Federal Court Cour fédérale

Date: 20250117

Docket: IMM-10433-23

Citation: 2025 FC 102

Ottawa, Ontario, January 17, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

HOANG ANH TUAN LAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Hoang Anh Tuan Lam [Applicant], a Vietnamese national, seeks judicial review of a June 15, 2023 decision [Decision] by a visa officer [Officer]. The Officer refused to grant a temporary resident visa [TRV], finding the Applicant inadmissible to Canada for making a misrepresentation in accordance with paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2007, c 27 [*IRPA*].

[2] This application for judicial review is dismissed.

II. Background

[3] On January 15, 2023, the Applicant applied for a TRV to visit Canada from May 20 to June 20, 2023. The Applicant's two children are students in Canada and his wife has been a visitor in Canada since 2017.

[4] On May 17, 2023, the Officer sent the Applicant a procedural fairness letter [PFL] identifying their concern that the Applicant may be inadmissible under *IRPA* paragraph 40(1)(a). The Officer stated:

> You answered 'No' to the question "Have you ever remained beyond the validity of your status, attended school without authorization or worked without authorization in Canada?". However, you remained in Canada beyond your authorized stay (between 2018/12/28 until 2022/02/02) and failed to declare this as required.

[5] The Applicant replied that he accidentally clicked "No" due to his limited reading skills and requested to correct the error. In his reply, the Applicant provided a timeline of previous visits to Canada from 2016 to 2022. The Applicant made two visits from June 26 to August 19, 2016, and July 1 to December 26, 2017. He returned to Canada January 9, 2018, to study English at the Winnipeg Global Education Language Institute. Two study permit applications, submitted with the assistance of an immigration consulting firm, in May and June 2018 were both refused. The Applicant's request for a visitor record in December 2018 was also refused. The Applicant states he returned to Vietnam on December 18, 2018, re-entering Canada on December 28, 2018. The Applicant studied English at the Manitoba Institute of Trades and Technology from January

7, 2019 to March 15, 2019. He applied for a study permit in May 2019 and was rejected. On June 25, 2019, the Applicant again requested a visitor record with the assistance of an immigration lawyer [Counsel].

[6] On September 19, 2019, the Canadian Border Security Agency [CBSA] attended the Applicant's home, confiscated his passport, and scheduled an appointment with the Applicant for September 27, 2019. The CBSA required the Applicant's cooperation in investigating a potentially fake immigration consultant. CBSA retained the Applicant's passport until February 2, 2022. The Applicant understood he could not leave Canada without his passport.

[7] On April 20, 2021, Counsel was advised by CBSA that the June 25, 2019 Visitor Record application had been refused on September 24, 2020. Counsel confirmed he had not received this refusal letter. The CBSA advised the Applicant was required to leave Canada, but he was unable due to COVID-19 restrictions.

[8] On May 11, 2021, Counsel submitted an application for a visitor record and restoration of visitor status. The Applicant received the visitor record refusal on January 3, 2022. On January 14, 2022, CBSA informed the Applicant he had to return to Vietnam and apply for another visitor visa. The Applicant returned to Vietnam February 2, 2022, when the first flight was available.

[9] The Applicant explained he did not understand the law well, was cheated by immigration companies in Canada, and that the COVID-19 pandemic in 2020 and 2021 resulting in his inability to return to Vietnam, led to his overstay in Canada.

III. Decision

[10] The Officer refused the TRV on the basis that the Applicant was inadmissible under *IRPA* paragraph 40(1)(a). In the Global Case Management System [GCMS] file, the Officer notes the Applicant answered "No" to the question of remaining in Canada beyond an authorized stay. The Officer also notes a PFL was issued.

[11] The Officer identified the following concerns: the Applicant had not satisfactorily supported his presence in Vietnam; explanations offered did not alleviate concerns regarding the Applicant's truthfulness; and information was withheld that could have precluded additional assessments. The Applicant's immigration history is material to assess, on balance, if the Applicant would leave Canada at the end of his authorized stay. The Officer found the fact that the Applicant withheld this information could have prevented further verifications and assessments. The Officer considered the innocent mistake exception, *IRPA* paragraph 40(1)(a), and found the Applicant did respond to other statutory questions accurately, therefore, little weight was given to the Applicant's explanation.

IV. Issues and Standard of Review

[12] This matter raises the following issues:

1. Was the Decision reasonable?

2. Was the Decision procedurally fair?

[13] The Applicant made no submissions on the standard of review for the merits of the Decision but applies the reasonableness standard in their submissions. The Respondent submits that the merits of the Decision are reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). I agree. This case does not engage one of the exceptions set out by the Supreme Court of Canada in *Vavilov*. Therefore, the presumption of reasonableness is not rebutted (*Vavilov* at paras 16-17).

[14] The Applicant also made no submissions on the standard of review for procedural fairness. The Respondent submits that the standard of review is correctness (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43). Procedural fairness issues are reviewed on a standard akin to correctness (*Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]). In assessing procedural fairness, the Court will determine whether the process followed was fair having regard to all the circumstances (*Canadian Pacific* at para 54).

V. Analysis

A. *Was the Decision reasonable?*

(1) Applicant's Position

(a) *Innocent Mistake Exception*

[15] Decisions of this Court endorse an “innocent mistake” exception to misrepresentation and oblige an officer to consider if it applies to the application before them (*Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 at paras 16-18). Though the Officer considered the Applicant’s explanation, the Officer’s assessment was not rational and did not grapple with the evidence.

[16] The Officer discounted the Applicant’s explanation, that he misunderstood the question, because the Applicant responded accurately to “other statutory questions”. The question at issue, which the Applicant answered “No” to, is less straightforward and somewhat unclear in its concepts of “status” and “authorization”.

[17] The Applicant did not understand the correct answer to Question 2a was “Yes”. Under section 183(5) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], when a temporary resident submits an application to extend their status, it is automatically extended until a decision is rendered on the application. The Applicant did not learn of the extension refusal until April 20, 2021. Therefore, the Applicant’s authorization should have continued until April 20, 2021. A decision cannot be considered to have been “made” until it is communicated to the affected temporary resident (*Shekhtman v Canada (Citizenship and Immigration)*, 2018 FC 964 at paras 25-27).

[18] Further, *IRPR* section 182(1) allows a visitor to apply for status restoration within 90 days of losing that status. The Applicant made an application to restore his visitor status on May 11, 2021. The Government of Canada’s website states individuals may stay in Canada while

awaiting decision on their application to restore worker status. Given these considerations, it is fathomable that a layperson believes that they are "authorized" to be in Canada while they are allowed to remain in Canada.

[19] The Respondent supplements the record, referencing the Applicant's English courses in 2018 and 2019, his selection to receive service in English, and communications in English in the TRV application. The Officer did not cite these facts in their reasons.

[20] Finally, where a misrepresentation finding is at issue resulting in a five-year period of inadmissibility, greater consequences "requir[e] the decision maker's reasons 'to reflect the stakes for, and from the perspective of, the affected individual'" (*Gill* at para 7).

[21] Although the Officer's reasons purport to contemplate the innocent mistake exception, the consideration of facts is not commensurate with the stakes involved, rendering the Decision unreasonable (*Shao v Canada (Citizenship and Immigration)*, 2023 FC 973 at paras 21-22; *Bhatia v Canada (Citizenship and Immigration)*, 2024 FC 698 at paras 18-19 [*Bhatia*]).

[22] Although the Applicant's written submissions included arguments on the materiality of the misrepresentation, he chose to abandon these submissions at the hearing.

(2) Respondent's Position

[23] The Officer's reasons comprehensively consider the innocent mistake exception and provide an analysis of its application. Although the Applicant abandoned their materiality

submissions at the hearing, the Applicant has admitted that he inaccurately replied to the question at issue. The duty of candour required full disclosure. The onus is on the Applicant to put their "best foot forward" when responding to the PFL. The Officer was not obligated to seek further information when the Applicant did not meet his burden (*Singh v Canada (Citizenship and Immigration)*, 2019 FC 969 at para 23). The Officer's decision not to accept the Applicant's explanation was reasonable in the context of the record. The Officer notes the Applicant's explanation did not alleviate concerns about truthfulness and withholding information that could precluded additional verification and assessments.

(a) *Innocent Mistake Exception*

[24] The innocent mistake exception is narrow, applying only in truly extraordinary circumstances. The Court in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 747 [*Singh*] summarizes the principles for this exception, including an applicant's duty of candour and their onus to ensure accuracy and completeness of the information. *Singh* clearly states an applicant bears full responsibility for misrepresentations whether: deliberate, negligent, intentional or unintentional; given by themselves, or others on their behalf; and even when made without their knowledge (at para 28).

[25] The Officer reasonably considered the innocent mistake exception and found it did not apply in light of the totality of the evidence. The Applicant responded accurately to other questions. The Applicant's explanation of limited reading skill, and that he did not "understand the law well, leading to being cheated by immigration companies in Canada" was given little

weight. The Officer notes the onus remains with the Applicant to review and verify the information provided in support of an application to ensure it is accurate and truthful.

[26] The Applicant blames an immigration consulting firm for “cheating” him, leading him to overstay. However, the Applicant’s last involvement with the firm was in 2019. The Applicant does not state whether the immigration consultant was also involved in the 2023 TRV application. Nevertheless, this Court has refused judicial review on the basis of fraudulent activities of hired agents (*Cao v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 260 at paras 3-4, and 17).

[27] The Applicant’s English skills do not excuse the misrepresentation in this case. This Court has similarly rejected an applicant’s inability to read English and unfamiliarity with the process to explain a misrepresentation. Even though the applicant had been deceived, it did not absolve them of the consequences of misrepresentation (*Haghighat v Canada (Citizenship and Immigration)*, 2021 FC 598 [*Haghighat*]).

[28] Furthermore, the Applicant’s PFL response was written in English, he studied English in Canada in 2018 and 2019, and chose to receive services in English on his application form, stating he could communicate in English. The Applicant’s response did not indicate he received any assistance with translation, however, his affidavit on judicial review stated verbal translation into Vietnamese by his son. The Respondent is not supplementing the Officer’s reasons. The Officer is presumed to have considered all the evidence before reaching a decision. The Respondent submits this decision was reasonable within the entire factual matrix.

(3) Conclusion

[29] The Decision was reasonable. The reasons reflect the stakes involved and the record before the Officer. The Officer provided reasons that are responsive to the Applicant's PLF reply, engaged in analysis of whether a material misrepresentation was made pursuant to *IRPA* section 40(1), and considered whether the innocent mistake exception applied.

(a) *Innocent Mistake Exception*

[30] In the GCMS file, the Officer made the following comments on the innocent mistake exception:

> The exception to s 40(1)(a) is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control. That is, the applicant was subjectively unaware that they were withholding information.

[31] The Officer summarized the Applicant's response to the PFL, indicating: the Applicant accidentally clicked "No" to the question because of his limited reading skills; provided additional information regarding his status and applications in Canada; and mentioned his limited knowledge caused him to be cheated by immigration companies. The Officer provided little weight to the Applicant's explanation, citing accurate responses to other statutory questions.

[32] I agree with the Respondent that the Applicant's submissions essentially attempt to bolster the Applicant's original response. The Applicant did not provide any information concerning his confusion between being "authorized" or "allowed" to stay in Canada. I also note

that Question 2(a) reads, "[h]ave you ever remained beyond the validity of your status, attended school without authorization or worked without authorization in Canada? [emphasis added]" The submissions on the "authorization" debate do not apply regardless. The issue is that the Applicant remained in Canada beyond the validity of his status, not whether he did so without authorization.

[33] In the PFL reply the Applicant acknowledged he overstayed due to "being cheated" by immigration companies, coupled with flight restrictions during COVID-19. However, the Applicant made no submissions on the misrepresentation itself being outside his control. In light of the application and the Applicant's explanations in the PFL reply, the Officer reasonably found the narrow innocent mistake exception did not apply.

[34] I agree with the Applicant that the Respondent's submissions on the Applicant's English skills are largely irrelevant to the reasons given by the Officer.

[35] Although the materiality submissions were abandoned at the hearing, the Court does note the jurisprudence is clear that applicants have an onus and continuing duty of candour to provide accurate information. Applicants cannot take advantage of the fact the misrepresentation is caught by immigration authorities before the final assessment of the application (*Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 at para 38).

B. *Was the Decision procedurally fair?*

(1) Applicant's Position

[36] While TRVs typically attract a low duty of procedural fairness, *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at paragraph 27, states:

> "…associated findings of misrepresentation under *IRPA* s 40(1)(a) attract a higher level or degree of procedural fairness because a finding of misrepresentation precludes an applicant from re-applying for a 5-year period, a harsh result, and therefore, also potentially reflects on the applicant's character"

[37] The PFL did not provide the Applicant with a reasonable understanding of why the Officer was inclined to deny the application. This diminished the Applicant's ability to address the concerns (*Bhatia* at para 21). By asserting the Applicant had been in Canada without authorization between December 28, 2018 and February 2, 2022, the Officer appeared to state the entire stay had been unauthorized. Therefore, the Applicant recited his entire Canadian immigration history. These PFL mistakes diminishes the Applicant's ability to respond properly. The Applicant was led to believe he had been without authorization in Canada for three years and two months, rather than 9.5 months. Almost all of the actual period, 9.5 months, was within the restoration period – the period the Applicant was allowed to remain in Canada.

[38] Lastly, contrary to the Respondent's submission, the PFL reply was not late.

(2) Respondent's Position

[39] The process was procedurally fair to the Applicant. The Officer sent a PFL identifying the concerns that the answer to Question 2(a) was misrepresented. The Officer also listed the applicable timeframe of the unauthorized stay (December 28, 2018 to February 2, 2022). In response, the Applicant did not dispute that he overstayed. Rather, the Applicant relied on his

disagreement with the period of non-status (April 20, 2021 to February 2, 2022). The Applicant had an opportunity to clarify or correct any concerns. However, once the Applicant admitted he remained in Canada beyond the validity of his status, this fell squarely within the misrepresentation at issue. The Officer considered additional information regarding the status of the Applicant's applications in Canada. The Officer noted the Applicant submitted no documentary evidence to corroborate his time in Vietnam, nor his two stated departures from Canada in 2018.

[40] The IRCC records indicate it received a late response to the procedural fairness letter on June 15, 2023, instead of May 24, 2023. The Officer still considered the explanation in the reasons, notwithstanding the delays. This discrepancy is of no consequence.

(3) Conclusion

[41] The Officer did not breach the Applicant's procedural fairness rights. The Applicant was afforded an opportunity to respond to the misrepresentation concerns cited in the PFL.

[42] The Applicant takes issue with the adequacy of the PFL in meeting the requirements of procedural fairness. The Applicant's position on judicial review is essentially confusion. The Applicant believed he only had to correct the dates listed in the letter. However, in reviewing the Applicant's actual response, it is clear he realized the information he provided was inaccurate, and he sought to correct his stated immigration history.

[43] It is the Applicant's onus to put his "best foot forward". Yet, the Applicant provided little information to assuage the Officer's concerns about the misrepresented information. The Applicant had sufficient opportunity to know the case to meet and, accordingly, provide response.

VI. Conclusions

[44] For the reasons above, this application for judicial review is dismissed.

[45] The parties do not propose a question for certification and I agree that none arises.

JUDGMENT in IMM-10433-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10433-23
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