Federal Court  Cour fédérale

Date: 20231031

Docket: IMM-4404-22

Citation: 2023 FC 1454

Ottawa, Ontario, October 31, 2023

PRESENT: The Honourable Chief Justice Crampton

BETWEEN:

SUKHVEER KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Maintaining the integrity of the Canadian immigration system, through fair and efficient procedures, is one of the explicit objectives set forth in paragraph 3(1)(f.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [**IRPA**]. Immigration consultants who submit fraudulent documents to federal immigration officials seriously undermine that important objective. If no one is held accountable for such actions or other forms of misrepresentation of material facts, it is reasonable to expect that public confidence in Canada's immigration system will be weakened.

[2] In the absence of any practical way of holding foreign-based immigration consultants accountable, it is necessary to hold those who retain them accountable, unless they meet the exception for innocent misrepresentation. That exception reflects a recognition that it may be unfair to hold applicants for immigration status in this country accountable for directly or indirectly misrepresenting or withholding material facts relating to a material fact that induces or could induce an error in the administration of the IRPA.

[3] However, the exception only applies in "extraordinary" or "exceptional" circumstances. It contemplates that it is not unfair to hold applicants responsible for the actions of their consultants where the applicants were in a position to take reasonable actions to prevent their consultants from misrepresenting or withholding facts, as described above. In my view, reasonable actions include making all reasonable efforts to verify the truthfulness and accuracy of documentation or other information submitted as part of their application.

[4] In the present case, the applicant, Sukhveer Kaur, made no such efforts.

[5] Ms. Kaur is a citizen of India. She was found to be inadmissible to Canada by a Member of the Immigration Division at the Immigration and Refugee Board of Canada (the **"Panel Member"**). The Panel Member reached that finding after determining that Ms. Kaur had indirectly made a material misrepresentation in her study permit application package, as contemplated by paragraph 40(1)(a) of the IRPA. Specifically, the consultant she retained (the **"Consultant"**) included a fraudulent letter of acceptance from Loyalist College in that package.

[6] Ms. Kaur seeks a judicial review of the Panel Member's decision (the **"Decision"**). She maintains that the Panel Member erred in concluding that the innocent misrepresentation exception was not available in light of her particular circumstances. She further submits that the Panel Member erred by applying the wrong test in reaching that conclusion. Given those alleged errors, she submits that the Decision was unreasonable and should be set aside.

[7] For the reasons that follow, I find that the Panel Member did not err in the manner alleged by Ms. Kaur and that the Decision was not unreasonable. Consequently, her application will be dismissed.

II. Background

[8] In 2018, Ms. Kaur came to Canada on a study permit that was issued to her after the Consultant submitted an application package that included the above-mentioned fraudulent acceptance letter from Loyalist College. The fraudulent nature of that letter was not discovered until much later.

[9] Ms. Kaur retained the Consultant on the recommendation of people she trusted who had previously retained the Consultant and achieved positive results. She did not actively participate in the preparation of her application package and was not aware that the acceptance letter was fraudulent.

[10] After discovering that the Consultant had submitted the fake acceptance letter as part of her application package, Ms. Kaur learned that the Consultant had previously submitted fraudulent information on behalf of many other aspiring international students.

III. The Decision

[11] In finding that the inclusion of the fraudulent acceptance letter from Loyalist College amounted to a misrepresentation of a material fact, the Panel Member observed that "any immigration official processing [that] application would be proceeding on the basis that she had been genuinely accepted to Loyalist College […]." Consequently, the inclusion of the fake letter in Ms. Kaur's application constituted a misrepresentation with respect to a material fact.

[12] Regarding Ms. Kaur's alleged innocent misrepresentation, the Panel Member found that she honestly believed that she was not making a misrepresentation when the Consultant included the fake acceptance letter in her application package. However, he proceeded to find that her actions in allowing the indirect misrepresentation to be made on her behalf were not reasonable. In brief, the Panel Member found that it was not reasonable for Ms. Kaur to trust completely the preparation and submission of her application to the Consultant, particularly without reviewing the documents before they were submitted to immigration officials. In this regard, the Panel Member observed earlier in the Decision that the Consultant did not show Ms. Kaur the completed application before she signed it.

[13] The Panel Member also noted that the misrepresented information was not beyond Ms. Kaur's control because she could have insisted on reviewing the material and she could have called Loyalist College in advance to make sure that everything was in order.

IV. Issues

[14] Ms. Kaur maintains that the Decision was unreasonable for a variety of reasons that essentially fall within the three following overarching questions:

1. Was it unreasonable for the Panel Member to find that she had misrepresented a material fact?
2. Was it unreasonable for the Panel Member to find that the innocent misrepresentation exception was not available in light of her particular circumstances?
3. Was it unreasonable for the Panel Member to effectively adopt the three-prong test for innocent misrepresentation in the course of dismissing Ms. Kaur's claims?

V. Relevant Legislation

[15] Paragraph 40(1)(a) states as follows:

Inadmissibility	**Interdictions de territoire**
Misrepresentation	*Fausses déclarations*
40 (1) A permanent resident or a foreign national is	40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants:

inadmissible for misrepresentation:	
(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 ;
[…]	[…]

VI. Standard of Review

[16] It is common ground between the parties that the standard of review in this proceeding is whether the Decision was unreasonable: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [***Vavilov***]; *Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169, at para 15; *Vahora* v *Canada (Minister of Citizenship and Immigration*, 2022 FC 778, at paras 10-11 [***Vahora***].

[17] When reviewing a decision on a standard of reasonableness, the Court must approach the decision with "respectful attention" and consider the decision "as a whole": *Vavilov*, at paras 84–85. The Court's overall focus will be upon whether the decision is appropriately justified, transparent and intelligible. In other words, the Court will consider whether it is able to understand the basis upon which the decision was made and then to determine whether it "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Vavilov*, at paras 86 and 97.

[18] A decision that is appropriately justified, transparent and understandable is one that reflects “an internally coherent and rational chain of analysis” and “is justified in relation to the facts and the law that constrain the decision maker”: *Vavilov*, at para 85. It should also reflect that the decision maker “meaningfully grapple[d] with key issues or central arguments raised by the parties”: *Vavilov*, at para 128.

[19] It is not the role of the Court to make its own determinations of fact, to substitute its view of the evidence or the appropriate outcome, or to reweigh the evidence. The Court’s function is solely to assess whether the administrative tribunal’s determinations and reasoning are reasonable: *Vavilov*, at paras 125–126; *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 at para 7.

VII. Analysis

A. *Applicable principles*

[20] Paragraph 40(1)(a) applies when it is demonstrated that the permanent resident or foreign national in question directly or indirectly misrepresented or withheld material facts relating to a relevant matter that induces or could induce an error in the administration of the IRPA.

[21] Before paragraph 40(1)(a) can be invoked, the facts required to establish the foregoing elements must be demonstrated with clear and convincing evidence, on a balance of probabilities: *Munoz Gallardo v Canada (Citizenship and Immigration)*, 2022 FC 1304, at para 17 [***Munoz***].

[22] In *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 [***Kazzi***], at para 38, Justice Gascon provided the following helpful summary of the principles applicable in considering paragraph 40(1)(a):

> (1) [Paragraph 40(1)(a)] should receive a broad interpretation in order to promote its underlying purpose; (2) its objective is to deter misrepresentation and maintain the integrity of the Canadian immigration process; (3) any exception to this general rule is narrow and applies only to truly extraordinary circumstances; (4) an applicant has the onus and a continuing duty of candour to provide complete, accurate, honest and truthful information when applying for entry into Canada; (5) regard must be had for the wording of the provision and its underlying purpose in determining whether a misrepresentation is material; (6) a misrepresentation is material if it is important enough to affect the immigration process; (7) a misrepresentation need not be decisive or determinative to be material; (8) 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; (9) the materiality analysis is not limited to a particular point in time in the processing of the application; and (10) the assessment of whether a misrepresentation could induce an error in the administration of the IRPA is to be made at the time the false statement was made.
>
> See also *Vahora*, at paras 26-31; *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004, at para 10 [***Malik***]; *Wang v Canada (Citizenship and Immigration)*, 2020 FC 262, at para 15 [***Wang***]; and *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107, at para 31 [***Ahmed***];

[23] Deterring misrepresentation and maintaining the integrity of Canada's immigration process is consistent with the objective set forth in paragraph 3(1)(f.1) of the IRPA, which is "to maintain, through the establishment of fair and efficient procedures, the integrity of the Canadian immigration system."

[24] The indirect misrepresentation contemplated by paragraph 40(1)(a) includes misrepresentations made by a third party, even where the applicant was unaware of them:

Zolfagharian v Canada (Citizenship and Immigration), 2021 FC 1455 [***Zolfagharian***], at paras 20-21 and 27; *Sbayti v Canada (Citizenship and Immigration)*, 2019 FC 1296, at para 28 [***Sbayti***]; *Wang*, at para 16.

[25] The "innocent misrepresentation" or "honest mistake" exception established in the jurisprudence was developed to address truly "extraordinary" or "exceptional" circumstances: *Wang*, above, at para 15; *Munoz*, at para 19; *Akintunde v Canada (Citizenship and Immigration)*, 2022 FC 977, at para 40 [***Akintunde***]; *Pandher v Canada (Citizenship and Immigration)*, 2022 FC 687, at para 27 [***Pandher***]; *Malik*, at para 19; *Ahmed*, at para 31; *Sbayti*, at para 29; *Appiah v Canada (Citizenship and Immigration)*, 2018 FC 1043, at para 18 [***Appiah***]; *Kazzi*, at para 38; *Singh v Canada (Citizenship and Immigration)*, 2015 FC 377 at para 33 [***Singh***]; *and Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 [***Goudarzi***] at para 33.

[26] That exception only applies where (i) the applicant honestly believed they were not representing a material fact, (ii) the applicant's belief was reasonable, and (iii) knowledge of the misrepresentation was beyond the applicant's control: *Munoz*, at paras 19-20; *Pandher*, at para 30; *Akintunde* at para *40; Moon v Canada (Citizenship and Immigration)*, 2019 FC 1575 at para 34 [***Moon***]; *Sbayti*, at para 29; *Appiah*, at para 18; and *Goudarzi*, at para 40. See also *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 at paras 19-20 [***Gill***]. Accordingly, it is not sufficient for the applicant to demonstrate that they subjectively believed that they were not misrepresenting a material fact. The applicant must also demonstrate that such belief was objectively reasonable: *Munoz*, at para 19; *Alkhaldi v Canada (Citizenship and Immigration)*,

2019 FC 584, at para 19; *Canada (Citizenship and Immigration) v Robinson*, 2018 FC 159, at para 6.

[27] Where the misrepresentation was indirect, the exception only applies where the applicant was unaware of it, and such unawareness was objectively reasonable and beyond the applicant's control: *Appiah*, at para 18; *Sbayti*, at para 31.

B. *Was it unreasonable for the Panel Member to find that Ms. Kaur had misrepresented a material fact?*

[28] Ms. Kaur maintains that the officer erred in determining that she had misrepresented a material fact within the meaning of paragraph 40(1)(a), because she had an excellent education history and other qualifications, and she had the intent to attend Loyalist College. In other words, she did not attempt to avoid a ground of inadmissibility. Consequently, she states that the impugned misrepresentation "falls on the less serious range of the scale." Given that she ultimately did proceed to complete her studies in Canada, albeit at a different institution, she asserts that the inclusion of the fraudulent letter of acceptance from Loyalist College did not compromise the integrity of Canada's immigration system.

[29] I disagree. In the course of finding that the submission of the fraudulent letter of acceptance from Loyalist College amounted to a misrepresentation with respect to a material fact, the Panel Member observed that the entire basis of Ms. Kaur's study permit application was to attend Loyalist College. He further noted that no other learning institutions were listed as options in that application. Moreover, actual acceptance into a program is required at the outset

of the application process. Consequently, the Panel Member found that, had the officers who processed the application been aware that the letter was fake, the application would have been processed very differently. Indeed, the study permit would not have been issued.

[30] In my view, the foregoing observations and findings of the Panel Member were not unreasonable. They were appropriately justified, transparent and intelligible, and fell well "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Vavilov*, at para 86. In brief, given that the entire basis of Ms. Kaur's application was to attend Loyalist College, it was reasonably open to the Panel Member to conclude that the submission of a fraudulent letter of acceptance from that institution constituted misrepresentation with respect to a material fact.

C. *Was it unreasonable for the Panel Member to find that the innocent misrepresentation exception was not available in light of Ms. Kaur's particular circumstances?*

[31] Ms. Kaur maintains that the Panel Member's finding that the innocent misrepresentation exception was not available to her was unreasonable, insufficiently justified and disconnected from her circumstances. I disagree.

[32] In support of this submission, Ms. Kaur states that she testified that it is the cultural and community norm in India to rely on and trust a consultant in preparing an application such as hers. She added that she chose the Consultant on the recommendation of her cousin and her friends, who had previous positive experiences with the Consultant. In addition, the Consultant had positive reviews "on Google." She maintains that it was unreasonable for the Panel Member

to require her to go further than this and verify the documentation prepared by the Consultant, prior to its submission. Ms. Kaur further notes that she had no reason to believe that the acceptance letter from Loyalist College was fraudulent, and that the officers who processed her application also believed it to be genuine.

[33] The Panel Member accepted that Ms. Kaur honestly believed she was not making a misrepresentation when the Consultant submitted her application package, and that therefore she met the first (subjective) prong of the test for innocent misrepresentation. In reaching this finding, the Panel Member recognized that Ms. Kaur had done some preliminary research and retained the Consultant based on the Consultant's good reviews. In addition, the Panel Member noted that she had visited the agent and had no doubts about the authenticity of his business. The Panel Member also found that she was not an active participant in the preparation of her application package and that she was honestly shocked to learn from an immigration officer that the acceptance letter was fake.

[34] Notwithstanding the foregoing, the Panel Member stated that her actions in allowing the indirect misrepresentation to be made on her behalf were not reasonable, and that therefore she did not meet the second (objective) prong of the test for innocent misrepresentation. In reaching this finding, the Panel Member observed that Ms. Kaur did not do anything to verify the accuracy of the information contained in her application, including the supporting documents. He added that she did not even see the acceptance letter that was sent to Loyalist College. In this regard, he noted that she "blindly trusted the consultant," and that applicants who proceed in this

manner “do so at their own peril, particularly if they do not review materials that are prepared on their behalf.”

[35] The Panel Member explained that it was not reasonable for Ms. Kaur to trust a matter of such importance to a third party, particularly without reviewing the documents in advance of them being submitted to immigration officials. He further stated that the misrepresented information was not beyond her control because she could have contacted Loyalist College in advance of sending her application to immigration officials, to make certain that everything was in order regarding her acceptance into the school. She could also have insisted on reviewing the application package.

[36] Based on the foregoing, the Panel Member reiterated that Ms. Kaur had not met the (objective) reasonableness prong of the test for innocent misrepresentation. He then observed that the integrity of the immigration system in Canada cannot be preserved if applicants can be absolved of their duty to be honest, simply by outsourcing their applications to third parties. He added that this would create a system that encourages deception at every turn, and would permit applicants to avoid having to answer and take responsibility for the contents of their application.

[37] In my view, there was nothing unreasonable about the Panel Member’s determination that Ms. Kaur did not satisfy the reasonableness prong of the test for innocent misrepresentation. Contrary to Ms. Kaur’s submissions, that finding was appropriately justified and took full account of her personal circumstances. In addition, it reflected “an internally coherent and

rational chain of analysis," and "meaningfully grappled with the key issues" and the main arguments raised by Ms. Kaur: see paragraph 18 above.

[38] It is not objectively reasonable for an applicant to fail to review their full application package to ensure its accuracy: *Zolfagharian*, at para 22; *Goudarzi* at para 37; *Haque v Canada (Citizenship and Immigration)*, 2011 FC 315 at para 15 [***Haque***]; and *Sayedi v Canada (Citizenship and Immigration)*, 2012 FC 420 at paras 37-42 [***Sayedi***]. This is particularly so when the applicant has signed a blank application form: *Haque*, at para 16.

[39] I recognize that Ms. Kaur may well have failed to ascertain that the letter of acceptance from Loyalist College was fraudulent, even if she had reviewed her full application package to ensure its accuracy. However, as the Panel Member noted, she could have contacted Loyalist College in advance of sending her application to immigration officials, to make certain that everything was in order regarding her acceptance into the school. In making this observation, the Panel Member implicitly found that it was not objectively reasonable for Ms. Kaur to have failed to take this action. In my view, this finding was not unreasonable.

[40] It is settled law that applicants for immigration status in this country are fully responsible for the contents of their application: *Vahora*, at para 27; *Zolfagharian*, at paras 21 and 27; *Wang* at paras 9 and 15; *Munez*, at para 26; *Goudarzi*, at paras 42 and 46; *Sayedi*, at para 42; *Haque*, at para 15; *Mohammed v Canada (Citizenship and Immigration)*, [1997] 3 FC 299, at pp 321, 323-324 [***Mohammed***].

[41] Ms. Kaur signed her application form immediately below a sentence stating: “I declare that I have answered all questions in this application fully and truthfully.” In that application form, she listed Loyalist College as the educational institution to which she had been accepted. As explicitly required by the application form, the fraudulent letter was attached to the completed form. Ms. Kaur was therefore fully responsible for ensuring the genuineness of that letter.

[42] I recognize that it may not occur to some applicants for immigration status in this country that they should verify the accuracy and truthfulness of the information and documentation prepared by consultants they have retained on the basis of their apparently good reputation. I also acknowledge that making applicants fully responsible for their applications in such circumstances can have harsh consequences. However, in the absence of any practical way of holding foreign-based consultants accountable for such information, I do not see any alternative to assigning full responsibility to the applicants. I agree with the Panel Member that this is required to preserve the integrity of Canada’s immigration system. Permitting applicants to avoid the consequences of fraudulent behaviour by their consultants would create unacceptable scope for weakening the integrity of that system.

[43] To reduce the scope for future applicants to make the same mistake as Ms. Kaur, the immigration officials who are responsible for applications are encouraged to consider including new language in the application forms. The purpose of such new language would be to make it clear that applicants must verify the truthfulness and accuracy of any documentation or other

information included with their application, including any material prepared or obtained by a third party, such as a consultant.

[44] Ms. Kaur asserts that a strict application of the exception for innocent misrepresentation undermines the purpose of that exception. I disagree. The purpose of that exception is to provide relief in "truly extraordinary" or "truly exceptional" circumstances: see the jurisprudence cited at paragraph 25 above. This is in keeping with adopting a "broad and robust" approach to section 40 of the IRPA, in order to preserve the integrity of the immigration system in this country: *Munoz*, above at para 18; *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 [***Oloumi***], at para 32; *Singh*, at para 41; see also paragraphs 22-23 above.

[45] Ms. Kaur further maintains that the Decision lacks intelligibility because it failed to engage with her subjective belief and intent, in assessing the objective reasonableness of the impugned misrepresentation. In this regard, she relies on *Park v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 786, at paras 23-27. However, that case is distinguishable because the Court there explicitly refrained from opining on whether the facts in question supported the application of the innocent misrepresentation exception.

[46] In any event, the Panel Member did assess Ms. Kaur's subjective belief and intent. He then proceeded to find in her favour with respect to the subjective prong of the test for innocent misrepresentation. However, he determined that her actions in allowing the indirect misrepresentation to be made on her behalf were not reasonable. For the reasons I have discussed above, that finding was not unreasonable. Those reasons included an assessment of Ms. Kaur's

honest belief, the research she undertook to find a good consultant, and the trust she placed in the Consultant. Accordingly, I do not accept that the Panel Member failed to engage with Ms. Kaur's subjective belief and intent, in assessing the objective reasonableness of her misrepresentation.

[47] Ms. Kaur also asserts that it was unreasonable for the Panel Member to determine that she did not meet the test for innocent misrepresentation, after finding that she was truthful and credible. I disagree. Findings that an applicant is truthful and credible do not logically preclude a determination that an applicant's actions were not objectively reasonable. The test for innocent misrepresentation requires that an applicant honestly and reasonably believe that they were not misrepresenting a material fact, and that knowledge of the misrepresentation was beyond the applicant's control: see paragraph 26 above.

[48] In advancing her various arguments regarding her honest belief that she did not make a material misrepresentation, Ms. Kaur relies on *Medel v Canada (Minister of Employment and Immigration)*, [1990] 2 FC 345 [***Medel***]. There, the Appeal Division of the former Federal Court of Canada was called upon to decide whether the appellant had been granted a spousal sponsorship visa "by reason of any fraudulent or improper means," as contemplated by paragraph 27(1)(e) of the former *Immigration Act*, 1976, SC 1976-77, c 52. On behalf of the Court, McGuigan J.A. determined that the appellant's visa had not been obtained in such a manner, because the appellant "was subjectively unaware that she was holding anything back. She had no knowledge of her husband's withdrawal of her sponsorship and her impression was that the Embassy was being excessively bureaucratic," in requesting the return of her visa:

Medel, at 349. In such circumstances, her failure to mention the embassy's request did not amount to obtaining her status in Canada on the basis of "fraudulent or improper means."

[49] *Medel* is distinguishable from the present circumstances. This is because the appellant's belief was specifically characterized as having been reasonable: *Medel*, at 350. For the reasons I have explained, Ms. Kaur's belief that she was not misrepresenting a material fact was not objectively reasonable. In brief, in failing to review her application to ensure its accuracy, and in failing to take reasonable steps to ensure the accuracy of the fraudulent letter of acceptance from Loyalist College, Ms. Kaur did not act reasonably: *Goudarzi*, at para 37.

[50] Ms. Kaur also relies on *Moon*, at paras 34-35. However, that case is distinguishable because the applicant there was not aware that her consultant had submitted the disputed application on her behalf.

[51] Finally, Ms. Kaur submits that her alleged misrepresentation was not established on a balance of probabilities.

[52] I disagree. During the hearing before the Panel Member, Ms. Kaur conceded that the letter of acceptance from Loyalist College was fraudulent. She also acknowledged that she signed a blank application form, and that she had not attempted to contact Loyalist College to confirm that she had been accepted there. She then explained that she had not done so because she was totally dependent on the Consultant and trusted him.

[53] For the reasons I have explained, it was reasonably open to the Panel Member to determine, based on these established facts, that Ms. Kaur's honest belief that she had not misrepresented a material fact was not objectively reasonable. Although the Panel Member did not explicitly state that he had reached this determination on a balance of probabilities, this was implicit. Moreover, the facts upon which he based his determination were sufficient for that finding to have been made on a balance of probabilities.

[54] For greater certainty, the Panel member's determination on this issue was appropriately justified, transparent and understandable. It also reflected "an internally coherent and rational chain of analysis" and was "justified in relation to the facts and the law that constrain the decision maker": *Vavilov*, at para 85. Furthermore, it demonstrated that the Panel Member "meaningfully grapple[d] with key issues or central arguments raised by the parties": *Vavilov*, at para 128.

D. *Was it unreasonable for the Panel Member to effectively adopt the three-prong test for innocent misrepresentation in the course of dismissing Ms. Kaur's claims?*

[55] Ms. Kaur maintains that the Panel Member erred by effectively requiring her to demonstrate that the impugned misrepresentation was beyond her control.

[56] I disagree.

[57] On this issue, the Panel Member noted that "[i]n some cases the court has also held that information or facts misrepresented must be beyond the applicant's control." Subsequently, in

explaining his finding that the innocent misrepresentation exception was not available to Ms. Kaur, he observed that the misrepresented information was not beyond her control. As previously mentioned, the Panel Member stated that this was because she could have insisted on reviewing her application package and she could have contacted Loyalist College to make certain that she had in fact been accepted there. After making those findings, the Panel Member stated:

> "[…] This is a case where Ms. KAUR ceded control of her matters to a third party. It is not a situation that was beyond her control.
>
> As such, the reasonableness prong of the innocent misrepresentation test is not satisfied in Ms. KAUR's set of circumstances […].

[58] In making the above-quoted statements, the Panel Member appears to have conflated the second and third prongs of the exception for innocent misrepresentation. However, for the reasons discussed below, that error was not material.

[59] As discussed at paragraph 26 above, the exception for innocent misrepresentation applies where (i) the applicant honestly believed they were not representing a material fact, (ii) the applicant's belief was reasonable, and (iii) knowledge of the misrepresentation was beyond the applicant's control.

[60] The preponderance of this Court's jurisprudence regarding the exception for innocent misrepresentation has adopted this *three-prong approach*: *Gill*, at para 20; see also the cases cited at paragraph 19 of that decision, and the additional jurisprudence cited at paragraph 26 above.

[61] Consequently, it was not unreasonable for the Panel Member to effectively require Ms. Kaur to demonstrate that the submission of the fraudulent letter of acceptance from Loyalist College was beyond her control.

[62] In any event, the Panel Member also found that "[i]t was not reasonable for [Ms. Kaur] to trust a matter this important to […] a third party, particularly without reviewing documents in advance of them being submitted to immigration officials." This finding would have provided a sufficient basis upon which to find that Ms. Kaur did not satisfy the test for misrepresentation, even under the line of jurisprudence of this Court that does not require a demonstration that the misrepresentation be "beyond the control of" the applicant. That line of jurisprudence simply requires a demonstration of the first two prongs of the three-prong approach. That is to say, *the two prong approach* requires a demonstration that: (i) *subjectively*, the person honestly believed they were not making a misrepresentation; and (ii) *objectively*, it was reasonable on the facts that the person believed they were not making a misrepresentation: see *Gill*, at para 18, and the cases cited therein.

[63] In my view, the two-prong test is reconcilable with much of the jurisprudence that has adopted the three-prong test, despite the fact that the latter test includes a requirement to demonstrate that the misrepresentation was "beyond the control of" the applicant. This is because the misrepresentation in several of the cases that adopted the three-prong test appears to have failed the two-prong test. To the extent that there was any discussion of the misrepresentation being "beyond" or "within" the "control" of the applicant, such discussion can be read as having been relevant to the Court's determination that the objective reasonableness prong of the test had

not been established by the applicant. In short, on closer examination, the difference between the two lines of jurisprudence may be more semantic than substantive in nature.

[64] The requirement that the alleged misrepresentation be "beyond the control of" the applicant appears to have its roots in the following passage of *Mohammed*, at paragraph 41:

> The present circumstances may also be distinguished from those in Medel on the basis that the information which the applicant failed to disclose was not information regarding which he was truly subjectively unaware. The applicant in the present case was not unaware that he was married. **Nor was it information, as in Medel, the knowledge of which was beyond his control.** This was not information which had been concealed from him or about which he had been misled by Embassy officials. The applicant's alleged ignorance regarding the requirement to report such a material change in his marital status and his inability to communicate this information to an immigration officer upon arrival does not, in my opinion, constitute "subjective unawareness" of the material information as contemplated in Medel. (Emphasis added)

[65] It is readily apparent from a reading of the foregoing passage that the bolded passage containing the reference to "beyond his control" was entirely unnecessary. This is because the applicant was subjectively aware of his misrepresentation. In other words, he did not meet the "subjective" prong of the test for innocent misrepresentation. He was well aware that he married someone just before coming to Canada, yet he stated that he was single.

[66] The above-quoted passage from *Mohammed* was then quoted by Justice Tremblay-Lamer in a trilogy of cases in 2012: *Oloumi*, at para 36; *Goudarzi*, at para 37; *Sayedi*, at paras 37 and 40. Although Justice Tremblay-Lamer appears to have relied on that passage in the course of adopting the three-prong test for innocent misrepresentation, it was unnecessary for her to do so.

The particular facts in each of those cases were such that applicants in each case would have failed the second prong of the test, which requires that the applicant's belief be objectively reasonable. Indeed, Justice Tremblay-Lamer stated so: *Oloumi*, at paras 36 and 39; *Goudarzi* at paras 37, 40 and 42; *Sayedi*, at paras 37, 40 and 43.

[67] The following year, Justice Strickland quoted with approval the three-prong test that adopted in *Oloumi*. She did so in her decision in *Godburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 [***Godburdhun***], at para 28, which has been frequently applied: *Gill*, at paras 19-20. She then proceeded to find that the applicant had not satisfied the exception for innocent misrepresentation, because he was aware of the error in his application and he failed to review that application before it was submitted by a consultant: *Godburdhun*, at paras 29 and 34. As in the above-mentioned trilogy of decisions by Justice Tremblay-Lamer, the subsequent reference to the third prong of the test was unnecessary, because the applicant had clearly failed the first and second prongs of the test. In other words, it was unnecessary to add that the erroneous information was "within [the applicant's] control." Nonetheless, that fact was very relevant to an assessment of whether it was objectively reasonable for the applicant to have failed to review his application after drawing the error to the attention of his consultant, prior to the submission of the application.

[68] Essentially the same observations can be made with respect to several other decisions that adopted the three-prong test for innocent misrepresentation, but then proceeded to make findings that would have provided a sufficient basis upon which to find that the applicant had not satisfied one of the first two prongs of that test: see e.g., *Akintunde*, at paras 40-41; *Vahora*, at paras 30

and 35-36; *Del Pilar v Canada (Citizenship and Immigration)*, 2022 FC 559, at paras 18, 21, 41-42 and 45-46; *Malik*, at paras 31-32 and 35-36; *Appiah*, at paras 18-19; *Suri v Canada (Citizenship and Immigration)*, 2016 FC 589, at paras 20 and 26; *Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324, at paras 27 and 30-32; and *Brar v Canada (Citizenship and Immigration)*, 2016 FC 542, at paras 11 and 15-17.

[69] In brief, the jurisprudence cited immediately above can be reconciled with the line of this Court's jurisprudence in which the two-prong test for innocent misrepresentation was adopted. This is because nothing turned on whether the misrepresentation at issue was "beyond the control" of the applicant in question.

[70] That reconciliation is reinforced by the fact that, in several of the cases that adopted the three-prong test, an explicit or implicit finding was made that it was not objectively reasonable for the applicant to fail to take certain actions that were within their control: see e.g., *Tuiran*, at para 30; *Godburdhun*, at para 34; *Oloumi*, at para 39; *Goudarzi* at para 40 and 42; and *Sayedi*, at paras 40 and 43.

[71] In the present case, the Panel Member made a similar determination when he found that "[i]t was not reasonable for [Ms. Kaur] to trust a matter this important to […] [the Consultant], particularly without reviewing documents in advance of them being submitted to immigration officials." Consequently, even though the Panel Member conflated the second and third prongs of the three-prong test, his findings provided a sufficient basis for his conclusion that "the reasonableness prong of the innocent misrepresentation test is not satisfied in Ms. KAUR's set of

circumstances." In other words, the Panel Member's Decision is not unreasonable, even under the two-prong approach to the test for innocent misrepresentation.

[72] For greater certainty, I consider that it is not objectively reasonable, as contemplated by the second prong of both the three-prong test and the two-prong test, for an applicant for immigration status in this country to fail to take certain actions that are within their control. Those actions include making all reasonable efforts to verify the truthfulness and accuracy of all information or documentation submitted on their behalf by a consultant or other third party.

[73] In summary, it was not unreasonable for the Panel Member to effectively adopt the three-prong test for innocent misrepresentation in the course of dismissing Ms. Kaur's claims of innocent misrepresentation. This is because that test has been adopted in the preponderance of this Court's jurisprudence regarding innocent misrepresentation. Consequently, the Panel Member's application of the three-prong test fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law": *Vavilov*, at para 86.

[74] In any event, the Panel Member's findings provided a sufficient basis for his conclusion that "the reasonableness prong of the innocent misrepresentation test is not satisfied in Ms. KAUR's set of circumstances." In other words, the Decision was not unreasonable, even under the two-prong test. It was reasonably open to the Panel Member to effectively find that it was not objectively reasonable for Ms. Kaur to blindly trust the Consultant, and to fail to review her application package before it was submitted. Nothing turned on the Panel Member's adoption of the three-prong test. The Panel Member's reasons were appropriately justified, transparent and

intelligible. They reflected “an internally coherent and rational chain of analysis” and were “justified in relation to the facts and the law that constrain the decision maker”: *Vavilov*, at para 85.

VIII. Conclusion

[75] For the reasons set forth in part VII.B., above, it was not unreasonable for the Panel Member to find that Ms. Kaur had misrepresented a fact that was *material*, as contemplated by paragraph 40(1)(a) of the IRPA.

[76] For the reasons set forth in part VII.C., above, it was not unreasonable for the Panel Member to find that the innocent misrepresentation exception was not available to Ms. Kaur in light of her particular circumstances.

[77] For the reasons set forth in part VII.D., above, it was not unreasonable for the Panel Member to effectively adopt and apply the three-prong test for innocent misrepresentation in the course of dismissing Ms. Kaur’s claims of innocent misrepresentation.

[78] Given the foregoing, it is unnecessary to address the parties’ submissions with respect to Ms. Kaur’s actions after she arrived in Canada. Those actions were only addressed in the background section of the Decision, before the Panel Member turned to discussing Ms. Kaur’s submissions with respect to innocent misrepresentation.

[79] At the end of the hearing of this Application, the parties stated that no serious question of general importance arises from the facts and issues in this case. I agree. Accordingly, no question will be certified pursuant to paragraph 74(d) of the IRPA.

JUDGMENT in IMM-4404-22

THIS COURT'S JUDGMENT is that:

1. Ms. Kaur's application for judicial review of the decision of a panel member of the Immigration Division of the Immigration and Refugee Board, dated April 28, 2022, finding her inadmissible to Canada pursuant to paragraph 40(1)(a) of the IRPA, is dismissed.

2. There is no question for certification pursuant to paragraph 74(d) of the IRPA.

"Paul S. Crampton"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Kajal Sharma	FOR THE APPLICANT
Philippe Alma	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Brij Mohan & Associates Brampton, Ontario	FOR THE APPLICANT
Department of Justice Canada Vancouver, British Columbia	FOR THE RESPONDENT