Federal Court  Cour fédérale

Date: 20160719

Docket: IMM-296-16

Citation: 2016 FC 825

Ottawa, Ontario, July 19, 2016

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

IQBAL, KHANDAKER ASHIK

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] An Immigration Officer [Officer] rejected the Applicant's application for permanent residence as a member of the Skilled Worker Class and held that the Applicant is inadmissible to Canada for misrepresentation under paragraph 40(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] This Court's jurisprudence has categorically often stated that misrepresentation need not be intentional (*Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117 at paras 16 and 18 [*Berlin*]).

II. Introduction

[3] This is an application for judicial review by the Applicant pursuant to subsection 72(1) of the IRPA, of a decision by an Officer dated November 4, 2015.

III. Background

[4] The Applicant, Khandaker Ashik Iqbal (age 33), is a citizen of Bangladesh. He applied for permanent residence status under the Federal Skilled Worker Class (NOC 1123) in May 2014. The application was received on May 14, 2014.

[5] On September 7, 2015, the Officer noted in the Global Case Management System [GCMS] that he doubts the credibility of the Applicant:

> I have reviewed the results of the site visit. I have concerns with the credibility of the PA based on the authenticity of the employment letter dated 05May14. The employment letter states that the PA has been employed at Banglalink as a PR & Communications Senior Assistant Manager from April 2006 until present. The investigation revealed that the PA does work at Banglalink, but did not work in his stated position from 2006 to 2011. He instead worked in customer service from 2006 to 2010 and then in the training department from 2011 to June 2013. It was only from 01Jul13 that the PA started working as the PR & Comm Snr Asst Manager. Therefore, on a balance of probabilities I am satisfied that the PA misrepresented his work experience to meet the requirements under the skilled worker class.
>
> (Certified Tribunal Record [CTR], GCMS Notes, at p 6)

[6] On September 8, 2015, a Procedural Fairness Letter [PFL], dated September 7, 2015, was sent to the Applicant. In the PFL, the Officer mentions having concerns regarding the fact that the Applicant may have misrepresented his work experience as a Public Relations and Communication Senior Assistant Manager at Banglalink from April 16, 2006 until the time of assessment. The Officer was concerned that the Applicant may not have worked in that position for the time stated.

[7] On September 22, 2015, the Applicant submitted additional documents including a revised employment letter, dated September 21, 2015, wherein he included a breakdown of the different positions the Applicant held with the corporation Banglalink.

[8] In a decision dated November 4, 2015, the Applicant's application for permanent residence was rejected and the Applicant was found inadmissible for misrepresentation pursuant to paragraph 40(1)(*a*) of the IRPA. More specifically, the Officer had issues with the employment references sent by the Applicant:

> I have now completed my review of your application. The evidence indicates that you have submitted fraudulent employment references. This misrepresentation of your employment experience with the above named entities was material to the assessment of your applicant. It could have induced an error in the administration of the Act, in that your stated employment experience with the above listed entity could have had your application found eligible for processing, and you may have been awarded points for experience that you do not have. This could have contributed to your approval for a permanent resident visa.
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> (CTR, Decision, at p 9)

IV. Issues

[9] The only issue is whether the Officer's determination that the Applicant is inadmissible for misrepresentation is reasonable.

V. Standard of Review

[10] The standard of reasonableness applies to the review of an Immigration Officer's determination that the Applicant misrepresented his work background pursuant to paragraph 40(1)(*a*) of the IRPA (*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23 [*Oloumi*]; *Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327 at para 13).

VI. Analysis

[11] In *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 [*Goburdhun*], Justice Cecily Y. Strickland summarized the general principles arising out of this Court on paragraph 40(1)(*a*) of the IRPA:

> [28] In *Oloumi*, above, Justice Tremblay- Lamar describes general principles arising from this Court's treatment of section 40 of the IRPA which are summarized below together with other such principles arising from the jurisprudence:
>
> > - Section 40 is to be given a broad interpretation in order to promote its underlying purpose (*Khan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 512 at para 25 [*Khan*]);
> >
> > - Section 40 is broadly worded to encompasses misrepresentations even if made by another party, including an immigration consultant, without the knowledge of the applicant (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2011 FC

942 at para 35 [*Jiang*]; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 55-56 [*Wang*]);

- The exception to this rule is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control (*Medel*, above);

- The objective of section 40 is to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the applicant to ensure the completeness and accuracy of their application (*Jiang*, above, at para 35; *Wang*, above, at paras 55-56);

- An applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada (*Bodine v Canada (Minister of Citizenship and Immigration)*, 2008 FC 848 at para 41; *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 at para 15);

- As the applicant is responsible for the content of an application which they sign, the applicant's belief that he or she was not misrepresenting a material fact is not reasonable where they fail to review their application and ensure the completeness and veracity of the document before signing it (*Haque*, above, at para 16; *Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 450 at para 31 [*Cao*]);

- In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose (*Oloumi*, above, at para 22);

- A misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process (*Oloumi*, above, at para 25);

> - 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. The materiality analysis is not limited to a particular point in time in the processing of the application. (*Haque*, above, at paras 12 and 17; *Khan*, above, at paras 25, 27 and 29; *Shahin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 423 at para 29 [*Shahin*]);
>
> (*Goburdhun*, above at para 28)

[12] In the present case, it is apparent from the GCMS Notes that the Officer's main concerns were regarding the employment letter dated May 5, 2014 [Employment Letter]. This is reflected in the decision.

[13] The Respondent submits that it was reasonable for the Officer to consider that the Applicant submitted fraudulent employment references, as the Employment Letter, read together with information contained in the Application, can only lead one to believe that the Applicant had been working as a PR and Communication Senior Assistant Manager since 2006.

[14] Although the Employment Letter in its introductory paragraph attempts to clarify that the Applicant is presently working at the said position, it does not categorically clear the confusion, as to the number of years during which the Manager position would have been held.

[15] The Supreme Court stated in *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, [2011] 3 SCR 708, 2011 SCC 62 at para 15 "courts should not substitute their own reasons, but they may, if they find it necessary, look to the record for the purpose of assessing the reasonableness of the outcome". [Emphasis added.]

[16] In the present case, the Respondent submits that the Applicant misrepresented in his application, specifically at question 8 of the Schedule A. At question 8, the Applicant had to list all of his "activity" for the past 10 years, including occupation or job title held. The Applicant wrote that from May 2006 until May 2014, he was "serving as PR & Communication Sr. Assistant Manager, Marketi[ng]" at Banglalink Digital Communications (see CTR, Schedule A, at p 44). Furthermore, at question 12 of Schedule 3, the Applicant was asked to list all of his occupations within the 10 years preceding the date of his application. The Applicant listed as occupation "Marketing & Publ" April 2006 until May 2014 and listed in the "Main duties" column his duties as a PR and Communication Senior Assistant Manager. Undoubtedly, the answers provided by the Applicant at question 8 of Schedule A and at question 12 of Schedule 3 could reasonably lead an Officer to believe that the Applicant worked as a PR and Communication Senior Assistant Manager since April 2006. This Court's jurisprudence has often stated that misrepresentation need not be intentional (*Berlin*, above at para 12; *Oloumi*, above; *Singh v Canada (Citizenship and Immigration)*, 2010 FC 378 at paras 16, 18; *Mahmood v Canada (Citizenship and Immigration)*, 2011 FC 433 at para 22; *Jiang v Canada (Citizenship and Immigration)*, 2011 FC 942 at para 35; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 55-58).

[17] The PFL sent to the Applicant clearly stated the Officer's concerns that the Applicant did not work in that position since April 2006. While the Applicant clarified the situation after receiving the PFL, it does not mean that a misrepresentation did not occur as the purpose of a PFL is to allow an applicant an opportunity "to demonstrate that there was no misrepresentation

or withholding of material facts that could have induced an error in the administration of the IRPA" (*Brar v Canada (Citizenship and Immigration)*, 2016 FC 542 at para 17).

[18] Consequently, it was reasonable for the Officer to find that the Applicant was inadmissible for misrepresentation pursuant to paragraph 40(1)(*a*) of the IRPA as the application contained misleading information that could induce an error in the administration of the IRPA.

VII. Conclusion

[19] Consequently, the application for judicial review is dismissed.

JUDGMENT

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

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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