Federal Court  Cour fédérale

Date: 20211124

Docket: IMM-2328-20

Citation: 2021 FC 1285

Ottawa, Ontario, November 24, 2021

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

LULE SUFAJ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Lule Sufaj, is a citizen of Albania. She and her spouse applied for temporary resident visas [TRV] or "super visas" to visit their son who is a permanent resident of Canada. Only the Applicant's TRV application is relevant here.

[2] Following her response to a procedural fairness letter [PFL], the Embassy of Canada, Visa Section, in Rome, Italy refused the Applicant's TRV application in April 2020 and deemed the Applicant inadmissible for a period of five years for misrepresenting or withholding material facts [Decision], further to paragraph 40(1)(a) and subsection 40(2) of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [*IRPA*]. See Annex "A" for applicable legislative provisions.

[3] The Applicant now seeks judicial review of the Decision. The parties agree, as do I, that the presumptive reasonableness standard of review is applicable, with the reasonableness of the Decision being the sole issue for the Court's determination: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25. I find that none of the situations rebutting such presumption (*Vavilov*, at para 17) is present in this matter.

[4] To avoid judicial intervention, a challenged decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility; the party challenging the decision has the onus of demonstrating that the decision is unreasonable: *Vavilov*, at paras 99-100.

[5] I find that the Applicant has not satisfied her onus and, thus, for the reasons that follow, this judicial review application is dismissed.

II. Background

[6] The TRV application form contained the following question: *Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?* The

Applicant answered “yes” and disclosed that she previously was refused a Canadian visa in February 2019.

[7] The Officer sent a PFL to the Applicant notifying her of the inadmissibility concerns because of an undisclosed visa refusal for the United States of America in 2005. In response, the Applicant provided a statutory declaration confirming that she had been refused a US visa in 2005, as well as on another occasion in 2000. She explained that she had simply did not remember these refusals because they occurred so many years ago and it was not her intention to mislead anyone or gain any benefit. An accompanying letter from her counsel also indicated that any data linked to her would become known to the Officer following the Applicant providing her fingerprint biometric information and, therefore, it is clear that she did not omit this information to gain a benefit.

III. Challenged Decision

[8] In the global case management system [GCMS] notes which form part of the Decision, the Officer considered the Applicant’s statements and her counsel’s accompanying letter, and refused the TRV application. The Officer observed that the Applicant’s immigration history is a material fact and that it is the Applicant’s obligation to present truthful information, regardless of biometric information sharing. The undeclared facts could have lead to an improper application of the *IRPA*.

[9] The Officer also stated it was not credible the Applicant “simply forgot about past visa refusals, **without any further explanation.**” [Emphasis added.] The Officer found that the

Applicant's assumption the Officer would find the previous refusals by other means is not an excuse for failing to properly answer the questions on the application.

IV. Analysis

[10] I note that "a lack of intent to deceive is not a part of the test for misrepresentation": *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004 at para 22. Further, the materiality of the Applicant's misrepresentation is not in issue: *Alkhaldi v Canada (Citizenship and Immigration)*, 2019 FC 584 at para 25.

[11] Rather, the crux of this matter revolves around the phrase "without further explanation," which was the focus of the parties' oral submissions. The Applicant argues that it was unreasonable of the Officer to take into account what counsel said in the accompanying letter rather than solely what the Applicant said in her statutory declaration. I do not agree with the Applicant for three reasons.

[12] First, the Applicant's statutory declaration discloses that, with some due diligence, the Applicant's own records revealed the failed US visa applications, including the one from 2000 that was not disclosed by the Applicant's biometric data, according to the PFL which mentioned only the 2005 incident. The onus was on the Applicant to provide complete and accurate information: *Ibe-Ani v Canada (Citizenship and Immigration)*, 2020 FC 1112 at para 29.

[13] Second, applicants who choose to be represented "are bound by the submissions made by those who represent them in the process[; t]here is a duty on an applicant to ensure that their

submissions are complete and correct": *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107 at para 34. There is no evidence in the matter before me that the Applicant disavowed or did not agree with her counsel's submission. In any event, paragraph 40(1)(a) of the *IRPA* "is drafted broadly and encompasses misrepresentations even if made by a third party without the applicant's knowledge": *Canada (Public Safety and Emergency Preparedness) v Abdallah*, 2013 FC 1053 at para 17.

[14] Third, I thus am not persuaded that this matter involves the consideration of proper and improper factors by the Officer, unlike the situation that confronted the reviewing court in *B'Ghiel v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8144 (FC) at para 9 [*B'Ghiel*]. In my view, the Officer properly considered both the Applicant's and her counsel's statements and, thus, I find the *B'Ghiel* case distinguishable from the instant matter.

[15] Considering the record before the Officer, I am satisfied that the Decision was not unreasonable. I find the Officer's reasons, though brief, are sufficient to enable me to understand the basis on which the Decision was made. My finding is premised on the general principles that decision makers are not held to a standard of perfection in a reasonableness review; their decisions cannot be divorced from the institutional context in which the decisions were made nor from the history of the process: *Vavilov*, above at para 91.

V. Conclusion

[16] For the above reasons, I therefore dismiss the Applicant's judicial review application.

[17] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-2328-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act*, S.C. 2001, c. 27**
***Loi sur l'immigration et la protection des réfugiés (*L.C. 2001, ch. 27)**

Inadmissibility **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. **Application** **40(2)** The following provisions govern subsection (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; and **(b)** paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility.	**Interdictions de territoire** **Fausses déclarations** **40(1)** Emportent 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. **Application** **40(2)** Les dispositions suivantes s'appliquent au paragraphe (1) : **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; **b)** l'alinéa (1)b) ne s'applique que si le ministre est convaincu que les faits en cause justifient l'interdiction.

FEDERAL COURT

SOLICITORS OF RECORD

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