Federal Court  Cour fédérale

Date: 20230427

Docket: IMM-1303-22

Citation: 2023 FC 614

Ottawa, Ontario, April 27, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

DHVANIBEN ANANDKUMAR PATEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The narrow issue raised on this Application for judicial review is whether the Visa Officer reasonably considered the Applicant's response to a "procedural fairness letter". For the reasons that follow, I have concluded the Officer did not and this judicial review is granted.

[2] The Applicant is a 27-year-old citizen of India who applied for an Open Spousal Work Permit [OSWP] in order to join her husband in Canada. On the application, she checked 'no' in response to the question of whether she had previously been denied a visa to Canada or any other country.

[3] On July 7, 2020, the Applicant received a procedural fairness letter stating the Officer had concerns about her failure to disclose her prior United States visa refusal.

[4] On July 11, 2020, the Applicant responded, stating:

> While completing my application form for Canada Work Permit (Spouse), I forgot to mention about the US visitor visa application. This was a genuine error. I was in rush and too excited to apply for [a] visa and in that excitement I ticked 'NO' in section 2 of Background information. This was an unintentional human error. I did not mean to hide any information or misrepresent facts. I am enclosing below mentioned documents of my US visitor visa application.
>
> ...
>
> I sincerely apologies [sic] for my mistake. I would be grateful if you could kindly approve my application.

[5] On December 15, 2021, the Officer rejected the OSWP application due to a misrepresentation [Decision]. The Global Case Management System [GCMS] notes state as follows:

> Case reviewed. Applicant did not declare a previous US visa refusal on her application and clearly indicated this in her application when asked if she has previously been refused a visa to any country. This information is relevant as it relates to her credibility; additionally, knowing the background history of an applicant factors in the eligibility and admissibility assessment. Applicant claims she forgot to provide this information and made

> an error in completing the application. Despite this, the applicant is responsible for ensuring her application is complete and accurate. On balance of probabilities, I am therefore of the opinion that the applicant misrepresented herself under A40(l)(a) by providing incorrect information that could have induced an error in the administration of IRPA. Note that A40(l)(a) includes both direct and indirect misrep. Refused under A40(l)(a) and A16(1)(a). 5 year inadmissibility applies.

[6] As a result of the Decision, the Applicant is inadmissible to Canada under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for misrepresenting or withholding a material fact which could induce an error in the administration of the *Act*.

[7] A finding of misrepresentation is significant as it means the Applicant continues to be inadmissible to Canada for a period of five years.

I. Analysis

[8] The only issue is whether the Officer reasonably considered the Applicant's response to the procedural fairness letter. The standard of review is therefore reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[9] The Applicant argues the Officer did not assess her personal statement, in which she indicated she was excited and completed the application form in a hurry, or her explanation of the circumstances around the visa refusal. In support of her position, the Applicant relies upon a number of decisions where this Court has found an officer's failure to explain why the applicant's response to the procedural fairness letter is insufficient is unreasonable (*Gill v*

Canada (Citizenship and Immigration), 2021 FC 1441, *Singh v Canada (Citizenship and Immigration)*, 2021 FC 828, and *He v Canada (Citizenship and Immigration)*, 2022 FC 112).

[10] The Officer's consideration of the explanation is confined to the following statement in the GCMS notes:

> Applicant claims she forgot to provide this information and made an error in completing the application. Despite this, the applicant is responsible for ensuring her application is complete and accurate.

[11] The Respondent submits the Officer's reasons are intelligible, transparent, clear, and cogent, as the Officer considered the Applicant's explanation that she forgot to mention the US visa refusal. However, the Officer determined the Applicant had the responsibility to ensure her application was complete and therefore concluded a misrepresentation had occurred.

[12] The Respondent relies upon *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 [*Wang*] and *Ram v Canada (Citizenship and Immigration)*, 2022 FC 795 [*Ram*]. In my view both of these cases address different issues and are, therefore, of limited assistance. In *Wang*, the issue was the reasonableness of the officer's consideration of the innocent misrepresentation exception. Here, however, there is no indication the Officer ever considered the exception. In *Ram*, the officer found there had been an intentional withholding of information. There is no such finding in this case.

[13] While I agree the Officer acknowledged the Applicant's explanation for the mistake, there is no indication or explanation as to *why* the Officer did not accept it. Based upon the reasons provided in the GCMS notes, the Court cannot discern if the Officer did not believe the

Applicant, or if the Officer is implying that an ‘oversight’ can never be relied upon as an explanation for failing to disclose a past visa application, or if the Officer is relying upon some other reason.

[14] In my view, the lack of any meaningful assessment of the Applicant’s response to the procedural fairness letter renders the Decision unreasonable. Once an applicant responds to a procedural fairness letter, it is incumbent on the officer to address the response provided in a substantive and fair manner. This is particularly so considering the severe consequences of a finding of misrepresentation under *IRPA* (*Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 27).

[15] Further, the Immigration, Refugee and Citizenship Canada manuals recognize that mistakes sometimes occur (*Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117 at para 15).

[16] In order to accept the Respondent’s position that the Officer rejected the innocent misrepresentation exception, the Court would have to read words into the Decision or make assumptions about the Officer’s conclusions. That is not the role of this Court. In assessing a decision for reasonableness, the Court looks to the words used by the officer as against the evidence. Here, based upon the words used by the Officer, I cannot discern if the Officer rejected the explanation as an innocent mistake or as an intentional mistake. In other words, the Decision is not transparent, intelligible, or justifiable.

II. Conclusion

[17] This Application for judicial review is granted.

JUDGMENT IN IMM-1303-22

THIS COURT'S JUDGMENT is that:

1. The judicial review application is granted and the December 15, 2021 Decision is set aside and the matter is remitted to another officer for redetermination; and

2. There is no question for certification.

"Ann Marie McDonald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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