

Federal Court



Cour fédérale

**Date: 20210611**

**Docket: IMM-6325-20**

**Citation: 2021 FC 598**

**Ottawa, Ontario, June 11, 2021**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**MELIKA HAGHIGHAT**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review of a Migration Officer's [the "Officer"] decision, dated March 6, 2020, refusing the Applicant's temporary resident visa [the "Decision"].

II. Background

[2] The Applicant, Melika Haghighat, is a citizen of Iran. In August of 2019, she retained the services of an immigration consultant to assist with her application for a temporary resident visa. The Applicant was unfamiliar with the process and could not read English at the time.

[3] The Applicant's father agreed to pay \$6000 USD in installments for the services of an immigration consultant, who the Applicant understood had applied for a temporary resident visa on her behalf on-line. The immigration consultant refused to give the Applicant access to the on-line account or portal.

[4] In September of 2019, at the direction of the immigration consultant, the Applicant traveled to Istanbul, Turkey for a biometrics appointment at the Visa Application Centre.

[5] On October 16, 2019, the Global Case Management System [GCMS] notes indicate that the Applicant's application was refused. The Applicant states she was not made aware of this refusal.

[6] The immigration consultant provided the Applicant with a fraudulent passport request letter, dated December 18, 2019. The Applicant believed her temporary resident visa application had been approved and her passport was now required.

[7] On or about January 2, 2020, the Applicant sent her passport directly to Immigration, Refugees and Citizenship Canada, as the Applicant and her father were fearful the immigration consultant may withhold the Applicant's passport and request more money.

[8] On January 16, 2020, a GCMS entry indicates "concerns with authenticity of Passport Request Letter. PFL [procedural fairness letter] sent". The Applicant did not receive and did not respond to the procedural fairness letter.

[9] At some point following, the Applicant and her father could no longer reach the immigration consultant. The Applicant emailed the Visa Office in Ankara, Turkey on January 23, 2020, to inquire about the status of her application. She used "Google Translate" to compose her message. She did not receive a response.

[10] In February of 2020, the Applicant's father was made aware that the immigration consultant had defrauded other clients. He received a call from a travel agency in Iran, who indicated that eight of their clients had used the immigration consultant's services and were provided with fraudulent passport request letters.

[11] The Applicant's father initiated a complaint against the immigration consultant with the Public Prosecutor's Office in Esfahan, Iran on February 25, 2020. An arrest warrant was issued against the immigration consultant on August 20, 2020, who was convicted on January 16, 2021.

[12] The Applicant was found to be inadmissible to Canada by the Officer, in the Decision dated March 6, 2020, on the basis of misrepresentation in her application for a temporary resident visa by submitting the fraudulent passport request letter. The Applicant filed her application for leave and judicial review of the Decision on December 4, 2020.

[13] The Applicant seeks an Order setting aside the Decision and referring the matter back for redetermination by a different Officer, with an opportunity to provide new and updated documents, and in accordance with such directions as the Court deems fit.

### III. Decision Under Review

[14] The Officer refused the Applicant's application for a temporary resident visa in Canada, and found that the Applicant was inadmissible to Canada for a period of five years:

On your application, you misrepresented or withheld the following material facts:

- The passport request letter purportedly issued by Immigration, Refugees and Citizenship Canada submitted in support of your application was fraudulent.

On 2020-01-16 our office sent you a letter offering you the opportunity to address the officer's concerns regarding the genuineness or omission of the above mentioned material facts, but you were unable to properly address these concerns.

IV. Issues

[15] The issues are:

- A. Did the Officer breach the duty of procedural fairness in failing to provide the procedural fairness letter directly to the Applicant?
  
- B. Was the Officer's Decision unreasonable?

V. Standard of Review

[16] The first issue is a question of procedural fairness, which engages the correctness standard (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 36). The second issue engages the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

## VI. Relevant Provisions

[17] The relevant provisions include subsections 11(1) and 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the “Act”]:

### **Application before entering Canada**

**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.

### **Misrepresentation**

**40 (1)** A permanent resident or a foreign national is inadmissible for misrepresentation

**(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;

### **Visa et documents**

**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.

### **Fausse déclarations**

**40 (1)** Empoignent interdiction de territoire pour fausses déclarations les faits suivants :

**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;

## VII. Analysis

[18] It is the Applicant's position that the Decision is procedurally unfair and unreasonable.

The fraudulent passport request letter was provided to her by her immigration consultant, without her knowledge of its inauthenticity. She further did not receive the procedural fairness letter sent

by the Officer. The fraudulent passport request letter was not material and could not have induced an error in the administration of the *Act*.

[19] The Respondent submits that the Applicant bears the burden of providing correct information in an application for status in Canada, even when a third party submits that information. The Officer's Decision is reasonable and there was no breach of the procedural fairness owed. The Applicant applied through an on-line portal and it was reasonable for the Officer to anticipate that she would receive the procedural fairness letter through the portal.

A. *New Evidence*

[20] The Applicant seeks to introduce new evidence, specifically the Affidavit of the Applicant, dated January 27, 2021, and Exhibits "C" and "E" to "I". I am allowing this evidence to be admitted, finding that it does not impact the result of this proceeding. Any concerns with the evidence will go to weight.

B. *Procedural Fairness*

[21] The circumstances of this case are unfortunate. The Applicant placed her trust in an immigration consultant and was deceived. However, these circumstances do not absolve the Applicant from the consequences of her misrepresentation.

[22] The GCMS notes indicate that the procedural fairness letter was provided to the Applicant on January 16, 2020. The fact that the Applicant did not receive the procedural

fairness letter lies with her and her immigration consultant. The immigration consultant applied through the on-line portal on the Applicant's behalf and denied her access to this on-line portal. While the circumstances are unfortunate, it cannot be said that the Officer breached a duty of procedural fairness in such circumstances. The Officer was not required to respond to the Applicant via her personal email address.

C. *Reasonableness of the Decision*

[23] The Officer was further reasonable in finding that the Applicant had misrepresented by submitting the fraudulent passport request letter. An applicant has “a duty of candour to provide complete, honest and truthful information when applying for entry into Canada” (*Brar v Canada (Citizenship and Immigration)*, 2016 FC 542 at para 12 [*Brar*]). The Applicant does not dispute that a fraudulent passport request letter was submitted, but rather asks this Court to recognize the circumstances surrounding its submission.

[24] In *Duquitan v Canada (Citizenship and Immigration)*, 2015 FC 769 [*Duquitan*], the Federal Court described the purpose of subsection 40(1)(a) of the *Act* (*Duquitan*, above at para 10):

[10] This Court has held that the purpose of paragraph 40(1)(a) of the IRPA is to ensure that applicants provide “complete, honest and truthful information and to deter misrepresentation” and that “full disclosure is fundamental to the proper and fair administration of the immigration scheme”. It has also been held that subsection 40(1) of the IRPA encompasses innocent failures to disclose material information. Moreover, “a misrepresentation need not be decisive or determinative to be material; it must only be important enough to affect the process” (*Paashazadeh v. Canada (Citizenship and Immigration)*, 2015 FC 327, at paras 18, 25 and 26).



[25] This Court does not distinguish between innocent misrepresentation and deliberate misrepresentation, including those misrepresentations made on “faulty legal advice” (*Chen v Canada (Minister of Citizenship and Immigration)*, 2005 FC 678 at para 10). While seemingly rigid, the integrity of the immigration system relies on the provision of complete, honest and truthful information. The obligation of a duty of candor cannot be compromised by an applicant’s failure to take responsibility for ensuring an application is truthful and complete, as required.

[26] There can be no question as to the materiality of the fraudulent passport request letter in that such a document was important enough to affect the process (*Duquitan* at para 10). I do not find the Officer’s Decision deficient in this case for not describing exactly how the fraudulent passport request letter could have induced an error. The Applicant cannot now “take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application” (*Brar*, above at para 12).

#### VIII. Conclusion

[27] For the reasons above, this Application is dismissed.

**JUDGMENT in IMM-6325-20**

**THIS COURT'S JUDGMENT is that:**

1. The Application is dismissed; and
2. There is no question for certification.

"Michael D. Manson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6325-20

**STYLE OF CAUSE:** MELIKA HAGHIGHAT v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 10, 2021

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** JUNE 11, 2021

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