Federal Court  Cour fédérale

Date: 20230123

Docket: IMM-6328-20

Citation: 2023 FC 105

Toronto, Ontario, January 23, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

ADESOLA VICTORIA AFE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision by an Officer finding her inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. For the reasons that follow, I will dismiss the Judicial Review.

I. Background

[2] The Applicant is a citizen of Nigeria. In September 2013, she entered Canada on a study permit and enrolled at the University of Saskatchewan. In July 2019, the Applicant states that she applied to extend her student permit. She included in her application a fraudulent Registration Letter dated July 19, 2019, from the Manager of Undergraduate Services at the University of Saskatchewan. The Registration Letter indicated that she began her studies in September 2013, that she was pursuing an Honours Bachelors of Arts degree in Sociology, which she would complete in 2020.

[3] When the Applicant applied to extend her study permit on July 21, 2019, she attached a cover letter with her application package referring to and attaching the Registration Letter. On August 11, 2020, the Applicant received a procedural fairness letter from the Officer notifying her that she may be inadmissible to Canada for misrepresentation, as the Officer discovered that the Registration Letter was fraudulent.

[4] On August 23, 2020, her Counsel provided a responding letter, explaining that the Applicant could not obtain a confirmation of enrolment at the University due to a financial hold on her account [Responding Letter]. Two of her brother's friends offered to assist. According to Counsel's Responding Letter, these two men assured the Applicant that they had spoken with the University to explain her situation and that she would receive confirmation of registration and indeed subsequently received the Registration Letter by mail. She submitted it as part of her

application. She claims she was unaware that it was fraudulent when she submitted her extension package.

[5] On December 2, 2020, after considering the Responding Letter, the Officer determined that the Applicant was inadmissible to Canada for misrepresentation [Decision]. The Officer made the observation that "being unaware of a misrepresentation occurring does not preclude an individual from following the rules as set out in IRPA and the IRPR".

II. The Applicant's Arguments

[6] The Applicant argues that the Decision is unreasonable for two reasons. First and foremost, she maintains that this was an innocent misrepresentation in that she honestly and reasonably did not know the Registration Letter was fraudulent. The Applicant submits she had no reason to believe otherwise, given that the letter arrived around the same time that her father paid the outstanding fees to the University. The Applicant contends that given the circumstances, she should benefit from the innocent misrepresentation exception to s. 40 based on her lack of knowledge about the fraud, and the fact that she was at all times operating on an honest assumption that she was properly enrolled after her father rectified any outstanding fees that were owing to the University.

[7] The Applicant relies on *Osisanwo v Canada (Citizenship and Immigration)*, 2011 FC 1126 and *Medel v Canada (Minister of Employment and Immigration)*, [1990] 2 FC 345 to argue that this Court has excused innocent misrepresentations when an applicant has showed that they honestly and reasonably believed that they were not withholding material information. She also

relies on *Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324 [*Tuiran*] for the proposition that this is an exceptional situation, where knowledge of the misrepresentation was beyond her control.

[8] Second, the Applicant argues that the Registration Letter's contents are true and that the Officer did not dispute them, in that the Applicant has been enrolled at the University of Saskatchewan since September 2013 and was still enrolled as a student in Sociology at the time that the Officer decided the case, as proven by a letter from University administration dated September 11, 2019, that was sent to the Immigration, Refugees and Citizenship Canada [IRCC] Case Processing Centre.

III. Analysis

[9] It is helpful to first consider the law on misrepresentation, which Justice Strickland succinctly summarized a decade ago in *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28 [*Goburdhun*], and which still encapsulates the key points bearing on IRPA's broadly-worded s. 40:

> 1. Section 40 is to be given a broad interpretation in order to promote its underlying purpose;
>
> 2. Section 40 is broadly worded to encompasses misrepresentations even if made by another party, including an immigration consultant, without the knowledge of the applicant;
>
> 3. The exception to this rule is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control;

> 4. The objective of section 40 is to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the applicant to ensure the completeness and accuracy of their application;
>
> 5. An applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada;
>
> 6. As the applicant is responsible for the content of an application which they sign, the applicant's belief that he or she was 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;
>
> 7. In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose;
>
> 8. A misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process;
>
> 9. An applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application. The materiality analysis is not limited to a particular point in time in the processing of the application;
>
> (Numeration and emphasis added; citations omitted)

[10] Clearly, s. 40 is broadly worded. There is no requirement that the misrepresentation be intentional, deliberate or negligent.

A. *The Officer reasonably decided the innocent misrepresentation exemption did not apply*

[11] Here, the evidence clearly indicates that the Applicant knew or should have known that by relying on her brother's friends to obtain proof of her registration in the University – after

clearly having been unable to obtain that proof herself – that there might be something amiss when she received what has since been acknowledged to be a fraudulent Registration Letter.

[12] The problem with the explanation the Applicant provides about her innocent mistake, is that it is inconsistent with a detailed, one-page email received by the Applicant and her father on July 22, 2019 from the Director of Student Advising and Academic Services [Director]. In this email, sent three days after the Applicant submitted her application, the Director set out the current situation about her registration and overdue account at the time.

[13] The Director's email is crystal clear. She copied two other University officials, including the Manager of Undergraduate Services who confirmed that he never signed the fraudulent letter, stating:

> Thank you for your email. I have cc'd your father, Dr. [X], as he has also contacted our office on your behalf.
>
> Please find attached, a Student Program Monitor that identifies the remaining course you must complete for your BA 4 yr Sociology degree. There is currently a financial hold on your account…
>
> Adesola, as you are aware, you will not be able to register in any courses until your outstanding fees are paid, and this hold is lifted. In addition, we cannot provide you with a letter of enrolment at the College of Arts and Science until this hold is lifted, and you are registered in your courses.

[14] Given the nature of this email, it should have been clear to the Applicant that there was a fundamental inconsistency between the position she set out in her application for a study permit extension, and the fact that she believed she was properly enrolled. The documents she submitted in the application were (i) her cover letter dated June 23, 2019, (ii) the fraudulent letter dated

July 19, 2019, (iii) a “sponsorship” letter from her father dated June 24, 2019, and (iv) the application form signed by the Applicant on June 23, 2019.

[15] Based on all the circumstances described above, she should have known very well that there was an issue with her enrolment status at the outset. Even in the unlikely event that the Applicant did not realize something was fishy with the Registration Letter when she received it in the mail – between July 19, 2019 (when the letter was dated) and July 21, 2019 (when she submitted the letter as part of her application) – she could and should have realized there was a problem when she received the Director’s email on July 22, 2019.

[16] Notwithstanding the clarification of her situation by her institution after she submitted her application, she failed to update IRCC, instead waiting for the Department to raise the issue with her through their due diligence process after they contacted the University to confirm the contents of her application. The onus was on the Applicant to advise the department, not the other way around.

[17] Therefore, I find that the misrepresentation was clearly not beyond the Applicant’s control (*Goburdhun* above, point 3; see also *Tuiran* at para 27). The exception for innocent misrepresentation only applies to exceptional or extraordinary situations. It may not be established through mere inadvertence (*Wang v Canada (Citizenship and Immigration)*, 2023 FC 62 at para 49; *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107, at para 30). Here, the Applicant should have immediately advised IRCC of the issue, in keeping with her duty of candour to ensure her application was complete and accurate (*Goburdhun*, above, at point 5). I

note that neither the Applicant's affidavit, nor her Counsel's Responding Letter, outline any exceptional circumstances.

[18] Applicant's Counsel pointed out during the hearing that the Applicant comes from a good family of professionals, including her father who has been paying for her education – himself a Ph.D. and CEO of a petroleum company, and successful siblings. The duty of candour, however, does not discriminate. It applies to every person submitting an application under the IRPA. As the Federal Court of Appeal has noted, the requirement of candour is an overriding principle of the IRPA (*Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169 at para 70.

[19] At best, it was clear that the Applicant knew that there was a problem on her file, and was at that point on notice – to the extent that she had not known anything before – that she had received a forged letter. At worst, she was wilfully blind to the fact that she was not properly registered when she submitted her application for a study permit extension, or at most, one day thereafter. Ultimately, the onus was on the Applicant to establish that the mistake was innocent (*Ahmed*, at para 45). She did not do so, and it was reasonable for the Officer to conclude accordingly.

B. *The relevancy and materiality of the misrepresentation*

[20] Second, the Applicant argues that she was duly registered at the University at the time Counsel submitted the Responding Letter, and when IRCC refused the application. Thus, she argues that the fraudulent Registration Letter was neither material nor relevant to establish that

she qualified for an extension. Again, a brief review of the jurisprudence interpreting s. 40 inadmissibility for misrepresentation is helpful to respond to this argument.

[21] The case law states that misrepresentation need not be decisive or determinative. An applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application. The materiality analysis is not limited to a particular point in time in the processing of the application. In other words, if it is important enough to affect the process, then it is material (see *Goburdhun*, above, at points 7-9).

[22] Materiality is thus determined at the time the misrepresentation is made (*Inocentes v Canada (Citizenship and Immigration)*, 2015 FC 1187 at para 16). As Justice McHaffie recently held in *Ji v Canada (Citizenship and Immigration)*, 2022 FC 1210 at para 24:

> Even if the process would have yielded the same result in the circumstances, the misrepresentation may nonetheless be material. This approach reinforces the importance of the underlying purpose of paragraph 40(1)(a) of the IRPA, namely to deter misrepresentation and maintain the integrity of the immigration process by placing an onus on every applicant to ensure the completeness and accuracy of their application.

[23] Here, even if the Applicant's enrolment was eventually confirmed by the Officer through sources other than the fraudulent Registration Letter, the misrepresentation still affected the process in that it could have prevented officers from making further inquiries about the Applicant's enrolment, as they were ultimately forced to do through their own due diligence and subsequently through the procedural fairness process.

IV. Conclusion

[24] Viewed globally and mindful of the totality of the circumstances, the Officer reasonably concluded that this explanation did not address underlying concerns about the fraudulent letter, and as a result, the Applicant was inadmissible for misrepresentation. The Officer's Decision was justified and reasonable under the factual and legal constraints. I will therefore dismiss the judicial review. The Parties proposed no question of general importance for certification, and I agree that none arises.

JUDGMENT in IMM-6328-20

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.

2. No questions for certification were argued and I agree none arise.

3. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Adetayo G. Akinyemi	FOR THE APPLICANT
Brad Gotkin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Adetayo G Akinyemi LLP Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT