

Federal Court



Cour fédérale

Date: 20220225

Docket: IMM-2422-20

Citation: 2022 FC 270

Ottawa, Ontario, February 25, 2022

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

JASPREET KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Jaspreet Kaur, seeks judicial review of the decision of a visa officer at the High Commission of Canada in New Delhi [the Officer], dated April 8, 2020. The Officer refused Ms. Kaur's application for an open work permit. The Officer also found her inadmissible to Canada for misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the application for judicial review is granted.

I. Background

[3] Ms. Kaur, a citizen of India, applied for an open work permit to come to Canada with her two children to join her husband, Mr. Jaskaran Singh, who was in Canada on a work permit at that time.

[4] The Global Case Management System [GCMS] notes reflect that, upon review of Ms. Kaur's application form, concerns were raised about the validity of her marriage to Mr. Singh because his divorce certificate from his previous marriage had not been provided. As a result, Ms. Kaur was invited to an interview.

[5] Ms. Kaur was advised to bring to the interview "all required documentation ... including marriage photos depicting all ceremonies, post marriage photographs, proof of on-going communication, status of inviter in Canada, proof of on-going education of inviter in Canada."

[6] The interview took place on November 26, 2019, with the aid of an interpreter fluent in Punjabi. The GCMS notes reflect that the interviewing officer asked Ms. Kaur about her previous and current marriage. Ms. Kaur explained, among other things, that she married Mr. Singh in August 2013 but had met him and begun dating in 2011.

[7] The interviewing officer also questioned Ms. Kaur about her previous visa refusals. In her application form, Ms. Kaur had stated, “I applied for Canada visa with my children, which was refused. I applied for USA visa with my children, which was refused.”

[8] The GCMS notes of the interview set out the following exchange:

Q- Any previous Cdn visa refusals? Yes in 2015.

Q- I have info that you were refused Cdn visas 4 times. Yes.

Q- Why did you not tell me before? I had applied in 2015.

Q- Also in 2018? No.

Q- Any previous visa refusals from any other country? No.

Q- From the US? Yes in 2016.

Q- Why didn't you previously tell before? I forgot.

Q- How many times were you refused US visas? Two times in 2016.

Q- I have info that you were refused US visas 5 times. No.

Q- I have info that you were refused US visas 5 times. I forgot.

[9] The GCMS notes of the interview conclude:

No proof of host's divorce, I am not satisfied that he was free to marry her. I am, therefore, not satisfied that they are spouses. I didn't find her to be a credible person. She was not truthful about past visa refusals and contradicted herself. I gave her an opportunity to respond. She said, “I always speak the truth.”
Concerns persist.

[10] The interviewing officer referred the case to another Officer (the unit manager), who made the decision.

II. The Decision Under Review

[11] In an unsigned letter from the High Commission of Canada at New Delhi, dated April 8, 2020, the Officer refused Ms. Kaur's application. The letter stated that the Officer was not satisfied that Ms. Kaur had truthfully answered all questions, and informed her that she had been found inadmissible to Canada in accordance with paragraph 40(1)(a).

[12] In the GCMS notes, which comprise the reasons together with the letter, the Officer cited the interviewing officer's finding that Ms. Kaur had not disclosed previous visa refusals for Canada and the US. The Officer noted that Ms. Kaur had not been able to allay the concerns put to her. The Officer concluded:

In my opinion, on the balance of probabilities, the applicant was not truthful on his application form and failed to disclose that they had previous history in Canada and the USA. This could have caused an error in the administration of the Act and Regulations as it could have satisfied an officer that this applicant met the requirements of the Act with respect to having a genuine temporary purpose for travel to Canada and that he would abide by the conditions of entry to Canada.

III. The Applicant's Submissions

[13] Ms. Kaur submits that the Officer breached the duty of procedural fairness by not informing her of the concerns about her marriage, and in particular not advising her to bring her husband's divorce certificate to the interview, given that other documents were specifically requested.

[14] Ms. Kaur further submits that the Officer breached the duty of procedural fairness by not advising her of the concerns regarding her past visa refusals.

[15] Ms. Kaur also submits that the decision is unreasonable. She argues that there was no justification for the interviewing officer to question the validity of her marriage on the basis of the available evidence. She also submits that the Officer did not consider all the evidence with respect to her past visa refusals and that any resulting finding of misrepresentation is not justified. She notes that she had clearly disclosed on her application that she had previously been refused visas to Canada and the US. Ms. Kaur argues that the Officer simply accepted the interviewing officer's recommendation.

IV. The Respondent's Submissions

[16] The Respondent submits there was no breach of procedural fairness in the circumstances because Ms. Kaur was instructed to bring all required documentation to the interview, including a list of marriage-related documents, which should have put her on notice of the concerns about her marriage. She was given ample opportunity to answer the interviewer's questions about her marriage and the other aspects of her application.

[17] With respect to Ms. Kaur's argument that the Officer did not comprehensively review her application prior to rendering the decision, the Respondent submits that an officer is presumed to have considered all of the evidence unless the contrary is shown.

[18] The Respondent submits that it was reasonable for the Officer to find that Ms. Kaur had made misrepresentations given her failure to disclose several previous visa refusals and her untruthfulness at the interview.

V. Issues and Standard of Review

[19] Ms. Kaur raises two issues:

- Whether the Officer breached the duty of procedural fairness by not advising her of concerns about the validity of her marriage or her previous visa refusals; and
- Whether the decision is reasonable and the finding of misrepresentation justified.

[20] Issues of procedural fairness require the Court to determine whether the procedure followed by the decision-maker is fair having regard to all of the circumstances; this is akin to a standard of correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [CPR]. The scope of the duty of procedural fairness owed in the circumstances is variable and informed by several factors (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 21, 174 DLR (4th) 193 [Baker]. Where a breach of procedural fairness is found, no deference is owed.

[21] The standard of review of a work permit refusal and of a finding of inadmissibility under paragraph 40(1)(a)—which is a factual determination—is reasonableness: *Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at para 49 [Bains]; *Lin v Canada (Citizenship and Immigration)*, 2019 FC 1284 at para 23 [Lin].

[22] 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 (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85, 102, 105–07 [*Vavilov*]). A decision should not be set aside unless it contains “sufficiently serious shortcomings ... such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100).

[23] Reasons are not held to a standard of perfection (*Vavilov* at para 91). In the context of decisions for work permits and similar applications, it is understood that the reasons are brief (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at para 17 [*Patel*]); nonetheless, the reasons must permit the Court to understand why the application was refused and to determine that the conclusion falls within the range of reasonable outcomes.

VI. There Was No Breach of Procedural Fairness

[24] The duty of procedural fairness owed with respect to applications for work permits is generally at the low end of the spectrum. Where the refusal of the work permit is accompanied by a finding of misrepresentation and consequential inadmissibility to Canada for a five-year period, the jurisprudence is divided on whether a higher level of procedural fairness is owed. Ms. Kaur submits that a high level of procedural fairness is owed (*Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 27; *Lin* at paras 24–25).

[25] The Court has considered the fundamental principles regarding the scope of the duty of procedural fairness. In *Baker*, the Supreme Court of Canada emphasized that the scope of the

duty of procedural fairness is variable and must be determined in the specific context of each case. The factors that inform the scope of the duty include the nature of the decision, the nature of the statutory scheme, the importance of the decision to the person affected, the legitimate expectations of that person and the choice of procedure made by the decision-maker.

[26] In *Baker*, the Supreme Court of Canada reiterated that procedural fairness is based on the principle that individuals affected by decisions should have the opportunity to present their case and to have decisions affecting their rights and interests made in a fair, impartial and open process “appropriate to the statutory, institutional, and social context of the decision” (*Baker* at para 28).

[27] I do not agree with Ms. Kaur that a “high” level of procedural fairness was owed to her. However, I accept, as does the Respondent, that given the importance of the decision and the consequences of a finding of misrepresentation, in these particular circumstances, a higher—i.e., more than the minimum—duty was owed (*Baker* at para 25).

[28] The key question is “whether the applicant knew the case to meet and had a full and fair chance to respond”: *CPR* at para 56. In the present case, Ms. Kaur did know the case to meet. She was required to respond to all questions in the application form and was cautioned to answer truthfully. She was then invited to an interview and advised to bring documents, in particular relating to her marriage. The interview provided an opportunity for her to respond to the interviewing officer’s concerns, about her marriage and about her past visa refusals.

[29] Contrary to Ms. Kaur's submission that she should have been alerted to the interviewing officer's concerns about her past visa refusals, visa officers are not required to alert applicants to concerns that arise from the requirements of the Act (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 at para 24; *Hamza v Canada (Minister of Citizenship and Immigration)*, 2013 FC 264 at paras 21–24; *Patel v Canada (Citizenship and Immigration)*, 2021 FC 573 at para 20).

[30] The fact that the Officer who rendered the decision was not the interviewing officer does not demonstrate a breach of procedural fairness. This practice appears to be a safeguard, as the interviewing officer refers the file to another officer, in this case, the unit manager (as noted in the GCMS notes), before a finding of misrepresentation is made. Ms. Kaur's argument that the Officer's decision was made without regard to the evidence relates to the reasonableness of the decision.

VII. The Decision Is Not Reasonable

[31] The reasons—the decision letter and the GCMS notes—do not clearly convey whether the decision was based on a finding that Ms. Kaur was not credible due to the initial concerns about the validity of her marriage or because of the later concerns about her responses with respect to past visa refusals, or both.

[32] The interviewing officer noted both concerns at the conclusion of the interview. The GCMS notes state, “[n]o proof of host's divorce ... I am, therefore, not satisfied that they are spouses. I didn't find her to be a credible person. She was not truthful about past visa refusals

and contradicted herself.” This suggests that the interviewing officer reached a conclusion about Ms. Kaur’s overall credibility based on both the status of her marriage and her past visa refusals.

[33] The interviewing officer’s concern about the validity of Ms. Kaur’s marriage was speculative and unwarranted given the documents she provided, including her marriage certificate and passport and her responses at the interview. Moreover, Ms. Kaur provided her husband’s divorce certificate shortly after the interview and well before the decision was rendered on April 8, 2020. Any finding that Ms. Kaur was not credible about the status of her marriage or the purpose of her application for the visa, which was to visit her husband in Canada, is not reasonable.

[34] In addition, the interviewing officer’s referral to the unit manager noted that Ms. Kaur “went to great lengths to hide previous visa refusals.” This characterization is not supported by the GCMS notes. Clearly her answers were inconsistent, but there were only a few such questions recorded, which does not reflect “great lengths.”

[35] The GCMS notes of the Officer who rendered the decision state, “[d]uring the course of the review of the application, the officer noted that the applicant applied for VISAs in Canada and the USA that were not disclosed. The client was convoked for interview and advised of the concerns as well as the consequences of a finding under A40 ... The applicant failed to disabuse the officer of the concerns presented.”

[36] As Ms. Kaur notes, this is not an accurate reflection of the events. The interview was held due to the initial concern about her marriage, not about past visa refusals.

[37] The GCMS notes then set out the Officer's conclusion:

In my opinion, on the balance of probabilities, the applicant was not truthful on his application form and failed to disclose that they had previous history in Canada and the USA. This could have caused an error in the administration of the Act and Regulations as it could have satisfied an officer that this applicant met the requirements of the Act with respect to having a genuine temporary purpose for travel to Canada and that he would abide by the conditions of entry to Canada.

[Emphasis added.]

[38] The Officer who made the decision appears to have adopted the recommendation of the interviewing officer, including regarding credibility, without reviewing the evidence, given the references to "he" and "his" and the reference to whether Ms. Kaur had a "genuine temporary purpose for travel to Canada." The purpose of her travel had not been raised as a concern, given that her application was based on coming to visit her husband who was working in Canada at the time. The Officer's conclusion reflects, at worst, an example of a "cut and paste" from another decision, or at best, a lack of attention to Ms. Kaur's application. Either way, it does not meet the standard for a reasonable decision.

[39] As Justice Diner noted in *Patel* at para 15, although the reasons of visa officers are necessarily brief, the reasons must be responsive to the evidence to accord with the principles established in *Vavilov*. At para 17, Justice Diner added:

Again, while the reality of visa offices and the context in which its officers work include significant operational pressures and

resource constraints created by huge volumes of applications, this cannot exempt their decisions from being responsive to the factual matrix put before them. Failing to ask for basic responsiveness to the evidence would deprive reasonableness review of the robust quality that *Vavilov* requires at paras 13, 67 and 72.

“Reasonableness” is not synonymous with “voluminous reasons”: simple, concise justification will do.

[40] Although reasons are not held to a standard of perfection, the decision letter and the GCMS notes of the Officer who made the decision do not sufficiently convey a rational chain of analysis leading to a conclusion that is justified by the facts and the law.

[41] My finding that this decision is not reasonable does not undermine the importance of the purpose of section 40 of the Act in deterring misrepresentation and the importance of being truthful as a statutory requirement and a fundamental principle, which has been repeatedly highlighted in the jurisprudence.

JUDGMENT in IMM-2422-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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