Federal Court Cour fédérale

Date: 20201202

Docket: IMM-4080-19

Citation: 2020 FC 1112

Ottawa, Ontario, December 2, 2020

PRESENT: Mr. Justice Pentney

BETWEEN:

CHINUA RODRICK IBE-ANI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Chinua Rodrick Ibe-Ani, seeks judicial review of the decision of the visa officer (Officer), dated May 9, 2019, refusing his study permit application because he was found inadmissible due to misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Officer found the Applicant to be inadmissible because he provided a copy of a United States B1/B2 visitor's visa (U.S. Visa) with his application, but did not disclose that it had been revoked.

[2] The Applicant submits that he was not aware that his U.S. Visa had been revoked, and claims that he should therefore benefit from the "innocent misrepresentation" exception that has been recognized in this Court's jurisprudence. He also argues that the Officer's reasons are inadequate because they fail to explain the basis for the conclusion that the Applicant ought to have been aware that his U.S. Visa had been revoked.

I. Background

[3] The Applicant is a citizen of Nigeria. He applied for a study permit on February 1, 2019. Among other questions, the forms require an answer to Question 2(b): "Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?" The Applicant answered "yes" to this question, indicating that he had previously been refused Canadian study permits on July 31, 2018, and November 26, 2018. He also provided a copy of his U.S. Visa that was issued on July 7, 2017, and due to expire on July 4, 2019.

[4] On April 8, 2019, the Applicant received a procedural fairness letter from the Officer, alleging that there were reasonable grounds to believe that the Applicant had not answered Question 2(b) truthfully, because "it has been found that you have provided a copy of a recently issued USA visa which you know is not valid as it has been revoked shortly after it was issued."

[5] The Applicant responded the same day, explaining that he had not been aware that his U.S. Visa had been revoked before he received the fairness letter. He indicated that he was aware of an issue in 2015 relating to a U.S. Visa for a domestic employee of his mother, and that he understood his mother had made efforts to clarify that with the U.S. Embassy.

[6] The Applicant also stated that he was aware that when his mother applied to renew the family's visas in 2017, an issue had arisen regarding the picture on his younger sister's visa (the wrong picture appeared on her visa), and that his mother had immediately reported this to the U.S. Embassy. He indicated that his sister's visa had been cancelled on a without prejudice basis, and that his mother had been advised that the former domestic employee had obtained a U.S. visa. He also stated that the U.S. Embassy had requested that his mother schedule a follow-up interview "and come with my younger sister… and all our passports to speak with an Interviewing Officer…." The Applicant said that his mother had not been successful in scheduling the follow-up interview.

[7] In addition, the Applicant also included a letter from his mother, which stated that she was not aware that her children's visas had been revoked, and that she "was only requested to schedule for [sic] a 221g follow up appointment for an interview with a Consular [*sic*] regarding my daughter's USA visa which has been cancelled **WITHOUT PREJUDICE** due to an error of picture mix up and my domestic staff who travelled to USA on her own with a visa issued to her as my staff after resigning her appointment with me…" (emphasis in original). The mother also confirmed she had not succeeded in booking this follow-up appointment despite her efforts to do so.

[8] On May 9, 2019, the Officer sent the refusal letter to the Applicant, noting that he had been found inadmissible pursuant to paragraph 40(1)(a) of *IRPA* "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 IRPA." The letter also indicated that in accordance with paragraph 40(2)(a) of *IRPA*, the Applicant would be inadmissible to Canada for five years.

[9] The Officer's notes in the Respondent's Global Case Management System (GCMS Notes) explain the rationale for the decision:

> PA [the Applicant] was sent a PFL [procedural fairness letter] to address the concerns of undisclosed information in the statutory questions. PA's response is not credible as the timing and nature of the US refusal is such that they would not have overlooked this event. 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. Therefore, based on the information on file, I am satisfied that the PA is inadmissible under A 40, misrepresentation and is inadmissible to Canada for a period of 5 years as a result. Refused.

[10] The Applicant seeks to overturn this decision.

II. Issues and Standard of Review

[11] The only issue in this case is whether the Officer's decision is unreasonable.

[12] The parties submit that the standard of review to this question is reasonableness, and I agree (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]). This is consistent with prior jurisprudence that had applied the reasonableness standard when reviewing a visa officer's finding of misrepresentation under subsection 40(1) of *IRPA* (*Li v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 87 at para 9).

[13] Under the *Vavilov* framework, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints"

(*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The burden is on the applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

III. Analysis

[14] There are two prongs to the Applicant's challenge to the decision. First, he argues that he should benefit from the innocent misrepresentation exception because he honestly and reasonably did not know that his U.S. Visa had been revoked when he completed his application for a study visa to Canada. Second, he submits that the Officer's reasons are unreasonable because they lack a rational chain of analysis and do not explain the basis for the conclusion that the Applicant was aware that his U.S. Visa had been revoked. There is considerable overlap in the evidence and argument on these points, and so I will deal with them together.

[15] The Applicant submitted an alternative argument about the allegedly ambiguous wording of Question 2(b) because it does not specifically refer to the cancellation of a visa, but it is not necessary to deal with this in any detail because the Applicant did not pursue it in oral argument. I note that the Applicant did not say that he misunderstood the question in his response to the fairness letter. It cannot be unreasonable for the Officer to have failed to consider an explanation that the Applicant never offered at the time.

[16] Turning to the innocent misrepresentation exception, the primary focus of the Applicant's submissions is that the Officer failed to explain the basis for the conclusion that the Applicant was aware that his U.S. Visa had been revoked. There is no evidence in the record that the

Applicant had been advised of this, nor does the Officer refer to any policy of the United States government on the subject. The Officer's only explanation involves speculation that the "timing and nature of the US refusal is such that they would not have overlooked this event."

[17] The Applicant points to the Respondent's policy manual on Evaluating Inadmissibility (ENF 2), which states in article 9.3 that the test for assessing inadmissibility is the "balance of probabilities," which is a higher standard than the usual "reasonable grounds to believe" test that is applied elsewhere in the administration of *IRPA*. This is appropriate in light of the five-year ban on admissibility that accompanies a finding of misrepresentation.

[18] The Applicant also notes that this Court has continually emphasized the need for "clear and convincing" evidence to support misrepresentation findings, given the impact of such a determination on an applicant's future admissibility to Canada (*Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38 at para 1; *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 at para 31; *Chughtai v Canada (Citizenship and Immigration)*, 2016 FC 416 at paras 29-30).

[19] The Applicant argues that in this case, the Officer has failed to point to any evidence to support the conclusion that the Applicant was, in fact, aware of the revocation of his U.S. Visa. Absent such evidence, the Officer's finding of misrepresentation must be unreasonable (*Vavilov* at para 126). It is not the role of a reviewing court to "fill in the missing pieces" in the Officer's analysis, and in any event there is no evidence in the record to support the Officer's finding.

[20] I am not persuaded that the Applicant has shown any error in the Officer's reasons, let alone one that is "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[21] The Applicant does not dispute that his U.S. Visa was, in fact, revoked. The only question is whether he misrepresented that fact when he completed the form.

[22] The starting point in the analysis is the ongoing onus on the Applicant to be honest and forthright in providing information to obtain status in Canada. This has often been described as a "duty of candour," which is "an overriding principle of the Act" (*Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169 at para 17).

[23] A corollary of this is that the innocent misrepresentation exception must be interpreted narrowly, to apply only to certain exceptional or extraordinary situations (*Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 at para 38). This exception "applies in limited circumstances where 'knowledge of the misrepresentation was beyond the applicant's control'" (citations omitted) (*Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324 at para 27).

[24] The onus was on the Applicant to convince the Officer that his mistake was innocent (*Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107 at para 45). He was given an opportunity to answer the procedural fairness letter that had alerted him to the Officer's concerns. The Officer reviewed the evidence submitted by the Applicant, and concluded that he had not met his onus. In light of the evidence on the record, the Officer's conclusions are reasonable.

[25] The Officer's conclusion that the Applicant must have been aware that his U.S. Visa had been revoked is consistent with the documentary evidence submitted by the Applicant. In his letter in response to the procedural fairness letter, the Applicant describes the issue that arose concerning his sister's visa, and states that United States visa authorities "requested that my

[m]other should schedule a USA Embassy 221g Follow-up Interview/Appointment and come with my younger sister whom her USA Visa had issue [sic] <u>and all our passports</u> to speak with an Interviewing Officer…" (emphasis added). It should be noted that the Applicant also indicated that his mother had applied for visas for the family on prior occasions, and the reference to his mother being asked to bring all of the family's passports must be seen in that context.

[26] This is also consistent with other evidence submitted by the Applicant in his response to the procedural fairness letter. He included two letters from the U.S. Embassy in Nigeria. The first, dated July 26, 2017, was addressed to his mother and sister and it states that their visas were refused, adding that for U.S. travel purposes, the decision "constitutes a denial of a visa." A second letter, dated November 21, 2017, was addressed to the Applicant's mother "and family," and also stated that their visa applications had been refused and that the decision constituted the denial of a visa.

[27] The Applicant argues that this letter was not directly addressed to him personally, and the reference to "family" is ambiguous. While the record is not entirely clear on the point, it is consistent with the Applicant's other evidence, as well as that of his mother, that she had taken the lead in submitting all of the visa applications for the family.

[28] At a minimum, the demand from the U.S. Embassy that his mother bring all of the family's passports to the interview, and the letter addressed to his mother and family, should have been enough to alert the Applicant to a potential problem with his U.S Visa. It is simply not plausible that the Applicant was not aware that his U.S. Visa had been revoked, or that he should confirm its status before completing the Canadian Application for Study Permit form. This was

not an exceptional situation where knowledge of the misrepresentation was beyond the Applicant's control. If anything, the evidence shows that he was specifically alerted to a possible problem with his U.S. Visa, but there is no evidence that he took any steps to verify its validity.

[29] It is worth remembering that the law provides that misrepresentations can occur directly or indirectly, and this Court has confirmed that applicants seeking status in Canada have an obligation to ensure the information provided on their behalf is accurate and complete (*Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 53-58, aff'd 2006 FCA 345).

[30] This is the context for the Officer's conclusion that the timing and nature of the U.S. Visa refusal was such that the Applicant must have been aware of it. Viewed in light of the applicable legal framework – in particular, the onus that lay on the Applicant, as well as the evidence cited above – the Officer's decision is reasonable. The Officer provided the Applicant with an opportunity to address the concerns regarding the U.S. Visa, but in the end, the Officer was simply not convinced by the explanations offered.

[31] The Officer's conclusion that the Applicant had misrepresented a material fact that could have affected the administration of *IRPA* is supported in the evidence, and was made taking into account the applicable law. The decision, while short, explains the Officer's reasoning in sufficient detail, in particular given the context of a visa officer dealing with a study permit. That is what is required for a decision to be found reasonable, in accordance with the *Vavilov* framework.

IV. Conclusion

[32] The application for judicial review is dismissed.

[33] There is no question of general importance for certification.

JUDGMENT in IMM-4080-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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