

Federal Court



Cour fédérale

Date: 20190301

Docket: IMM-1527-18

Citation: 2019 FC 256

Ottawa, Ontario, March 1, 2019

PRESENT: Mr. Justice Grammond

BETWEEN:

BEGENCH BAYRAMOV

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Mr. Bayramov is a citizen of Turkmenistan whose application for permanent residence under the Canadian Experience Class was rejected on the basis of misrepresentation, pursuant to subsection 40(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. An immigration officer determined that he had misrepresented the nature of the employment that qualifies him for permanent residence. Mr. Bayramov now seeks judicial review of the officer's

decision. I am dismissing his application, since the process followed by the officer complied with procedural fairness and the decision was reasonable.

I. Background

[2] Mr. Bayramov is a citizen of Turkmenistan. He began his studies in Canada on a valid study permit, graduated in May 2014 and remained in Canada afterwards on work permits. He then applied for permanent residence. Throughout the process, he was assisted and represented by a registered immigration consultant.

[3] In his application, he declared that, from November 2014 to May 2017, he had worked as an administrative assistant for KMJ Homes Inc [KMJ]. To support that statement, he provided a reference letter from KMJ dated March 31, 2017 and signed by the owner, as well as a job offer from the same employer offering him a permanent position as a business administrator, effective April 1, 2017.

[4] The officer assessing Mr. Bayramov's application wished to verify the existence of the alleged employer, but was unable to find information about KMJ on open sources. The phone number provided in the reference letter was found to belong to "Hand and Stone Massage and Facial Spa" in North York, Ontario. According to the employee who answered the call, the spa had operated at the same address since January 2015. The officer also noted that, on his Facebook page, Mr. Bayramov claimed to have been working at Durdy Bayramov Art Foundation [the Foundation] for more than two and a half years. The Foundation's official website showed multiple pictures of Mr. Bayramov and mentioned that he was an employee.

Mr. Bayramov did not declare the work experience at the Foundation in his work permit extension application.

[5] On September 13, 2017, the officer requested copies of Mr. Bayramov's paystubs and his notices of assessment [NOA] for 2015 and 2016. In response, Mr. Bayramov submitted NOAs as well as documents purporting to show his earnings.

[6] On November 10, 2017, the officer sent Mr. Bayramov a Procedural Fairness Letter [PFL], giving him the opportunity to address his concerns. In his response, dated December 9, 2017, Mr. Bayramov provided NOAs for 2015 and 2016. He further said that he was not sure why the phone number on the letterhead of KMJ was wrong, that he unsuccessfully tried to contact the owner, as the phone numbers on the business card he provided were out of service, and that he felt that KMJ was going through rough times. Mr. Bayramov explained that he did not pay attention to the phone number on the letterhead of the company when he submitted the documents. With regards to the Foundation, Mr. Bayramov said that it was established in memory of his late grandfather, and that he had been volunteering for a few hours a day after his work since January 2015.

[7] In response to the PFL, Mr. Bayramov also included a letter from PBS Accounting & Tax Services Inc. dated December 4, 2017 and signed by a Mr. Simaan, stating that they were accountants for KMJ and confirming Mr. Bayramov's employment at KMJ. Finally, Mr. Bayramov provided the same paystubs as before, T4s from 2014 to 2017, and a Record of Employment form filled and signed by the same Mr. Simaan, dated June 7, 2017.

[8] On December 20, 2017, the Officer requested, by email and through the “my CIC” channel, that Mr. Bayramov submit his original NOAs for 2014, 2015 and 2016, as well as federal and provincial incorporation documents for KMJ which clearly indicate the corporate name, address, year of incorporation, and shareholder information.

[9] A second PFL was sent on January 8, 2018 to Mr. Bayramov to give him the opportunity to submit the documents requested on December 20, 2017. Mr. Bayramov was warned that failure to provide the additional information could result in the refusal of his application. The officer did not receive a response from Mr. Bayramov.

[10] In his decision, the officer found that M. Bayramov’s response was not credible and that Mr. Bayramov did not alleviate his concerns about the truthfulness of the documents provided.

[11] The officer gave little weight to Mr. Bayramov’s paystubs as the tables could have easily been created using software such as Word or Excel. He also had serious concerns about the authenticity of Mr. Bayramov’s 2015’s NOA, which had a different format and showed a Social Insurance Number missing one digit. Regarding the Foundation, the officer found that on the Foundation’s official website, Mr. Bayramov’s was identified as an employee, namely the Collections Manager and Researcher. Other people were specifically identified as volunteers.

[12] Moreover, the officer concluded that the KMJ business card provided by Mr. Bayramov raised credibility issues with the work experience declared since he noted that the business address was identical to Mr. Bayramov’s residential address. The officer also gave no weight to

Mr. Bayramov's Record of Employment as he noted that it was a form submitted to Service Canada and not the Record of Employment issued by Service Canada.

II. Analysis

A. *No Breach of Procedural Fairness*

[13] Mr. Bayramov submits that the negligence of his immigration consultant resulted in a breach of procedural fairness. He alleges that the consultant failed to check regularly his profile on CIC's website and failed to notice that the officer had issued the second PFL. As a result, he says that he was deprived of the opportunity of fully addressing the officer's concerns. He adds that the profile was created by the consultant and only the consultant had the username and password to access it. The consultant, who was notified according to this Court's *Protocol on Allegations against Counsel or Other Authorized Representatives in Citizenship, Immigration and Protected Person Cases before the Federal Court*, replied that he did not receive an email notification from CIC when the second PFL was issued, which would normally be the case when CIC issues a communication on one of his clients' profiles.

[14] It is not necessary for me to decide whether the consultant's alleged failure to inform Mr. Bayramov of the second PFL constituted negligence or impaired the exercise of Mr. Bayramov's participatory rights. I prefer to deal with the issue by establishing the scope of the requirements of procedural fairness in the circumstances and whether those requirements were met.

[15] It is well-established that where a finding of misrepresentation is contemplated, the visa officer has a duty to inform the applicant of the concerns that may give rise to such a finding and provide the applicant with a meaningful opportunity to respond: *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 at para 18. This is usually done through the sending of a PFL. The PFL must contain enough detail to enable the applicant to know the case to meet. The officer must then carefully consider any information provided in response to the PFL.

[16] Unless an entirely new ground of misrepresentation is discovered in the process, there is no duty to provide a second PFL where the officer is not satisfied that his or her concerns have been fully addressed: *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at para 13; *Shao v Canada (Citizenship and Immigration)*, 2018 FC 610 at para 26. It should be remembered that applicants have a duty to provide all relevant documentation in support of their applications in the first place and that officers do not have a duty to make further inquiries or to provide a “running score:” *Mehfooz v Canada (Citizenship and Immigration)*, 2016 FC 165 at paras 12–13; *Singh v Canada (Citizenship and Immigration)*, 2018 FC 72 at para 24.

[17] Here, the PFL sent on November 10, 2017, fully informed Mr. Bayramov of the officer’s concerns related to KMJ’s existence and the genuineness of Mr. Bayramov’s employment with KMJ. The relevant parts read as follows:

I have concerns that you may be inadmissible pursuant to paragraph 40(1)(a), specifically I have concerns with the work experience that you claimed as Administrative Assistant with employer KMJ Homes Inc. that is not genuine.

We made a verification on employer KMJ Homes Inc and no information can be found on open sources, this employer does not appear to exist. The pay-stubs you have provided does not appear

to be genuine, can be easily in a word document, no stamps of a employer or signature on it.

The phone number provided on your employment letter 416) 331-8686 belongs to HAND AND STONE MASSAGE AND FACIAL SPA. On social media it appear you are working for “DURDY BAYRAMOVART FOUNDATION”, photos on you can be found on DURDY BAYRAMOV ART FOUNDATION website.

[sic throughout]

The letter also informed Mr. Bayramov of the potential consequences of a finding of misrepresentation. That PFL complied with the requirements of procedural fairness. Mr. Bayramov responded to that letter and provided some documentary evidence in support of his case.

[18] At that point, the requirements of procedural fairness were met and the officer only had to consider Mr. Bayramov’s response, which the officer did. The officer was not required to send a subsequent request for documents or PFL. The fact that the officer went beyond the requirements of procedural fairness and gave Mr. Bayramov an additional opportunity to submit documents does not increase those requirements. Thus, Mr. Bayramov’s alleged failure to receive the second PFL did not result in a breach of procedural fairness. In other words, the failure to conclude an exchange of information that was not required by procedural fairness does not give rise to a breach of procedural fairness.

B. *The Decision of the Officer was Reasonable*

[19] Mr. Bayramov also argues that the officer’s finding of misrepresentation was unreasonable. I disagree. On the evidence, it was reasonable to conclude that Mr. Bayramov

misrepresented his work experience. I also agree with the Respondent that, if anything, the evidence Mr. Bayramov claims he would have provided in response to the second PFL raises even more concerns concerning the genuineness of his work experience and supporting documents.

[20] First, all the evidence points to the conclusion that KMJ is not a genuine business. It has no Internet presence. Its alleged phone number is that of another business. Mr. Bayramov initially used KMJ's address as his own. In this regard, KMJ's incorporation documents, which Mr. Bayramov would allegedly have provided in response to the second PFL, show that KMJ was incorporated by a person who appears to be a relative of Mr. Bayramov, a few weeks before Mr. Bayramov began his alleged employment. This only reinforces the conclusion that Mr. Bayramov's employment with KMJ is not genuine. In this regard, the fact that Mr. Bayramov later resided at a different location is beside the point. Moreover, Mr. Bayramov never disclosed that he had a family relationship with KMJ's owners. Knowing that, Mr. Bayramov's statement that he is now unable to reach KMJ's owners appears even more implausible.

[21] Second, the officer's doubts with respect to the documents provided by Mr. Bayramov as evidence of his alleged employment were justified. The officer rightly noted that there were irregularities in the NOAs and that other documents were not issued by the government, appeared to contain irregularities and could have easily been fabricated.

[22] Third, the officer's research strongly suggests that Mr. Bayramov was actually employed by the Foundation. Given the balance of the evidence, the officer was entitled to disbelieve Mr. Bayramov's explanation that he was merely a volunteer.

[23] As a result, the application for judicial review will be dismissed.

JUDGMENT in IMM-1527-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No question is certified.

“Sébastien Grammond”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1527-18

STYLE OF CAUSE: BEGENCH BAYRAMOV v THE MINISTER OF
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