Federal Court Cour fédérale

Date: 20200831

Docket: IMM-3077-19

Citation: 2020 FC 872

Ottawa, Ontario, August 31, 2020

PRESENT: The Honourable Madam Justice Fuhrer

BETWEEN:

CARMEN AZUCENA CABELLO MUNIZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] A Visa Officer's finding of misrepresentation or withholding of material facts can have serious consequences for applicants; they can be precluded from entering or returning to Canada for five years. This happened to the Applicant, Carmen Azucena Cabello Muniz when she applied in February 2019 for an electronic Travel Authorization or eTA: *Immigration and*

Refugee Protection Act, SC 2001, c 27 [IRPA] ss 40(1) and 40(2)(a). She was found not to have answered all questions on her application truthfully: IRPA s 16(1).

[2] Ms. Muniz, a citizen of Mexico, has an extensive Canadian immigration history spanning 2013-2019. During this period, she was granted a visitor visa, several study and work permits and visitor records. Toward the end of the period, however, and before Ms. Muniz filed her eTA application in February 2019, she was denied a post-graduate work permit [PGWP] and a visitor record extension. The Global Case Management System [GCMS] notes on her eTA application indicate the application for a visitor record extension was refused because of *bona fides* concerns. The notes do not disclose whether such concerns previously were communicated to Ms. Muniz.

[3] Ms. Muniz's February 2019 eTA application included the question - "Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?" - to which she answered "no". She subsequently received a procedural fairness letter advising her the Officer reviewing her application was concerned she had made a misrepresentation based on her "no" answer to this question. Ms. Muniz responded that same day by email, explaining "there was a misunderstanding about the question" and that she did not intend to "lie about her information". She confirmed she had been refused a PGWP and a visitor record, and attached the refusal letters from Immigration, Refugees and Citizenship Canada [IRCC]. The GCMS notes disclose that, given Ms. Muniz's experience with Canada's immigration system, her "misunderstanding" argument was considered weak; the question was clear and the response did not alleviate misrepresentation concerns.

[4] Ms. Muniz now challenges her eTA refusal, and the misrepresentation and inadmissibility findings, pursuant to IRPA s 72(1). The overarching issue that arises in this matter is whether the Officer's decision was unreasonable which subsumes the following more particularized issues:

1. Did the Officer fail to consider the 'innocent error exception' before finding Ms. Muniz inadmissible under IRPA s 40(1)?
2. Did the Officer unreasonably ignore Ms. Muniz' extensive history of compliance with Canadian immigration laws, her previous disclosure of instances of refusal, her prompt correction, and the availability of this information when assessing the materiality of her omission?

[5] For the reasons that follow, I dismiss this application for judicial review because the Applicant has failed to demonstrate that the Officer's decision was unreasonable. After a brief discussion of the applicable standard of review, reasonableness, my analysis will begin with a summary of applicable principles and conclude with the reasons why I find in the circumstances of this case the Officer was not required to consider the innocent error exception and further the answer to the second more particularized question is no.

II. Relevant Provisions

[6] See Annex A.

III. Standard of Review

[7] The parties submit and I agree that the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10. It is not a "rubber-stamping" exercise, but rather a robust form of review: *Vavilov*, above at para 13. Courts should intervene only where necessary. To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility – and it must be justified in relation to the factual and legal constraints applicable in the circumstances: *Vavilov*, at para 99. A decision may be unreasonable if the decision maker "fundamentally misapprehended or failed to account for the evidence before it": *Vavilov*, above at para 126. The party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, above at para 100.

IV. Analysis

[8] The applicable principles concerning misrepresentation and the scope of IRPA s 40(1) are summarized as follows:

i. Intention is not a prerequisite; lack of awareness of the misrepresentation at the time of its making, including an accidental omission, is still misrepresentation: *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 [*Goburdhun*] at para 30; *Coube De Carvalho v Canada (Citizenship and Immigration)*, 2019 FC 1485 [*Coube De Carvalho*] at paras 21, 32.

ii. The "innocent misrepresentations" exception is narrow – it may excuse the omission of material information if "the applicant honestly and reasonably believed [they were] not misrepresenting a material fact, knowledge of the

misrepresentation was beyond the applicant's control, and the applicant was unaware of the misrepresentation": *Appiah v Canada (Citizenship and Immigration)*, 2018 FC 1043 [*Appiah*] at para 18.

iii. A misrepresentation need not be decisive nor determinative of the application. It will be material if it is important enough to affect the process - it is only necessary that the misrepresentation could induce an error in the application of IRPA, not that it actually has done so: *Goburdhun*, above at para 37; *Appiah*, above at para 16; *Balasundaram v Canada (Citizenship and Immigration)*, 2015 FC 38 at paras 35, 38, 41.

iv. Officers need not specify which investigation or verification process could have been bypassed because of the misrepresentation: *Goburdhun*, above at para 42.

v. That IRCC has immigration records from previous applications and, therefore, can cross-reference applications, does not relieve an Applicant's responsibility to provide truthful answers on all applications; what is key is whether the misrepresentation induced or could have induced an error in the administration of the IRPA: *Goburdhun*, above at para 43; *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 [*Alalami*] at paras 21-23.

vi. A correction made in response to a procedural fairness letter does not cure the materiality of the misrepresentation: *Goburdhun*, above at para 44; *Appiah*, above at para 15; *Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 [*Goudarzi*] at para 27; *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 [*Kazzi*] at para 42.

[9] With these principles in mind, I next consider the more particularized issues.

1. *Did the Officer fail to consider the 'innocent error exception' before finding Ms. Muniz inadmissible under IRPA s 40(1)?*

[10] I find in the circumstances of this case the Officer was not required to consider the innocent error exception, rather than having failed to consider it. Ms. Muniz responded to the procedural fairness letter that there was a misunderstanding about the question. She did not explain how she misunderstood the question, or what about it she misunderstood. It was open to the Officer to accept or to reject the one-line explanation provided; the Officer's reasons represent the justification: *Mohseni v Canada (Citizenship and Immigration)*, 2018 FC 795 at paras 16-17.

[11] Because the Officer rejected Ms. Muniz's explanation and found "PA may have directly omitted/misrepresented material facts," the Officer was not required to consider the "innocent error" exception; "reviewing courts cannot expect administrative decision makers to 'respond to every argument or line of possible analysis'," especially when, as in this case, Ms. Muniz did not raise the exception with the Officer: *Vavilov*, above at para 128; *Alalami*, above at para 16.

[12] The Minister submits, and I agree, the Officer's reasons demonstrate concern with Ms. Muniz's *bona fides* as a visitor on the eTA application. Although the GCMS notes could have been worded more clearly, I find the Officer questioned her purpose in returning as a visitor after having spent so much time in Canada already on various permits, rather than confusion about her previous applications and what she was doing on them. Further, the GCMS notes disclose the Officer was aware that Ms. Muniz previously was denied "WP and VR in Canada". Ms. Muniz's alleged misunderstanding about a clear question in her eTA application did not alleviate the concern about the answer "no".

2. *Did the Officer unreasonably ignore Ms. Muniz' extensive history of compliance with Canadian immigration laws, her previous disclosure of instances of refusal, her prompt correction, and the availability of this information when assessing the materiality of her omission?*

[13] The Applicant submitted that Officers must not 'compartmentalize' visa applications but rather they should be considered in their totality recognizing that errors sometimes occur in filling them out; not all technical misrepresentations warrant a finding of inadmissibility. I agree that in this case, the Officer not refer to Ms. Muniz's previous immigration applications to consider whether she previously had answered the question in issue correctly. In my view, however, there is no requirement for an Officer to cross-reference multiple applications, submitted at different points in time, to determine if a misrepresentation has occurred innocently in a subsequent application.

[14] First, there is no intent requirement; evidence of prior intention to include this information does not overcome the subsequent omission, in itself. Rather, it speaks to whether the innocent error exception may apply.

[15] Second, in many of the cases on which Ms. Muniz seeks to rely, the Applicant included in the same application documents which contradicted one another on the alleged misrepresentations; this points to the error residing in the internal inconsistencies within the application as a whole: *Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117 at para 20; *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 at paras 24-25. The record before this Court does not demonstrate this was the case here. Despite having listed all previous immigration application outcomes in subsequent applications (she disclosed the PGWP refusal

on three prior applications), Ms. Muniz did not include all of them in the eTA application involved in this review. This Court therefore cannot determine whether she provided the omitted refusals elsewhere in her application, which the Officer overlooked.

[16] Further, as this is the first application following the January 2019 visitor record refusal because of *bona fides* concerns, it cannot be said that she previously proactively brought the VR refusal to IRCC's attention. In addition, Ms. Muniz submits the Officer's *bona fides* concerns were not put to her. I note, however, the fairness letter explicitly referenced her omission of previously-refused applications, and she was provided an opportunity to respond. In my view, the Officer was not required to flag expressly that the *bona fides* concerns from her previous refusal continued into this application given the omission.

[17] Finally, Ms. Muniz also argues her omission was not material in any event because the Officer had access to this information through their own internal databases (hence the fairness letter), and therefore her omissions could not mislead the immigration system. I disagree. As explained in *Mohseni*, information on previous refusals is material to the issuance of a visa: *Mohseni*, above at para 41. Even if that information was accessible by the Officer, the omission need not be determinative, and this did not relieve Ms. Muniz of the obligation to fulfill her duty of candour: IRPA s 16(1). Applicants cannot rely on the immigration system to catch their errors, even if they are made innocently, to meet this requirement: *Goburdhun*, above at para 43.

[18] In sum, I am not persuaded the Officer erred in concluding Ms. Muniz's omission or misrepresentation of material facts was material and could have induced an error in the application of IRPA.

V. Conclusion

[19] This application for judicial review is dismissed. The Officer's decision, based on available evidence and response to the fairness letter, was not unreasonable.

[20] I find there is no serious question of general importance for certification, neither party having proposed one.

JUDGMENT in IMM-3077-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance for certification.

3. There are no costs.

"Janet M. Fuhrer"

Judge

Annex A: Relevant Provisions

[21] All individuals seeking to enter Canada must obtain an eTA prior to entering: IRPA s 11(1.01).

11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11 (1)** L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
(1.01) Despite subsection (1), a foreign national must, before entering Canada, apply for an electronic travel authorization required by the regulations by means of an electronic system, unless the regulations provide that the application may be made by other means. The application may be examined by an officer and, if the officer determines that the foreign national is not inadmissible and meets the requirements of this Act, the authorization may be issued by the officer.	**(1.01)** Malgré le paragraphe (1), l'étranger doit, préalablement à son entrée au Canada, demander l'autorisation de voyage électronique requise par règlement au moyen d'un système électronique, sauf si les règlements prévoient que la demande peut être faite par tout autre moyen. S'il décide, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi, l'agent peut délivrer l'autorisation.

[22] Individuals must answer all immigration questions truthfully: IRPA s 16(1)

16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant	**16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les

evidence and documents that the officer reasonably requires.	renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

[23] An individual may be found inadmissible for misrepresenting or withholding material facts: IRPA s 40(1)(a).

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;
(2) The following provisions govern subsection (1):	**(2)** Les dispositions suivantes s'appliquent au paragraphe (1):
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and	**a)** l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;

FEDERAL COURT

SOLICITORS OF RECORD

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