Federal Court  Cour fédérale

Date: 20200131

Docket: IMM-3724-19

Citation: 2020 FC 187

Vancouver, British Columbia, January 31, 2020

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

BALDEV SINGH

Applicant

and

THE MINISTER OF IMMIGRATION
REFUGEE AND CITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

[1] Baldev Singh seeks judicial review of the decision of a visa officer in New Delhi, India, dated February 27, 2019, to refuse his application for a temporary resident visa because he was found to be inadmissible to Canada due to misrepresentation, contrary to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] In November 2018, the Applicant applied for a temporary resident visa. He was found to have failed to provide honest answers in regard to several questions:

- Question 2(b) asks: “Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?” He answered, “No.”

- Question 2(c) asks: “Have you previously applied to enter or remain in Canada?” He answered, “yes I applied visitor visa two times and was approved.”

- Question 3 asks, “Have you ever committed, been arrested for, been charged with or convicted of any criminal offence in any country or territory?” He answered, “I was convicted but was released in [sic] may 2009. I have attached court orders. I have a clean record since then.”

[3] During the review of the application, the visa officer found that the Applicant had not been entirely forthcoming in his answers. He had failed to advise of previous visa refusals and other orders, including a deportation order from Canada that was issued on July 11, 2003, and a danger certificate, which had been issued on July 15, 2004. The Applicant also failed to indicate that he had made a refugee claim in 2003, but had been deemed inadmissible for serious criminality.

[4] The officer provided a procedural fairness letter to the Applicant to allow him to respond to these concerns. In his response, the Applicant stated that he had made a clerical mistake and had not intentionally withheld information.

[5] The visa application was refused due to misrepresentation pursuant to paragraph 40(1)(a) of *IRPA*, with the consequence that the Applicant would remain inadmissible for a period of five years pursuant to paragraph 40(2)(a).

[6] The Applicant submits that this decision is unreasonable because the misrepresentation was an innocent mistake made by the immigration consultant, that it was not material to the application, and that the imposition of a five-year period of inadmissibility is unreasonable considering his personal situation, as an 86 year old-man with children in Canada. He was applying for a multiple entry visa to Canada so that he could spend time with his children and grandchildren.

[7] The standard of review of the discretionary decision of a visa officer to issue a temporary resident visa is reasonableness, as confirmed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[8] When reviewing for reasonableness, the Court asks "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para 99). It must be internally coherent, and display a rational chain of analysis (*Vavilov*, at para 85). As such, a decision will be unreasonable if the reasons read in conjunction with the record do not enable the Court to understand the decision maker's reasoning on a critical point (*Vavilov*, at para 103).

[9] The starting point for the analysis is the wording of paragraph 40(1)(a) of *IRPA*, which provides that an applicant "is inadmissible for misrepresentation…for directly or indirectly misrepresenting or withholding a material fact relating to a relevant matter that induces or could induce an error in the administration of this Act." It is a broad provision and the consistent case law of this Court has found that it is to be interpreted broadly. It reflects the overarching obligation on an applicant to provide full and complete information, and the more general duty of candour that lies on persons seeking immigration status from Canada (see *Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169 [*Sidhu*]).

[10] The general principles applicable to misrepresentation have recently been summarized by Justice Gascon in *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 [*Kazzi*] (cited with approval in *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107 at para 31). In *Kazzi*, Gascon J. provides the following summary of the jurisprudence on paragraph 40(1)(a):

> [38] Turning now to the case law, the general principles arising out of this Court's jurisprudence on paragraph 40(1)(a) of the IRPA have been well summarized by Madame Justice Tremblay-Lamer in *Sayedi* at paras 23-27, by Madame Justice Strickland in *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 [*Goburdhun*] at para 28 and by Mr. Justice Gleeson in *Brar* at paras 11-12. The key elements flowing from those decisions and that are of particular relevance in the context of this application can be synthesized as follows: (1) the provision should receive a broad interpretation in order to promote its underlying purpose; (2) its objective is to deter misrepresentation and maintain the integrity of the Canadian immigration process; (3) any exception to this general rule is narrow and applies only to truly extraordinary circumstances; (4) an applicant has the onus and a continuing duty of candour to provide complete, accurate, honest and truthful information when applying for entry into Canada; (5) regard must be had for the wording of the provision and its underlying purpose

> in determining whether a misrepresentation is material; (6) a misrepresentation is material if it is important enough to affect the immigration process; (7) a misrepresentation need not be decisive or determinative to be material; (8) 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; (9) the materiality analysis is not limited to a particular point in time in the processing of the application; and (10) the assessment of whether a misrepresentation could induce an error in the administration of the IRPA is to be made at the time the false statement was made.

[11] The Applicant has pointed to decisions in which this Court has accepted an honest mistake exception, but these decisions are distinguishable on their facts. In *Singh Dhatt v Canada (Citizenship and Immigration),* 2013 FC 556, the applicant had misrepresented that one of his daughters was adopted but he had stated this during the interview and her adoption papers had been provided. In *Berlin v Canada (Citizenship and Immigration),* 2011 FC 1117, the father's failure to disclose his adoptive children from a previous marriage was not found to be a basis for a finding of misrepresentation because he had disclosed them on earlier applications and forms.

[12] The facts of those cases are not similar to the facts in this case. There is no indication that the Applicant had previously disclosed his immigration history, nor did he simply miss one particular minor element of his immigration history or family situation. The most significant aspect is the Applicant's failure to disclose that he had previously made a refugee claim, but he had been found to be inadmissible for serious criminality and deported from Canada.

[13] The Applicant noted that his history of criminality was overcome by a certificate of discharge from the police in India, which he had provided. With respect, this is not relevant to the misrepresentation. The officer did not find the Applicant to be inadmissible because of serious criminality. He found that the Applicant had failed to disclose his prior failed refugee claim, and that he had previously been deported from Canada on the basis that he had been found to be inadmissible for serious criminality. The Applicant also failed to disclose that a danger certificate had been issued against him. None of these failures are affected by the subsequent course of his criminal proceedings in India.

[14] As noted in *Kazzi*, any exception to the general duty of candour on persons who seek immigration status in Canada must be interpreted narrowly. It will only apply in truly extraordinary circumstances. This case does not fit within this narrow exception, in light of the nature of the omission by the Applicant, the explanation he provided to the officer in response to the procedural fairness letter, and its potential impact on the consideration of the application.

[15] The Applicant failed to provide several highly relevant pieces of information when he completed the form. He initially explained this lapse as a clerical error, and in his submissions to the Court he has blamed it on the immigration consultant on whom he relied. The jurisprudence is clear that an applicant is responsible for the truth and completeness of an application, whether it was completed by the individual or another person: *Patel v Canada (Citizenship and Immigration)*, 2019 FC 422 at paras 37-38. It is also clear that knowledge of a misrepresentation is not always required: *Baro v Canada*

(Citizenship and Immigration), 2007 FC 1299 at para 15. In any event, the officer cannot be faulted for considering the only explanation that was offered.

[16] The officer provided an opportunity for the Applicant to respond to the concerns about misrepresentation, and made clear precisely what the concerns were. The officer did not accept the Applicant's explanations, and in view of the nature of the omissions, it is easy to understand why. It is also evident that the misrepresentations were material to the application.

[17] The officer's analysis is clear and is well supported in the record. There is no significant information provided by the applicant that the officer has failed to address in the analysis. Applying the *Vavilov* framework, the officer's decision is justified in the context of the relevant law and facts, and the reasoning displays an internal logic and a rational chain of analysis.

[18] Finally, although the five-year period of inadmissibility may appear to impose a harsh penalty on an 86-year-old man who wants to visit his children in Canada, the officer had no choice in the matter. Once a finding of misrepresentation under paragraph 40(1)(a) was made, the five-year ban applies automatically pursuant to subsection 40(2) of *IRPA*. The officer cannot be faulted for applying the law.

[19] For these reasons, the application for judicial review is dismissed. There is no question of general importance for certification.

JUDGMENT in IMM-3724-19

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

There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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