Federal Court  Cour fédérale

Date: 20190327

Docket: IMM-3566-18

Citation: 2019 FC 378

Ottawa, Ontario, March 27, 2019

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JUAN YANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a citizen of China. She was offered a window washing supervisor position in Ontario and applied for a work permit. Her work permit application contained different details than the ones provided in a prior Temporary Resident application. Due to those differences, an officer with the Immigration Section, Consulate General of Canada in New York (the "Officer") decided the Applicant had made material misrepresentations and rejected the

Applicant's work permit application under section 40(1)(a) of the *Immigration and Refugee Protection Act,* SC 2001 , c 27 ("IRPA"). As a result, she is inadmissible to Canada for five years under section 40(2) of the IRPA.

[2] On July 27, 2018 the Applicant applied to this Court for judicial review. For the reasons that follow, I am setting this decision aside.

II. **Background**

[3] The Applicant, Juan Yang, is a 35 year old citizen of China. On July 12, 2017 she accepted a window washer supervisor position with H. Breiter Window Cleaning Ltd. in North York, Ontario. On January 11, 2018, the Applicant applied for a work permit so that she could begin working in this position.

[4] In a letter dated June 4, 2018, the Officer rejected the Applicant's application, finding that she misrepresented or withheld material facts about her employment history. This material misrepresentation finding was based on different information submitted by the Applicant in different applications, including details about her job titles, employment dates, and job responsibilities. For instance, in one application she describes herself as a Production Director, but in her work permit application she describes herself as a Cleaning Supervisor.

[5] The Global Case Management System ("GCMS") notes state that the Officer reviewed the Applicant's reference letter dated October 10, 2017 from her previous employer in China (Anhui New Epoch Science and Technology Co.). The Officer questioned the credibility of the letter because it was written in English and used the Latin alphabet rather than Chinese

characters. The Officer was also concerned the wage was expressed in dollars but not in CNY or RMB.

[6] To address these concerns, on January 22, 2018 the Officer wrote a letter to the Applicant and offered her an opportunity to explain these differences. This letter does not mention credibility concerns related to the reference letter. Rather, the letter only addressed credibility concerns related to her different employment histories. On March 4, 2018 the Applicant responded, primarily arguing that the different job titles can be due to semantic differences.

[7] According to the GCMS notes, on May 9, 2018 the Officer reviewed the Applicant's response as well as a new reference letter from her former employer dated March 1, 2018. Although the new reference letter was from Anhui New Epoch Science and Technology Co., this time the Officer did not describe any credibility concerns about the letter being written in English. The only concerns detailed in the GCMS notes are concerns about the different employment histories.

[8] After reviewing the Applicant's explanations, the Officer decided that the she had committed a misrepresentation. The Officer also determined that the misinformation was material as it may have induced an error in the administration of the IRPA, because "a work permit may have been issued when [the Applicant's] eligibility for a work permit is not satisfied". As a result, the Officer also found that the Applicant was inadmissible to Canada for a period of 5 years pursuant to section 40(2)(a) of the IRPA.

III. **Issue and Standard of Review**

[9] Decisions made under section 40(1)(a) of the IRPA are reviewed by this Court for reasonableness (*Chughtai v Canada (Citizenship and Immigration)*, 2016 FC 416 at para 11). The issue I must determine is whether the Officer reasonably decided the Applicant misrepresented information such that it could have induced an error in the administration of the IRPA under section 40(1)(a).

IV. **Analysis**

[10] The Applicant argues that the different information contained in her applications does not satisfy the requirements for a finding under section 40(1)(a) of the IRPA. The Applicant argues that, whether or not she was a Production Director or a Cleaning Supervisor, there is no doubt that she has experience performing supervisory cleaning duties. The Applicant also argues that the Officer's only consideration should be whether she has the required experience for the current job offer at this stage of the application process.

[11] The Respondent argues the Officer had clear and convincing evidence that the Applicant misrepresented her employment history and provided the Court with a helpful chart of the major differences between her applications. For example, the Respondent submits that the Applicant's December 19, 2017 employment letter stated she had a variety of positions within the company. Specifically, she was an intern from January 2005 to July 2005, a production line worker from July 2005 to the end of 2005, and a Production Director from 2007 to 2014. On the other hand, the Respondent submits that the Applicant's employment letter in her work permit application only states that she was a Cleaning Supervisor during the period from January 2005 to May 2014. Thus, the Respondent argues that her previous visitor permit application might have been

analysed differently had it been known that her experience was only that of a Cleaning Supervisor.

[12] Section 40(1)(a) of the IRPA does not state that all misrepresentations lead to inadmissibility. Rather, section (40)(1)(a) limits inadmissibility to those misrepresentations that could induce an error in the administration of the IRPA:

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 présente loi;
…	…
Application	Application
(2) The following provisions govern subsection (1):	(2) Les dispositions suivantes s'appliquent au paragraphe (1):
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five 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;	a) l'interdiction de territoire court pour les cinq 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;

[13] This Court has held that misrepresentations which could induce an error in the administration of the IRPA are material misrepresentations. The error need not actually be induced, it is enough if an error could be induced. Misrepresentations are material if they are important enough that they affect the process (*Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 37; *Oloumi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 428 at para 25).

[14] I agree with the Applicant that the Officer's conclusion that "a work permit may have been issued when [the Applicant's] eligibility for a work permit is not satisfied" is unreasonable because it did not analyse the evidence on the record. The Officer considered neither the job requirements nor the Applicant's qualifications. In addition, there is no assessment related to this consideration about her proposed employer's letter, which explains that the employer assessed the Applicant's skills and determined that she is qualified for the job.

[15] The Applicant's initial application indicated more skill and qualifications. But in these circumstances, it is possible that no material misrepresentation occurred (and therefore that no error could be induced) because the second application nevertheless indicated that the Applicant has supervisory cleaning experience. Whether any misrepresentation was material was not reasonably considered by the Officer, and this leads to a reviewable error. Before making a finding under section 40(1)(a) of the IRPA, the Officer must assess the evidence on the record to determine whether any misrepresentation is a material misrepresentation.

V. **Certified Question**

[16] Counsel for both parties was asked if there were questions requiring certification. They each stated that there were no questions arising for certification and I concur.

VI. **Conclusion**

[17] A finding of misrepresentation must meet the evidentiary burden on the balance of probabilities and must be based on clear and convincing evidence. This Officer did not consider evidence in regards to whether the perceived misrepresentation was material. Therefore the decision is not from a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). Accordingly, I will set the decision aside.

JUDGMENT in IMM-3566-18

THIS COURT'S JUDGMENT is that:

1. The decision under review is set aside and the matter referred back for redetermination by a differently constituted panel.
2. No question is certified.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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