Federal Court  Cour fédérale

Date: 20220328

Docket: IMM-3109-20

Citation: 2022 FC 422

Vancouver, British Columbia, March 28, 2022

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

BALJINDER SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision [the Decision] by an immigration officer at the High Commission of Canada in New Delhi, India [the Officer], conveyed by letter dated June 25, 2020, rejecting the Applicant's work permit application and finding him

inadmissible to Canada for misrepresentation under s 40(1)(a) of the *Immigration and Refugee Protection Act,* SC 2001, c 27 [*IRPA*].

[2] As explained in more detail below, this application is allowed because the Officer failed to consider the innocent mistake exception, which can apply to preclude a finding of inadmissibility due to misrepresentation under s 40(1) of *IRPA.* As the material before the Officer included evidence and submissions supportive of the application of this exception, the Officer's failure to conduct a meaningful analysis of the exception renders the Decision unreasonable.

II. **Background**

[3] The Applicant, Mr. Baljinder Singh, is a citizen of India who applied in February 2020 for a temporary work permit to work in Canada as a long-haul truck driver. He submitted with his application an employment offer from a company named New Millenium Transport Ltd [New Millenium], which had previously obtained from Employment Social Development Canada a positive Labour Market Impact Assessment for three long-haul truck driver positions at wage rates of $23.98/ hour and 50 hours/week.

[4] As reflected in Global Case Management System [GCMS] notes, an immigration officer reviewing the application identified that New Millenium was registered to a residential address and could find no open source information about the company. The officer developed concerns that the employment offer may not be genuine, as a result of which a procedural fairness letter [PFL] was sent to the Applicant on April 6, 2020. The PFL expressed concern that the

Applicant's employment offer may not be genuine due to the company size of his potential employer. To assess his application, the PFL required the Applicant to request from his employer and provide to the officer various categories of documentation and information.

[5] On April 18, 2020, the Applicant's immigration consultant provided on his behalf a response to the PFL with accompanying documentation. GCMS Notes dated June 22, 2020, reflect the following analysis of that response:

> Response to PFL reviewed. T4 remittance for 2019 indicates that 14 T4's were issued with a total of $274,295. T4 remittance for 2018 indicates that 13 T4's were issued with a total of $203,416. In 2019 14 employees may have earned approximately $19,592. However, if 3 of these employees were permanent truck drivers earning wages of 23.98 per hour and they worked 40 hours per week for 52 weeks they would have earned $49,878. 3 permanent drivers would have earned $149,635 leaving 11 employees to share the remainder of $124,660 or just over $11,000 each. In Jan 2020 the employer indicates that 3 employees were paid only $3594.50 in wages or roughly $1300 in salary. In Feb 2020 the employer indicates that 3 employees were paid $11,310.00 in wages. If these were permanent truck drivers it appears that at no time were they being paid an amount that equals the contract that this applicant has signed. I am not satisfied that potential employer would be able to fulfill the obligations outlined in the offer of employment. I am therefore not satisfied that this is a genuine job offer as per R200(1)(c)(ii.1)(A) as the offer does not appear consistent with the reasonable employment needs of the employer. Furthermore, based on the information on file and the response to the PFL, I am of the opinion that the PA has submitted a non-genuine job offer in order to obtain a Canadian Work Permit and that the misrepresentation of this material fact could have induced errors in the administration of the Act. Application for final review.

[6] The GCMS notes also record the following entry, dated June 25, 2020, the date of the Officer's letter to the Applicant conveying the Decision:

> 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. I have reviewed the application, supporting documents and notes on this application. The applicant applied for a work permit to enter Canada as a temporary resident. During the review of the application, concerns arose over the offer of employment submitted with the application. Verifications were conducted by this office and it was confirmed that the applicant had provided a non-genuine offer of employment. A procedural fairness letter was sent to the applicant providing an opportunity to disabuse the officer of their concerns. The procedural fairness letter outlined the concerns as well as the consequences of a finding under A40 including a five year bar from entering Canada. The applicant has responded but has failed to disabuse me of the concerns presented. In my opinion, on the balance of probabilities, the applicant provided non-genuine documents in support of the work permit application. An offer of employment is material to the assessment of eligibility for a work permit and the intention of the employer to hire the applicant as a temporary foreign worker. Had the offer of employment been taken as genuine it could have induced an error in the administration of the Act, as the officer may have erroneously issued a work permit to the applicant believing that they had a genuine job offer in Canada and that they were a bona fide temporary foreign worker with a genuine intention to work in Canada. Therefore, I am of the opinion that the applicant is inadmissible to Canada under section 40 of the Act. This application is refused on A 40 grounds. Pursuant to subsection A 40(2)(a), a permanent resident or a foreign national determined to be inadmissible for reasons of misrepresentation continues to be inadmissible for a period of five years following, in the case of a determination made outside Canada, the date of the refusal letter.

[7] On July 16, 2020, the Applicant commenced this application for judicial review of the Decision. His arguments challenge the reasonableness of the Decision.

III. **Analysis**

[8] My decision to allow this application for judicial review turns on the Applicant's argument that, on the facts of this case, the Officer was required to consider the innocent mistake exception to inadmissibility and failed to do so.

[9] In arguing for the application of this exception, the jurisprudential support for which I will identify below, the Applicant submits that, prior to being required to respond to the PFL, he had no knowledge of the details of New Millenium's finances and operations. Therefore, when submitting his work permit application, he was not privy to the information or analysis that led the Officer to conclude that New Millenium would be unable to fulfil his employment obligations, that its offer to the Applicant was not consistent with its reasonable employment needs, and that the offer was therefore not genuine.

[10] On these facts, the Applicant submits that the innocent mistake exception precludes a finding of inadmissibility or, at least, that the Officer was required to consider the application of this exception. While the Applicant acknowledges that it was available to the Officer to conclude that the offer was not genuine and to deny his work permit application as a result, he argues it was unreasonable for the Officer to conclude also that the Applicant had committed a misrepresentation resulting in his inadmissibility, without considering the innocent mistake exception.

[11] In response to these arguments, the Respondent emphasizes that the wording of s 40(1)(a) of *IRPA* provides that inadmissibility can result from directly or indirectly misrepresenting or

withholding material facts and that s 40(1)(a) may apply even when the misrepresentation was made by a third party and the applicant had, or claims to have had, no knowledge of it (see *Zolfagharian v Canada (Citizenship and Immigration)*, 2021 FC 1455 [*Zolfagharian*] at paras 20-21).

[12] The Respondent also relies on relevant provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. Pursuant to s 200(1)(ii.1)(A) of the *IRPR*, an officer can issue a work permit only upon determining that the employment offer is genuine, and s 200(5) identifies factors to be considered by an officer in assessing the genuineness of an offer. Those factors include whether the offer is consistent with the reasonable employment needs of the employer and whether the terms of the offer are terms the employer is reasonably able to fulfil. The Respondent points out that these are the factors the Officer relied on in concluding that the Applicant had submitted a non-genuine offer.

[13] As a matter of law, I agree with the Respondent's submissions. However, as further explained in *Zolfagharian*, while even an innocent failure to provide material information can result in a finding of inadmissibility, the jurisprudence also recognizes a narrow exception which can arise where applicants that can show that they honestly and reasonably believed that they were not withholding material information (at para 22). It can be a reviewable error for an officer to fail to conduct a meaningful analysis of the innocent mistake exception where there is evidence supportive of its application (see *Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117).

[14] The Respondent argues that such an analysis is inherent in the Officer's reasoning and conclusion that the Applicant had submitted a non-genuine offer. I do not agree that the Decision discloses such an analysis. The Officer's conclusion that the Applicant submitted a non-genuine job offer in support of his application for a work permit resulted from the Officer's application of the evidence to the factors prescribed by s 200(5) of the *IRPR*. That analysis did not engage with either the subjective component of the innocent mistake exception, i.e., whether the Applicant honestly believed he was not making a misrepresentation, or the objective component, i.e., whether it was reasonable on the facts that he believed he was not making a misrepresentation. In my view, the Officer failed to conduct a meaningful analysis, or indeed any analysis, as to whether the innocent mistake exception applied.

[15] In so concluding, I am not expressing the view that a visa officer considering the application of s 40(1)(a) is in all cases required to consider and analyse the innocent mistake exception. However, in the case at hand, the Applicant's submissions in response to the PFL noted the Applicant's surprise that the genuineness of New Millenium's employment offer was being questioned, explained that the information sought in the PFL was that of the third party employer, and argued that the Applicant should not face the consequence of inadmissibility arising from concerns about an employer's business capacity. At the hearing of this application for judicial review, the Respondent acknowledged that these submissions at least implicitly argue that the Applicant had no intention to commit a misrepresentation in his work permit application. Based on these submissions, as well as the nature of the alleged misrepresentation that relates to the financial and operational details of a third-party arm's-length employer, I am satisfied that

the Officer was required to consider whether the innocent mistake exception applied and that failure to do so renders the Decision unreasonable.

[16] Based on this conclusion, this application for judicial review will be allowed, and it is unnecessary for the Court to consider the Applicant's other arguments impugning the Decision.

[17] Neither party proposes any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-3109-20

THIS COURT'S JUDGMENT is that this application for judicial review is allowed, the Decision is set aside, and the matter is returned to another officer for redetermination.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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