Federal Court  Cour fédérale

Date: 20210621

Docket: IMM-7205-19

Citation: 2021 FC 639

Toronto, Ontario, June 21, 2021

PRESENT: Mr. Justice Diner

BETWEEN:

RITCHELL RAGADA

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application judicially reviews a decision ("Decision") of a visa officer ("Officer") to refuse the Applicant's application for a work permit ("WP") based on two findings. First, the Officer found that the Applicant had not demonstrated that she would be able to do the work sought. Second, the Officer found that she is inadmissible to Canada due to misrepresentation, under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

For the reasons that follow, I find the Officer's Decision was reasonable and will therefore dismiss this application for judicial review.

II. Background

[2] The Applicant received a job offer to work in Canada pursuant to a positive Labour Market Impact Assessment ("LMIA") as a caregiver for two children.

[3] The Applicant applied for a work permit ("WP") in May 2019, including in her application reference letters from past employers and other supporting evidence. The Officer raised concerns about the content and provenance of two work reference letters because of their similar content and formatting. The reviewing Officer invited the Applicant to an interview on October 17, 2019, to discuss these concerns.

[4] At the interview, the Officer asked the Applicant whether her employers had written the reference letters themselves and the Applicant answered, unequivocally, that they had. The Applicant also stated that, in her current job for an employer named Ms. Gong, she had done "everything" related to childcare for Ms. Gong's young son.

[5] After the interview, the Officer contacted Ms. Gong and found that, contrary to what the Applicant had said in her interview, the Applicant's primary work responsibilities at her current employment were household chores, rather than childcare, and that the child's grandmother was available to take care of the child. Ms. Gong also said that the Applicant had prepared the reference letter herself, and had only asked Ms. Gong to sign it, which Ms. Gong did.

[6] In verifying the information that the Applicant had provided, the Officer also found it troubling that a second employer ("Mr. Choi") could not be reached though the phone number provided in the WP application.

[7] The Officer detailed these concerns in a procedural fairness letter to the Applicant dated October 21, 2019 ("PFL"). The Applicant responded to the PFL, explaining the discrepancies and providing documentation to support her explanations ("PFL Response"). Among this documentation, the Applicant included a letter from Ms. Gong, which provided more context to the information she had given to the Officer by phone. In the letter, Ms. Gong explained the provenance of the reference and the nature of the Applicant's work as follows:

> I recently received a call from the Canadian Embassy employee and he asked about when was the time [the Applicant] came and started working for me… and what her main duties have been. I said that [she] does some housework and looks after the child. We have an elderly family member, my mother, who helps take care [of] my son but [the Applicant] is required to help take care of the child if my mother is busy and has other plans for the day. [The Applicant] is required to pick up the child from school and yes, I said we have a driver to help [the Applicant] with the transportation but I want to clarify that [she] is the one who takes care [of] the child to send him off [to school] and who collects him…. Sometimes when the driver is busy, in order to make sure the child is safe I require [the Applicant] [to] take a bus to pick up my son and she sometimes waits for more than two hours for my son's tutoring class to conclude but before that class she takes care of the child, she prepares my child's snacks and help[s] him do his homework…
>
> I was asked about [the Applicant's] Certificate of Employment, as I am a busy woman and the certificate was signed more than 2 months ago I honestly forgot that the certificate was in English and my assistant had translated the certificate to me before I signed on it.
>
> I want to clear all the confusion that might have transpired due to my poor memory, [the Applicant] is a nanny to my son and she is also our domestic helper, she does take care of my son and all that

> is written in her employment certificate I did sign on August 5 of 2019 is complete [*sic*] true…

[8] The Applicant also explained to the Officer in her PFL Response that the reason why Mr. Choi had not answered at the phone number provided was because he had moved to Thailand. The Applicant provided WeChat screenshots, in which Mr. Choi confirms his relocation, to support her assertion.

[9] During the hearing of this judicial review, the Applicant elaborated on the explanation she had given to the Officer in her PFL Response about the provenance of her reference letters. Specifically, she stated that Ms. Gong had asked to see a sample reference letter, because Ms. Gong was a busy woman and also needed help with her English. Her assistant then helped her to translate and draft the letter, which Ms. Gong signed. With respect to the letter from Mr. Choi, the Applicant said that he dictated it to her while she typed it. In sum, the Applicant said that both reference letters were drafted in collaboration with her employers, and that both employers ultimately signed them.

III. Decision under Review

[10] The Officer refused the Applicant's work permit application on November 21, 2019 (the "Refusal Letter"). The Officer set out the following grounds for the refusal:

- The Applicant had not demonstrated that she would be able to perform the work sought;
- The Officer was not satisfied that the Applicant truthfully answered all questions put to her regarding the documents she submitted as part of her application; the Officer pointed

to the PFL for information about the kinds of information the Officer was dissatisfied were truthful; and

- The Officer found the Applicant inadmissible for misrepresentation, contrary to paragraph 40(1)(a) of *IRPA*.

[11] The extensive Global Case Management System ("GCMS") notes that accompany the Decision provide further information about the reasons for the refusal:

> PA applied for a WP to Canada as a caregiver supported by employment reference letters purported to have been issued by her current and previous employers. The applicant was invited to a personal interview to address officer's concerns regarding work reference letters, as well as PA's ability to perform the work outlined in the job offer. Following the interview, verifications were done on the PA's work reference letter which determined there were discrepancies with what the applicant declared at interview and the information provided by employers at verification.
>
> A PFL was sent to the applicant on 21Oct2019 [*sic*] to address the officer's concerns that the PA had misrepresented herself at interview by declaring that her work reference letter from Ms. Gong Yuhong was prepared by Ms. [Gong]; however, Ms. [Gong] confirmed that the PA herself had prepared the letter and was then signed by Ms. [Gong]. Ms. [Gong] also confirmed that the PA was not primarily responsible for the childcare (as this was done by the family elders) but instead was repsonsible [*sic*] for the household chores.
>
> I have reviewed the PA's response. The PA declares she has nothing to hide from us and that [she] was nervous and was unsure about the question. <u>At interview, the PA declared that the letter was prepared and signed by her employers; however, this contradicts the information provided by [Ms. Gong] via verification after the interview. Furthermore, the PA has failed to address the officer's concerns that she misrepresented her actual duties for Ms. [Gong].</u>
>
> … Based on all the information on file, it appears that the misrepresentation of the PA's work experience was intentional.

> I am an officer designated under the Act to make a determination under A40. I am satisfied that [the] PA knowingly misrepresented herself in [order] to satisfy the requirements of IRPA for a work permit. As such, I am satisfied that the applicant has misrepresented a material fact that if accepted would have led to an error in the administration of IRPA. Therefore the applicant is found inadmissible under A40 for misrepresentation.
>
> [Emphasis added.]

IV. Issues and Standard of Review

[12] The Applicant contends that the Decision was both unreasonable and procedurally unfair.

[13] The merits of the refusal and the finding of section 40 misrepresentation are reviewed on a reasonableness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Ibe-Ani v Canada (Citizenship and Immigration)*, 2020 FC 1112 at para 12 [*Ibe-Ani*]. A reasonable decision 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).

[14] As for the alleged breach of procedural fairness, the standard of correctness applies and this Court must determine whether a fair and just process was followed: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54.

V. Analysis

A. *Was the Officer's decision reasonable?*

[15] The Applicant argues that the Officer's findings are unreasonable in light of the evidence provided. This evidence includes: (i) the reference letter from Ms. Gong, which confirmed the Applicant's childcare experience as a housekeeper and nanny for three years, (ii) the explanation from Ms. Gong addressing the Officer's concerns about the provenance of Ms. Gong's reference letter, (iii) evidence of the Applicant's Social Security System remittances during this period, (iv) other reference letters, including that of Mr. Choi, and (v) evidence of the Applicant's five-year degree in early childhood education. The Applicant argues that she met the requirements of the LMIA and the job offer with "undisputed" evidence, and that it was therefore unreasonable for the Officer to conclude that she had failed to demonstrate her ability to work as a caregiver.

[16] The Applicant also argues that the Officer failed to apply the proper test for misrepresentation and states that the discrepancies that the Officer identified were not material in the sense of *IRPA* paragraph 40(1)(a) and did not amount to misrepresentation. As mentioned above, according to the Applicant, Mr. Choi dictated his letter to her while she typed it, and then he signed it. As for Ms. Gong, who had wanted to see a sample letter before writing her own, the Applicant states that she sent a sample reference letter, which explains the similarities between the letters. The Applicant points out that Ms. Gong confirmed the Applicant's assertions in her explanatory letter.

[17] I am not persuaded by the Applicant's arguments. Paragraph 40(1)(a) of *IRPA* is a broadly-worded provision, which holds that a foreign national is "inadmissible for misrepresentation (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 [IRPA]".

[18] In order to find an applicant inadmissible to Canada due to misrepresentation, two elements must be established. First, there must be a misrepresentation. Second, the misrepresentation must be material, in that the misrepresentation induces or could induce an error in the administration of *IRPA*: *Kangah v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 814 at paras 20-21. A fact need not be decisive or determinative to be material. It will be material if it is important enough to affect the process undertaken or the final decision: *Yang v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1484 at para 13; *Kazzi v Canada (Minister of Citizenship and Immigration)*, 2017 FC 153 at para 38.

[19] Courts have held that an innocent mistake may fall within the parameters of subsection 40(1) of *IRPA*: *Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327 at para 18 [*Paashazadeh*]; *Punia v Canada (Citizenship and Immigration)*, 2017 FC 184 at para 51. The provision may apply even where a misrepresentation is made by a third party: *Ibe-Ani* at para 29; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 50-53, 58).

[20] On a related point, for a decision regarding misrepresentation to be reasonable, officers must also undertake an analysis of the materiality of the act or omission that is alleged as

misrepresentation, and how the act or omission could have or did affect the outcome. In other words, before making a finding under paragraph 40(1)(a) of *IRPA*, an officer must assess the evidence on the record to determine whether any alleged misrepresentation is material: *Yang v Canada (Citizenship and Immigration)*, 2019 FC 378 [*Yang*] at para 15.

[21] Here, there was a clear misrepresentation made by the Applicant herself. The Officer recorded the following exchange in the GCMS notes about the provenance of her reference letters:

> At the interview, client had provided the following answers to my questions:
>
> "If the letter was prepared and signed by your employers? PA said "Yes".
>
> "Can you explain why the two work reference letters look so much similar and were signed by two different employers at different times? PA said "No. They were provided to me and signed by my employers."
>
> "Can I re-confirm again that these two letters were not prepared by you? A: No.

[22] Thus, as is clear from the GCMS notes, on more than one occasion when the Officer asked the Applicant about the provenance of the letters, the Applicant confirmed that she did not prepare the letters herself, but that her employers had. The Officer noted that Ms. Gong later contradicted, by telephone interview, information the Applicant provided about who wrote the letter (in addition to contradictory information about her work duties, notably primary care of the children, as discussed below). The Officer summarized the Applicant's PFL Response:

> PA explained that said [*sic*] she was nervous and has nothing to hide [from] us. She was unsure about the question but she remembered she was asked whether she had signed on the

> reference letters on behal[f] of her bosses, her answer was “No”. PA further explained at this time “The reference letter was a template I used to prepare the previous letter for Mr. [Choi] and my current employer asked me to show her my previous reference letter which I did. My current employer Ms. Gong… does not speak English but her personal assistant Annie does and I gave the reference to [Annie] and was given the signed letter back by Annie.”

[23] The Applicant’s counsel attempted to explain away the contradictory responses, but the explanations only came after the fact at the hearing and the Officer did not have the benefit of this explanation. Furthermore, the Applicant’s assertions at the judicial review hearing were not supported by evidence, such as an affidavit from the Applicant. This late explanation did not, in my view, lead to a conclusion that the finding of misrepresentation was unreasonable.

[24] The Officer also found that a second misrepresentation had been made when the Applicant stated that she did “everything” for Ms. Gong’s child. Yet the Applicant’s evidence was that the child’s grandmother was the primary caregiver.

[25] Taken alone, one might question the interpretation of the word “everything”. This could connote that the Applicant participated in all aspects of childcare when her help in this respect was needed (as stated by Ms. Gong in her letter included with the PFL Response). However, it could also mean that the Applicant was 100% responsible for childcare (which is contradicted by evidence on the file, including Ms. Gong’s support letter).

[26] Viewed as a whole, I also do not find that the Officer’s secondary conclusion, based on statements about childcare, to be reasonable because it was one possible conclusion in light of all

the circumstances and evidence presented. It is not the job of this Court to reweigh this evidence. Rather, decisions that involve a finding of misrepresentation should only be set aside if they are shown to be unreasonable: *El Sayed v Canada (Citizenship and Immigration)*, 2017 FC 39 at para 12; *Hoseinian v Canada (Citizenship and Immigration)*, 2018 FC 514. In this case, the Officer's conclusion that the discrepancies amounted to misrepresentation was reasonable.

[27] As for the authorities the Applicant relies on, including the materiality of the misrepresentation, those cases arose under on different facts. For instance, in *Yang*, Justice Shirzad Ahmed found that the officer had failed to assess the evidence on the record, including the applicant's qualifications, to determine whether the misrepresentation was a material one: *Yang* at paras 13-15.

[28] Here, on the other hand, the GCMS notes indicate that the Officer considered the totality of the evidence, including the Applicant's education documentation, reference letters, remittances statements, and other supporting documentation, including all documentation received with the PFL Response. The Officer concludes being "satisfied that the applicant has misrepresented a material fact that if accepted would have led to an error in the administration of [the IRPA]". I agree that the shifting story was highly material to the heart of the WP application, as it related to past work experience, which was one of the qualifying criteria.

[29] In short, the purpose of paragraph 40(1)(a) is to ensure that applicants provide complete, honest, and truthful information and to deter misrepresentation: *Paashazadeh* at para 25. Here,

the misrepresentations found by the Officer, which were reasonable in my view, went to the heart of the application.

B. *Was the Applicant's right to procedural fairness breached?*

[30] The Applicant argues that the explanations she provided in her PFL Response– including WeChat screenshots of Mr. Choi's confirmation of his relocation and Ms. Gong's explanatory letter – were not reasonably assessed, leading to procedural unfairness. Given that a misrepresentation finding leads to serious consequences for foreign nationals applying to work and live in Canada (a ban from Canada for five years), the Applicant submits that the level of procedural fairness owed in this case was high. She cited a number of this Court's cases to support this assertion, including: *Lin v Canada (Citizenship and Immigration)*, 2019 FC 1284 at para 25; *Bao v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 268 at paras 17-18 [*Bao*]; *Ge v Canada (Citizenship and Immigration)*, 2017 FC 594 at para 28 [*Ge*]; and *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 at para 24 [*Lamsen*].

[31] I agree that where misrepresentation is raised, given the potential inadmissibility and resulting consequences, the Officer has an obligation to put concerns to the Applicant and give her an opportunity to respond: *Ge* at para 30. Here, I find the Officer did just that for all key findings, by providing both an in-person interview and subsequent opportunity to explain herself in the PFL process, to which the Applicant responded.

[32] As with the substantive findings of misrepresentation, the Officer assessed the evidence in its totality and did not "compartmentalize" the procedural aspects of this case, unlike in

Lamsen (at para 24), or fail to put the concerns to the Applicant in the PFL, as occurred in *Bao* (at paras 17-18). Rather, here the process was fair: the Officer provided every opportunity for the Applicant to explain herself, first orally, and then in writing. Procedural fairness does not require an extended back-and-forth exchange between visa officers and applicants.

VI. Conclusion

[33] I find that the Officer's analysis with respect to paragraph 40(1)(a) of *IRPA* is reasonable, given its justification, transparency, and intelligibility. The process was also fair. The application for judicial review is accordingly dismissed. Neither party felt that these issues merit a certified question, and I agree.

JUDGMENT in IMM-7205-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. The parties did not propose any question of general importance for certification and I agree that none arise.

3. No costs will issue.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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