Federal Court Cour fédérale

Date: 20230213

Docket: IMM-2872-22

Citation: 2023 FC 210

Vancouver, British Columbia, February 13, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

PRINCE KATARIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant applied to set aside a decision of an immigration officer at the High Commission in New Delhi, India dated February 26, 2021. The officer denied the applicant's request for a work permit under the Temporary Foreign Worker Program because the officer was not satisfied that the applicant truthfully answered all questions asked of him.

[2] The officer also found that the applicant was inadmissible to Canada for a period of 5 years under paragraphs 40(1)(*a*) and 40(2)(*a*) of the *Immigration and Refugee Protection Act* (the "*IRPA*").

[3] The applicant asks the Court to set aside the decision as unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 563.

[4] For the reasons below, the application is dismissed. The applicant has not demonstrated that the officer's decision was unreasonable.

I. <u>Facts and Events Leading to this Application</u>

[5] The applicant is a citizen of India.

[6] In October 2019, the applicant received a job offer from a liquor store in Edmonton, Alberta to work as a Retail Store Supervisor. The employer had obtained a Labour Market Impact Assessment ("LMIA") for this position.

[7] Over the next few months, the applicant twice applied for a work permit. CBSA officers refused both applications.

(a) *The First Work Permit Refusal*

[8] In November 2019, the applicant travelled to Canada. He applied for a work permit on arrival at the Edmonton International Airport based on the job offer from the liquor store. An officer of Canada Border Services Agency ("CBSA") examined him at the port of entry. The officer called the liquor store and obtained information inconsistent with the need to hire a supervisor. The applicant advised the CBSA officer that the store had recently informed him that it did not need a supervisor but did need an employee.

[9] The CBSA officer concluded that the job offer was not genuine and refused the applicant's work permit application. The officer's entry in the Global Case Management System ("GCMS") stated:

> Subject is not a Canadian citizen, permanent resident [or] status native. Subject is an Indian national coming to Canada to work for liquor house. Subject travelled from Delhi through Amsterdam through Minneapolis to Edmonton. Subject does not hold a work visa, instead has a V–1 visitor visa. Subject has an LMIA #85016534 for a supervisor position at liquor house in Edmonton at [address]. During examination BSO [border services officer] called Liquor house as well as the owner's phone number on LMIA in an attempt to clarify more information about the position. Unable to reach the owner. Spoke with employee from Liquor House who provided information about the store. Employee did disclose that only three employees work their total, contrary to the five or six that the subject stated he would be supervising. Employee also said the owner, [name], works at that location during the day and had left there at 5 PM. This information contradicts the need for a supervisor at the location. Subject provided letters of experience [from] TATA Sky and Vodafone. Subject stated he has franchises with both companies in India. After reviewing both letters it appears the exact requirements of the supervisor NOC code are stated as his experience. After the subject was informed that not only did he have the incorrect visa, but that it appears that the Liquor house does not need a supervisor, he stated that the owner has just informed him that the

> store does not need a supervisor but instead only a worker. TRP option was considered early in the exam, however, the multiple indications that the position is not legitimate led to the decision of an ATL.
>
> [Emphasis added.]

[10] The officer refused entry to the applicant, who travelled back to India.

(b) *The Second Work Permit Refusal*

[11] Soon after, in January 2020, the applicant made a second application for a work permit to the High Commission in New Delhi. His application relied on the same job offer for a supervisor at the liquor store and the same LMIA.

[12] In late February 2020, an officer at the Canadian High Commission in New Delhi reviewed the applicant's work permit application. The officer's GCMS entry noted the prior work permit refusal at the Edmonton International Airport and that the examination at that time led to the conclusion that the applicant's offer of employment was not genuine. The officer also noted that the applicant submitted the same LMIA and offer of employment dated October 25, 2019. The applicant's submission was "not supported by reference to or by updated information to reflect changed employer circumstances or requirements." As such, the officer was not satisfied that the applicant had presented evidence of a genuine employment offer. After considering other evidence, the officer was "not satisfied the applicant is a genuine temporary resident who would comply with the conditions of any authorized stay. The genuine intention of the applicant is likewise of concern". The officer decided to send a procedural fairness letter to

the applicant advising that he had "provided a document that appears fraudulent due to various inconsistencies" and seek an explanation.

[13] By procedural fairness letter dated June 4, 2020, the officer advised the applicant that he had provided supporting documentation that appeared fraudulent due to various inconsistencies and asked him to explain "how this documentation was obtained and why [he] provided it in support of [his] application". The letter cautioned the applicant that if he was found to have engaged in misrepresentation in his application for a work permit, he could be found inadmissible to Canada for five years under the *IRPA*.

[14] By sworn statement in response, the applicant advised that he was unsure which documents were being referred to in the procedural fairness letter. He confirmed that he had truthfully answered all questions to him on the application, that the supporting documents were authentic, that he had not misrepresented or withheld material facts and that he could provide additional documents if required to support his application and prove that the documents were genuine.

[15] An officer in New Delhi reviewed the applicant's response. According to notes entered into the GCMS on May 13, 2021, the officer recognized that the applicant indicated that he was unclear which documents the previous officer believed were fraudulent. The officer decided to send a second procedural fairness letter and entered its draft contents into the GCMS.

[16] The officer sent the second procedural fairness letter dated July 5, 2021. It described the concerns as follows:

> I have concerns that the job offer in Canada may not be genuine. Specifically, when you were interviewed in person by the CBSA officer in November 2019 you are indicated you were just informed by the employer that he no longer needed a supervisor and instead only required an employee.
>
> As such, the onus is on you to provide evidence that the employer in Canada still offering you a NOC supervisor position as per LMIA 8501653 along with supporting documentation demonstrating the employer in Canada has the need for a supervisor in the capacity to fulfil the terms of the offer of employment in terms [of] remuneration.

[17] The applicant responded in writing on July 21, 2021, advising that he had contacted his employer after receiving the second procedural fairness letter, and “she informed [him] that she had sold the store a few weeks ago”. The applicant requested to withdraw his work permit application. The applicant also provided a letter dated July 14, 2021, from the employer and a copy of the bill of sale between two corporations signed on April 30, 2021, for a business at the same address as the applicant’s job offer and that was mentioned in the GCMS notes made at Edmonton airport. The bill of sale referred to an agreement of purchase and sale dated April 9, 2021.

[18] The employer’s letter advised that the applicant had been offered the liquor store supervisor position. The letter stated that the employer had to leave for India due to family emergency, so she asked the applicant to come to Edmonton and apply at the port of entry for a work permit. The letter advised that the employer “decided to hire someone casually to cover the immediate shortage of staff”. The letter purported to describe what had occurred between the

applicant and the officer at the Edmonton airport and the officer's telephone call to the store. The letter advised that the employer had continued her recruitment efforts but was unable to find employees who met the job requirement amongst Canadians are permanent residents. In addition, it was becoming "increasingly complex for [the employer] to balance work with personal life" so she sold the store on April 9, 2021. The employer stated: "We have asked [the applicant] to withdraw his work permit application."

II. The Decision under Review

[19] By letter dated February 26, 2022, an officer in New Delhi refused the applicant's second work permit application because the officer was not satisfied that the applicant had truthfully answered all questions asked of him. The officer also found that the applicant was inadmissible to Canada for five years for misrepresentation under *IRPA* paragraphs 40(1)(*a*) and 40(2)(*a*), for directly or indirectly misrepresenting or withholding material facts related to a relevant matter that induces or could induce an error in the administration of the *IRPA*.

[20] The officer's GCMS entry on February 26, 2022 stated:

> I have reviewed the application, supporting documents and notes on this application. The applicant applied for a work permit to enter Canada as a temporary resident. During the review of the application, concerns arose over the offer of employment submitted with the application. The concern specifically was the legitimacy of the offer. A procedural fairness letter was sent to the applicant. The procedural fairness letter outlined the Officer's concerns, as well as, the consequences of a finding under A40 including being inadmissible to Canada for a period of five years. The applicant was given the opportunity to respond to the Officer's concerns. The deadline stated in the procedural fairness letter has passed and the applicant has responded to the concerns. The concerns were reviewed, however, the response does not disabuse the concerns that remain, that the offer is genuine [*sic*]. In my

> opinion, on the balance of probabilities, the applicant provided non-genuine documents in support of the work permit application. An offer of employment is material to the assessment of eligibility for a work permit and the applicant's intention to work for the stated employer as a temporary foreign worker. Had the offer of employment been taken as genuine it could have induced an error in the administration of the Act, as the officer may have erroneously issued a work permit to the applicant believing that they had a genuine job offer in Canada and that they were a bona fide temporary foreign worker with a genuine intention to work in Canada. Therefore, I am of the opinion that the applicant is inadmissible to Canada under section 40 of the Act. This application is refused on A40 grounds. Pursuant to subsection A40(2)(a), a permanent resident or a foreign national determined to be inadmissible for reasons of misrepresentation continues to be inadmissible for a period of five years following, in the case of a determination made outside Canada, the date of the refusal letter.
>
> [Emphasis added.]

[21] In this application for judicial review, the applicant challenged this second refusal decision.

III. Standard of Review

[22] The standard of review is reasonableness. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers,* 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

IV. Analysis

[23] The applicant's memorandum of argument raised two principal issues: (i) whether the officer erred in determining that the applicant provided non-genuine documents in support of the work permit application, and (ii) whether the officer failed to apply the innocent error exception under *IRPA* paragraph 40(1)(*a*) and erroneously found the applicant inadmissible for misrepresentation.

(a) *Was the Officer's Decision Reasonable on the Second Work Permit Application?*

[24] At the hearing, the applicant focused on his first position. He submitted that employer's job offer was genuine at the time it was made and continued to be valid until the employer sold the store in April 2021, more than a year after he filed the second work permit application. The applicant referred to the employer's letter sent in response to the second procedural fairness letter, essentially arguing that the officer should have accepted its contents in their entirety.

[25] The applicant also argued that the officer should have considered the LMIA as an indication that the job offer was genuine, and should have conducted a more thorough investigation by contacting both the employer and EDSC before making a decision. He referred to the Court's recent decision in *Jandu v Canada (Citizenship and Immigration),* 2022 FC 1787, at paras 43-45. He submitted that he should be afforded a high level of procedural fairness given the stakes for him (citing *Vavilov*, at para 133; *Lin v Canada (Citizenship and Immigration),* 2019 FC 1284, at paras 24-25; *Likhi v. Canada (Citizenship and Immigration),* 2020 FC 171, at para 27).

[26] I am not persuaded by the applicant’s submissions. I agree with the respondent that, considering the record before the officer, the concerns in the GCMS notes and in the second procedural fairness letter and the applicable legal framework, the applicant has not demonstrated that the decision to refuse the second application for a work permit was unreasonable.

[27] First, the factual basis for the refusal was open to the officer on the record. The applicant filed the second work permit application in January 2020, using the same job offer that had been rejected as not genuine when he arrived at the port of entry in November 2019. His second application did not include any new information to suggest that the job offer was genuine or that any factual circumstances had changed. The two procedural fairness letters to the applicant concerning his second application advised him that CBSA was concerned that the job offer for a supervisor position at the liquor store was not genuine. The second procedural fairness letter specifically alerted the applicant to his own statements at the port of entry in Edmonton: “when you were interviewed in person by the CBSA officer in November 2019 you are indicated you were just informed by the employer that he no longer needed a supervisor and instead only required an employee”.

[28] The applicant’s own responses to the second procedural fairness letter did not deny this statement, nor did he attempt to explain it. He did not identify any changed circumstances between the rejection of his first study permit application and the filing of the second application that could have affected the officer’s conclusion on whether the offer for a supervisor position was genuine.

[29] The employer's letter advised that the employer was unexpectedly away in India both when she asked the applicant to obtain a work permit on arrival in Canada, and when he arrived at Edmonton airport. The employer's letter advised that the applicant had been offered the liquor store supervisor position, but it did not address a key issue raised in the second procedural fairness letter: whether or when the employer advised the applicant that she no longer needed a supervisor, only an employee. The employer's letter did confirm that the employer had "decided to hire someone casually to cover the immediate shortage of staff". The employer's letter implicitly confirmed that the store had operated without a supervisor while the employer stated she was in India, including when the applicant arrived in November 2019. Neither the applicant nor his proposed employer provided additional supporting documentation demonstrating the employer's need for of a supervisor position at the liquor store, as requested in the second procedural fairness letter.

[30] In this light, it was open to the officer to conclude, on the record, that the applicant's response to the second procedural fairness letter did not disabuse the concerns since the refusal of the first work permit application that the job offer for a supervisory position was not genuine.

[31] Second, the onus was on the applicant from the outset to file sufficient information to support his second work permit application and put his best foot forward to meet the requirements in the application regulations: *Safdar v. Canada (Citizenship and Immigration)*, 2022 FC 189, at para 10; *Patel v Canada (Citizenship and Immigration)*, 2021 FC 483, at para 30 (and the cases cited there); *Sangha v Canada (Citizenship and Immigration),* 2020 FC 95, at paras 42 and 47. It was similarly the applicant's onus to respond to the second procedural

fairness letter, and he did not argue that he did not know the case to meet: see *Babafunmi v Canada (Citizenship and Immigration),* 2022 FC 948, at para 21.

[32] The first officer had contacted the employer in November 2019 at the time of the first work permit application, and the applicant submitted the employer's letter in response to the second procedural fairness letter. In this context, the CBSA had no obligation to contact the prospective employer again. The applicant offered no legal reason for an additional legal requirement to do so and I see no basis in the evidence to mandate any additional inquiries with the employer.

[33] Third, a positive LMIA is not determinative of whether a job offer is genuine. An officer may make separate inquiries to reach an independent decision on the evidence: *Jandu,* 2022 FC 1787, at para 21; *Dhaliwal v Canada (Citizenship and Immigration),* 2022 FC 1344, at para 7; *Patel*, at para 32; *Ul Zaman v Canada (Citizenship and Immigration),* 2020 FC 268, at para 37; *Sulce v Canada (Citizenship and Immigration),* 2015 FC 1132, at para 29; *Singh v Canada (Citizenship and Immigration),* 2015 FC 115, at para 20. .

[34] Fourth, I do not agree with the applicant's submission that the officer was required to contact EDSC to inquire further about whether it considered the job offer genuine. I do not read *Jandu*, cited by the applicant, as creating a standalone obligation on CBSA to contact ESDC whenever it has concerns about whether a job offer is genuine. The circumstances giving rise to Justice Diner's conclusions in *Jandu* are entirely different from the situation here: see *Jandu,* at paras 37-43. Nothing in the present circumstances required contact with ESDC.

[35] In light of the applicable legal principles and the evidentiary record before the officer (including the concerns set out in previous GCMS entries on which the second procedural fairness letter was based), I find that it was to open to the officer to conclude that the job offer was not genuine.

[36] The applicant's submissions also argued that, on the merits, his response to the procedural fairness letter proved that he has no knowledge or belief that he was misrepresenting the existence of a genuine job offer from liquor store. The applicant's written submissions highlighted his position on the severity of the consequences to him and referred to the heightened procedural fairness requirements when CBSA considers possible misrepresentation under *IRPA* section 40, to ensure such findings are made only where there is clear and convincing evidence of misrepresentation: see *Likhi,* at paras 26-27.

[37] However, on this judicial review application, the Court cannot reconsider the merits officer's decision or determine whether it was decided correctly: *Vavilov*, at para 125. In addition, CBSA sent the applicant two procedural fairness letters related to the issue of whether the job offer was genuine. His response to the first letter stated that he had answered all questions truthfully and that all documents he submitted were genuine, and asked which documents were at issue. The applicant did not argue that the contents of the second procedural fairness letter were insufficient to respond to his inquiries or did not give him a fair understanding of what was at issue – a sensible position given the contents of that letter.

[38] Lastly, the applicant's written submissions argued, briefly, that the officer did not provide adequate reasons to justify the decision. The point was not raised at the hearing.

[39] In my view, the grounds for the misrepresentation and inadmissibility findings are discernible and adequately stated in the letter dated February 26, 2022 and the GCMS notes entered the same day, read in light of the record: *Vavilov,* at paras 96-97.

[40] The letter dated February 26, 2022 advised that the officer was not satisfied that the applicant had truthfully answered all questions asked of him. The February 2022 GCMS notes stated that the officer reviewed the file (the “application, supporting documents and notes”). The officer recognized that concerns arose over the legitimacy of the offer of employment submitted with the application and that the filing of “non-genuine documents in support of the work permit” was the basis for the misrepresentation. The prior GCMS notes confirm, in summary, that the applicant was initially denied entry to Canada due to concerns about the lack of a genuine job offer for a retail store supervisor. He then made a second work permit application based on the same job offer without offering any explanation or new facts to explain why the offer was then, or was always, genuine. Both work permit refusals focused on whether the job offer for a supervisor position was genuine. The second procedural fairness letter raised that issue specifically, including the applicant’s own statement that a supervisor was not needed at the liquor store when he applied for the first work permit. The applicant’s response to the second procedural fairness letter did not actually respond to the specified concerns and did not refer to an innocent mistake.

[41] The February 2022 GCMS notes also refer to the materiality of the misrepresentation and that it may have induced an error in the administration of the *IRPA*.

[42] For these reasons, I find that the letter and GCMS notes dated February 26, 2022, adequately explained the reasons for the conclusions on misrepresentation and inadmissibility.

[43] Overall, the applicant's principal submission therefore does not succeed.

(b) *The Innocent Mistake Exception under IRPA paragraph 40(1)(a)*

[44] The applicant's second position was that the officer failed to consider and apply the innocent error exception and erroneously found the applicant inadmissible for misrepresentation (citing *Singh v Canada (Citizenship and Immigration)*, 2022 FC 422 ("*Singh 2022*"*)*, at para 13). He maintained that the officer failed to come to grips with the mitigating evidence in the record and should not have found him inadmissible.

[45] I agree with the applicant that there is a narrow innocent mistake exception to the application of paragraph 40(1)(*a*): see e.g., *Munoz Gallardo v. Canada (Citizenship and Immigration)*, 2022 FC 1304, at para 19; *Kazzi v. Canada (Citizenship and Immigration)*, 2017 FC 153, at para 38; *Goburdhun v Canada (Citizenship and Immigration),* 2013 FC 971, at para 31. I also agree that this Court has concluded that in some circumstances, a reviewable error may occur if an officer does not meaningfully analyze the innocent mistake exception: see e.g. *Singh (2022)*, at para 13; *Ram v. Canada (Citizenship and Immigration)*, 2022 FC 795, at para 23; *Berlin v Canada (Citizenship and Immigration),* 2022 FC 1117, at para 22.

[46] However, as the respondent submitted, an officer is not bound to consider the innocent mistake exception in every case. If there is no viable basis for the exception to apply, the officer

is not required to consider it: *Takhar v Canada (Citizenship and Immigration),* 2022 FC 420, at para 21; *Malik v Canada (Citizenship and Immigration),* 2021 FC 1004, at para 36; *Alalami v Canada (Citizenship and Immigration),* 2018 FC 328, at para 16. As Justice Southcott stated in *Singh 2022*, it "can be a reviewable error for an officer to fail to conduct a meaningful analysis of the innocent mistake exception where there is evidence supportive of its application …" [underlining added]. In *Singh 2022* itself, the applicant filed evidence and submissions to support the innocent mistake exception but the officer did not engage with either the subjective or the objective parts of the exception.

[47] In the present case, the exception had no potential application, given the issues and evidence before the officer and the reasonable conclusion to refuse the second work permit application owing to the non-genuine job offer. The applicant also did not raise it with the officer prior to that decision.

[48] Accordingly, I find no reviewable error in relation to applicant's arguments about the innocent mistake exception under paragraph 40(1)(*a*) in the circumstances.

V. Conclusion

[49] For these reasons, the application is dismissed. Neither party raised a question to certify for appeal and no question will be stated.

JUDGMENT in IMM-2872-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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