent to misrepresent as their actions were innocent.

[15] That was not enough to disabuse the decision maker. The notes state in part:

There is no explanation to address why their application contains evidence of facilitation by a third party found on several other applications in this office; I note that the use of the same credit card across multiple self-completed, unrelated applications in this office is a key indicator of an undeclared representative. I have considered the innocent exception rule and find that it does not apply to the circumstances outlined by the Applicant in response to the procedural fairness letter.

[16] As can be seen, the fact that Pacific Blue Travel & Tours were used in the past appears to have played a role in the conclusion reached. We read the following note in the GCMS:

I note, that this Office, has received over 200 applications from an entity which our investigation and research overwhelmingly indicate is an undeclared compensated representative operating in Nairobi. Similarities exist between these applications which have not been addressed by the PFL response.

Clearly, the encounter of September 27, 2023, also had the effect of arising suspicions:

Dr. Duop states that he met his daughter at a gym located near the Pacific Blue Travel & Tour business to get her passport; hence why he took a taxi from his residence to the area where the Tour business was located which is approx. 6 km away (20 mins). No proof substantiating why he travelled such a long way only to scan and upload documents at an internet café; knowing that these businesses are prevalent in most areas and neighbourhoods in Nairobi. No evidence the daughter has in questions has membership at a gym located near this business.

[Transcribed as in Original.]

[17] It is the basis on which the decision letter of October 31, 2024 concludes that the TRVs are denied and inadmissibility to Canada for five years was imposed. This decision was challenged. A notice of application was filed on December 17, 2024. On August 21, 2025, the Court ordered that a certified copy of the decision maker's record be provided to the parties for the proper disposition of the leave application, and on September 8, 2025, the application for leave was granted.

III. The Notice of Motion [18] In spite of what appears to be a rather straightforward set of facts, these Applicants seek to mount a broad-based attack on judicial review. They claim that the Respondent conducts "mass capture of IP addresses, geolocation metadata, and credit card information of immigration Applicants and their representatives through a program known as the Immigration Consultants' IT Enhancement Project" (Application for Leave and Judicial Review [ALJR], para 12). They also assert that the Respondent uses something called the "Integrity Trends Analysis Tool" which should be prohibited from utilization by the Court in the redetermination of the case if the judicial review application is successful.

[19] The Notice of Motion before the Court seeks for the tribunal to comply with rules 14(2) and 17(b) of the Federal Courts Citizenship, Immigration and Refugee Protection Rules, SOR/2002-232. Rule 17(b) requires the tribunal to prepare a record which contains "all relevant documents that are in the possession or control of the tribunal." Rule 14(2) is relevant only "for the proper disposition of the application for leave." As already seen, our Court issued an order on August 21, 2025; that order was made pursuant to rule 14(2), before leave was granted on September 8, 2025. Accordingly, rule 14(2) is not relevant to the motion which comes almost two months after leave had been granted.

[20] On the basis of rule 17, the Applicants search for a variety of documents:

- a true copy of the affidavit of Dr. Thon Duop submitted on March 13, 2024;
- the notes about the Applicant's temporary resident visa application contained within the GCMS;
- all documents and information received on or around January 25, 2024, which prompted the cancellation of the approved TRVs. "This includes all records resulting from research unrelated to the Integrated Payment Revenue Management System (IPRMS) that was conducted by the Respondent and which led to the cancellation of the Applicant's approved temporary resident visa, as described by Officer Tabitha Wilford in paragraph three of her affidavit of February 27, 2025" (Notice of Motion, para 1(c)). Ms. Wilford is the decision maker as she has the ministerial delegated authority. She was cross-examined on her affidavit on October 16, 2025, two weeks before the date of the said Notice of Motion;
- all records produced by the Integrity Trends Analysis Tool relating to the Applicants' TRV applications;
- all reports using IPRMS utilized in the Applicants' investigation;
- the screenshots of the information about these applications and their TRVs as displayed in GCMS;
- all documentation and research by all immigration officers who "handled this temporary resident visa application... that indicated Pacific Blue Travel & Tours is an undeclared compensated representative operating in Nairobi" (Notice of Motion, para 1(g));
- all IP address information collected about the Applicants;
- the visa counterfoil issued to the Applicants around October 30, 2023.

IV. Arguments and Analysis The scope of rule 17 [21] Right at the outset, it is useful to recall that rule 17 requires that the documents sought be relevant to the judicial review and that they be in the possession of the tribunal. The "tribunal" is defined at rule 2 of the Federal Courts Citizenship, Immigration and Refugee Protection Rules, as "a person or body who has disposed of a matter, referred to... in subsection 72(1) of the Immigration and Refugee and Protection Act, that is the subject of an application for leave or an application for judicial review". As a result, it will be the documents relevant to the judicial review of the decision of Ms. Wilford, the decision maker, which are in their possession or control that ought to be constituting the tribunal record. As is well known, a judicial review, as a general rule, must be decided on the basis of the information in possession at the time the decision was made (Canada (Public Sector Integrity Commissioner) v Canada (Attorney General), 2014 FCA 270).

[22] That general rule applies with respect to rule 17, which "imposes a mandatory obligation on visa officers to produce a record containing all documents relevant to the matter that are in the possession or control of the tribunal" (Toor v Canada (Minister of Citizenship and Immigration), 2019 FC 1143 at para 11 [Toor]). It is presumed that the record is complete, and "the onus is on the Applicant to prove that a document that is not in the CTR was in fact before the decision maker" (Toor at para 12, citing Ogbuchi v Canada (Citizenship and

Immigration), 2016 FC 764). Our Court insists that bare assertions will not do (*El Dor v Canada (Citizenship and Immigration)*, 2015 FC 1406). As Diner J. stated at paragraph 12 in *Toor*, “evidence must support the proposition that documents were placed before the visa officer (*Ajeigbe v Canada (Citizenship and Immigration)*, 2015 FC 534, at para 16)”. The lack of evidence in support of a bald assertion was fatal. In fact, fishing expeditions are not allowed.

[23] The Federal Court of Appeal, in *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250, [2014] 2 FCR 557 [JP Morgan Asset Management], noted that grounds are to be concise, but they should not be bald, and that “Applicants who have some evidence to support a ground can state the ground with some particularity. Applicants without any evidence, who are just fishing for something, cannot.” (at para 42). The Court of Appeal added:

[44] The statement of grounds in a notice of application for judicial review is not a list of categories of evidence the applicant hopes to find during the evidentiary stages of the application. Before a party can state a ground, the party must have some evidence to support it.

[45] It is an abuse of process to start proceedings and make entirely unsupported allegations in the hope that something will later turn up. See generally *Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184, 321 D.L.R. (4th) 301, at paragraph 34; *AstraZeneca Canada Inc. v. Novopharm Limited*, 2010 FCA 112, 83 C.P.R. (4th) 241, at paragraph 5. Abuses of process can be redressed in many ways, such as adverse cost awards against parties, their counsel or both: rules 401 and 404.

The Decision Maker’s Affidavits [24] Two affidavits affirmed by Tabitha Wilford and her cross-examination on the first affidavit are referred to in the Notice of Motion before the Court.

[25] One affidavit is dated February 27, 2025. In it we learn that Ms. Wilford was the decision maker in this case. The affidavit does not seek to justify her decision on the merits. It is factual. She states that the visa applications were received on September 27, 2023, and approved on October 30, 2023.

[26] Around January 25, 2024, information was received by the High Commission in Nairobi, according to which the applications failed to disclose the use of a compensated representative. There was research carried out using the Integrated Payment and Revenue Management System, the IPRMS.

[27] The affiant explained that the IPRMS is a web-based interface, which is a fee management system which interfaces with the GCMS (it is accredited for use by all federal departments and agencies). It is operated manually by a user to generate reports based on payment information from various applications. The witness specified that the IPRMS does not use artificial intelligence and “any search in this case did not involve captured internal protocol addresses” (IP addresses) (affidavit of February 27, 2025, para. 3).

- [28] That may be because this investigative tool is used by referring to the visa application number (in this case there were two application numbers). The system generates the credit card number used, the cardholder's name and the type of credit card used to pay. In the case at hand, the credit card used was that of Pacific Blue Travel & Tours. Once the credit card number is identified, the IPRMS can be used again to ascertain what other unrelated applications utilized the same card number and cardholder. In this case, the affiant states that at the time the affidavit was affirmed, the second IPRMS report identified 221 other applications associated with the card number and cardholder used by the Applicants.
- [29] The affiant affirms that no other tool was used in the investigation of this matter. The Applicants' IP addresses were not reviewed, nor were they the basis for refusing the visa applications. Rather, the affiant declares that the "High Commission was already aware of regional cyber cafés and travel agents, including Pacific Blue, offering fee-based services as undeclared and unauthorized representatives on visa applications" (affidavit of February 27, 2025, para. 7).
- [30] On October 30, 2024, the officer who concluded the investigation recommended that the applications for visas be reviewed by the person holding the Delegated Authority, Ms. Wilford. On October 31, she reviewed the file and refused the applications based on the misrepresentation about the use of a compensated representative. She articulated the reasons as being fundamentally: "the similarities identified using the IPRMS, namely the same card number and cardholder name across multiple self-completed and unrelated applications, was noted in the GCMS notes and formed part of my reasons" (affidavit of February 27, 2025, para. 11).
- [31] The second affidavit was affirmed on July 17, 2025. In it, the affiant supplied further precision concerning the exhibits that were appended to her first affidavit. These were merely examples, or illustrations, of reports produced using the Integrated Payment and Revenue Management System. She affirmed that "the exact same steps" were followed in January 2025 as the applications for visas were reopened. The recommendation to find the Applicants inadmissible, which was endorsed by the decision maker, was based in part on these reports.
- [32] The cross-examination on affidavit took place three months after the second affidavit, on October 16, 2025. We learn that the risk assessment unit (RAU) within the High Commission initially brought to the attention of officers in the affiant's unit what their initial investigation generated. However use of the IPRMS was conducted by an officer in the affiant's unit (the so-called temporary resident unit). Because the information generated by the IPRMS can be easily reproduced, the reports are not saved: "...you just go online and do it again, and it can be reproduced" (question 92). Indeed, the process to generate the information appears to be straightforward.

[33] Counsel for the Applicants also showed an interest during cross-examination for the use of “Chinook 3+”. Chinook 3+ was described as “an Excel-based tool” (question 132), as the file was processed with the assistance of Chinook 3+ at the approval stage, in the initial phase. The affiant was clear that Chinook 3+ was used during that initial phase, not once the file was reopened. At that ulterior stage, only IPRMS was used as part of the decision under review (question 145). I note questions 147-148 for the sake of completeness on the use made of Chinook 3+:

147 Q. Can Chinook be used without rendering a decision?

A. Generally not, Chinook is only meant -- it's to transfer the decision that you put in Excel and transfer it to GCMS, it doesn't do anything more than that. So it's only used for an approval, a refusal, or I think a withdrawal, I'm not too sure, but it can't -- it has to populate into GCMS. And I didn't see a note in the GCMS notes by the reviewing officer to me that said, "Entered by Chinook." Because there's no final decision, it still comes to me, and I do these manually, I don't use Chinook for this.

148 Q. Doesn't Chinook provide a summary of pertinent information about an application to an officer?

A. It does if you were going to use it right to finalization you would use Chinook. Otherwise, it doesn't really make sense because you're not going to use it to enter the final decision.

I take it that Chinook 3+ was not used in the treatment of the reopened application and, at any rate, the use that can be made is limited as it is an “Excel tool that’s first meant to sort of forward a decision from an Excel into GCMS, and it populates ‘Processed by Chinook.’” (question 146)

[34] In sum, the affiant did not cancel the visas. Her involvement was afterwards and limited to considering the information which came to light once the visas were cancelled and a decision had to be made once the applications had to be reopened. Were the visas to be granted? At that stage Chinook 3+ was not used. The IPRMS was used by an officer in her unit. Two reports were generated by IPRMS. One generated the credit card number, the cardholder’s name and the type used to pay for the two visa applications. The other report is generated by putting the credit card number, which, in turn, provides the number of times that card was used. The use of the IPRMS is operated manually. The said reports are not kept, but they are easily recreated (affidavit of February 27, 2025, question 210). The affiant also testified to the “local knowledge” to the effect that cybercafés and travel agencies are often used as unauthorized representatives. The second report showed the use of the Pacific Blue Travel & Tours credit card having been used upwards of 200 times.

[35] Finally, the decision maker was questioned about the use of other tools in her decision to deny the visa applications after they were reopened following the initial approval, as well as about the collection of IP addresses.

[36] The witness had no knowledge that IP addresses are collected. As a matter of fact, IP addresses associated to the Applicants were not used in the decision made. Furthermore, counsel for the Applicants showed an interest in what was described as advanced analytic tools or automated decision-making tools, such as the “Integrated Trends Analysis Tool”, aka “Lighthouse” or “Watchtower,” and the “Advanced Analytics Triage of Overseas Temporary Resident Visa Applications.” The evidence is that it is the IPRMS which was used in this case, with the witness explaining how it was used and the products generated by the system. It is operated manually, with an officer inputting information which allows reports to be generated. The witness testified that she had not assisted in the development of the Integrity Trends Analysis Tool and she did not even know what the “Immigration Consultants’ IT Enhancement Project” is. Neither the Integrated Trends Analysis Tool nor the Advanced Analytics Triage of Overseas Temporary Resident Visa applications were used by the decision maker in making her decision to deny the TRVs. She was not even questioned at any length about them.

Beyond the CTR [37] So what is it that the Applicants claim they are entitled to which is not already part of the CTR?

[38] The facts of this case as they emerge from a review of the material are simple. The original visas were cancelled. Once the matter was re-opened with a view to considering the issuance of the visas, the evidence, using the Integrated Payment and Revenue Management System, showed that the applications made by Dr. Thon Duop, on behalf of the Applicants, used a credit card number associated with Pacific Blue Travel & Tours. That same card had been used upwards of 200 times. The decision maker also factored in that local knowledge was to the effect that cyber cafés and travel agencies are used as unauthorized representatives in immigration matters. Here, Dr. Thon Duop’s evidence is that Pacific Blue Travel & Tours agreed for him to use their equipment (scanner and copier) to upload the visa applications, along with their credit card. The fees were paid and Pacific Blue Travel & Tours was reimbursed in cash for the amounts paid using their credit card. The judicial review will have to determine whether that constitutes “representation,” such that the question asked to that effect was wrongly answered, leading to inadmissibility for misrepresentation pursuant to paragraph 40(1)(a) of the IRPA.

[39] This is the judicial review application in the two Court files of the only decision that could have been and was challenged: the new consideration by the decision maker of whether or not the sought TRVs should be granted. However, the Applicants attempt to make a different case out of the one they can to challenge, that is to only challenge the denial of visas once the matter had been reopened and the finding of inadmissibility.

[40] Thus, they complain that the CTR is missing the IP address information collected by the Respondent. That is in spite of the evidence of Dr. Thon Duop that he used the equipment at the Pacific Blue Travel & Tours agency to upload the applications. He could not use their own computer. On the cross-examination of the decision maker, she testified that she did not even know whether IP addresses are collected. There is no basis for claiming that the

CTR is missing this evidence. In fact, there is no indication that it was even before the decision maker. Moreover, it is not at all clear how relevant that information in the case before the Court could be. There is no doubt, on this record, that the credit card used was that of a travel agency.

- [41] The same can be said of the Integrity Trends Analysis Tool. The evidence of the existence of that tool comes from an affidavit submitted by the Applicants. It comes from one Wei William Tao who is presented as being an expert. He is a lawyer in British Columbia who asserts having offered expert testimony about the use of digital processing tools in immigration matters.
- [42] I have read the 180 paragraphs of his affidavit. It constitutes information about the Integrity Trends Analysis Tool, Chinook, and the Immigration Consultants' IT Enhancements Project. The affidavit is descriptive (history, definitions, functionalities, potential issues).
- [43] The problem here is that there is no indication whatsoever of the use made here of the Integrity Trends Analysis Tool or the Immigration Consultants' IT Enhancements Project. The case, for what is before the Court, is much simpler than what the Applicants wish to make of it. As opposed to the IPRMS, which was used in this case, the Tool has not been shown as having any bearing in this simple case. The decision maker testified about Chinook and the "Project". That does not advance the Applicants' case. The Applicants speculate that the procedural letter should have detailed the use made of the Integrity Trends Analysis Tool because it is "necessary to adjudicate the underlying judicial review" (written representations, para. 6). Without any basis to conclude that the Tool was in fact used, the allegation ends up being without any foundation. As already pointed out, fishing expeditions are not to be entertained.
- [44] To the contrary, the use of the IPRMS in this case has been acknowledged. It has been the subject of cross-examination of the affiant. What was before the decision maker has been established. There is no indication that there are missing records with respect to the only decision before the Court: the Applicants did not disclose in their visa application the use of unauthorized representatives (as alleged), which led to their inadmissibility to Canada for five years. Whether the "assistance" provided by Pacific Blue Travel & Tours constitutes "representation" that ought to have been disclosed, thus being a misrepresentation pursuant to paragraph 40(1)(a) of the IRPA, is the issue on the merits. The issue at the heart of this case was well encapsulated at paragraph 17 of the Applicants' written representations. The CTR is what it is. There are no other records missing, let alone relevant records, as the decision maker testified.

Other Arguments [45] The Applicants have another line of attack, other than that involving tools such as the Integrity Trends Analysis Tool or perhaps the Immigration Consultants' IT Enhancements Project, or even the Advanced Analytics Triage of Overseas Temporary Resident Visa applications. They claim that the CTR disclosed to them has been tampered with and that other documents ought to be included in the CTR.

[46] It is in the nature of stating the obvious to acknowledge that the constitution of the record for judicial review applications is of prime importance. The Federal Court of Appeal has said repeatedly that the Judge must guard against immunizing administrative decision makers from a legitimate ground of judicial review that may exist. Conversely, a judicial review is not a vehicle for the discovery of material in the hope of establishing some ground, what is referred to as a “fishing expedition”. As found in *Canadian National Railway Company v. Canadian (Transportation Agency)*, 2023 FCA 245, “Attempts to use rule 317 for a fishing expedition are common and the Court must never permit it” (para. 15). The Court referred back to *JP Morgan Asset Management (supra)*, quoting from paragraphs 49 and 50:

The Court must read the pleading “with a view to understanding the real essence of the application [or appeal]” and gaining “a realistic appreciation’ of the [proceeding’s] ‘essential character’”. The Court must not fall for skilful pleaders who are “[a]rmed with sophisticated wordsmithing tools and cunning minds”. Instead, it must read the pleading “holistically and practically without fastening onto matters of form”

[My emphasis.]

[47] The line of attack falls in my view into two distinct categories. First, did the Respondent tamper or tinker with the CTR? Second, are there other documents that should be included but are not?

Was There Tampering or Tinkering With the CTR and Should There Have Been Some Notes From the GCMS Included in the CTR? [48] I begin with the alleged tampering and modifying of elements of the CTR.

[49] The question for the Court becomes whether there has been tampering and whether it may be meaningful in view of what constitutes the real essence and essential character of the judicial review application.

[50] The Applicants allege that the response to the procedural fairness letter of January 26, 2024 was tampered with, as found in the CTR. It will be recalled that the PFL stated:

Based on your submissions, I have concerns that you have omitted to declare that you used a compensated representative to facilitate the submission of your application. Your application contains evidence that it was facilitated by the same person or entity as many other applications received by this office. Based on our research, this is a compensated representative. I therefore have concerns that you misrepresented this information either through omission or through failing to indicate that the representative was compensated.

Omitting that you have used a representative is a material fact that may induce error in the administration of the Act, including your immigration history.

Please note that if it is found that you have engaged in misrepresentation in submitting your application for a temporary resident visa, you may be found to be inadmissible under section 40(1)(a) of the Immigration and Refugee Protection Act. A finding of such inadmissibility would render you inadmissible to Canada for a period of five years according to section 40(2)(a):

After an extension of time to respond was granted (which explains the issuance of the PFL on February 13, 2024), the Applicants submitted a long response on March 13, 2024.

- [51] In the response, the Applicants, through their representative Greystone Immigration, identified that the concern was related to the assistance received from Pacific Blue Travel & Tours in the finalization of their visa applications. The explanation for the type of assistance provided was in the covering letter (4 pages) which was supported by the affidavit of Dr. Thon Duop.
- [52] The affidavit refers to a number of exhibits, including exhibits A and B, which are the copies of the PFL addressed to each Applicant.
- [53] The alleged tampering is concerned with these letters. The Applicants complain that they have transmitted to the Immigration authorities a bundle which included the mention of “Exhibit A” and “Exhibit B,” together with page numbers added to the exhibits. Indeed the exhibits to the affidavit of Dr. Thon Duop are all bearing the same kind of further identification. The last page of the affidavit, called “Enclosure”, lists the various exhibits (from A to L).
- [54] Where is the tampering? The Applicants argue that the mentions “Exhibit A” and “Exhibit B,” as well as the page numbers are not present on these two documents as found in the CTR. The Respondent explains that the bundle containing those mentions was not provided through its online portal. It is rather the one furnished by Greystone Immigration on March 13, 2024 that ends up in the CTR. It did not have those mentions.
- [55] There is no need to resolve the mystery. In the words of the bard, William Shakespeare, this is much ado about nothing. There is no harm or alteration to the contents of the documents. Those found in the CTR are exactly the same as those now presented by the Applicants, save for their added mentions of “Exhibit” and page numbers which come from the affiant. Actually, the sixth page of the affidavit presents the list of exhibits, clearly identifying the two exhibits as the procedural fairness letter for each Applicant. They are perfectly the same. Their content has not been altered. That is what is important.
- [56] Then, the Applicants assert that the CTR is incomplete because the GCMS notes included in the GCMS given to the Applicants did not provide two notes. These two notes appear in the Exhibit K of the affidavit of Ms. Nyanted Madit Thon, dated October 10, 2025. In turn, the affiant states the following at paragraph 23: “On or around January 8, 2025, through my legal counsel, I received a copy of the GCMS notes on my TRV application from IRCC.” The notes in Exhibit K were obtained through an Access to Information Act request.

- [57] The two notes, notes 3 and 6, bear the mention “Entered by error.” In fact, both notes provide the narrative of the facts in this case. Note 3, dated October 30, 2024, summarizes the information found elsewhere and explains why its author recommends it be found that there was misrepresentation in this case, leading to the Applicant being found inadmissible. Note 6 was created on February 6, 2024, and updated on October 30, 2024. It provides the rationale for its author to refer the matter, as did note 3, to the delegated decision maker for a decision on inadmissibility pursuant to s. 40 of the IRPA. These two notes can be found in the Applicants’ motion record, vol. 3, pages 133 to 136. I have reproduced them in the annex to the decision.
- [58] The Applicants contend that these notes should have been included in the CTR in spite of the fact that it is stated that they were included in error. They state that they were before the decision maker. We do not know whether they were or not, but it is certainly possible that they were, in one format or another. Furthermore, it is alleged that the file was sent to the decision maker on February 6, 2024. That speculation appears to be because note 6 was originally created on that date. However, on its face that note states prominently that it was updated on October 30, 2024, the day before the decision under review was made. Indeed, note 3 was created and updated on October 30, 2024, and both notes indicate that the file was forwarded to the delegated decision maker. Read together with note 3 (and for that matter note 2 was also created and updated on October 30, 2024), there is not any discrepancy between the notes as to when the file was forwarded to the decision maker, who is the person to whom was delegated the power to decide the matter. One note was originally created in February 2024, but it appears to have been updated on October 30, 2024, before it was given to the delegated authority, the decision maker, for a decision. The Applicants’ speculation about the file having been referred to the decision maker as early as February 2024 is without basis.
- [59] Given the indication that these two notes were entered in error, it is unclear whether they should have been included in the CTR. The GCMS notations are included usually because they provide the rationale for the official decision rendered by the Minister (Baker at para 44). What notes 3 and 6 add to the reasons or rationale is unclear. Nevertheless, it is preferable at this stage to include the two notes in the material which will find its way to the judge on the merits. I decline to order that screenshots be provided. Rather, the text of the two notes, as it appears in the annex, is amply sufficient for the announced purpose.

Other Documents Which Ought to Have Been Included in the CTR [60] On this second front, the Applicants argue that other documents should have been part of the CTR because they influenced the decision.

- [61] The contention is premised on an allegation that there are many decision makers. One is the officer who approved the TRVs. The second would be the officer in the RAU at the Mission in Nairobi who cancelled the TRVs. Thirdly, the officer who made the recommendation to the decision maker is himself a decision maker. Finally the Officer who rendered the decision to declare the Applicants inadmissible pursuant to s. 40 of the IRPA on October 31, 2024 is

another decision maker. The Respondent argues that this cannot be accurate. I agree. The Attorney General maintains that this unusual argument is for the purpose of seeking to broaden incorrectly the debate, thus expanding the scope of what must be in the CTR.

- [62] As Stratas J.A. stated in *JP Morgan Asset Management* (supra), the Court reads the notice of application with a view to understanding the real essence of the application (para. 49). What is the essential character of the application?
- [63] There cannot be any doubt that the application for leave is concerned with one decision, and one decision only:

The Applicant(s) seek(s) leave of the Court to commence an application for judicial review of:

1. The decision made by Immigration, Refugees, and Citizenship Canada (“IRCC”), refusing to grant the Applicant a temporary resident visa (TRV) and finding the Applicant inadmissible to Canada for alleged misrepresentation under paragraph 40(1)(a) of the Immigration and Refugee Protection Act (“IRPA”)
2. The said final decision is dated October 31, 2024.

Actually, it cannot be otherwise (rule 302 of the Federal Courts Rules).

- [64] As already pointed out, the CTR to be produced, according to rule 17 of the Federal Courts Citizenship, Immigration and Refugee Protection Rules, will have “all relevant documents that are in the possession or control of the tribunal.” The “tribunal” is defined in rule 2 as the “a person or body who has disposed of a matter, referred to in... subsection 72(1) of the Immigration and Refugee and Protection Act, that is the subject of an application for leave or an application for judicial review”. That is solely the decision to deny visas and to declare inadmissible to Canada the Applicants. And that decision is taken by the person who holds the appropriate delegated authority. No one else can. There is one decision maker.
- [65] The real essence of the decision under review is the determination that the assistance received by Dr. Thon Duop, as acknowledged in his affidavit in response to the PFL, from Pacific Blue Travel & Tours (in the form of the use of scanners and printers, together with their credit card) constitutes “representation” that ought to have been disclosed. That non-disclosure constitutes allegedly misrepresentation (“fausse déclaration”). The decision under review is accordingly concerned with a narrow issue. Did Dr. Thon Duop use a “representative,” on behalf of his spouse and daughter, without disclosing it?
- [66] I find that the other “decision makers” identified by the Applicants are not decision makers and that, at any rate, they are not the decision maker whose decision is before the Court. The issue is whether the facts establish that the assistance provided by Pacific Blue Travel & Tours constitutes “representation” and, if so, whether inadmissibility should reasonably ensue.

- [67] The Applicants argue that the “CTR is incomplete because it does not contain any of the documents relied upon by the Tribunal to cancel the Applicant’s approved TRV on or around January 25, 2024” (written representations, para. 60). The tribunal involved in the case before the Court for review did not cancel the TRV. That is not the issue before the Court. At any rate, it is acknowledged by the Applicants that Pacific Blue Travel & Tours provided assistance. I repeat. The real issue is whether the assistance constitutes external representation, according to the appropriate standard of review.
- [68] I agree with the Respondent that the Applicants’ argument for the inclusion of this material is premised on the contention that there are other decision makers. Indeed this constitutes a different issue. That was made unmistakably clear at paragraph 66 of the Applicants’ written representations:
66. The (1) adverse/derogatory information received by the High Commission on or around January 25, 2024, and (2) the documents resulting from the research that led to the visa cancellation are both relevant for inclusion in the CTR because they were before the decision-maker. They were before Officer DD6298 who made the decision to cancel the Applicant's approved TRV and re-open the application. Documents before the decision-maker are presumptively admissible
- Put simply, the decision maker is not Officer DD 6298. The matter before the Court is limited to the reopened applications for TRVs, resulting in a decision on inadmissibility if there was misrepresentation.
- [69] I should add one comment about the contention that the records are necessary for an argument according to which there may have been a violation of procedural fairness because the PFL were not sufficiently detailed. With respect, the argument is without merit because it does not have an air of reality. The response to the PFL of March 13, 2024, identified the issue, including even the identity of the alleged external representative. A full explanation was supplied on behalf of the Applicants. The procedural fairness letter did not prevent the Applicants from making their views and explanations known. They were capable of participating fully. In the words of Stratas J.A. in *JP Morgan Asset Management* (supra), courts should not succumb to “sophisticated wordsmithing tools and cunning minds” of skillful pleaders (para. 49).
- [70] The Applicants also complain about the lack of written records on Pacific Blue Travel & Tours. They speculate that there must exist records. What the record shows is that it was possible using the IPRMS to establish that Pacific Blue’s credit card was used on behalf of the Applicants and it was found in upwards of 200 applications. The recommendation made to the decision maker is not before the Court. It is rather the decision to accept that recommendation for the reasons given that is the subject of the judicial review application. The Applicants would want the Court to adjudicate on the recommendation made by someone who is not the decision maker in the only case before the Court. The adjudication is to take place on the actual decision made and the reasons for the decision are what is

actually before the Court, not whether the recommendation was appropriate.

- [71] That is not to say that information relevant to an issue validly before the reviewing Court may never be added to the CTR. That would immunize administrative decision-making and frustrate the adjudication of a legitimate ground of review. But that does not include the discovery conducted in an action. Documentary discovery in an action serves a purpose that is different from what rules 17 and 317 allow. The rules serve a different purpose.
- [72] The Applicants must prove that a document not included in the CTR was in fact before the decision maker or that there is a ground of review which allows for a broaden scope of documentation to be made available. That is their burden. As our Court has found, assumptions will not meet that burden as evidence must support the assertion that documents were placed before the decision maker (see generally Toor). That is also the finding of the Court of Appeal. In *Canada (Public sector integrity commissioner) v. Canada (Attorney general)*, 2014 FCA 270, one reads:
- [4] To obtain the disclosure of material that was not before the Commissioner when he made his decision, the applicant had to prove that the material sought is relevant within the meaning of Rule 317. First, since as a general rule a judicial review case must be decided on the basis of the information in the decision-maker's possession at the time the decision is made, the applicant had to raise in his request a ground of review that would allow the Court to consider evidence that was not before the Commissioner. These exceptions to the general rule are well settled by the case law. In the present case, the only relevant exception was a breach of procedural fairness, namely, the investigator's purported bias, which had allegedly tainted the entire investigation process. Second, the ground of review had to have a factual basis supported by appropriate evidence, as required (*Access Information Agency Inc. v. Canada (Transports)*, 2007 FCA 224, [2007] F.C.J. No. 814, paragraphs 17 to 21). The second criterion is particularly important because it prevents an applicant raising a breach of procedural fairness simply to gain access to material that the applicant could not otherwise access
- [73] In effect, the Applicants broaden the scope of the judicial review by seeking to add decision makers, claiming procedural unfairness without a factual basis supported by appropriate evidence, asking for documents that are not relevant to the issue before the Court.

V. Conclusion [74] More than 30 years ago, the Federal Court of Appeal remarked in *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc. (CA.)*, [1995] 1 FC 588, "that the focus in judicial review is on moving the application along to the hearing stage as quickly as possible" (p. 598). What has transpired in this judicial review application is, in my respectful view, a case in point.

- [75] The Applicants' attempt to suggest that the Respondent used in this case various tools was unsuccessful. The decision maker readily acknowledged that was used the Integrated Payment Revenue Management System for the purpose of identifying the credit card (and the cardholder) used to effect payments for the issuance of the TRVs. An explanation was also offered for the use made of Chinook. As for other tools, there is simply no foundation to go any further with them.
- [76] Having acknowledged that they used some assistance from a travel agency, a strong factual basis supported by appropriate evidence was needed to give an air of reality to the contention that, somehow, there was a breach of procedural fairness in bringing the matter to a decision on inadmissibility to Canada for misrepresentation. Whether what is said to be misrepresentation (not disclosing some use of external assistance) constitutes misrepresentation leading to an inadmissibility finding was squarely raised in response to the PFLs. The point was vividly made that "no advice or representation for consideration was at any point solicited or received" (letter from Greystone Immigration, March 13, 2024, at p.3/4). On the appropriate standard of review, the decision subject to judicial review, that of the delegated authority, will be reviewed. That is the decision that was challenged in the application and the relevant documents in possession of the delegated authority constitute the CTR. It has not been shown that other documents were missed, except for two notes which, arguably, should have been included. The text of the two notes is included in the annex to this judgment. The two notes are deemed to be part of the CTR for use, if any, by the parties.
- [77] There was no tampering of the CTR. I have compared the documents complained of in the CTR to those claimed to have been tampered or tinkered with. They are identical other than the added mentions of "exhibit" and a page number. Nothing material was identified; I could not locate anything unusual or different between the documents.
- [78] The Respondent, who was largely successful, did not seek costs on the motion. The Applicants sought costs because of their claim that the CTR had been tampered with and there was the covert removal of GCMS notes from the CTR.
- [79] No costs shall be awarded to the Applicants. The alleged tampering with the affidavit has not been established. As for the removal of two notes from the GCMS, I have chosen to allow them to be included out of an abundance of caution, in case they could be of some value in spite of being repetitive and having perhaps been "entered in error." That does not rise to a "special reason" for the awarding of costs pursuant to s. 22 of the Federal Courts Citizenship, Immigration and Refugee Protection Rules. There was nothing unfair, oppressive, improper, let alone the Respondent acting in bad faith. Given my own review of the notes, that is more akin to the infamous "line-by-line treasure hunt for error" (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65; [2019] 4 SCR 653 at para. 102), showing a preference for form over substance. Thus, the parties will support their respective costs.

JUDGMENT in IMM-23802-24 and IMM-23806-24

THIS COURT'S JUDGMENT is:

The motion to comply with rule 17 of the Federal Courts Citizenship, Immigration and Refugee Protection Rules is dismissed, except for two notes appearing in the Global Case Management System.

The said notes are reproduced in the Annex to the Judgment and Reasons. They are deemed to be part of the Certified Tribunal Record to be used by the parties if they so wish.

There is no order as to costs.

"Yvan Roy"

Judge

ANNEXE

GCMS Information Request: Application

Request Identifier: P-2024-72898

Request Date: 2024/12/20

...NOTES: 3

Created Date: 2024/10/30

Updated Date: 2024/10/30

Restricted: N

Label: Entered in Error

Office: Nairobi

Text: Application re-opened and reviewed as derogatory information received post visa issuance/ approval. PA was sent a PFL on January 26 2024 to address the concerns of undisclosed information on their application. Specifically, the applicant had not declared that a representative was used in the application process and withheld information regarding that representative.

PA responded to PFL through in-Canada counsel (Greystone Immigration- Leanne Deboski RCIC # R707114- Use of Representative form on file) on January 29 2024 requesting an extension to submit response. New PFL sent to PA on February 13 2024 giving an extra 30 days to submit response . 47 page response received from in-Canada counsel on March 13 2024.

In the response, which the Counsel states is a response for both clients:

PA states they did not solicit or receive any advice or representation by an individual or entity in relation to their applications. They state they used a 3rd party credit card for online fee payment only.

Counsel states that Dr. Daniel Thon Duop, spouse of UCI 1128191683 and father of client 1128230451, assisted with preparation of their TRV applications. On September 27 2023, Dr. Duop used a copy, scan and internet services at Pacific Blue Travel & Tours to finalize the applications for his family as they do not own a printer/scanner and utilize internet cafes and other local business centres for these services.

Dr. Duop was unable to make online payment with his debit card as there were insufficient funds in the couples bank account at the time. Neither Dr. Duop nor his spouse have a credit card. Dr. Duop enquired at Pacific Blue Travel & Tours about utilizing a method of payment in exchange for cash in order to submit the applications. They obliged.

Counsel proclaims that using a 3rd party credit card does not constitute withholding of material information nor misrepresentation. Counsel states the the use of fee-for-service provider such as internet cafes, business centres, money exchanges or other online payment service providers does not constitute representation as defined in section 91(1) of IRPA.

Counsel states that no advice or representation for consideration was solicited nor received but rather that the clients utilized copy/scan and 3rd party credit card services in exchange for cash in facilitating the submission of their applications only.

I note, an affidavit from Dr. Duop outlines details of how he came to using the Pacific Blue Travel & Tours facility to submit the application for his spouse and child. In that affidavit, Dr. Duop states that his spouse and daughter reside at A10, Johari Apartments, Chanai Ave, Kilimani, Nairobi. Dr. Duop states that on September 27 2023 he took a taxi from to a gym where his daughter was to collect her passport and looked for an internet café or business centre to scan and upload the documents. Dr. Duop states he went across the way to an office building where he found Pacific Blue Travel & Tours and asked if they could use their copy/scan/printer for a fee. Dr. Duop states he scanned all the documents and if he could use their online payment mechanism and will reimburse them in cash. Dr. Duop states he did not provide details about why he was using the payment card to the vendor. Dr. Duop states he paid 45,000 kes in cash to Pacific Blue Travel & Tours which included a 1,000 kes service fee. Receipts from the business provided showing this.

Having opened my mind to all the information before me and in the application; the concerns outlined in the PFL have not been overcome. | note, that the crux of the in-Canada counsel's argument (and the PAs) is that the TRV application was paid for by a 3rd party credit card at an internet café where the scanning and uploading of documents also took place. In the PFL response, both the counsel and PA's spouse (Dr. Duop) state they utilized the services of an internet café to only provide the scanning/uploading and Visa fee payment. Counsel states that this does not constitute representation and thus no obligation to declare this fact.

The website for the company claimed to be used is not operational.

Dr. Duop states that he met his daughter at a gym located near the Pacific Blue Travel & Tour business to get her passport; hence why he took a taxi from his residence to the area where the Tour business was located which is approx. 6 km away (20 mins). No proof substantiating why he travelled such a long way only to scan and upload documents at an internet café; knowing that these businesses are prevalent in most areas and neighbourhoods in Nairobi. No evidence the daughter has in questions has membership at a gym located near this business.

I also note in the application the PA submitted Dr. Duop's bank statement from Equity Bank account ending 3566 showing transactions that purportedly show payment to Netflix using a visa card. This seems to suggest that Dr. Duop had a credit card at the time the application was submitted even though he stated he does not have a credit card.

The PA's response to the PFL was thoroughly and carefully considered; however, I am not satisfied that the concerns regarding misrepresentation identified have been satisfactorily disabused.

Based on the application, I am satisfied that the applicant failed to provide complete and truthful information. This information is material to the assessment of the application; therefore, it could have led to an error in the administration of the act. The PA was provided with an opportunity to address this concern and has failed to provide any information which overcomes said concern.

I am therefore of the opinion that the applicant is inadmissible to Canada under section 40 of the Act.

File forwarded for A40 review by delegated decision maker.

...NOTES: 6

Created Date: 2024/02/06

Updated Date: 2024/10/30

Restricted: N

Label: Entered in Error

Office: Nairobi

Text: Application re-opened and reviewed as derogatory information received post visa issuance or approval. PA was sent a PFL to address the concerns of undisclosed information on their application. Specifically, the applicant had not declared that a representative was used in the application process and withheld information regarding that representative.

Application reviewed. PA was sent a PFL to address the concerns of undisclosed information on their application. Specifically, the applicant had not declared that a representative was used in the application process and withheld information regarding that representative.

PA's representative has responded requesting for an extension of 90 days to adequately respond to the PFL concerns.

Based on the application, I am satisfied that the applicant failed to provide complete and truthful information. This information is material to the assessment of the application; therefore, it could have led to an error in the administration of the act. Based on the response provided, I am satisfied that the PA is inadmissible under A40, misrepresentation and is inadmissible to Canada under section 40 of the Act.

File forwarded for A40 review by delegated decision maker.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:

IMM-23802-24

STYLE OF CAUSE:

NYANTED MADIT THON v MCI

AND DOCKET:

IMM-23806-24

STYLE OF CAUSE:

AND ADENG DUOT DENG MALUAL v MCI

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE
FEDERAL COURTS RULES

JUDGMENT AND REASONS:

ROY J.

DATED:

APRIL 28, 2026

WRITTEN REPRESENTATIONS BY:

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Prepared on 28 October 2026 · Esheria