Federal Court  Cour fédérale

**Date: 20150902**

**Docket: IMM-6040-14**

**Citation: 2015 FC 1043**

**Ottawa, Ontario, September 2, 2015**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**MARIA ISABEL ANGEL DE AZEEM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] This is an application for judicial review brought under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], seeking to set aside a decision, rendered on August 4, 2014 by a visa officer at the Embassy of Canada in Mexico whereby the application for a permanent resident visa within the Federal Skilled Worker Class of Ms. Maria Isabel Angel de Azeem (the applicant) was refused.

[2] Ms. Angel de Azeem's application was refused on the basis that the arranged employment offer [AEO] underlying her application misrepresented her proposed employment, and she was therefore inadmissible for misrepresentation under section 40 of the IRPA.

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

## I. Background

[4] Ms. Angel de Azeem is a citizen of Venezuela who arrived in Canada from the United States in 2003 accompanied by her then husband, a citizen of Pakistan named Nadeem Amjad Azeem, and their two daughters. On arrival refugee protection was claimed.

[5] In 2004, after arriving in Canada, Ms. Angel de Azeem, her then husband and their friend Stella Ospina registered a company called "Gamma Salt Crystals Ltd" [Gamma] that imported and sold salt products from Pakistan. Stella Ospina was the majority shareholder in the company. Ms. Angel de Azeem, her husband, and her brother-in law each held an ownership interest in Gamma as well. The applicant's sister, Martha Angel, did not have an ownership interest in Gamma but she did manage the company.

[6] Ms. Angel de Azeem declared that from February 2004 to March 2009, she worked at Gamma as an "Executive Secretary" on a full time basis. Her duties included: preparing correspondence, scheduling appointments, preparation for trade shows, assistance with wholesale customers' shipments, and development of sales materials in English and Spanish.

[7] The claim for refugee protection was ultimately rejected and a removal order was issued against the Azeem family in 2009. Mr. Azeem returned to Pakistan, while Ms. Angel de Azeem returned to Venezuela with their two daughters. The applicant and her husband were subsequently divorced in October 2010.

[8] On July 8, 2011, Ms. Angel de Azeem filed an application for a permanent resident visa within the Federal Skilled Worker Class, with her two daughters as dependents. She submitted that she should be awarded 85 points overall, with 10 points based on an arranged employment offer from Gamma. She submitted a letter, signed by her sister Martha Angel, confirming an offer of employment in the position of Executive Secretary at Gamma. The duties described in the offer of employment were administrative in nature.

[9] In October 2011, Ms. Angel de Azeem's counsel received confirmation that she had been issued a positive Arranged Employment Opinion regarding Gamma's offer of employment, and that her permanent residency application was being transferred to a visa officer for final determination.

[10] On July 29, 2014, Ms. Angel de Azeem attended an interview with a visa officer concerning her application. In response to questions posed, the applicant provided explanations on the creation and composition of Gamma. She explained that her duties at Gamma had previously involved dealing with Spanish-speaking clients, attending trade shows and doing presentations, and generally a lot of marketing and customer service. She stated that the duties for the Executive Secretary position she had been offered in the AEO are "not the same", and

that she needed a title in the company so they "gave her executive secretary and those duties on paper". She was unable to describe what the employment relationship would be as between her and her sister, or if her sister would be her boss when she assumed her duties with Gamma.

[11] During the interview, the visa officer raised his concerns: (1) that the offer was an "offer of convenience"; and (2) that there was "no employer/employee relationship" given how the company was started and the make-up of the company.

[12] At the end of the interview, the visa officer advised Ms. Angel de Azeem that her application would be refused on the basis of a misrepresentation.

II. Decision

[13] On August 4 2014, a letter of refusal was sent to Ms. Angel de Azeem advising her that pursuant to paragraph 40(1)(a) of the IRPA she was inadmissible for misrepresentation.

[14] The refusal letter states that there had been a direct misrepresentation of material facts relating to the AEO, which is characterized as an AEO of convenience that could have induced an error in the administration of the IRPA. The decision letter addresses the circumstances surrounding the creation of Gamma and Ms. Angel de Azeem's connections to Gamma's principals, described as friends and family. It is also noted that Ms. Angel de Azeem's sister initiated and signed the AEO. The letter notes that concerns with respect to the AEO were raised in the July 29th, 2014 interview but the responses did not alleviate those concerns.

## III. Issues

[15] The applicant raises the following issues in this application:

A. Was the visa officer's determination that the applicant was inadmissible for misrepresentation reasonable?

B. In rendering the decision was there a breach of the principles of procedural fairness?

## IV. Applicant's Position

[16] The applicant takes the position that the visa officer's finding of inadmissibility on the basis of misrepresentation was based solely on the determination that Gamma was a family business. The applicant contends that the circumstances relating to the formation of the company at a time when the applicant was a refugee claimant in Canada were irrelevant to the admissibility decision under the Federal Skilled Worker Class. Furthermore, there was undisputed evidence that the applicant had previously been employed by Gamma and that Gamma was an active company genuinely carrying out business in Canada.

[17] The applicant submits that any finding of inadmissibility on the basis of misrepresentation could only be reached if the visa officer concluded that the job offer itself was not genuine or that the applicant was unlikely to take up the position with Gamma upon arrival in Canada. No such finding was made by the visa officer. The sole determination reached by the visa officer in relation to the AEO was that it was an offer "of convenience"; a term which the applicant submits has no meaning under the IRPA and is irrelevant in the circumstances.

[18] The applicant further argues that a finding of misrepresentation is a serious matter that should not be made in the absence of clear and convincing evidence. In this case, the applicant submits that nothing was hidden or misrepresented in the application. The applicant also takes the view that the positive arranged employment opinion issued by Human Resources and Skills Development Canada, while not binding on the visa officer, could only be departed from where the officer had good reason.

[19] The applicant also contends that the visa officer breached the principles of procedural fairness by failing to provide the applicant with a meaningful opportunity to address the visa officer's concerns and by failing to contact Gamma prior to finding the applicant inadmissible for misrepresentation.

## V. Respondent's Position

[20] The respondent submits that the courts have adopted a broad and robust interpretation of s. 40 of the IRPA to ensure applicants provide complete, honest and truthful information when seeking entry to Canada. The respondent submits that the applicant's acknowledgement at the interview on July 29, 2014 that "she needed a title in the company so they have her executive secretary and those duties on paper" and the vague nature of the employment were sufficient to allow the visa officer to reasonably conclude that there had been misrepresentation which could have induced an error in the administration of the IRPA.

[21] The respondent states that the meaning of the term "AEO of convenience", adopted by the visa officer, is clear; the arranged employment was not a genuine offer as the applicant would not be accepting and carrying out the employment described in the offer.

[22] On the question of procedural fairness the respondent advances the position that there is no duty to provide an applicant with an opportunity to respond to concerns that arise directly from the requirements imposed by legislation or regulation. The respondent contends that subsection 82(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002/227 requires the applicant to establish that "they are able to perform and are likely to accept and carry out the employment". The respondent further contends that the duty of fairness owed by a visa officer is at the lower end of the spectrum. In this case the visa officer's concerns relating to the AEO were put to the applicant in the July 29, 2014 interview and as such there was no breach of procedural fairness.

## VI. Applicant's Reply

[23] In reply, the applicant submits that the visa officer's reasons in support of the decision consist only of the statements in the refusal letter and the notes contained in the Global Case Management System [GCMS] dated August 4, 2014. To go beyond this and rely on the remaining GCMS notes would be to rewrite the reasons provided by the visa officer.

## VII. Standard of review

[24] The visa officer's evaluation of the permanent resident visa application in the Federal Skilled Worker Class and determination that the applicant is inadmissible for misrepresentation engages questions of fact and mixed law and fact. This decision is reviewable on the reasonableness standard (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1189 at para 17, [2008] FCJ No 1468; *Ghasemzadeh v Canada (Minister of Citizenship and Immigration)*, 2010 FC 716 at paras 17-19, [2010] FCJ No 875).

[25] The procedural fairness issue raised by the applicant is to be reviewed on a standard of correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339).

## VIII. Analysis

### A. *Reasons*

[26] As a preliminary matter there is a need to identify what part of the Certified Tribunal Record [CTR] forms the reasons in this case. The applicant argues that the reasons are limited to those statements contained in the refusal letter and the GCMS notes dated August 4, 2014. In argument before the Court the respondent took the position that all of the GCMS notes formed part of the reasons in support of the decision.

[27] GCMS notes (formerly referred to as CAIPS notes) may form the basis for or supplement reasons provided by a visa officer. As noted by Justice Robert Barnes in *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298, [2006] FCJ No 1615:

> [22] CAIPS notes have been accepted as a constituent part of an administrative decision: see *Kalra v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1199, 2003 FC 941 at para. 15, and *Toma v. Canada (Minister of Citizenship and Immigration)*, [2006] F.C.J. No. 1000, 2006 FC 779 at para. 12. In this case, the CAIPS notes provide additional detail to the formal decision letter and are clearly sufficient to inform the Applicant of the reasons for the refusal of a visa. It is not open to the Applicant to complain that the CAIPS notes were not provided in advance of the initiation of this application because her counsel failed to request them at an earlier stage: see *Hayama v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1642, 2003 FC 1305 at para. 14 and *Liang v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. 1301 at para. 31:

[28] While I am not prepared to conclude that all of the GCMS notes in this case form part of the reasons, I am satisfied that the notes prepared by the immigration officer on August 1, 2014 and July 29, 2014 do. Ms. Angel de Azeem was interviewed by this officer and it was this officer who then made the recommendation for refusal to the decision-maker. Recommendations to a decision-maker may be considered as part of the reasons for the final decision: *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 37, [2005] FCJ No 2056 ; *Miller v Canada (Solicitor General)*, 2006 FC 912 at paras 58-62, [2006] FCJ No 1164 ; *Wanis v Canada (Canadian Food Inspection Agency)*, 2013 FC 963 at para 21, [2013] FCJ No 1047 ; *Taticek v Canada (Border Services Agency)*, 2014 FC 281 at para 44, [2014] FCJ No 315.

B. *Was the visa officer's determination reasonable?*

[29] Under para 40(1)(a) of the IRPA, a person is inadmissible to Canada if that person "withhold[s] material facts relating to a relevant matter that induces or could induce an error in the administration of th[e] *Act* ". An applicant for permanent residence has a general duty of candour, which requires not only the disclosure of material facts but also an obligation to ensure the documents underlying an application accurately reflect the circumstances: *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 at para 15, [2007] FCJ No 1667; *Zhao v Canada (Citizenship and Immigration)*, 2012 FC 1421 at para 1-2, [2012] FCJ No 1532.

[30] In this case Ms. Angel de Azeem was asked to explain discrepancies between the marketing duties she had previously performed for Gamma and the primarily administrative duties set out in the AEO. In providing this explanation she acknowledged that the duties in the AEO were simply duties on paper and that she needed a title so she was given "Executive Secretary". This, coupled with concerns that an employer/employee relationship did not exist, lead the interviewing officer to conclude that the AEO was an "offer of convenience" as opposed to an offer that reflected the actual needs of the company.

[31] While the applicant takes issue with the use of the term "offer of convenience", I am satisfied after reviewing the refusal letter and the GCMS notes prepared by the immigration officer that the genuine nature of the offer was the issue. The family nature of the business alone is not sufficient to call into question the AEO, however it is not unreasonable to consider this

factor where a concern with the genuine nature of the offer is raised by the totality of the circumstances.

[32] The applicant submits that the finding of misrepresentation should only be made where there is clear and convincing evidence. The acknowledgement of the inaccuracy of the AEO by the applicant satisfies the clear and convincing standard in my opinion. Similarly, while the visa officer must be mindful of the positive arranged employment opinion of Human Resources and Skills Development Canada, this opinion does not usurp or displace the role of the visa officer in assessing the application. In this case the visa officer identified the facts that caused him to question the genuine nature of the AEO: *Bondoc v Canada (The Minister of Citizenship and Immigration)*, 2008 FC 842 at paras 15 and 16, [2008] FCJ No 1063.

[33] I am satisfied that the determination by the visa officer that the AEO was not genuine falls within the range of reasonable possible outcomes within the context of the facts and the law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190.

[34] However, for the misrepresentation to lead to inadmissibility it must also have induced or could have induced an error in the administration of the IRPA. The applicant is of the view that even if there was a misrepresentation of the facts it could not have induced an error because the visa officer found the applicant would have sufficient points under the Federal Skilled Worker Class to pass eligibility without an AEO. I disagree. In a letter to the applicant dated October 11, 2011 from the Federal Skilled Worker Centralized Intake Office the applicant is advised that "instructions which were published in the Canada Gazette on June 25, 2011[…] specify that only

applicants who have work experience in certain listed occupations or applicants who have an offer of Arranged Employment […] are eligible to be processed in the Federal Skilled Worker Class" (see Updated Ministerial Instructions, (2010) C Gaz I, 1669-1672). The AEO was relevant to the decision to process the application. A determination that an error was or could have been induced by the misrepresentation was therefore reasonable.

C. *Was there a breach of the principles of procedural fairness?*

[35] The degree of procedural fairness owed a visa applicant has been addressed in a number of cases: *Patel v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 55 at para 10, [2002] FCJ No 178. In *Obeta v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1542, [2012] FCJ No 1624 [*Obeta*] Justice Richard Boivin described the degree of procedural fairness owed as follows:

> [15] From the outset, the Court recalls that visa applicants are owed a degree of procedural fairness which falls at the low end of the spectrum (*Dash v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1255 at para 27, [2010] FCJ No 1565 (QL) [*Dash*]), there being no substantive rights at issue as an applicant has no right to enter Canada (*Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at para 20, 302 FTR 127). The decision on the application is neither judicial nor quasi-judicial in nature.

[36] I am mindful that the declaration of inadmissibility in this case will exclude the applicant from traveling to Canada for two years and as such may well have a greater impact on her than some other visa applicants given her family ties in Canada. It remains however, that the applicant has no right to enter and remain in Canada as noted in *Obeta*.

[37] The applicant emphasizes case law highlighting that where credibility of information is in question there is a duty to give an opportunity to respond to those concerns. The respondent replies with case law indicating that no duty is owed where the concern arises directly from the requirements of the IRPA and concerns the sufficiency of the evidence. In my view, whether the genuineness of the offer raises an issue of credibility or sufficiency is largely irrelevant. The fact is the visa officer did give the applicant an opportunity to respond to his concerns at the interview. While the applicant submits that this opportunity was insufficient to allow her to meaningfully participate in the process, the interviewing officer had the benefit of discussing the concerns with her directly and heard her responses. Overall, the duty owed by the visa officer was low and I believe it was met by putting his concerns to her at the interview.

[38] The parties did not identify a question for certification and the Court agrees.

## JUDGMENT

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

No question is certified for appeal.

"Patrick Gleeson"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6040-14 |
| **STYLE OF CAUSE:** | MARIA ISABEL ANGEL DE AZEEM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
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| **JUDGMENT AND REASONS:** | GLEESON J. |
| **DATED:** | SEPTEMBER 2, 2015 |

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