Federal Court  Cour fédérale

Date: 20181128

Docket: IMM-1296-18

Citation: 2018 FC 1197

Ottawa, Ontario, November 28, 2018

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

SALLY SEBIAL GO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The issue in this judicial review is whether Ms. Go, a foreign national, is inadmissible to Canada for misrepresentation. More specifically, did she directly or indirectly misrepresent or withhold material facts as to where she had lived from March 2011 to August 2012. If that was a relevant matter which induced or could have induced an error in the administration of the *Immigration and Refugee Protection Act*, she would be inadmissible in accordance with section

40(1)(a) thereof. She was so found, in fact, she was so found three times, and was issued an exclusion order under section 229(1)(h) of the *Immigration and Refugee Protection Regulations*.

I. **Background**

[2] Ms. Go came to Canada in 2009 as a live-in caregiver. The Live-in Caregiver Program brought qualified temporary workers to Canada to provide in-home childcare, senior home support care or care for the disabled. One requirement was that they "resided" in the household in which they provided such care. After a requisite period of time such caregivers were entitled to apply for permanent residence from within Canada.

[3] Although that Program has since been repealed, it was in place when Ms. Go applied for permanent residence in November 2012. She filed a "Generic application form for Canada". In it she stated that the category under which she was applying was the Live-in Caregiver Program. Schedule A to the form was called "background/declaration". In it she had to "list all addresses where you have lived since your 18th birthday". She stated that she had lived at one address in British Columbia from May 2009 to March 2011, and then from March 2011 to August 2012 at a street address in Kelowna, B.C., the home address of her employer.

[4] Many nights, during her time in Kelowna, she did not sleep at her employer's home, but rather at an apartment her Church made available for Filipino live-in caregivers and nannies. Failure to disclose that fact was considered a relevant matter which could have induced an error in the administration of *IRPA*.

[5] It is important to note that it was not held that she did not satisfy the requirements of the Live-in Caregiver Program. Rather, by failing to disclose the Church apartment, she foreclosed an avenue of investigation for the Processing Officer who may possibly have had a flexible and constructive approach to living arrangements as this Court contemplated in *Turingan v The Minister of Employment and Immigration*, 1993 FCJ No 1234,72 FTR 316.

[6] The first two times Ms. Go was found inadmissible, the Minister consented to her application for judicial review, and so this Court sent the matter back for redetermination.

[7] This time around the decision, by consent, was based on the earlier records. There was a conflict of evidence as to how often Ms. Go stayed over at the Church apartment. The Member found Ms. Go's employer to be more credible and so determined that she only stayed over at her employer's home one or two nights a week.

[8] Although this credibility finding was challenged before me, I do not consider it appropriate to intervene. Some deference should be shown to finders of fact, even those who have not seen witnesses (*N V Bocimar S A v Century Insurance Co*, [1987] 1 SCR 1247).

II. **Analysis**

[9] Section 16(1) of *IRPA* requires persons who make an application to "answer truthfully all questions put to them …". "All addresses where you have lived" is very ambiguous. The French version of the form calls for "toutes les adresses ou vous avez résidé". The English version of

section 113 of the Regulations then in force called for Ms. Go to have “resided”. The French version called upon her to have «habité ».

[10] Those who prepare the forms that would-be immigrants are called upon to fill in should have been well aware of this ambiguity. Section 5(1) (c) of the previous *Citizenship Act* required an applicant to have accumulated at least three years of “residence” in Canada within the four years immediately preceding an application. There were three schools of thought amongst Citizenship Judges as to how “residence” ought to be interpreted.

[11] It had been held that a person could be in Canada in mind, if not in body, and that such days would count for the residency requirement (*Re Papadogiorgakis* 1978 2 FCT 208). It had also been held that the only days that counted were those in which the applicant was physically in Canada (*Re Pourghasemi* (1993) 62 FTR 122). The third test was whether it could be said that Canada was a place where the applicant “regularly, normally or customarily lives.” (*Re Koo* 1993 1 FC 286).

[12] All this led Lutfy J., as he then was, in *Lam v Canada (Minister of Citizenship and Immigration)*, (1999) 164 FTR 177 to hold that it was open to a Citizenship Judge to adopt any one of the three conflicting lines of jurisprudence, and if the facts of the case were properly applied to the principles of that approach, the Citizenship Judge’s decision would not be wrong.

[13] It took Parliament until June 2015 to amend the residency requirement of section 5(1)(c) of the *Citizenship Act*. That amendment initially required physical presence in Canada for at

least four years during the six year period immediately preceding the citizenship application date and physical presence in Canada for 183 days during each of four calendar years fully or partially within the six years immediately before the application date. That first requirement has since been reduced to three out of the five previous years and the second 183 days of presence requirement has since been repealed.

III. **Decision**

[14] Where one lays one's head at night is only one factor to take into consideration. Ms. Go did not have her own room at the Church apartment; she did not leave her clothes there; her mailing address was her employer's home which she did disclose in the application form.

[15] It was unreasonable for the Member to find, on the balance of probabilities, that Ms. Go misrepresented her living arrangements. If this Court could find that it was reasonable for trained Citizenship Judges to uphold three different views of the residency requirement under the *Citizenship Act*, how can it be said that Ms. Go failed to provide a reasonable answer? The problem lay in the question, not the answer. The question was not specific to the Live-in Caregiver Program.

IV. **Certified Questions**

[16] Counsel for Ms. Go proposed the following questions:

1. Can an applicant for permanent resident status be found inadmissible under section 40(1)(a) of the *Immigration and Refugee Protection Act (IRPA)* if the material fact the

Minister alleges the applicant failed to disclose in his or her application for permanent resident status is unclear or ambiguous?; and

2. Does the question "List all the addresses where you have lived since your 18th birthday" on the (IMM 5669) Schedule A form accompanying an application for permanent resident status require the applicant to list every address where the applicant has overnighted since his or her 18th birthday, irrespective the duration or temporary nature of such stays, or is an applicant only obligated to list in answer to that question the addresses of the places where the applicant has made his or her permanent home?

[17] The Minister opposes, essentially because the question must be dispositive of the appeal, and the point is not of general importance as the Regulation in issue has been repealed. Although there may be a few transitional cases, this is hardly a serious question of general importance.

[18] I agree and will not certify the questions.

JUDGMENT in IMM-1296-18

THIS COURT ORDERS that for reasons given, this matter is referred back to another Member of the Immigration Division of the Immigration of Refugee Board of Canada for redetermination.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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