Federal Court  Cour fédérale

Date: 20240626

Docket: IMM-12832-22

Citation: 2024 FC 999

Toronto, Ontario, June 26, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

HARSHIL NARENDRAKUMAR PATEL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Harshil Narendrakumar Patel, seeks judicial review of a decision of an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated November 4, 2022, finding him inadmissible to Canada due to misrepresentation pursuant to subsection 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*")

and refusing his work permit application. The Officer found that the Applicant had failed to disclose several United States visa application refusals.

[2] The Applicant submits that the decision is unreasonable and was rendered in a procedurally unfair manner, the omission of the US visa refusals being immaterial to his application, the Officer not considering the "innocent mistake" exception, and the decision having been predetermined.

[3] For the following reasons, I find that the Officer's decision was rendered in a procedurally fair manner and is reasonable. This application for judicial review is dismissed.

II. **Analysis**

A. *Background*

[4] The Applicant is a 29-year-old citizen of India who applied for a work permit in Canada, IRCC receiving his application on March 28, 2022.

[5] In a decision dated November 4, 2022, the Officer found that the Applicant was inadmissible to Canada pursuant to section 40(1)(a) of the *IRPA* for misrepresentation.

[6] The decision is largely contained in the Global Case Management System ("GCMS") notes, which form part of the reasons for the decision. The GCMS notes state:

> Applicant has submitted an OWP application to work in Canada. Information sharing with the USA indicates the applicant has multiple (4) undeclared visa refusals. The applicant failed to declare all of the aforementioned refusals in the application form. A procedural fairness letter was sent to the applicant on 2022/08/22 providing an opportunity to address this matter. A response was received by the applicant admitting that he failed to declare his previous four student visa refusals with US. He states that he is not aware of the specific reasons for his previous refusals.
>
> Given the number of previous undeclared US refusals, and the vague response provided by the applicant, I am not satisfied with the response of the PA as to why all previous refusals have not been disclosed.
>
> It remains the responsibility of the applicant, on submission of an application, to sign and attest to the information submitted to IRCC. Furthermore, the IRCC website provides all the information required to submit an application. The website warns further applicants of unauthorized representatives and cautions them from becoming victims of fraud. The above response does not negate the requirement of the applicant to be truthful on their application.
>
> Provision of the information in question is material to the determination to issue a visa it speaks directly to the eligibility and admissibility of the applicant. Omission of information requested on the application form, specifically previous visa refusal information, could have caused an error in the administration of the Act/Regs as the applicant could have been issued a TRV to enter Canada that they were not entitled to.
>
> It is my opinion the applicant has directly misrepresented a material fact relating to a relevant matter that could induce an error in the administration of the Act.
>
> Refused A40 Misrepresentation.

B. *Issues and Standards of Review*

[7] This application for judicial review raises the issues of whether the Officer's decision is reasonable and was rendered in a manner that breached procedural fairness.

[8] The standard of review on the merits of the decision is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25 ("*Vavilov*")). I agree.

[9] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 ("*Canadian Pacific Railway Company*") at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[10] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[11] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent

exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

[12] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21-28 (*Canadian Pacific Railway Company* at para 54).

C. *There was no breach of procedural fairness*

[13] The Applicant's submissions amount to a contention that the Officer had predetermined the refusal of the application based on the information contained in the procedural fairness letter ("PFL") and that the Officer was obligated to consider the response to the PFL. The Respondent disagrees, stating that the GCMS notes leading up to the decision did not contain a final determination of the application.

[14] I agree with the Respondent. The entries in the GCMS notes clearly show, prior to the final decision being made, that there were concerns about the application and the possibility of a misrepresentation finding based on the Applicant's failure to disclose his previous US visa refusals. There is no evidence whatsoever establishing that the matter had been predetermined before the final decision was made, allegations of bias requiring significantly more (see *Arthur v Canada (Attorney General)*, 2001 FCA 223 at para 8). Furthermore, the Officer's

responsiveness to the Applicant's response to the PFL is a question for reasonableness review, as will be seen below.

D. *The decision is reasonable*

[15] The Applicant submits that the misrepresentations were not material to his application and that the Officer failed to provide any rationale for this finding, as well as the finding that the Applicant was inadmissible. The Applicant further submits that the Officer failed to account for the Applicant having made an honest mistake, there being no explanation in the decision to conclude as-such. Furthermore, the Applicant impugns the Officer for finding the Applicant to be inadmissible, rather than merely refusing the Applicant's work permit application.

[16] The Respondent submits that the Applicant's argument regarding the materiality of his misrepresentations is not borne out by the facts and that the Officer's decision discloses the rationale for the inadmissibility finding.

[17] I agree with the Respondent. The Officer's decision demonstrably addresses both the Applicant's explanation for failing to disclose the previous US visa refusals and why this non-disclosure was material in concluding that the Applicant was inadmissible under paragraph 40(1)(a) of the *IRPA*. I can find no error in this decision, it being justified, transparent, and intelligible (*Vavilov* at para 15). Contrary to counsel for the Applicant's characterization, at the hearing for this matter, of the Applicant's response to the PFL and the Officer's decision, the decision is clearly responsive to the Applicant's scant response to the PFL (*Vavilov* at paras 127-128). Furthermore, the Applicant impugning the Officer for not simply refusing his application,

but instead finding him inadmissible, is a request for the judicial review of what the Applicant thinks the decision ought to have been. This, however is the judicial review of the decision the Officer "actually made" (*Vavilov* at para 15).

III. **Conclusion**

[18] This application for judicial review is dismissed. The Officer's decision was rendered in a procedurally fair manner and is reasonable. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-12832-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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