Federal Court  Cour fédérale

Date: 20181017

Docket: IMM-1412-18

Citation: 2018 FC 1043

Ottawa, Ontario, October 17, 2018

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ERIC APPIAH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, a Ghanaian national, challenges the legality or reasonableness of a decision rendered by a Visa Officer at the High Commission of Canada in Ghana [Officer] dismissing his application for a work permit from outside of Canada. The Officer found the applicant inadmissible for misrepresentation. As a result, the applicant is inadmissible to Canada for a five year period (paragraph 40(2)(a) and subsection 40(3) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act]).

[2] The Officer's findings are subject to a reasonableness standard, while the issue of procedural fairness is subject to a correctness standard: *Vetharaniyam v Canada (Citizenship and Immigration)*, 2011 FC 1116 at paragraphs 8-9. I am satisfied that the Officer's findings are supported by the evidence and that the finding of inadmissibility is reasonable. Moreover, the Officer did not breach the applicant's right to procedural fairness.

[3] The facts in this matter are fairly straightforward. In September 2017, the applicant was offered a position as a cook at a Quebec restaurant for either three years or the duration of his prospective work permit. This employment offer received a positive Labour Market Impact Assessment from the Federal Government and approval from the Quebec Government under a CAQ. Thereafter, on October 2, 2017, the applicant applied to Immigration, Refugees and Citizenship Canada [IRCC] for a work permit. To support his work permit request, the applicant filed a certificate of cooking proficiency issued by a Ghanaian national trade school and a work attestation from a Ghanaian restaurant that claims to have employed him since October 2015, in addition to his offer of employment at a Canadian restaurant.

[4] On his work permit application forms, the applicant was asked if he had "ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country?" The applicant answered "no".

[5] On December 14, 2017, the applicant received a letter from the High Commission requesting that he attend an interview on December 19, 2017. The applicant attended at the High Commission and the interviewing officer [the Interviewer] transcribed the interview in the

Global Case Management System Notes [GCMS Notes]. After asking the applicant why he wanted to apply for a job in Canada and how he discovered the position, the Interviewer asked him about his training, his work as a cook, and about the dishes offered at the restaurant employing him in Ghana. The Interviewer noted the applicant's hesitation, though the applicant ultimately listed some dishes he cooked at work, described how he cooks fried rice, and told the Officer about certain seasonings used. In response to further questions, the applicant said he had never applied to travel to another country and that it was his first time applying for a visa.

[6] The remainder of the interview proceeded as follows:

> **Interviewer:** Ok, there is somebody in our system by the name of Eric Kwame [*sic*] Apiah with your date of birth who has previously applied for a visa. Is this you?
>
> **The applicant:** I don't remember.
>
> **The Interviewer:** So you don't remember whether you've applied for a Canadian visa?
>
> **The applicant:** No, I don't remember.
>
> **The Interviewer:** When this person applied, they had a letter from a reverend Peter Jelinic on file. Are you sure that it wasn't you that applied?
>
> **The applicant**: I remember that at some point he said he would help me get an education there, but it was a long time. I can't remember.
>
> **The Interviewer:** I am concerned that you have previously applied to Canada and that you have deliberately withheld that information from us. Would you like to respond?
>
> **The applicant**: Like I said, I can't remember, but I think it's so. It's a long time ago.
>
> **The Interviewer:** Based on the responses you've given me so far, I'm concerned you are misrepresenting about your application history to Canada. That means you aren't being completely honest. If you are found to have misrepresented, you will be barred from

> Canada for 5 years. I will be referring the decision to my manager who has the authority to make the final decision. Is there anything else you would like to say?
>
> **The applicant:** The only thing I will say is that I forgot I'd been here.
>
> **The Interviewer:** So you had been at the high commission for a visa?
>
> **The Applicant:** I can't remember.
>
> **The Interviewer:** Ok, thank you Mr. [*Sic*] Apiah. That's the end of the interview. Thank you, you will get a letter in the mail in a week or two indicating what the final decision is.

[7] On February 5, 2018, the High Commission informed the applicant by mail that the Officer dismissed the work permit application under paragraph 40(1)(a) of the Act, for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the Act. On February 8, 2018, the applicant applied for reconsideration of the Officer's decision. The High Commission reviewed the applicant's file and dismissed the request for reconsideration on February 19, 2018.

[8] Before this Court, the applicant submits that the impugned decision is unreasonable because the information withheld by the applicant was not material and the applicant honestly and reasonably believed that he was not withholding or misrepresenting information.

[9] I will first address the procedural fairness issue.

[10] The applicant complains that he was not afforded an opportunity to provide further explanations about the refused study permit after the interview through a procedural fairness

letter. Conversely, the respondent submits that the procedure was fair: the Interviewer asked the applicant more than once about the study permit refusal and therefore gave the applicant a fair opportunity to respond to his concerns.

[11] I agree with the respondent. The applicant had ample opportunity to respond to Officer's concerns about the study permit during the interview. There was no need for a procedural fairness letter. The applicant knew about the Interviewer's concerns and took no further measures to alleviate those concerns before the Officer ultimately rendered his decision.

[12] The applicant further submits that the Officer's inadmissibility finding is unreasonable. His conduct did not consist of misrepresentation as it could not induce an error in the Act's administration because the applicant ultimately acknowledged that his previous study permit application was dismissed. The Officer had the correct information at the time of his decision. As long as the misinformation is corrected before the Officer makes a decision, no misrepresentation has occurred. The applicant further argues that the refused study permit was not relevant to the work permit application and could not have impacted the Officer's ultimate decision on the application; accordingly, the applicant did not withhold a material fact.

[13] The respondent submits that the Officer reasonably refused the work permit application on the basis of misrepresentation. The applicant never actually acknowledged that he previously applied for a study permit and the misrepresentation remained uncorrected. The respondent argues that the applicant withheld a material fact as the study permit refusal was relevant to the work permit application. In the respondent's view, this fact was material to the true purpose of

the applicant's visit to Canada and the genuineness of his visitor status. The respondent submits that the applicant's failure to disclose the previous application could have induced an error in the administration of the Act even though the Officer ultimately possessed the correct information.

[14] I dismiss the applicant's arguments that withholding the study permit was immaterial and could not have induced an error in administration of the Act. It is not correct to suggest that the applicant "freely admitted" that he previously applied for the study permit after the Interviewer reminded him about the application. Upon reading the GCMS Notes, I note that the applicant continued to say that he did not remember. Finally, when confronted with the letter of Reverend Jelinic, he acknowledged that he believed the latter wanted to help him get an education in Canada, but he maintained throughout the interview that he did not recall applying for the study permit.

[15] I also reject the applicant's premise that a statement, or withholding of information, is not material, if an applicant corrects the misrepresentation before a decision is made on the visa application. The materiality analysis is not limited to a particular point in time in processing the application: *Haque v Canada (Citizenship and Immigration)*, 2011 FC 315 at paragraph 12 [*Haque*]; *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at paragraph 19 [*Wang*]; *Tan Gatue v Canada (Citizenship and Immigration)*, 2012 FC 730 at paragraph 37; *Bundhel v Canada (Citizenship and Immigration)*, 2014 FC 1147 at paragraphs 7-9; *Oloumi v Canada (Citizenship and Immigration*), 2012 FC 428 at paragraphs 25-26 [*Oloumi*]. To hold otherwise would enable an applicant to misrepresent or withhold any information they deem prejudicial to their application, and only disclose such information once prompted by the authorities to do so.

Candour should not be discouraged. I would also note that paragraph 40(1)(a) of the Act refers to the "withholding [of] material facts relating to a relevant matter that induces or could induce an error in the administration of [the] Act". While the applicant did not necessarily induce an error, to the extent that he withheld material information, he could have induced such an error: *Mai v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 101 at paragraph 18.

[16] While a study permit refusal from sixteen years in the past may seem immaterial to the applicant, it remains that the applicant was attempting to gain entry to Canada as a temporary resident. Refusal of the study permit could have occurred for reasons that would not bear directly on the work permit application; but it also could have been directly relevant, such as a failure to adhere to the admissibility requirements under the Act. In this case, the Officer remarked that, as a result of the misrepresentation, he was concerned that the applicant was not a genuine visitor who would leave Canada at the end of his visit, as this could have been the basis for refusing the applicant's study permit. The Officer might have undertaken the process differently if informed about the refused study permit, as he would have had the opportunity to investigate the reasons for that refusal: *Mohseni v Canada (Citizenship and Immigration)*, 2018 FC 795 at paragraph 41; *Haque* at paragraph 11. Accordingly, it was not unreasonable to conclude that the refused study permit application was a material fact relative to a relevant matter.

[17] I have also examined the "honest mistake" exception. The applicant submits that because he forgot about the study permit application, he honestly and reasonably believed he was not withholding information and should be excused from the misrepresentation rule. The respondent

states that the honest and reasonable belief exception to misrepresentation is narrowly applied and should not apply to the applicant's situation.

[18] The innocent misrepresentation exception is narrow and shall only excuse withholding material information in extraordinary circumstances in which the applicant honestly and reasonably believed he was not misrepresenting a material fact, knowledge of the misrepresentation was beyond the applicant's control, and the applicant was unaware of the misrepresentation (*Wang* at paragraph 17; *Li v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 87 at paragraph 22; *Medel v Canada (Minister of Employment and Immigration)*, [1990] 2 FC 345). Some cases have applied the exception if the information given in error could be corrected by reviewing other documents submitted as part of the application, suggesting that there was no intention to mislead: *Karunaratna v Canada (Citizenship and Immigration)*, 2014 FC 421 at paragraph 16; *Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117 at paragraphs 18-20. Courts have not allowed this exception where the applicant knew about the information, but contended that he honestly and reasonably did not know it was material to the application; such information is within the applicant's control and it is the applicant's duty to accurately complete the application: *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at paragraphs 31-34; *Diwalpitiye v Canada (Citizenship and Immigration)*, 2012 FC 885; *Oloumi* at paragraph 39; *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at paragraph 18; *Smith v Canada (Citizenship and Immigration)*, 2018 FC 1020 at paragraph 10.

[19] The Court cannot determine that the applicant honestly and reasonably believed that he was not withholding material facts. If the applicant was aware of the previous study permit refusal at the

time of the application, then he cannot rely on the honest mistake exception. It is certainly plausible that the applicant was no longer subjectively aware of the study permit application submitted sixteen years earlier. However, I am in no better position to determine if the applicant honestly forgot about this refused study permit than the Officer. A visa officer is afforded a significant degree of deference in making such factual findings: *Kavugho-Mission v Canada (Citizenship and Immigration)*, 2018 FC 597 at paragraph 13; *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at paragraph 20. Though one can certainly argue that the applicant honestly and reasonably forgot about the refused study permit, I am not prepared to conclude that the Officer was unreasonable in holding otherwise.

[20] For the above reasons, the Court dismisses the present application. Counsel agree that there is no general question warranting certification.

JUDGMENT in IMM-1412-18

THIS COURT'S JUDGMENT is that the application is dismissed. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1412-18
STYLE OF CAUSE:	ERIC APPIAH v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 10, 2018
JUDGMENT AND REASONS:	MARTINEAU J.
DATED:	OCTOBER 16, 2018

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