Federal Court  Cour fédérale

Date: 20171124

Docket: CONF-4-17

Citation: 2017 FC 1066

Ottawa, Ontario, November 24, 2017

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

A.A.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant was denied admission to Canada on the ground that he constituted a danger to the security of Canada, pursuant to s 34(1)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA), and for material misrepresentation contrary to s 40(1)(a) of the IRPA. He challenges both findings in this application for judicial review.

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

II. Confidentiality and Non-Disclosure Orders

[3] The materials filed on this application are subject to a Confidentiality Order issued on [redacted] to protect the identity of the Applicant and his family. Pursuant to that Order, the Notice of Application for Leave and for Judicial Review was redacted and the Applicant has been identified by the initials "A.A." in all of the materials filed in the public record. The Certified Tribunal Record (CTR), filed with the Court was sealed and treated as confidential. A redacted version of the CTR from which the confidential information was removed was filed on the public record.

[4] On [redacted] the Court granted the Respondent's motion for non-disclosure of certain information in the CTR on the ground that the disclosure would be injurious to national security or to the safety of any person. As a result, portions of six pages of the CTR were not disclosed to the Applicant or his counsel. Those portions were not relied upon by the Respondent in these proceedings and the Court, having read the redacted content in clear text, is satisfied that they are not material to the merits of the application.

[5] The hearing of the application was conducted in open court. The Court's records of that hearing will be kept confidential subject to any further order of the Court. A redacted version of this Judgment and Reasons will be placed on the public file. The original unredacted version of the Judgment and Reasons shall be sealed and kept confidential.

III. Background

[6] [redacted]

[7] [redacted]

[8] [redacted]

[9] [redacted]

[redacted]

[10] [redacted]

[11] [redacted]

[12] [redacted]

[13] [redacted]

[14] [redacted]

[15] On [redacted] the visa officer found the Applicant inadmissible for being a danger to the security of Canada pursuant to s 34(1)(d) of the IRPA and for material misrepresentation contrary to s. 40(1)(a) of the IRPA.

[16] The visa officer was concerned with the Applicant's involvement [redacted] Furthermore, the visa officer considered the Applicant's previous employment [redacted] directly material to an assessment of the Applicant's admissibility to Canada and the omission of that information could have resulted in a misadministration of the Act. She noted that none of the forms respecting permanent residency completed by the Applicant instructed him to only declare the employment for which he could produce additional documentation. The visa officer noted that the Applicant "[…] was aware 'right away' after stating his employment [redacted]

IV. Issues

[17] In addition to challenging the reasonableness of the visa officer's decision on both grounds of inadmissibility, the Applicant questions whether the finding that he is a danger to the security of Canada violates his rights under s 7 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. He asserts that s 34 (1)(d) of the IRPA violates s 7 of the *Charter* as it captures people who are not actually a danger to Canada because their role in the impugned state activity did not carry with it a sufficient degree of moral blameworthiness. He submits that the section should be interpreted, in this context, to apply only to high ranking individuals or individuals who would have been indispensable [redacted] No authority directly on point is offered in support of that proposition.

[18] The security inadmissibility regime in IRPA has withstood constitutional scrutiny: *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3, 2002 SCC 1; *Canada (Citizenship and Immigration) v Harkat*, 2014 SCC 37, [2014] 2 SCR 33. The Applicant has not provided evidence that would justify a reconsideration of the issue. At most, his affidavit evidence is to the effect that he would suffer some stigma as a result of the danger finding [redacted] This is not a case in which the Applicant is at risk of losing status previously acquired. As a foreign national with no right to enter Canada as a permanent resident, on seeking entry he bore the burden of establishing that he was not inadmissible and met the requirements of the Act: IRPA s 11(1).

[19] The question of whether the visa officer's decision in this matter should be upheld can be dealt with under administrative law principles without invoking the Constitution. The *Charter* deserves more than ill-considered challenges: *MacKay v Manitoba*, [1989] 2 SCR 357, [1989] SCJ No 88; *Kinsel v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 126, [2014] FCJ No 781, paras 84–100; *Farah v Canada (Attorney General)*, 2016 FC 935, paras 44–47.

[20] Having considered the Applicant's written and oral submissions, I advised the parties at the hearing that I did not intend to address the *Charter* argument. The Applicant has failed to provide an adequate evidentiary foundation to establish that the visa officer's interpretation was overbroad or that his liberty and security interests were engaged by the visa officer's finding that the Applicant is a danger to the security of Canada. The Applicant's concerns about the disclosure [redacted] can be addressed through continuation of the Confidentiality Order.

[21] I consider that the issues in this matter are the following:

1. Is the visa officer's decision that the Applicant is inadmissible for being a danger to the security of Canada under s 34(1)(d) of the IRPA reasonable?

2. Is the visa officer's decision that the Applicant is inadmissible for misrepresentation under s 40(1)(a) of the IRPA reasonable?

V. Relevant Legislation

[22] The following sections of the IRPA are relevant:

Application before entering Canada	**Visa et documents**
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.
Obligation — answer truthfully	**Obligation du demandeur**
16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.
Rules of interpretation	**Interprétation**
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	**33** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

Security	**Sécurité**
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	**34 (1)** Emportent interdiction de territoire pour raison de sécurité les faits suivants
[…]	[…]
(d) being a danger to the security of Canada;	**d)** constituer un danger pour la sécurité du Canada;
[…]	[…]
Misrepresentation	**Fausses déclarations**
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 présent loi;

VI. Standard of review

[23] The parties submit and I agree that the appropriate standard of review for decisions involving an exercise of discretion and for questions of mixed fact and law is reasonableness:

Dunsmuir v New Brunswick, 2008 SCC 9, [2008] 1 SCR 190, at paras 34, 47–48 [*Dunsmuir*]: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 59; [redacted]

[24] In applying the reasonableness standard, the Court must find that the conclusion arrived at by the decision-maker falls within a range of possible, acceptable outcomes; the reviewing court will be concerned "with the existence of justification, transparency and intelligibility within the decision-making process": *Dunsmuir*, above, at para 47.

VII. Analysis

A. Danger to the security of Canada s 34(1) (d) of IRPA

[25] The standard for determining the existence of facts that constitute inadmissibility under sections 34 to 37 of the IRPA is described in s 33 as "reasonable grounds to believe". This is more than a mere suspicion but less than a balance of probabilities. To conclude that a person represents a danger to the security of Canada pursuant to paragraph 34(1)(d) of IRPA, the visa officer has to have an "an objective basis for the belief which is based on compelling and credible information": *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 SCR 100, at para 114. "Reasonable grounds" connotes "a bona fide belief in a serious possibility based on credible evidence": *Chiau v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No. 2043, [2001] 2 FC 297 (FCA) above, at para 60.

[26] As discussed by the Supreme Court of Canada in *Suresh*, above, at para 85:

> […] We recognize that "danger to the security of Canada" is difficult to define. We also accept that the determination of what constitutes a "danger to the security of Canada" is highly fact-based and political in a general sense. All this suggests a broad and flexible approach to national security and, as discussed above, a deferential standard of judicial review. Provided the Minister is able to show evidence that reasonably supports a finding of danger to the security of Canada, courts should not interfere with the Minister's decision.

[27] [redacted] In this instance, the controversy stems from the visa officer's characterization of the Applicant's employment [redacted] The Applicant contends that there is no evidence that he engaged in any [redacted] activities while he was employed [redacted] In my view, neither decision is helpful to the Applicant.

[28] [redacted]

[redacted]

[29] [redacted]

[30] In the present matter, the visa officer raised serious questions about the involvement of the Applicant [redacted] and gave him the opportunity to respond. Those questions were supported by the findings set out in the [redacted] The Applicant concealed his employment [redacted] in his applications for permanent residence because of his awareness of what he described as the "bad publicity" [redacted] When confronted about his employment history during the interview, the Applicant attempted to discount the importance of this information and failed to provide a serious response.

[31] The Applicant argues that this omission should not matter because he had earlier, when he first came to Canada, [redacted] I

disagree. The onus was on the Applicant to satisfy the visa officer that he was not inadmissible: IRPA s 11. He bore the onus to ensure that the information that he provided in support of his application was complete: IRPA s 16(1). The visa officer's conclusion that the Applicant had failed to do so was not, in my view, unreasonable.

[32] The Applicant argues that there was no evidence provided to the visa officer [redacted] when the Applicant was employed there, and no evidence that the Applicant was then personally engaged in activities that were a threat to the security of Canada. He describes his work [redacted] as "relatively basic in nature"; minimal [redacted] The Applicant says that he believed [redacted] and would not have maintained his employment if he had thought that his work could endanger the lives of anybody. The Applicant further argues he did not play any kind of managerial or strategic role [redacted] nor did he have access to potentially sensitive information. It is not suggested by the Respondent that the Applicant was in a key position [redacted] He was a young man at the start of his career. [redacted]

[33] [redacted] This covered the time frame when the Applicant was employed [redacted] The Applicant acknowledged that his work there involved [redacted]

[redacted] In reaching the conclusion that the Applicant was inadmissible, the visa officer made a reasonable link between the Applicant's research studies, his employment [redacted]

[34] As the Federal Court of Appeal has noted "[t]here is no requirement under the combined effect of sections 33 and 34 that the danger to the security of Canada be current in order to be inadmissible on security grounds": *Harkat v Canada (Minister of Citizenship and Immigration),* 2012 FCA 122 at para 152; see also *Harkat (Re),* 2010 FC 1241 at paras 82–84; *Canada (Minister of Citizenship and Immigration) v Harkat*, 2014 SCC 37 at para 30. The Applicant may have other remedies to pursue in which he could advance the argument that he is not a present danger to the security of Canada.

(1) *Misrepresentation*

[35] A foreign national is inadmissible for misrepresentation 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 the Act: IRPA s 40 (1)(a).

[36] The Applicant contends that the omission to include [redacted] his employment history could not induce an error in the administration of the act as [redacted] This information was put before the decision-maker prior to the determination of his application. The

visa officer's conclusion that the Applicant was inadmissible for misrepresentation was therefore, he argues, unreasonable. In support of that argument he relies on *Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452, [2005] FCJ No 572 [*Bellido*].

[37] In *Bellido*, above, the Applicant had been untruthful about a job offer that was withdrawn by the prospective employer prior to the interview with the visa officer. The Court, at para 30, determined that the misrepresentation was not material and chose to ignore that aspect of the visa officer's findings. While the misrepresentation added to the "pattern of falsehoods" presented by the Applicant, it was not in itself a relevant matter or material to the admissibility decision. I don't read *Bellido* as supporting the general proposition for which it is relied upon by the Applicant – that any misrepresentation or omission that comes to the attention of the visa officer prior to the interview could not induce an error in the administration of the statute: see *Jiang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 942, and *Gordashevskiy v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1349, to the contrary.

[38] The Applicant chose to omit that information in his applications for permanent residence because he knew it could be a problem for him. [redacted] The Applicant was aware of what he described as "bad publicity" associated with the company. His explanations for not including the information – that he could not obtain documentation which was required under Quebec's provincial selection rules and because his work [redacted] was short term and irrelevant – do not bear

scrutiny. The federal forms that had to be completed to obtain permanent residence explicitly require that all time is to be accounted for; without gaps.

[39] The purpose of s 40 (1)(a) of the IRPA is to ensure that Applicants 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 44. This duty of candour requires that the application forms be complete and accurate: *Goudarzi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 425, [2012] FCJ No 474, at para 40. The discretion to determine whether a misrepresentation or omission does or does not constitute "material facts relating to a relevant matter that induces or could induce an error in the administration of the Act" rests with the visa officer. It is not open to an Applicant to decide what is or is not material or to rely on reports from other government officials to fill in the gaps of his narrative.

[40] The visa officer's finding that the omission in this instance was material and could have induced an error in the administration of the Act was reasonable.

[41] No questions were proposed for certification.

JUDGMENT IN CONF-4-17

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed and no questions are proposed for certification;

2. The Amended Confidentiality Order of [redacted] is continued and the Court's records of the hearing of this Application shall be kept confidential, subject to any further order of the Court;

3. A redacted version of this Judgment and Reasons will be placed on the Court's public file and the unredacted original version shall be sealed and kept confidential.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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