Federal Court Cour fédérale

Date: 20210617

Docket: IMM-2304-20

Citation: 2021 FC 630

Vancouver, British Columbia, June 17, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

SUKHJIT KAUR SOMAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] At the close of the hearing of this judicial review application held on June 16, 2021, I advised I allowed the application and reasons would follow. These are my reasons.

[2] Ms. Somal is a 31-year-old citizen of India. On June 20, 2019, pursuant to s. 87.3 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], she applied for a work permit

from outside Canada. While completing Form IMM-1295, she checked "yes" to question 2(b), which asked: "Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?" Ms. Somal responded that she had been refused a visa in 2016 from the United States ("American refusal"). The June 20, 2019, application was refused for reasons unrelated to misrepresentation. A second application, made in 2019, was refused for inadvertently failing to pay the processing fee.

[3] On December 19, 2019, Ms. Somal submitted a third application for a work permit to enter Canada. Again, she checked "yes" to question 2(b) of the Form IMM-1295. This time, she noted in the corresponding box that she had been refused two (2) work permit applications in Canada in 2019. She failed to mention the American refusal. I note here that Ms. Somal engaged the same immigration consultant to assist her with all three (3) applications.

[4] On January 21, 2020, Ms. Somal received a procedural fairness letter. The officer examining the third application contended she had failed to provide a complete answer to question 2(b) of the Form IMM-1295. The letter indicated that, although she had declared the two (2) previous Canadian visa refusals, she had not declared visa refusals from other countries or territories. This was an apparent reference to the American refusal, previously disclosed.

[5] On January 22, 2020, Ms. Somal's immigration consultant responded to the procedural fairness letter by stating, in part, that the failure to disclose the American refusal was an unintentional clerical error. The consultant noted that Ms. Somal had, in her June 20, 2019,

application, declared this refusal. However, when preparing the second application, this information was inadvertently deleted. That error found its way into the third application.

[6] The Officer was not satisfied with the response. The Officer accordingly found Ms. Somal to be inadmissible to Canada pursuant to paragraph 40(1)(a) of the *IRPA* and would remain inadmissible for a period of five years, by application of paragraph 40(2)(a) of the *IRPA*.

[7] Ms. Somal brings the within application for judicial review, pursuant to s. 72(1) of the *IRPA*, of the June 29, 2020 decision that she committed misrepresentation.

II. Relevant Provisions

[8] The relevant statutory provisions are paragraphs 40(1)(*a*) and 40(2)(*a*) of the *IRPA*:

***Immigration and Refugee Protection Act*, S.C. 2001, c. 27**	***Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, ch. 27**
Misrepresentation	**Fausses 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;

[…]	[…]
Application	**Application**
(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;

III. Standard of Review

[9] The parties agree that this Court should apply the standard of reasonableness to the Officer’s decision *(Canada (MCI) v. Vavilov*, 2019 SCC 65). Ms. Somal contends the reasons lack transparency, justification and intelligibility.

IV. Analysis

[10] Evidence of misrepresentation must be compelling. See, *Omid Seraj v. The Minister of Citizenship and Immigration*, 2016 FC 38 at para. 1, where Justice Shore states: “Findings of misrepresentation must not be taken lightly. They must be supported by compelling evidence of misrepresentation occurred by an applicant; thereby, an applicant faces important and long

lasting consequences in addition to having his/her application rejected". The more important the evidence that is not mentioned, the more likely it will be that a court will conclude the decision-maker made a factual finding without regard to the evidence: *Cepeda-Gutierrez v. Canada (MCI)* (1998), 157 FTR 35 at para. 17.

[11] I conclude the Officer's decision with respect to misrepresentation is unreasonable for a number of reasons. It appears the Officer did not fully engage with the materials submitted by Ms. Somal. The Officer makes a blanket statement that he or she has "reviewed the application, supporting documents and notes". However, the Officer fails to mention Ms. Somal's explanation for failing to disclose the American refusal, nor does the Officer mention the immigration consultant's letter. Also, the previous disclosure of the American refusal, less than six (6) months prior, demonstrates, in my view, that there was no attempt to misrepresent to Canadian authorities. While the Officer is entitled to a different view from me on that issue, he or she should, at a minimum, have mentioned the previous disclosure and explained why, in that context, the misrepresentation was other than innocent.

[12] Further to my observations set out in paragraph 10, I note that in his December 19, 2019 submission to Immigration, Refugees and Citizenship Canada in Delhi, the immigration consultant wrote:

> "We are re-submitting Open Work Permit Application for Sukhjit Kaur Somal, her husband Hartej Singh Sidhu is currently working in Canada as a Farm Supervisor (Skill Level B) (Confirmation of Employment & paystubs attached). We have previously applied for her application twice but were refused for the following reasons:
>
> > Her first application was refused as her financial documents were not sufficient to support her application. We submitted he

> > [sic] application again with supporting financial documents.
> >
> > In the second application, due to human error we missed to pay $100 Open Work Permit Holder fee with the application.
> >
> > We are now reapplying with the same documents and will be paying Work Permit and Open Work Permit holder fee. Sukhjit has enough funds to come and stay in Canada for the first few months and will thereafter be working and supporting her expenses along with her spouse.
>
> We humbly request you to expedite the processing time for her application as this was an error on our part. She and her husband wish to spend Christmas and New Years together. They have been waiting a lot of time to be together.
>
> Please accept her Work Permit application and if you require further information, please feel free to contact us back."

[13] The specific reference in this third application to the first application demonstrates unequivocally there was no attempt to misrepresent anything. If the immigration consultant, on behalf of Ms. Somal, were attempting to mislead, surely there would be no mention of the application which refers to the American refusal.

V. Conclusion

[14] I allow the application for judicial review from the finding of misrepresentation and refer the matter to another visa officer for redetermination. Neither party requested the Court certify a question for consideration by the Federal Court of Appeal and none appears from the record.

JUDGMENT in IMM-2304-20

THIS COURT'S JUDGMENT is that the application for judicial review is allowed and the matter is referred to another visa officer for redetermination, all without costs. No question is certified for consideration by the Federal Court of Appeal.

"B. Richard Bell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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