

Federal Court



Cour fédérale

Date: 20200213

**Dockets: IMM-1393-19
IMM-1395-19**

Citation: 2020 FC 244

Ottawa, Ontario, February 13, 2020

PRESENT: The Honourable Madam Justice Heneghan

Docket: IMM-1393-19

BETWEEN:

JASMEEN KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

Docket: IMM-1395-19

AND BETWEEN:

JASMEEN KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Ms. Jasmeen Kaur (the “Applicant”) seeks judicial review, in two applications, of decisions made by a Visa Officer (the “Officer”).

[2] In cause number IMM-1393-19, the Applicant seeks judicial review of a decision denying a request for a Temporary Resident Visa (“TRV”), on the ground of a misrepresentation contrary to subsection 40(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (the “Act”).

[3] In cause number IMM-1395-19, the Applicant seeks judicial review of a decision denying her application for a work permit as a member of the provincial nominee class. This application was denied on the basis of the prior finding of misrepresentation.

[4] The following details are taken from the Certified Tribunal Record (the “CTR”) and the affidavits of the Applicant filed in support of her applications for judicial review. Affidavits filed in support of both applications were sworn on April 12, 2019, September 20, 2019, and September 27, 2019. The Applicant filed another affidavit in support of cause number IMM-1393-19, sworn on August 30, 2019. The Applicant also filed the affidavit of Mr. Harinder Singh Gahir, sworn on August 28, 2019, in support of the application for judicial review in cause number IMM-1393-19.

[5] The Applicant is a citizen of India. She lives in the village of Sudana, Jalandhar District, Punjab.

[6] In December 2017, the Applicant visited the office of an immigration consultant in Jalandhar to discuss an application for a visa to visit Canada. She deposed she did not meet with the consultant and left without signing a contract or paying a fee. However, she left supporting documents with the immigration consultant, including a copy of her passport biographical data, a letter from her employer, a copy of her resume, salary information, and her last income tax return.

[7] According to the Applicant's affidavit, sworn April 12, 2019, she was unaware that a TRV application had been made until she received written notification that her work permit application had been refused as a result of misrepresentation in the TRV application.

[8] According to the CTR, the High Commission of Canada in New Delhi received a TRV application in the Applicant's name on December 22, 2017. The Applicant deposed she was unaware of the TRV application and that she had not submitted the application nor had she authorized it.

[9] According to the Global Case Management System notes, the Officer sent a procedural fairness letter on February 6, 2018 via "VFS," notifying the Applicant of concerns that fraudulent information had been included in her application. In her affidavit, sworn September 20, 2019, the Applicant deposed that she never received this letter.

[10] The application for a TRV was refused by letter dated May 18, 2018, on the grounds of misrepresentation pursuant to section 40(1) of the Act. The Applicant deposed she believed that this letter was not meant for her and returned it to the post office.

[11] On February 2, 2019, the Applicant submitted a work permit application as a nominee of the British Columbia Provincial Nominee Program.

[12] By letter, dated February 19, 2019, the Applicant was notified that her application for a work permit was refused on the grounds she was still inadmissible as a result of her previous misrepresentation.

[13] According to the Applicant's affidavit, sworn August 30, 2019, basic information included in the TRV application was incorrect and inconsistent with her work permit application, including names of family members, birth dates, employment history, life insurance, and tax returns. She further deposed that her signatures on the TRV application form were falsified, and pictures included in the application were public on her social media sites.

[14] A Solemn Declaration was also included in support of the TRV application, purportedly bearing the name Harinder Singh Gahir. Mr. Gahir is a member of the Law Society of Ontario. He deposed in his affidavit that he had no knowledge of the Solemn Declaration, that he did not sign that document and that it is a fraudulent document.

[15] In cause number IMM-1393-19, the Applicant submits her procedural fairness rights were breached because she did not receive notice of the Officer's concerns regarding her TRV application in the form of a procedural fairness letter, and had no opportunity to respond to those concerns.

[16] In cause number IMM-1395-19, the Applicant argues that the Officer's refusal of her work permit was unreasonable because it was based upon the earlier decision about the TRV and that the TRV decision was procedurally unfair.

[17] The Minister of Citizenship and Immigration (the "Respondent") submits that there was no breach of procedural fairness in the decision upon the TRV application and that the Officer's decision refusing the work permit was reasonable.

[18] In the recent decision of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court of Canada said that correctness remains the standard of review for issues of procedural fairness and that, presumptively, the standard of reasonableness applies to decisions of administrative decision makers except where legislative intent or the rule of law requires otherwise. Neither exception applies in this case.

[19] The Supreme Court of Canada confirmed the content of the standard of reasonableness, as set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190.

[20] According to the decision in *Dunsmuir, supra*, the standard of reasonableness requires that a decision be justifiable, transparent and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[21] The Applicant's application for judicial review of the decision on her TRV application raises an issue of procedural fairness. The outcome of that application for judicial review is determinative of her second application for judicial review, that is about the decision on her work permit application.

[22] In my opinion, the Officer's decision about a misrepresentation raises an issue of procedural fairness, that is whether the Applicant received the opportunity to answer the concerns set out in the procedural fairness letter.

[23] In my opinion, the Applicant did not get that opportunity. There was no affidavit filed by the Respondent about how that letter was sent to the Applicant. There is no evidence to contradict the Applicant's evidence about when she received that letter.

[24] In the factual circumstances disclosed by the CTR and the Applicant's affidavits, I am not satisfied that the requirements of procedural fairness were met and the decision about a fraudulent misrepresentation relative to the TRV application will be set aside.

[25] The finding about a fraudulent misrepresentation was the basis for the refusal for the Applicant's application for a work permit. That decision was based upon an unreasonable finding

of fact and does not meet the standard for reasonableness as discussed in *Dunsmuir, supra*. It follows that the decisions cannot stand.

[26] In the result, the two applications for judicial review are allowed.

[27] Pursuant to subsection 18.1(3) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, a remedy upon an application for judicial review is discretionary. Paragraph 18.1(3)(b) of the *Federal Courts Act, supra*, provides as follows:

Powers of Federal Court

18.1(3) On an application for judicial review, the Federal Court may

...

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

Pouvoirs de la Cour fédérale

18.1(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut:

...

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

[28] I see no benefit in referring back to the decision made by the Officer upon the TRV application. That decision will be quashed.

[29] In cause number IMM-1393-19, the decision will be set aside and the matter remitted to a different officer for redetermination.

[30] The Applicant submitted the following question for certification:

Is a foreign national inadmissible for misrepresentation under s. 40(1) of IRPA where an application is tiled containing material misrepresentations, not by the foreign national but by a third party with no authorization or appointment to do so and where the foreign national had no knowledge before or after that an application was filed or would be tiled on her behalf?

[31] The Respondent opposes certification of this question.

[32] The test for certifying a question is set out in *Zazai v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89 and recently confirmed in *Lunyamila v. Canada (Public Safety and Emergency Preparedness)*, [2018] 3 F.C.R. 674. The test for certification requires a serious question that raises issues of broad significance or general importance and that is dispositive of an appeal.

[33] I agree with the submissions of the Respondent. This case turns on its facts and there is no question arising that meets the test for certification.

JUDGMENT in IMM-1393-19 and IMM-1395-19

THIS COURT’S JUDGMENT is that the application for judicial review in cause number IMM-1393-19 is allowed and the decision is quashed.

There is no question for certification arising.

THIS COURT’S JUDGMENT is that the application for judicial review in cause number IMM-1395-19 is allowed, the decision is set aside and the matter is remitted to a different officer for redetermination.

There is no question for certification arising.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1393-19
IMM-1395-19

STYLE OF CAUSE: JASMEEN KAUR v. THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: OCTOBER 17, 2019

JUDGMENT AND REASONS: HENEGHAN J.

DATED: FEBRUARY 13, 2020

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