

Federal Court



Cour fédérale

Date: 20130312

Docket: IMM-1149-12

Citation: 2013 FC 225

Ottawa, Ontario, March 12, 2013

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

PEYMAN BORAZJANI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Mr Peyman Borazjani, a citizen of Iran, applied for permanent residence in Canada as a skilled worker. A visa officer in Warsaw denied his application and concluded that he was inadmissible to Canada for having filed a fraudulent document with his application.

[2] Included with Mr Borazjani's application was a test result form (TRF) showing his competence in the English language as measured by the International English Language Testing System (IELTS). On his original 2006 application, Mr Borazjani provided a photocopy of his 2001 TRF. He subsequently provided an updated, original version of his 2010 TRF.

[3] In 2011, a visa officer in Warsaw informed Mr Borazjani that the 2001 TRF could not be verified and warned him that he could be found inadmissible to Canada for misrepresentation. Mr Borazjani responded by letter, explaining that the TRF was genuine. He no longer had an original copy of the TRF so any problems with the document could be explained by the poor photocopy he had supplied. Further, since the TRF was more than two years old, the IELTS could not verify its contents.

[4] Mr Borazjani subsequently attended an interview where the authenticity of the TRF was discussed, but the officer's concerns were not alleviated by Mr Borazjani's answers. Mr Borazjani's application was denied and he was found inadmissible to Canada for misrepresentation under s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, [IRPA] (see Annex).

[5] Mr Borazjani argues that the deciding officer treated him unfairly, failed to provide adequate reasons, and rendered an unreasonable decision. He asks me to quash the officer's decision and order another officer to reconsider his application.

[6] I am satisfied that the officer's decision was unreasonable because there was insufficient evidence to justify her conclusion. Therefore, I will allow this application for judicial review on that

basis. It is unnecessary to consider the other issues raised by Mr Borazjani.

II. The officer's decision

[7] An immigration officer reviewing Mr Borazjani's application noted a number of irregularities in his TRF – poor quality of the photocopy, extraneous words, and irregular format. A program manager agreed with the officer's observations and concluded that the document was not genuine. She refused Mr Borazjani's application on the basis of misrepresentation; however, in her letter to Mr Borazjani, she raised concerns about the 2010 TRF, not the 2001 TRF. It seems clear that this was an inadvertent error as all the concerns reflected in the record and conveyed to Mr Borazjani related to the 2001 TRF.

III. Was the officer's decision unreasonable?

[8] The Minister argues that the officer correctly noted a number of problems with the 2001 TRF, for which Mr Borazjani did not have a satisfactory explanation. Moreover, the issue of language proficiency was material to Mr Borazjani's application and the impugned document could have induced an error in the assessment of his application. I should, therefore, defer to the officer's conclusion that Mr Borazjani is inadmissible to Canada on the basis of misrepresentation.

[9] I agree that Mr Borazjani supplied a poor copy of his 2001 TRF. However, I cannot see how this, in itself, led to the conclusion that he had tried to misrepresent his language skills. The officer believed that parts of the document were scanned, while other parts were photocopied. The reasons

do not disclose how the officer came to that conclusion. Further, the officer was concerned that the “test report form number” was improperly formatted; however, the 2001 TRF does not bear a “test report form number” (although the 2010 TRF does). Further, the appearance of a strange watermark on the photocopy of the TRF does not, in itself, suggest that the document was fraudulent; it may have been a feature of the paper on which the copy was made.

[10] Mr Borazjani’s application was otherwise in order and he had filed an updated original of his 2010 TRF, whose authenticity was not questioned. He was not required to provide a TRF with his application; he did so voluntarily. The program manager had some training in false documents but did not have any significant experience with IELTS documents from 2001.

[11] Therefore, in the circumstances, I agree with Mr Borazjani that there was no reasonable basis to conclude that he had misrepresented his language skills by way of a fake TRF. A finding of misrepresentation can be made only where there is “clear and convincing evidence” to support it: *Xu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 784 at para 16. The evidence before the officer here did not meet that threshold.

IV. Conclusion and Disposition

[12] The officer had no reasonable basis for concluding that Mr Borazjani filed a fraudulent document showing his English language skills. That conclusion did not fall within the range of defensible outcomes based on the facts and the law and, therefore, was unreasonable. I must, therefore, allow this application for judicial review and order another officer to reconsider Mr

Borzjani's application. Neither party proposed a question of general importance for me to certify, and none is stated.

JUDGMENT

THIS COURT’S JUDGMENT is that:

1. The application for judicial is allowed and the matter is referred back to a different officer for reconsideration.
2. No question of general importance is stated.

“James W. O’Reilly”

Judge

Annex "A"

Immigration and Refugee Protection Act, SC 2001, c 27

Loi sur l'immigration et la protection des réfugiés, LC 2001, ch 27

Misrepresentation

Faussees déclarations

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 withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

a) directement ou indirectement, faire une 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;

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1149-12

STYLE OF CAUSE: PEYMAN BORAZJANI
v
MCI

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 22, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: March 12, 2013

APPEARANCES:

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