

Federal Court



Cour fédérale

**Date: 20160112**

**Docket: IMM-2435-15**

**Citation: 2016 FC 38**

**Vancouver, British Columbia, January 12, 2016**

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

**BETWEEN:**

**OMID SERAJ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Findings of misrepresentation must not be taken lightly. They must be supported by compelling evidence of misrepresentation occurred by an applicant; thereby, an applicant faces important and long lasting consequences in addition to having his/her application rejected.

II. Background

[2] This is an application for judicial review by the Applicant pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] of a decision by an immigration officer [Officer] dated April 10, 2015, wherein the Officer rejected the Applicant's permanent residence application under the Federal Skilled Worker class and held that the Applicant is inadmissible to Canada for misrepresentation under paragraph 40(1)(a) of the IRPA.

[3] The Applicant, Omid Seraj (age 35), is a geophysicist and citizen of Iran.

[4] The Applicant applied for permanent residence status under the Federal Skilled Worker class (NOC 2113) in May 2014. In a letter dated November 6, 2014, the Officer requested more information from the Applicant as the Officer had concerns about the Applicant's work experience in geophysics [Letter of Concern]:

I have concerns that you may not have valid work experience as a geophysicist.

- Please provide description of activities of the Baran Artistic and Cultural Institute.

- Copy of registration record of the Baran Artistic and Cultural Institute in the Official Gazette of Iran.

- Explanation as to why the Baran Artistic and Cultural Institute requires a geophysicist and how your duties from 2007-present correspond to the main responsibilities as described in your employment letter.

(Officer's Record at p 8)

[5] The Applicant's representative, Mr. Mir Jamil Azimzadeh responded to the Officer's letter, on December 2, 2014, by submitting supporting documents, including: a supplementary letter from the Baran Artistic and Cultural Institute [BACI] (Applicant's employer) dated November 15, 2014 [Supplementary Employment Letter]; and, English translation of BACI's corporate documents.

[6] On February 11, 2015, the Applicant was convoked to an interview to be conducted on March 10, 2015. On March 31, 2015, the Applicant was informed, in a letter undersigned by a Deputy Program Manager that his application did not meet the requirements of the IRPA; and, that the Applicant misrepresented or withheld material facts which induced or could have induced errors in the administration of the IRPA. As a result, pursuant to paragraph 40(2)(a) of the IRPA, the Applicant is inadmissible to Canada for a period of five years from the date of the letter.

[7] In a subsequent letter dated April 10, 2015, the Applicant was informed of the requirements of paragraph 11(1) of the IRPA (requirements before entering Canada); and, that he was inadmissible to Canada because of misrepresentation.

### III. Issues

[8] The Applicant only seeks to quash the Officer's determination of misrepresentation pursuant to paragraph 40(1)(a) of the IRPA. Consequently, the only issue central to this application for judicial review is whether the Officer erred in determining the Applicant was inadmissible for misrepresentation.

IV. Position of the Parties

[9] The Applicant submits that the Officer erred in his determination of misrepresentation. Firstly, the Officer ignored or omitted to consider material facts demonstrating there was no misrepresentation by the Applicant. The Officer did not find that any material fact was either present or omitted to warrant his finding of misrepresentation. Secondly, the Officer breached procedural fairness as the process to determine whether or not the Applicant misrepresented was not fair. Thirdly, the Officer's decision lacked adequacy of reasons as the Officer did not provide sufficient analysis to allow the Applicant to understand how and why the determination of misrepresentation was reached by the Officer.

[10] Conversely, the Respondent submits that it was reasonable for the Officer to find that the Applicant did misrepresent pursuant to paragraph 40(1)(a) of the IRPA as the Applicant provided vague descriptions of his main duties as a geophysicist and misrepresented his duties in the employment letter in order to be eligible. Secondly, the misrepresentation by the Applicant was material as it was important enough to affect the decision process. Thirdly, the Officer did not breach procedural fairness as the Applicant was provided, before the interview with a Letter of Concern outlining concerns related to apparent inconsistencies with regard to his work experience and the content of the employment letter. The Applicant had the opportunity during the interview to address those concerns.

## V. Standard of Review

[11] The assessment by an immigration officer as to whether an applicant committed misrepresentation is a determination of mixed fact and law reviewable on a standard of reasonableness (*Oloumi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 428 at para 23 [*Oloumi*]; *Paashazadeh v Canada (Minister of Citizenship and Immigration)*, 2015 FC 327 at para 13).

## VI. Analysis

[12] An applicant seeking to obtain permission to enter into Canada must be careful that the information submitted, by him/her or an adviser, does not directly or indirectly misrepresent or withhold material facts that could induce an error in the administration of the IRPA. Broad interpretation must be given to paragraph 40(1)(a) of the IRPA given the objective of this paragraph, namely, deter misrepresentation and maintain the integrity of the immigration process (*Oloumi*, above at para 23). Misrepresentation need not be wilful or intentional (*Berlin v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1117 at para 12); and, applicants are to be held to account in regard to their choice of adviser and representations made by such adviser (*Chen v Canada (Minister of Citizenship and Immigration)*, 2005 FC 678 at para 10).

[13] The Officer held in the decision dated March 31, 2015 that the Applicant misrepresented for the following reasons. Firstly, the Applicant's employment letter dated May 5, 2014 [Employment Letter] misrepresented the duties performed by the Applicant during his employment with the BACI. Secondly, during the interview the Applicant's description of his

duties at the BACI was vague and did not correspond to those stated in the Employment Letter. Thirdly, the BACI website does not indicate that the entity for which the Applicant works, performs geophysical services for clients; and, the Officer was not satisfied with the Applicant's explanation in that regard. Fourthly, the Employment Letter does not mention that the Applicant assists in the production of films or animation.

[14] The Officer found that the Employment Letter was not credible as the Applicant's duties were worded to fit the description of the duties listed in NOC 2113 all of which is central to the determination of misrepresentation.

[15] This Court has held that while the use of language in a reference letter similar to a NOC Code "is not, *per se*, grounds for dismissing" a reference letter, it may be reasonable for an officer to have doubts as to whether an applicant meets the requirements as the officer "cannot be confident that the applicant actually has the experience since he cannot articulate his own experience or duties or responsibilities in his own words and in relation to the job he actually performed" (*Ansari v Canada (Minister of Citizenship and Immigration)*, 2013 FC 849 at para 32).

[16] Subsequently to receiving the Letter of Concern from the Officer, the Applicant submitted a Supplementary Employment Letter as well as an English translation of BACI's corporate documents. The Supplementary Employment Letter attests to the Applicant's employment with BACI as a geophysical expert and that his duties include the performance of geophysical research. The letter also states that BACI requires experts to assist them in the

making of animation and films in the area of geology and geophysics; and, it is in that respect that the Applicant was hired. Additionally, the English translation of BACI's minutes dated October 4, 2006, states the "requirements for employing specialists in [...] geophysics, architecture and environment areas [...]. [W]e need to establish architectural, geological, geophysical and environmental sections based on the requested scientific research and visual documentation and the meeting agreed to establish these sections unanimously" (Affidavit of Mr. Mir Jamil Azimzadeh, June 23, 2015, at p 9).

[17] The Officer was not satisfied, subsequent to an interview with the Applicant, that the Applicant did in fact perform the duties described in the Letter of Employment. Not only was he of the opinion that there was insufficient information to that effect, he held that the Applicant misrepresented his duties. On examination of all the evidence discussed above, namely the Supplementary Employment Letter and the English translation of BACI's corporate documents, it was unreasonable for the Officer to hold that a misrepresentation occurred. The evidence, when examined in its entirety, brings to light, even on first blush, a different understanding as to the very context in which the evidence as a whole appears, in light of the duties to which the Applicant may have been assigned. To reach a conclusion, it certainly requires further examination to understand the context in which the Applicant fulfilled his duties, as such examination does not appear to have been undertaken adequately by which to have reached a reasonable conclusion.

[18] The Officer appears to have confused insufficiency of evidence with misrepresentation. Undoubtedly, the Officer could have found that there is insufficient evidence to demonstrate that

the Applicant performed the tasks described in the Employment Letter; however, the Officer could not reasonably have found that the Applicant or his adviser misrepresented. The Applicant holds a Master degree in geophysics and geo-electricity, as well as a Bachelor degree in physics. The Applicant submitted uncontradicted evidence that he was hired by BACI for his expertise in geophysics as his duties include assisting BACI in its undertakings of animation and movies in the subjects of geophysics and geology.

[19] Therefore, without adequate explanations, having examined the submissions of the parties and the evidence as a whole, the Court finds that it was unreasonable for the Officer to find that the Applicant misrepresented himself or his duties on the basis of the evidence itself.

## VII. Conclusion

[20] Consequently, the application for judicial review is granted.



**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review be granted and the matter is to be determined anew by a different decision-maker. There is no serious question of general importance to be certified.

"Michel M.J. Shore"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2435-15

**STYLE OF CAUSE:** OMID SERAJ v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** JANUARY 11, 2016

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** JANUARY 12, 2016

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