Federal Court Cour fédérale

Date: 20150112

Docket: IMM-3825-14

Citation: 2015 FC 38

Ottawa, Ontario, January 12, 2015

PRESENT: The Honourable Mr. Justice Annis

BETWEEN:

**VASANTHA BALASUNDARAM,
NIRMALAN BALASUNDARAM,
JAYANATH BALASUNDARAM**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA or the Act] of a March 14, 2014 decision by an Immigration Counsellor [the officer] of the High Commission of Canada in Colombo, Sri Lanka [the Commission] refusing the applicants' applications for permanent resident visas.

[2] The applicants are seeking an order quashing the officer's decision and remitting the matter back for re-determination by a different Immigration Counsellor.

[3] For the reasons that follow, the application is dismissed.

II. Background

[4] The applicants, Ms. Vasantha Balasundaram [the principal applicant] is the mother and her adult sons Mr. Nirmalan Balasundaram (later changed to a non-accompanying family member) and Mr. Jayanath Balasundaram [the son], are Sri Lankan citizens. In or about January 2009, they applied for permanent residence under the family class, sponsored by Mr. Niranjan Balasundaram [the sponsor].

[5] In May 2012, the son completed a Schedule A Background/Declaration form [the Schedule A] in which he declared that he had never been refused a visa to Canada or any other country. He signed the form, thereby declaring that the information given in the form was truthful, complete, and correct.

[6] The principal applicant was advised by a letter from the Commission dated November 22, 2013 that an officer had determined that the application was ready for final decision and requesting that they submit a valid original passport or travel document and two immigration photos for the principal applicant and for each accompanying family member. The applicants complied with the request.

[7] In December 2013, the son's passport was reviewed and an undeclared refusal for a visa to India in 2009 [the visa refusal] was detected. The Commission made a data sharing request to the Indian High Commission, which responded in January 2014 advising that no information about the visa refusal was available because the records had been deleted.

[8] In a letter dated January 22, 2014 [the fairness letter], the Commission advised the principal applicant that it had become apparent that materially relevant information on the application was not accurate, namely that the son had been previously refused a visitor visa to India which had not been indicated on the Schedule A. They were given 30 days to provide any relevant information before the Commission rendered a final decision on the application.

[9] The sponsor approached a Canadian lawyer Mr. Blank [the lawyer] for assistance in responding to the fairness letter. On February 10, 2014, the lawyer sent a letter to the Commission providing details regarding the alleged misrepresentation [the response] and indicating that he had enclosed a Use of Representative Form (IMM 5476) with his submissions, signed by the sponsor [the Representative Form]. The officer found no form accompanying his letter. In the response, the lawyer stated that the documents in question were completed by a third person, not the primary applicant or the son, and had been presented for signature by the applicants. When he signed the Schedule A, the son did not "note exactly which squares were ticked off or not" but this was an unintentional error. The response also noted that there had been no interview where the son could have responded to the Commission's concerns.

[10] The lawyer's response also quoted excerpts from the decision of *Koo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 931, [2009] 3 FCR 446 [*Koo*] that concluded although inadvertent errors were made on the form, the information although relevant, was not material to the matter at hand.

III. Impugned Decision

[11] On March 14, 2014, the permanent residence application was refused.

[12] The officer noted that the son had completed the Schedule A in May 2012, declaring that he had never been refused a visa to Canada or any other country and that this application was truthful, complete and correct. However, when the son's passport was checked, the visa refusal came to the Commission's attention and the fairness letter was sent to the applicants to give them an opportunity to address the issue.

[13] The officer acknowledged receipt of the response and noted that it had purported to include a Representative Form signed by the sponsor. However, the officer did not consider these submissions because there was no such form attached to the response, the lawyer would have known that representing the sponsor does not automatically mean that he represents the applicants, and there was nothing from the applicants themselves declaring the lawyer to be their representative for the application.

[14] The officer then discussed the error in the son's Schedule A form:

> Your son Jayanath was about 22 years old at the time of completing the application forms, who has sat for his Advanced Level exam in 2010. I thus believe he has a reasonable degree of education. He has signed a declaration to state his application is truthful and complete. It is not. I find it difficult to believe he would have forgotten about being refused a visa to India. I conclude that it is probable that he misrepresented a material fact.
>
> [Emphasis added.]

[15] The officer went on to state that the son's immigration history was material because "it leads to necessary examination of the circumstances of the refusal." In the officer's view, the misrepresentation or withholding of the immigration history induced or could have induced errors in the processing of the application which could have led to an incorrect decision. This was expanded on in a Global Case Management System [GCMS] entry dated February 19, 2014:

> 1990 born son declared in his schedule A that he has never been refused a visa to any country. He was refused a visa to India. Such a refusal is material in many respects. A correct declaration launches the necessary examination of the circumstances (intention, reason for refusal, etc.) which in turn can lead to concerns regarding admissibility. In a general sense, it is rare that a Sri Lankan is refused a visa to India, especially in the time frame of the months surrounding the closing of the civil war. However it was also common in those years that those in Sri Lanka who had something to fear from the closing days of the war, left to India. Though there may be no concerns regarding the refusal of the visa in question, the applicant did not give us an opportunity to examine that history and thus an error could have occurred in the determination of admissibility.
>
> [Emphasis added.]

[16] The officer concluded that he or she was not satisfied that the applicants were inadmissible and since that is a precondition to a visa being issued, the application must be refused (IRPA, s 11(1)). The officer also indicated that the son would be inadmissible to Canada

for a period of two years from the date of the officer's letter (IRPA, s 40(2)(*a*)) and that the sponsor could not appeal the decision (IRPA, s 64(3)).

IV. Statutory Provisions

[17] The following provisions of the Act are applicable in these proceedings:

Immigration and Refugee Protection Act, SC 2001, c 27	*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27
11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	**11.** (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
[…]	[…]
40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40.** (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(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;

[…]

(2) The following provisions govern subsection (1):

(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of two years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and

[…]

64. (3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.

[…]

91. (1) Subject to this section, no person shall knowingly, directly or indirectly, represent or advise a person for consideration — or offer to do so — in connection with a proceeding or application under this Act.

(2) A person does not contravene subsection (1) if

[…]

(2) Les dispositions suivantes s'appliquent au paragraphe (1):

a) l'interdiction de territoire court pour les deux ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;

[...]

64. (3) N'est pas susceptible d'appel au titre du paragraphe 63(1) le refus fondé sur l'interdiction de territoire pour fausses déclarations, sauf si l'étranger en cause est l'époux ou le conjoint de fait du répondant ou son enfant.

[…]

91. (1) Sous réserve des autres dispositions du présent article, commet une infraction quiconque sciemment, de façon directe ou indirecte, représente ou conseille une personne, moyennant rétribution, relativement à une demande ou à une instance prévue par la présente loi, ou offre de le faire.

(2) Sont soustraites à l'application du paragraphe (1)

they are	les personnes suivantes :
(a) a lawyer who is a member in good standing of a law society of a province or a notary who is a member in good standing of the Chambre des notaires du Québec;	a) les avocats qui sont membres en règle du barreau d'une province et les notaires qui sont membres en règle de la Chambre des notaires du Québec;
(b) any other member in good standing of a law society of a province or the Chambre des notaires du Québec, including a paralegal; or	b) les autres membres en règle du barreau d'une province ou de la Chambre des notaires du Québec, notamment les parajuristes;
(c) a member in good standing of a body designated under subsection (5).	c) les membres en règle d'un organisme désigné en vertu du paragraphe (5).
[…]	[…]

[18] The following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the Regulations] are applicable in these proceedings:

Immigration and Refugee Protection Regulations, SOR/2002-227	*Règlement sur l'immigration et la protection des réfugiés*, DORS/2002-227
10. (2) The application shall, unless otherwise provided by these Regulations,	**10.** (2) La demande comporte, sauf disposition contraire du présent règlement, les éléments suivants :
[…]	[…]
(c.1) if the applicant is represented in connection with the application, include the name, postal address and telephone number, and fax number and electronic mail address, if any, of any person or entity — or a person acting on its behalf — representing	c.1) si le demandeur est représenté relativement à la demande, le nom, l'adresse postale, le numéro de téléphone et, le cas échéant, le numéro de télécopieur et l'adresse électronique de toute personne ou entité — ou de

the applicant;

toute personne agissant en son nom — qui le représente;

(c.2) if the applicant is represented, for consideration in connection with the application, by a person referred to in any of paragraphs 91(2)(a) to (c) of the Act, include the name of the body of which the person is a member and their membership identification number;

c.2) si le demandeur est représenté, moyennant rétribution, relativement à la demande par une personne visée à l'un des alinéas 91(2)a) à c) de la Loi, le nom de l'organisme dont elle est membre et le numéro de membre de celle-ci;

(c.3) if the applicant has been advised, for consideration in connection with the application, by a person referred to in any of paragraphs 91(2)(a) to (c) of the Act, include the information referred to in paragraphs (c.1) and (c.2) with respect to that person;

c.3) si le demandeur a été conseillé, moyennant rétribution, relativement à la demande par une personne visée à l'un des alinéas 91(2)a) à c) de la Loi, les renseignements prévus aux alinéas c.1) et c.2) à l'égard de cette personne;

(c.4) if the applicant has been advised, for consideration in connection with the application, by an entity — or a person acting on its behalf — referred to in subsection 91(4) of the Act, include the information referred to in paragraph (c.1) with respect to that entity or person; and

c.4) si le demandeur a été conseillé, moyennant rétribution, relativement à la demande par une entité visée au paragraphe 91(4) de la Loi — ou une personne agissant en son nom —, les renseignements prévus à l'alinéa c.1) à l'égard de cette entité ou personne.

(d) include a declaration that the information provided is complete and accurate.

d) une déclaration attestant que les renseignements fournis sont exacts et complets.

[…]

[…]

12. Subject to section 140.4, if the requirements of sections 10 and 11 are not met, the

12. Sous réserve de l'article 140.4, si les exigences prévues aux articles 10 et 11 ne sont

application and all documents submitted in support of it shall be returned to the applicant.	pas remplies, la demande et tous les documents fournis à l'appui de celle-ci sont retournés au demandeur.
[…]	[…]

[19] The following portions of the Citizenship and Immigration Canada's Operational Manual, IP-9 Use of Representatives Paid or Unpaid [the Manual] are applicable:

> **3.1 Required Forms**
>
> A Use of Representative form (IMM 5476) must be submitted with an immigration application if the applicant used the services of a representative to help them prepare their application, or if the applicant wishes to appoint a representative to conduct business on their behalf with CIC or CBSA. All the information on the IMM 5476 is mandatory unless the question clearly states "if applicable" or "if known." If any of the mandatory items are missing, CIC has the authority to return the application (see Section 7.2) with a letter explaining why (see Appendix D). To be complete, the form must be signed and dated by both the applicant and the representative.
>
> […]
>
> **7.2 Processing applications received after October 28, 2011...**
>
> **Complete application [R10(2)]**
>
> All applicants using a compensated or uncompensated representative must submit a Use of a Representative (IMM 5476) form.
>
> R10 of the Regulations defines what constitutes a complete application. If the application provides all the necessary information required to satisfy R10, the application should be processed.
>
> R10(2)(c.1), (c.2), (c.3) and (c.4) require that detailed information concerning representatives be provided, where applicable. An application is considered complete when it includes the representative's name, postal address and telephone number and, if applicable, the representative's fax number and e-mail address. The form must be signed, both by the applicant and by the

> representative. If the information is incomplete, the application will be returned as per R12…
>
> […]
>
> **Returning an application**
>
> Applications from unauthorized representatives need to be returned so that these representatives and their clients are reminded that the government will deal only with authorized representatives when compensation is being given. It is necessary to present this message consistently in order to bolster our amended Regulations and further protect vulnerable clients.
>
> **Incomplete IMM 5476:** If the IMM 5476 does not include all of the information required under R10(2),the entire application, the letter concerning an incomplete form (see letter template in Appendix D),and any attached fees should be returned, as should all subsequent incoming documents…
>
> [Emphasis added.]

V. Issues

[20] The following issues arise in this application:

1. Did the officer err in failing to consider the letter from the lawyer who had provided representations in response to the fairness letter?

2. Did the officer err by finding that the applicants were inadmissible pursuant to section 40(1) of the Act for misrepresenting material facts that could have induced an error in the administration of the Act?

VI. Standard of Review

[21] It is not necessary to engage in a full standard of review analysis where the appropriate standard of review is already settled by previous jurisprudence (*Dunsmuir v New Brunswick,* 2008 SCC 9, [2008] 1 SCR 190, at para 62).

[22] Correctness is the appropriate standard of review for the procedural fairness issue raised in this case by the officer's treatment of the lawyer's response (*Mission Institution v Khela*, 2014 SCC 24, [2014] 1 SCR 502 at para 79; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 43).

[23] Decisions regarding inadmissibility on the grounds of misrepresentation involve questions of mixed fact and law, which are reviewable on the standard of reasonableness (*Sidhu v Canada (Minister of Citizenship and Immigration)*, 2014 FC 419 at para 11; *Koo*, above).

VII. Analysis

A. *Did the officer err in failing to consider the letter from the lawyer who had provided representations in response to the fairness letter?*

[24] The applicants submit that the officer erred by not considering the response because the lawyer had clearly indicated that the applicants intended to respond to the fairness letter and to provide an explanation for the officer's concerns. The officer concluded that in order for the response to be considered, there had to be a Representative Form signed by the applicants. However, such a requirement is only stipulated in the Manual, a policy document, and nowhere

in the Act or Regulations. The response complied with the legislation by providing the lawyer's details and it was clear that he was responding to the procedural fairness letter. The applicants contend that there is no dispute that the lawyer was retained for the purpose of responding to the officer's concerns or that he submitted material information that should have been considered. In the alternative, the applicants submit that the officer breached the duty of fairness by failing to give notice that the response would not be considered and that it was unreasonable for the officer to refuse the application instead of advising the applicants or their counsel that a Representative Form signed by the applicants should be submitted, given the context of this being a final decision.

[25] The respondent submits that it is "entirely reasonable for CIC to require some indication from the applicants themselves that the lawyer is representing them." The onus was on the applicants and they were not entitled to a running score of the status of their application, so the officer was not obliged to give them notice of the issue with the Representative Form. In the alternative, if the Court were to find that the lack of notice was a breach of procedural fairness, the respondent submits that the applicants have failed to show how the ultimate decision would have been different if the officer had considered the response because the letter does not make any submissions about how or why the visa refusal was not material in the applicants' case.

[26] I agree with the applicants that there was a failure of natural justice by the refusal of the officer to advise their lawyer that the Representation Form was not enclosed and that a similar form signed by the applicants would also be necessary. On the other hand, I also accept the

respondent's argument that the failure to consider the response of the sponsor and applicants' lawyer would not have impacted on the decision in any manner.

[27] I acknowledge that there do not appear to be any provisions in the Act or Regulations stipulating a requirement for a Representation Form whereby a party retains a representative to speak on his or her behalf. Nonetheless, it should be understood that not everything the CIC requests of claimants has to be prescribed in some statutory form. The CIC may adopt general practices normally followed by organizations in the operations of its daily affairs. The requirement that there be some form of official retainer by one person permitting another to represent his or her interests is a normal precautionary practice required to protect the organization from subsequent allegations that the representative was not authorized to represent the alleged principal. Failing the provision of such a form, CIC was entitled to refuse to consider the representative's submissions.

[28] Despite CIC's entitlement to demand a signed Representation Form from a purported representative, I conclude that in exercising its discretion in the special circumstances surrounding the requirement to provide a fairness letter, a CIC delegate may have to take the extra step to permit representations to be made if it is obvious that some slip or other innocent misunderstanding occurred that prevented receipt of the form. Thus, when discharging its duty to act fairly in obtaining representations from claimants, and faced with situations such as a missing enclosure or a misunderstanding as to the persons covered by a Representation Form, and where the administrative requirements are minor in nature, the officer should provide the claimants with an opportunity to correct the technical error or omission in order to obtain their representations.

[29] In decision-making, reasonableness underlies fairness by playing a role in improving the correctness, reliability, and legitimacy of decisions. It has been found that if persons affected by decisions do not have an opportunity to participate in the decision-making process, the decision may more often be defective (i.e. not correct, reliable or legitimate). Seen from this perspective, the officer should have understood that it was in her best interests in carrying out her functions to hear from the applicants to enhance the well-foundedness and legitimacy of the decision when patently obvious minor errors or omissions stand in the way.

[30] Reasonableness underlying fairness is also based on expectations. Norms of conduct develop and persons come to rely upon them. One of those norms that normally applies is that obvious slips and omissions will not be automatically fatal and may be corrected. For example, the failure to include an attachment to an email raises the expectation that the addressee will advise the sender of his or her error. Similarly, when the substantive interests of the sponsor and the applicant are identical, unless there are protracted administrative steps required, the officer should seek to correct the innocent misunderstanding. In this case, the officer ought to have notified the applicants about the missing enclosure and sought to clarify the confusion on the authority arising from the fact that the sponsor had signed the Representative Form.

[31] Accordingly, if the matter turned on the refusal of the officer to consider the representations of the sponsor’s lawyer due to the technical omissions described, I would have set aside the decision and required it to be reconsidered by another officer. However, I do not find that the submissions of the sponsor’s lawyer would have impacted in any manner on the officer’s ultimate decision, for reasons which are described below.

B. *Did the officer err by finding that the applicants engaged in misrepresentation and were therefore inadmissible pursuant to section 40(1) of the Act?*

[32] It is common ground that two factors must be present for a finding of inadmissibility under section 40(1) of the Act: there must be misrepresentations by the applicant and those misrepresentations must be material in that they could have induced an error in the administration of the IRPA (*Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452, 138 ACWS (3d) 728 at para 28 [*Bellido*]).

[33] The applicants submit that the officer's conclusion regarding the misrepresentation is unreasonable in light of the evidence that was before him or her and the officer's own investigation into the reasons behind the visa refusal. They argue that a foreign national seeking to enter Canada has a duty of candour to disclose material facts (*Haque v Canada (Minister of Citizenship and Immigration)*, 2011 FC 315 at para 13 [*Haque*]), but they will not be inadmissible where they can show they honestly and reasonably believed that they were not withholding material facts (*Bickin v Canada (Minister of Citizenship and Immigration)* 2000, 209 FTR 14, 104 ACWS (3d) 743; *Medel v Canada (Minister of Employment and Immigration)*, [1990] 2 FC 345; *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 at para 15, 163 ACWS (3d) 109).

[34] Nonetheless, it also follows that an applicant cannot be negligent or reckless in the misrepresentations that he or she makes (see *Bellido*, above). The Court in *Haque*, above cites *Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 450, 367 FTR 153, which involved very similar facts to those in the present case, as follows at para 15:

> [15] Mr. Haque has attempted to attribute blame to his consultant for improperly filling out his application. Nonetheless, he signed the application and so cannot be absolved of his personal duty to ensure the information he provided was true and complete. This was expressed succinctly by Justice Robert Mainville at para. 31 of *Cao*, supra:
>
> > The Applicant signed her temporary residence application and consequently must be held personally accountable for the information provided in that application. It is as simple as that.

[35] The applicants referred to the recent decision of *Karunaratna v Canada (Minister of Citizenship and Immigration)*, 2014 FC 421, 25 Imm LR (4th) 313 where the Court set aside the decision of an officer who had rejected the applicant husband and wife's application for permanent residence because of material misrepresentations for failing to refer to the refusal of past temporary visas. However, the facts in that case are clearly distinguishable, inasmuch as there was considerable confusion surrounding past applications and their updating. Moreover, the fact that the applicants had been refused past temporary visas had already been described in other documents in the officer's files, which demonstrated that there was no intention to conceal the fact. The information was also found not to be material, which appears to have been a factor in the overall decision in respect of the visas and other dated employment information.

[36] I conclude that the son committed a misrepresentation in failing to identify on the background declaration that he had been refused a visa. This decision is not impacted by the refusal of the officer to consider the submissions of the applicant's lawyer, or any analysis on the part of the officer. It results from the application of previous jurisprudence to the facts.

[37] The second issue is whether the misrepresentation was material. Paragraph 40(1)(*a*) of the IRPA states that a foreign national will be inadmissible if they directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or that could induce an error in the administration of the IRPA. A misrepresentation will be material if it is important enough to affect the process. Moreover it is not necessary that a misrepresentation actually induces an error, it is enough that it could do so (*Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at paras 36-37, 439 FTR 210 37 [*Goburdhun*]; *Haque*, above at para 11; *Mai v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 101 at para 18, 383 FTR 139; *Nazim v Canada (Minister of Citizenship and Immigration)*, 2009 FC 471, 344 FTR 272).

[38] The applicants submit that, prior to the misrepresentation being detected, there was no issue as to their admissibility based on the extensive medical, criminal, and security background checks that had already been performed in Sri Lanka. However, obtaining a security clearance in one country would not disentitle the officer from investigating why the son was refused entry to India. As described in the GCMS notes, it was generally rare that a Sri Lankan would be refused a visa to India, especially in the timeframe of the month surrounding the end of the Civil War. I find that this gave rise to a reasonable concern that the officer could properly act upon.

[39] The applicants further submit that it is unclear what information could have been obtained or investigated by CIC given the fact that the Indian authorities no longer had any records about the visa refusal. They contend that all that could have been learned were the son's personal reasons for seeking an Indian visa, which bears no relevance to his admissibility to

Canada and therefore is not a material fact. With respect, the destruction of documents that the officer wished to consult cannot be used as a factor to support the applicants' submissions when an 18 month interval intercedes between when the misrepresentation was made and when it came to the officer's attention. Rather, these circumstances describe the harm that arises from failing to provide accurate answers on the application by delaying the officer's investigation and supports the conclusion that the misrepresentation was material.

[40] I also reject the applicants' further submissions that, because the officer was able to make the necessary inquiries after the passport check, the misrepresentation did not prevent the officer from "undertaking the correct procedures that would have normally been taken." This argument is without merit. Correct procedures entailed learning from the Indian authorities why the son was refused a visa in the circumstances where such refusals were known to be rare.

[41] I also agree with the respondent that the officer's reasons were not focused on why the visa refusal occurred, but rather the fact that CIC did not have an opportunity to examine a material fact (the son's immigration history) and that this could have led to an error in the admissibility determination. As indicated in *Goburdhun*, above at paragraph 42: "had [the officer] relied solely on the application which did not disclose the prior visa refusal, this could have induced an error in the administration of the IRPA as he could have erroneously issued a visa to the applicant."

VIII. Conclusion

[42] In the circumstances, the application must be dismissed.

[43] The applicant proposed the following certified question:

1. Can an officer refuse to consider submissions made by a lawyer who asserts that they had been retained by an applicant due to a lack of a Representative Form?

[44] I decline to certify the question given my reasons, as it would not be dispositive of the appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and that no questions are certified for appeal.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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