Federal Court  Cour fédérale

Date: 20210916

Docket: IMM-28-20

Citation: 2021 FC 959

Ottawa, Ontario, September 16, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

GURDIAL SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of the decision dated December 19, 2019 [Decision], of a member of the Immigration Division [ID Member], to issue an exclusion order against the Applicant because he is a person described in paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. In particular, the ID Member found the

Applicant is a foreign national who, by misrepresentation, did or could have induced an error in the administration of the IRPA.

[2] For the reasons set out below, the application for judicial review is dismissed.

II. Background Facts

[3] The facts in this case are largely not in dispute.

[4] Mr. Singh is a citizen of India. He arrived in Canada on December 25, 2017 on a temporary resident visa, also referred to as a visitor visa. In his visa application, the Applicant stated the purpose of his visit was to spend more time with family.

[5] On May 26, 2018, the Applicant submitted an application for an extension of his visitor visa on the same grounds. The application was approved and the Applicant's visitor visa was extended to November 30, 2018.

[6] In October 2018, the Applicant became curious about employment opportunities in Canada. As he was browsing online, he came across a job posting by Matharu & Kelsi Welding Services [Matharu], which corresponded to his qualifications and skills as a welder.

[7] After applying for the position, the Applicant received a letter from Matharu on October 15, 2018 offering him a full-time permanent position as a welder. The Applicant accepted the offer that same day.

[8] The Applicant was aware that the offer was conditional and dependent upon Matharu obtaining a positive Labour Market Impact Assessment [LMIA] decision from Employment and Social Development Canada [ESDC]. An LMIA is a labour market verification process whereby the ESDC assesses an offer of employment to ensure that the employment of a foreign worker will not have a negative impact on the Canadian labour market.

[9] The Applicant also understood that Matharu needed the LMIA application to be approved and that he needed to obtain a work permit before he would be permitted to work in Canada.

[10] In February 2019, the Applicant applied for a further extension of his visitor visa with the assistance of an immigration consultant. The Applicant testified before the ID Member that he was not fluent in English and not able to fully understand all the questions posed in the application form. He filled out some of the information in the form and the balance was completed by the consultant. In the “purpose of my visit” section in the application form, the Applicant selected “other” from all the options provided in the form and listed that he wanted to spend more time with his family. No mention was made in the extension application of the job offer or the outstanding LMIA application.

[11] On March 12, 2019, Matharu was notified that the LMIA had been approved. This information was later communicated to the Applicant in April 2019.

[12] On March 25, 2019, the Applicant was advised that his visitor visa had been extended for another six-month period until August 6, 2019.

[13] On May 2, 2019, the Applicant crossed the US border and presented himself at a port of entry at the Niagara Falls Rainbow Bridge to obtain a work permit. An immigration officer found that the Applicant was inadmissible for misrepresentation under paragraph 40(1)(a) of the IRPA because he did not disclose in his February 2019 visitor visa extension application the fact that his prospective employer had submitted an LMIA application. A report was accordingly made pursuant to subsection 44(1) of the IRPA on the ground that the Applicant was a foreign national who is inadmissible by reason of misrepresentation.

[14] On December 19, 2019, the Applicant attended an admissibility hearing before the ID Member. During the course of the hearing, the Applicant testified that his true and primary purpose of visit was to spend more time with family and that this purpose did not change. He did not think he needed to disclose the LMIA because it was the employer's application. The Applicant also claimed that he was not aware that the government would have wanted him to disclose the prospect of a possible job opportunity that required his prospective employer to obtain a positive LMIA decision and for him to obtain a work permit on that basis.

III. Decision under Review

[15] At the conclusion of the hearing, the ID Member rendered an oral decision.

[16] While observing that there was nothing wrong with looking for work while in Canada on a visitor visa, the ID Member noted that the Applicant went further than simply making inquiries when he applied for a position with Matharu and signed a job offer. The ID Member therefore found that the Applicant was fully aware of the outcome of his job search on October 15, 2018.

[17] The ID Member also found that the Applicant contacted Matharu for updates a few times after accepting the job and was informed that the LMIA application was in progress. All of this took place before the Applicant applied for an extension of his visitor visa in February 2019.

[18] The ID Member concluded that the Applicant breached the duty of candour when he completed his visitor visa extension application by:

(1) failing to disclose he had a job offer at the time; and

(2) failing to disclose that his potential employer had submitted an LMIA application.

[19] Although the ID Member accepted that family visit was one of the purposes of the Applicant's extended visit to Canada, and that he was not lying about this, the ID Member added "it's what you didn't say that is troubling to me."

[20] The ID Member noted that the LMIA process was a complex one that included a $1,000.00 application fee. While agreeing the process was employer-driven and the outcome was not guaranteed, the ID Member noted that it was an active application of which the Applicant was aware.

> As I said, your employer went to a great length and I'm sure he shared that information with you when you called him for a follow-up or update on the status. The expensive paperwork that's required plus the $1,000.00 application fee is nothing to dismiss lightly. So, yes, although the outcome was not clear to you at that time, but the process had already begun.

[21] The Applicant testified during the hearing that if the job offer did not pan out, he would have left Canada. The ID Member interpreted this as an admission that the Applicant's intentions

in staying in Canada were not only to visit family, but also to determine whether the LMIA process would succeed and whether he could obtain a work permit to remain in Canada.

[22] The ID Member concluded that the Applicant was required to declare his full intentions when he applied to extend his status as a visitor, but failed to do so.

> I find that you have failed to fulfill the duty of candour and explain not just your mere desire to remain here, but what's actually been processed and put in place in order for you to obtain a work permit.

[23] On that basis, the ID Member issued an exclusion order for misrepresentation pursuant to paragraph 40(1)(a) of the IRPA, thereby barring the Applicant from applying to visit Canada for five (5) years.

IV. Standard of Review

[24] The presumptive standard of review is one of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. As both parties agree that this is the standard to be applied in this case, I see no need to dwell on this issue.

[25] This Court's analysis should focus on whether the decision-maker's assessment has "the attributes of justification, transparency and intelligibility," which are the "hallmarks of reasonableness." The Court should not substitute a preferred outcome, nor should it reweigh the evidence. Rather, the focus must be on the decision actually made, including the justification offered for it, and not the conclusion the Court itself would have reached in the administrative decision-maker's place.

V. Analysis

[26] The Applicant submits that the ID Member erroneously concluded that the Applicant is inadmissible to Canada for misrepresentation as contemplated under subsection 40(1) of the IRPA. As explained below, his arguments are at times self-defeating and difficult to follow.

[27] First, the Applicant claims that he accurately indicated on his visitor visa extension application that the intended purpose of his visit was to spend more time with his family. The Applicant then adds that his main purpose of extending his visit was to remain with his family, but a secondary less compelling purpose was to see if his prospective employer would be authorized to hire him. The Applicant's admission that he had a second purpose for staying in Canada completely undermines his argument that his answer to the question about the purpose of his visit was accurate.

[28] Second, the Applicant correctly sets out the principles related to the duty of candour at paragraph 16 of his further memorandum of argument.

> The duty of candour is triggered in the first part of the test for misrepresentation by the withholding provision. The duty of candour is reinforced by the obligations set out in s. 16 and s.18 of the IRPA and s. 51(a) of the (*Immigration and Refugee Protection Regulations* SOR/2002-227 [IRPR]). There is a duty of candour to disclose all material facts relevant to entry or admission, including material changes in circumstances even if no question is specifically asked by immigration authorities. An applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada. The onus of submitting true and complete information and ensuring that the application complies with the legislation rests with the applicant. An intention to mislead is not required for misrepresentation to occur.

[29] The Applicant goes on to suggest that paragraph 40(1)(a) of IRPA does not require spontaneous disclosure of all information that might possibly be relevant. He further argues that Parliament could only have intended for applicants to be assessed for their primary and most compelling purpose of visit. I disagree.

[30] As stated by Mr. Justice James Russell in *Singh v. Canada*, 2015 FC 377 at para 32, it is not for an applicant to decide what is relevant.

> [32] […] Applicants are required to make full disclosure and it is the role of the officer who examines the application to decide what is relevant and what weight to give to any particular fact that is disclosed. The system simply could not work if applicants, no matter how honest, were allowed to decide what is relevant for their application. If full disclosure is made, and an applicant believes that a visa has been unreasonably denied, then there is recourse before this Court. But the problem with misrepresentations is that they do not allow decisions to be made on the full facts by officers who have been fixed by Parliament with the power to make those decisions…

[31] Paragraph 40(1)(a) of the IRPA establishes the test to determine if there was misrepresentation, the first prong of which is the duty of candour:

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;

[32] The focus of this provision is on “material facts relating to a relevant matter.” In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose.

[33] In the present case, the only reason the Applicant stated in his “Extend My Stay” temporary resident visa application was that he wanted to continue to visit his family. The Applicant submits that he honestly and reasonably believed he was not required to disclose the possible job offer and the pending LMIA application made by the employer. The Applicant also points out that his immigration consultant completed the application and that he was not familiar with the process and the specifics.

[34] Because reasonable mistakes or misunderstandings fall outside the scope of misrepresentation, he maintains that the ID Member’s decision is unreasonable and cannot be given deference. This argument is without merit.

[35] The ID Member specifically found that the Applicant made no mention of the job offer, or the pending LMIA, even though the information was within his control.

[36] While the Applicant seeks to lay blame on his representative or his lack of comfort with English for the omission, he was ultimately responsible for the content of the application when he signed it: see *Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 450, *Haque v Canada (Minister of Citizenship and Immigration)*, 2011 FC 315; *Goburdhun v. Canada (Citizenship and Immigration)*, 2013 FC 971. An applicant’s subjective belief that he or she did

not misrepresenting a material fact is not reasonable where they fail to review their application and ensure the completeness and veracity of the document before signing it.

[37] I agree with the Respondent that the Applicant's failure to disclose in his February 2019 application that one of the reasons he wished to stay in Canada was to await the outcome of the LMIA process could induce an error in the administration of the IRPA. The Applicant would not necessarily be able to satisfy subsection 179(b) of the IRPR, which requires him to demonstrate that he will leave Canada at the end of his authorized stay.

179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
[…]	[…]
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;

[38] I therefore see no error in the ID Member's conclusion that the Applicant failed to declare his full intentions and the processes that were ongoing at the time he was applying for a second extension of his temporary resident status.

[39] The Applicant contends that a foreign national is allowed to change his purpose from the original purpose stated at entry and to explore Canada as a place to move to or work. This is not disputed in this case and was in fact acknowledged repeatedly by the ID Member. The Applicant was certainly free to attempt to apply for a work permit in Canada and go through the LMIA

process. However, he had the duty to disclose the change of purpose when applying for an extension of his visitor visa. He did not do so.

[40] Finally, I wish to comment on certain submissions by the parties that were improper.

[41] The Applicant submitted that the application form for extension of the visitor visa does not provide the option of including secondary reasons for extending one's purpose, nor does it allow for an applicant to disclose any pending applications, or potential change of immigration conditions in the future possibly allowing to work one day. However, no evidence was adduced or any argument made on this point before the ID Member.

[42] Moreover, in responding to the present application, the Respondent submitted that there were additional instances of misrepresentation in this case, such as the Applicant's failure to disclose his welding education and his past welding employment experience on his visa application, as well as his failure to disclose that he received notification from the prospective employer in April 2019 that his LMIA was positive when he attempted to "flag-pole" into Canada and obtain a work permit in May 2019. While there may be merit to the submissions, they cannot be taken into account as they were not raised before the ID Member and did not factor into the Decision.

VI. Conclusion

[43] For the above reasons. I conclude that the Decision is transparent, intelligible, and well supported by the relevant facts and law. It should not be disturbed.

[44] The application for judicial review is accordingly dismissed.

[45] The parties did not identify a question to be certified for appeal.

JUDGMENT IN IMM-28-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no certified question.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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