

Federal Court



Cour fédérale

Date: 20240815

Docket: IMM-7804-23

Citation: 2024 FC 1276

Ottawa, Ontario, August 15, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MOJTABA MOHAMMADIZADEH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mojtaba Mohammadizadeh, applied for a permit to work in Canada. An officer at Immigration, Refugees and Citizenship Canada [IRCC] refused his application, finding that he had misrepresented on the application and therefore was inadmissible under section 40(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. A misrepresentation finding has serious consequences for Mr. Mohammadizadeh. It means that, for a period of five

years following the misrepresentation finding, he cannot enter Canada or apply for permanent residence (IRPA, ss 40(2), 40(3)). Mr. Mohammadzadeh challenges this misrepresentation finding on judicial review.

[2] In my view, the determinative issue is the treatment of Mr. Mohammadzadeh's attempt to withdraw his application months prior to receiving notice of IRCC's misrepresentation concern. There is little information in the record before me about this request or what response was received. In these circumstances, given the significance of the misrepresentation finding and the limited information in the record about a relevant issue, the matter must be sent back to be redetermined.

II. New Evidence Inadmissible on Judicial Review

[3] On judicial review, Mr. Mohammadzadeh presented new evidence that was not before the Officer. This evidence included a detailed explanation about the various steps he had taken to ensure that the accurate information was provided by the individual who filed the work permit application on his behalf. None of this evidence about the steps taken by him in the work permit application process were presented to the Officer in response to the procedural fairness letter. There is no explanation as to why this evidence could not have been presented at that time. Mr. Mohammadzadeh is not making an incompetence claim against his former counsel who responded to the procedural fairness letter.

[4] I agree with the Respondent that it is not appropriate for me to consider this new evidence in reviewing the Officer's decision on judicial review because it was not before the Officer when

they made their decision and does not fit within any of the exceptions for admission of new evidence (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20).

III. Background to Misrepresentation Finding

[5] Mr. Mohammadzadeh is a citizen of Iran. He filed his work permit application in March 2022 with the assistance of an individual in Iran that ran a company called Visanew that purported to assist people with immigration to Canada.

[6] Approximately five months after filing the application, on September 15, 2022, Mr. Mohammadzadeh attempted to withdraw his work permit application. The notes on file indicate that the request was received.

[7] Approximately five months after the withdrawal request, Mr. Mohammadzadeh received a procedural fairness letter that set out IRCC's concern that the Labour Market Impact Assessment ("LMIA") number provided in support of the work permit application was fraudulent.

[8] Mr. Mohammadzadeh then hired an immigration consultant who responded to the procedural fairness letter. In the response, the consultant explained that Mr. Mohammadzadeh had been defrauded like approximately 500 others who had fallen victim to an individual running a fraudulent immigration agency in Iran. The consultant advised that he was also assisting around 40 other victims of the same immigration agency. Documents were also submitted that

indicated that the head of Visanew had arrest warrants issued against him, had been charged with fraud, had his bank accounts frozen, and an Interpol red notice issued against him by the Tehran Court of Justice.

[9] Approximately a month after receiving the response to the procedural fairness letter, the Officer found Mr. Mohammadizadeh inadmissible for misrepresentation, finding that despite being a victim of fraud, he “is responsible for the information submitted, including due diligence in ensuring everything submitted is authentic prior to the submission of the application.”

IV. Issue and Standard of Review

[10] Mr. Mohammadizadeh raised a number of arguments in his written materials on judicial review. He abandoned two at the judicial review hearing: that the misrepresentation was not material, and that the individual who had filed the work permit application on his behalf was incompetent. His central argument on judicial review is essentially that the Officer failed to address relevant factors in evaluating whether the innocent mistake exception should apply, including i) that he had attempted to withdraw his application prior to receiving the procedural fairness letter; and ii) the magnitude and nature of the fraud to which he was a victim.

[11] In my view, the determinative issue is the consideration of Mr. Mohammadizadeh’s withdrawal request that was filed months prior to receiving IRCC’s procedural fairness letter that set out the basis for the misrepresentation concern. The parties agree as do I that I ought to review this issue that goes to the merits of the Officer’s decision on a reasonableness standard.

V. Analysis

[12] In order to find a person inadmissible for misrepresentation under paragraph 40(1)(a) of IRPA, an officer must determine first that there has been a misrepresentation; and second that the misrepresentation was material in that it could induce an error in the administration of IRPA.

[13] This Court has consistently held that the misrepresentation provision is to be broadly interpreted given its purpose in promoting the integrity of Canada's immigration scheme (*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23; *Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324 at paras 20, 25). An intention to deceive is not necessary to ground a misrepresentation determination (*Khedri v Canada (Citizenship and Immigration)*, 2012 FC 1397 at para 21; *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 [*Baro*] at para 15). This Court has recognized, however, that there is a narrow exception to a section 40(1)(a) misrepresentation finding where an applicant can demonstrate that they honestly and reasonably believed that they were not misstating or withholding material information ("innocent mistake exception") (*Baro* at para 15). Mr. Mohammadzadeh argued that the innocent mistake exception ought to apply to his circumstances.

[14] There is a divergence in the jurisprudence as to whether "knowledge of the misrepresentation was beyond the applicant's control" is required for the innocent mistake exception to apply (see discussion at paragraphs 16-21 of *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 [*Gill*]). Like Justice McHaffie in *Gill*, I need not attempt to address this issue because the matter before me—the Officer's treatment of Mr. Mohammadzadeh's

withdrawal request—is not dependent on a particular approach to evaluating the innocent mistake exception.

[15] Mr. Mohammadzadeh argues that he attempted to withdraw because of concerns he began to have about the nature of the representation he had received. The only information in the Certified Tribunal Record about the withdrawal request is the following notation in the Global Case Management System [GCMS] notes: “Client contacted CSC by email to withdraw WP application W307050647 submitted with receipt O354427731 on 2022/03/31. Advised them their decision is final.”

[16] It is not clear on the record before me why further information about the request and the response was not in the Certified Tribunal Record. The parties agree that this notation in the GCMS notes confirms that the withdrawal request was made in September 2022. The notes are ambiguous about what happened to the request. The notation “advised them their decision is final” could mean the Applicant was advised their decision to withdraw was final, meaning they could not change their mind and try to reinstate their application.

[17] It is troubling that more information about this request and response is not in the record. Given the ambiguity of the notes and the little information in the record, I am left with the concern that there is a possibility that the application was in fact accepted as withdrawn prior to the misrepresentation determination and refusal that happened approximately six months later. Even if the request was not accepted, the attempt to withdraw may be relevant to the Officer’s

assessment of whether Mr. Mohammadzadeh exercised due diligence, but there is no mention of the withdrawal request in the reasons.

[18] The Respondent argued that the withdrawal request and what happened to it is irrelevant because the jurisprudence establishes that it is not in the public interest to allow applicants to withdraw where there has been a misrepresentation. The jurisprudence relied on by the Respondent is not akin to Mr. Mohammadzadeh's circumstances. It relates to situations where an applicant attempts to withdraw after IRCC has informed them of the potential of a misrepresentation finding. This Court has found that applicants should not be permitted to hedge their bets and benefit from a misrepresentation, with the security that they could simply withdraw their application if the misrepresentation is later discovered. As noted by Justice Barnes (as he then was) in *Zhang v Canada (Citizenship and Immigration)*, 2015 FC 463:

...it would not be in the public interest to routinely permit the withdrawal of visa applications in the face of evidence of possible misrepresentation. Such an approach would encourage claimants to misrepresent material information in the expectation their visa applications could simply be withdrawn if the deceit was later uncovered (at para 7; see also *Lim v Canada (Citizenship and Immigration)*, 2019 FC 871 at para 28).

[19] Mr. Mohammadzadeh's situation is different than those described in *Zhang* and *Lim* because he filed his withdrawal request approximately five months prior to being informed by IRCC of the possible misrepresentation. Further, I note again depending on the circumstances related to the withdrawal request, the Officer may have found this relevant to their assessment of whether Mr. Mohammadzadeh exercised due diligence with his work permit application. In these circumstances, given the gaps in the record and reasons before me on this relevant issue,

and taking into account the seriousness of the consequences of this determination on Mr. Mohammadizadeh, I find the decision has to be set aside.

JUDGMENT in IMM-7804-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The decision, dated April 30, 2023 is set aside and sent back to be redetermined by a different decision-maker;
3. If the matter will be redetermined, the Applicant will be given an opportunity to file further evidence and submissions; and
4. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7804-23

STYLE OF CAUSE: MOJTABA MOHAMMADIZADEH v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 27, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: AUGUST 15, 2024

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