Federal Court  Cour fédérale

Date: 20220209

Docket: IMM-4417-20

Citation: 2022 FC 168

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 9, 2022

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MARIANA AVRAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Ms. Mariana Avram, is seeking judicial review of an immigration officer's refusal to grant her a work permit. Additionally, she was found to be inadmissible for misrepresentation under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA or the Act], which results in inadmissibility for five years following the final determination of inadmissibility.

[2] The application for judicial review is made under section 72 of the IRPA. At the end of the hearing on February 2, 2022, the Court announced that the application for judicial review was dismissed, with written reasons to follow. This judgment provides those reasons.

I. Facts

[3] The applicant is a citizen of Moldova. In March 2020, she applied for a work permit in order to work in Canada as a seamstress for 18 months. The labour market impact assessment was positive, and an employment contract was signed.

[4] Ms. Avram has been married for over 20 years. She and her husband have two children, born in 2000 and 2008. The entire family was to come to Canada, but this application for judicial review concerns the applicant's situation following the refusal of her work permit application.

[5] In March 2020, Ms. Avram applied for a work permit at the Embassy in Romania. The process was set in motion, and at the end of March Ms. Avram was asked to prove her French language skills (the job was in Quebec). However, a so-called procedural fairness letter was sent to the applicant. The letter stated the following:

> [TRANSLATION]
>
> Specifically, I am concerned by the fact that you did not truthfully answer the following question: "Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?"
>
> **In your work permit application, you responded "No" to the above question. However, you were previously refused temporary resident visas for Canada.**

> Please be advised that if you are found to have made a misrepresentation in your work permit application, you could be deemed inadmissible under paragraph 40(1)(a) of the IRPA.

It seems that the visa officer's concerns were well founded. Ms. Avram submitted two applications for a visitor visa for Canada in 2013, and both were refused.

[6] The explanation letter in response to the procedural fairness letter advising that the temporary visas had been refused was received on July 8; the letter was written by the applicant and an immigration consultant who assisted with the process. The immigration officer's notes in the Global Case Management System (GCMS) indicate that the letter was not signed. The explanation given was that the omission was due to the applicant misunderstanding the question; she believed that the question was about visas that had been refused in the last five years. The officer commented in his notes that he did not believe the explanation, as the questionnaire does not indicate at any point that the required information should be limited to the previous five years. In the officer's opinion, the nondisclosure was deliberate.

[7] The applicant tried to have the decision reconsidered. The decision letter is dated July 22, 2020 (the applicant's spouse and children received refusal letters on July 27, 2020). There was no reconsideration. The decision specifies inadmissibility under paragraph 40(1)(a) of the Act, which states:

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or	**a)** directement ou indirectement, faire une

withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

It is understood that the false answer to the questionnaire is the basis of the inadmissibility for misrepresentation. The letter also informs the applicant that the period of inadmissibility is five years, as set out in subsection 40(2) of the Act.

II. Standard of review

[8] The standard of review proposed by the applicant is the correctness standard, because, according to her, the question is one of jurisdiction and statutory interpretation of the IRPA. That is not the case. First, there is no question of jurisdiction or statutory interpretation here. No one is contesting that the texts are unambiguous. This is a simple matter of applying the Act to the facts of the case. And, more importantly, the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] affirms the presumption of the reasonableness standard when it comes to the administrative decision maker's interpretation of the enabling statute (para 25). The applicant did not even attempt to rebut the presumption (*Vavilov* at para 17). In fact, doing so would have been futile in the context of an application to review the refusal of a visa, so well established is the case law (*Ibe-Ani v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1112 [*Ibe-Ani*]).

[9] The applicant therefore has the burden of showing that the immigration officer's decision was unreasonable (*Vavilov* at para 100), though, even then, the reviewing court should intervene only where "it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13). By doing so, the reviewing court shows judicial restraint and its respect for the administrative decision maker to whom Parliament has entrusted the task of deciding the merits of these issues. Therefore, the reviewing court does not rule directly on the merits, but rather examines the legality of the decision in hand by reviewing its reasonableness.

[10] As a result, the reviewing court seeks to determine whether the administrative decision has the hallmarks of reasonableness, that is, "justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). Only serious gaps can convince a reviewing court. In *Vavilov*, the Court identified two broad categories of fundamental gaps: a failure of rationality internal to the reasoning process that makes the reasoning inherently incoherent and a decision that would be untenable. This is what the applicant must demonstrate in order to win her case.

III. Applicant's position

[11] The applicant claims that she made an honest error. She claims to have understood, based on her recollection of the facts and the law, that she was supposed to answer about refusals in the last five years rather than the last ten years (para 20). However, it is difficult to see how one could misunderstand whether the time frame is five years or ten years, as the questionnaire mentions no time frame, be it five years or ten years. Therefore, the confusion between five years

and ten years seems inexplicable given the absence of either time frame on the form. How could the applicant have believed there were two time frames when neither appears on the form?

[12] The other argument put forward is that the misrepresentation is not material since the immigration officer had the necessary information at his disposal and could not have been misled by the misrepresentation.

IV. Analysis

[13] The respondent noted that section 16 of the Act specifically provides that a person who makes an application under the Act must answer truthfully and provide all relevant evidence and documents. This obligation was not met. In fact, no one contests that incorrect information was given in response to the question about past visa refusals.

[14] The applicant finds support in the decision *Koo v Canada (Citizenship and Immigration)*, 2008 FC 931, [2009] 3 FCR 446 [*Koo*]. The applicant in that case had changed his name; however, both names appeared in different documents submitted in support of his permanent resident visa application (*Koo* at para 25). In fact, some of the documents had been provided during the interview that had taken place and were part of the visa application file. As the Court stated in *Koo*, "[i]t is trite law that the officer has an obligation to consider the totality of the information before her" (para 23). Both names appeared in the file that the immigration officer had. The Court concluded that there had been an inadvertent error. Such is not the case here, where information on previous refusals was not part of the file.

[15] Such was not the case in the recent *Ibe-Ani* decision. In that case, the issue was the refusal of a study permit. The applicant was criticized for having failed to mention that he had had a U.S. visa revoked. The applicant claimed that it was an innocent misrepresentation, as he did not know that the U.S. visa had been revoked.

[16] The question that Mr. Ibe-Ani answered untruthfully was the same as in this case. He responded that he had been refused Canadian study permits but did not disclose that a U.S. visa had been revoked. Mr. Abe-Ani's explanation was not believed.

[17] For this Court, the requirement of candour is an overriding principle of the Act (*Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169, at para 17). The innocent misrepresentation exception can therefore only apply in exceptional or extraordinary situations. A narrow interpretation is appropriate, and only in certain situations can we claim innocent misrepresentation, that is, situations where knowledge of the misrepresentation was beyond the applicant's control. Once again, that is not the case here. In *Ibe-Ani*, the Court concluded that "[i]t 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" (para 28).

[18] In this case, the applicant had the burden of demonstrating that the immigration officer's decision was unreasonable. Ms. Avram stated that she honestly believed that the answer to the crucial question of whether she had been refused a visa in the past was limited to the previous five years. She was not believed. The reviewing court, which must defer to the administrative

decision maker, cannot conclude that the applicant successfully demonstrated that the decision was unreasonable. That was the burden, and she did not discharge it. There is no ambiguity at all in the question or in the rest of the questionnaire that would suggest that there is any sort of time frame for the requested information. This means that the immigration officer did not act unreasonably in concluding that the applicant's failure to answer the question correctly was deliberate. Someone applying for a visa has an incentive to not disclose that they were twice refused a visa. In this regard, an applicant should not try to convince the reviewing court that he or she made an innocent mistake. That is not the court's role. It is rather to see whether, based on the information provided in response to the procedural fairness letter, the conclusions reached by the immigration officer regarding the misrepresentations are unreasonable. In my opinion, the evidence is clearly insufficient to reach such a conclusion.

[19] The applicant also claimed that if there was a misrepresentation, it was not material, since the immigration officer had access to the information needed to verify it. The applicant did not provide any authority to support such a statement.

[20] It seems to me that the statement amounts to sophistry. Section 16 of the Act expressly sets out the obligation to answer truthfully all questions asked. The material facts referred to in section 40 of the Act are related to the purpose of that section. Material facts are relevant to the adjudication that must take place to determine whether a misrepresentation has been made within the meaning of the section. Additionally, a fact is "material" if it risks inducing an error in the administration of the Act.

[21] It seems to me irrefutable that not disclosing the refusal of visas risks inducing an error in the administration of the Act. One need only think of the frequent cases of visas being refused due to the fear that the visa holders would not return to their home countries upon expiry of their permission to come to Canada.

[22] Although the IRPA establishes the obligation to be honest, the requirement of candour being an overriding principle of the Act, the applicant retorts that this obligation does not apply because the immigration officer can investigate and discover that the response given to an important question is contradicted by his or her findings. In a sense, the requirement of candour is effectively eliminated because the officer is able to find the information somewhere other than in the file given to him or her by the visa applicant.

[23] In my opinion, one cannot bypass the statutory obligation in section 16 to answer truthfully by suggesting that the officer could have looked outside the file in front of him or her to find the answer to the question of whether Canadian visas had been issued. The obligation to provide truthful answers is unequivocal. The burden must be on the person who wishes to come to Canada (section 11 of the IRPA) to obtain the necessary documents and information and must not be shifted to the immigration officer.

V. Conclusion

[24] As a result, the application for judicial review is dismissed.

[25] The parties rightly stated that they do not have a serious question of general importance.

No question is certified.

JUDGMENT in IMM-4417-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

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

"Yvan Roy"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

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