

Federal Court



Cour fédérale

Date: 20220328

Docket: IMM-3071-20

Citation: 2022 FC 420

Vancouver, British Columbia, March 28, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

GURPREET SINGH TAKHAR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision [the Decision] by an immigration officer at the High Commission of Canada in New Delhi, India [the Officer], conveyed by letter dated June 25, 2020, rejecting his work permit application and finding him inadmissible to

Canada for misrepresentation under s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] As explained in more detail below, this application is dismissed, because I find that the Decision is reasonable and was made with requisite procedural fairness afforded to the Applicant.

II. **Background**

[3] The Applicant, Mr. Gurpreet Singh Takhar, is a citizen of India who applied in February 2020 for a temporary work permit to work as a heavy truck driver in Canada. He had similarly applied in September 2019. As reflected in Global Case Management System [GCMS] notes dated June 2, 2020, the assessment of the current application identified discrepancies in the Applicant's work experience with Ideal Driving Institute [IDE] in the United Arab Emirates [UAE] described in the two applications and in relation to his visa documentation. As a result, a procedural fairness letter [PFL] was sent to the Applicant on June 2, 2020. The PFL identified these concerns and gave the Applicant an opportunity to respond, including explaining the discrepancies and describing the duties he had performed in his employment with IDE.

[4] In his response to the PFL, the Applicant explained that he discovered inconsistencies in his September 2019 application, after the representative who was assisting him provided him with a copy of the application, and stated that he then asked his representative to withdraw the application. However, GCMS Notes dated June 24, 2020, which capture consideration of the Applicant's response, reflect that a withdrawal request was never received and observe that the

Applicant's explanation did not appear credible, as he was required to sign his application before submission and was responsible for ensuring its accuracy.

[5] Following further analysis of the available information, the officer reviewing the response to the PFL was not satisfied that the Applicant had been employed as a heavy truck driver as stated in his application. Forming the opinion that the Applicant had misrepresented his employment history to appear eligible for the position offered in Canada, the officer referred the matter to a senior officer for further review.

[6] GCMS notes dated June 25, 2020, reflect that the results of that review. The Applicant's response to the PFL did not disabuse the Officer of the concerns presented. In the Officer's opinion, the Applicant provided non-genuine documents in support of his application, which were material to the assessment of his eligibility for a work permit and the Applicant's intention to work for the stated employer as a temporary foreign worker. The Officer concluded that, had the documents been taken as genuine, it could have induced an error in the administration of *IRPA*, through erroneous issuance of a work permit on the basis that the Applicant had a genuine job offer and was a *bona fide* temporary foreign worker. The Officer therefore found the Applicant inadmissible to Canada for misrepresentation under s 40(1)(a) of *IRPA*.

[7] On July 9, 2020, the Applicant commenced this application for judicial review of the Decision.

III. Issues and Standard of Review

[8] Having considered the parties' arguments, I regard this application to raise the following issues for the Court's determination:

A. Did the Officer breach the duty of procedural fairness?

B. Is the Decision reasonable?

[9] The first issue is governed by the standard of correctness and, as suggested by its articulation, the second issue is governed by the standard of reasonableness.

IV. Analysis

A. Did the Officer breach of duty of procedural fairness?

[10] The Applicant raises two procedural fairness arguments. First, he submits that he was not given an effective opportunity to respond to the concerns about his application. The Applicant relies on *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 27, which explains that a finding of misrepresentation under s 40(1)(a) of *IRPA* attracts a high degree of procedural fairness, because of the harsh result of precluding an applicant from reapplying for a five-year period and the potential adverse reflection upon the applicant's character. He therefore submits that the Officer should have invited him for an interview, to better understand the problems he

encountered due to the role of his representative in connection with the September 2019 application.

[11] I find no merit to this argument. As the Respondent submits, the Applicant was provided with a PFL, which informed him of the concerns about his application and the consequences of a finding a misrepresentation and gave him an opportunity to respond. The Applicant was made aware of the case to meet and furnished with an opportunity to participate in the process. While the Applicant's response did not adequately address the concerns raised, this does not give rise to an obligation to provide him with a further or different means of addressing those concerns.

[12] The Applicant's written submissions also raise a procedural fairness argument surrounding the role of his representative in connection with the 2019 application. While I understand his counsel's oral submissions to explain that he is not pursuing this argument, I will nevertheless address it briefly. In his written submissions, the Applicant alleges that the principles of procedural fairness or natural justice were breached as a result of his agent's incompetence in failing to abide by his instructions to withdraw his 2019 application.

[13] However, as noted in both parties' submissions, it is trite law that the Applicant has the onus of demonstrating that his representative's incompetence resulted in a breach of procedural fairness and that, in doing so, he must establish that all three prongs of the following tripartite test are met: (a) the representative's alleged acts or omissions constitute incompetence; (b) there is a reasonable probability that the result would have been different if the representative had acted competently; and (c) the representative has been given notice and a reasonable opportunity

to respond (see, e.g., *Tapia Fernandez v Canada (Citizenship and Immigration)*, 2020 FC 889 at paras 25-26; *Farha v Canada (Citizenship and Immigration)*, 2016 FC 507 at para 17).

[14] As the Respondent submits, the Applicant provided little evidence in support of his allegation of incompetence on the part of his representative. There is no indication that the representative was given notice and a reasonable opportunity to respond. I therefore find no reviewable error resulting from this argument.

B. Is the Decision reasonable?

[15] In challenging the reasonableness of the Decision, the Applicant again relies on the alleged errors by his former representative, resulting in the inconsistencies in the information surrounding his work experience provided to immigration authorities in connection with his two immigration applications. He submits that, as the agency relationship was effectively “broken”, it was not reasonable for the Officer to find that the Applicant himself had committed a misrepresentation.

[16] As previously noted, the GCMS notes prepared by the first officer involved in the decision-making process reflect consideration of the Applicant’s explanation that the September 2019 application contained errors attributable to his former representative and that the representative failed to follow his instructions to withdraw the application. However, the notes reflect that officer’s conclusion that this explanation was not credible, as the Applicant was required to sign his application before submission and was responsible for ensuring that the information therein was accurate and correct.

[17] These notes also reflect that the Applicant's explanation did not address the fact that his employer, IDE, had provided a reference letter in connection with the September 2019 application, the details of which did not accord with the Applicant's description of his work experience in his current application. The GCMS notes observe that the reference letter from his employer would presumably have been requested by the Applicant, not by his representative. These notes clearly reflect consideration of the Applicant's explanation and set out compelling reasoning for rejecting that explanation. The subsequent GCMS notes prepared by the Officer who issued the Decision reflect a review of the application, supporting documents, and notes and express the Officer's conclusion that the Applicant's response to the PFL failed to disabuse the Officer of the concerns presented. I find nothing in the Applicant's arguments that undermines the reasonableness of this chain of analysis.

[18] The Applicant also draws the Court's attention to the statement in the GCMS notes that a determination on misrepresentation cannot be made based on information submitted in a previous application. He argues that, while the GCMS notes accurately state this principle, the Decision offends this principle because it relies on errors in the September 2019 application to arrive at the inadmissibility finding.

[19] The GCMS notes state that, although a determination on misrepresentation cannot be made based on information submitted in the previous application, information in that application including the employer's reference letter, which differs from the information in the current application, factors into the assessment of the Applicant's credibility and the credibility of the current reference letter. Based on these inconsistencies and the resulting credibility concerns, the

first officer reviewing the Applicant's response to the PFL formed the opinion that his employment work history was fabricated. Following review, the Officer who issued the Decision similarly concluded that the Applicant provided non-genuine documents in support of his work permit application.

[20] This reasoning does not offend the principle identified above, as the misrepresentation finding relates to information in the current application. Although the analysis underlying that finding took previous information into account, I find nothing unreasonable in that analysis.

[21] Finally, I note that the Applicant's submissions reference the innocent mistake exception, which can serve to preclude a finding of inadmissibility due to misrepresentation, where the Applicant reasonably and honestly believed that they were not withholding material information (see *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 at para 15). However, as explained in *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at para 16, this exception has no potential application in the absence of a conclusion that the error was indeed innocent. Given the conclusions of fabrication and submission of non-genuine documents, I find no viable argument that the exception applies in the case at hand or that the Officer erred in failing to consider its application.

[22] Having found no reviewable error in the Decision or the process leading thereto, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-3071-20

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3071-20

STYLE OF CAUSE: GURPREET SINGH TAKHAR V THE MINISTER
OF CITIZENSHIP AND IMMIGRATION CANADA

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: MARCH 23, 2022

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: MARCH 28, 2022

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