Federal Court  Cour fédérale

Date: 20220510

Docket: IMM-7196-19

Citation: 2022 FC 687

Ottawa, Ontario, May 10, 2022

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

ARSHDEEP SINGH PANDHER

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of a visa officer [Visa Officer] with the High Commission of Canada in New Delhi, India, refusing the application of Arshdeep Singh Pandher [Applicant] for a study permit and finding him to be inadmissible due to misrepresentation, pursuant to ss 40(1)(a) and 42(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

Background

[2] The Applicant submitted an Application for a Study Permit made Outside of Canada on March 16, 2019 which application included his Central Board of Secondary Education results. By letter dated April 29, 2019, the High Commission advised the Applicant that his Indian School Certificate Exam [ISCE] documents did not match upon verification with the authorities [Procedural Fairness Letter] and it was concerned that he had misrepresented material facts concerning his educational qualifications. The letter further advised that if it was found that the Applicant had engaged in misrepresentation in submitting his application for a study permit, he may be found to be inadmissible under section 40(1)(a) of the IRPA and that such a finding would render the Applicant inadmissible to Canada for a period of 5 years according to section 40(2)(a) of the IRPA. The Applicant was given 30 days within which to respond to the Procedural Fairness Letter.

[3] By letter dated May 24, 2019, Neera Agnihotri, of Agnihotri Immigration Consulting [Consultant] responded to the Procedural Fairness Letter as the Applicant's representative. The Consultant states that the Applicant had provided his former immigration consultant with a copy of his original secondary school certificate but that the former consultant had, without the Applicant's knowledge, changed the graduating marks. The Consultant states that Applicant had not been given a copy of the submitted study permit application but when he learned of the problem, he contacted his prior consultant who confessed to altering the school records. Further, that the Applicant had asked his former consultant to also confess this to the police, however, the consultant then stopped answering the Applicant's calls. The Consultant states that the Applicant

gave a statement to the police, a copy of which was attached to the Consultant's letter. The Consultant also states that the police had raided the former consultant's home and office but had not located him. Also attached to the Consultant's letter is an "Affidavit of Support" of the Applicant which the Consultant states establishes that the misrepresentation was not within the Applicant's control.

Decision under review

[4] By letter dated October 4, 2019, the Visa Officer advised the Applicant that his study permit application had been refused on the grounds that he had been found inadmissible to Canada in accordance with s 40(1)(a) of the IRPA for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induced or could induce an error in the administration of the IRPA. Pursuant to s 40(2)(a), the Applicant would remain inadmissible to Canada for a period of 5 years. Further, that the Applicant had submitted documentation that lacks authenticity as part of his application and that this diminished the overall credibility of his submission.

[5] The Global Case Management System [GCMS] notes of the Visa Officer state:

> Case and PFL response reviewed. On balance of probabilities, an officer determined that an education document the applicant provided in his submission is fraudulent. The information is relevant as it relates to his credibility; additionally, knowing the background history of an applicant factors in the eligibility and admissibility assessment. Applicant claims he provided a legitimate document to his former consultant but the consultant changed the marks on the document without his knowledge. I put not [*sic*] weight on this explanation as the applicant is solely responsible for his application. On balance of probabilities, I am therefore of the opinion that the applicant has committed misrep

> under A40(1)(a) by submitting this fraudulent document; this act could have induced an error in the administration of IRPA. Note that A40(1)(a) includes both direct and indirect misrep. Refused under A40(1)(a) and A16(1)(a). 5 year bar is effective today.

[6] The Applicant seeks judicial review of this decision.

Standard of Review

[7] The sole issue in this matter is whether the Visa Officer's decision was reasonable.

[8] The parties submit, and I agree, the reasonableness standard applies when assessing the merits of the Visa Officer's decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 23, 25). To make this determination, the reviewing 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).

Preliminary Issues

[9] The Respondent raises two preliminary issues.

[10] First, that the Applicant has not sworn an affidavit in support of his application for judicial review. Rather, he has filed an affidavit sworn by his brother-in-law, Jasvir Singh Benipal, who is not mentioned in the application process and which affidavit is based on hearsay evidence. In Reply, the Applicant submits that the brother-in-law's affidavit should be admitted

as an exception to the hearsay rule as the brother-in-law has personal knowledge of the Applicant's study permit application because he has been supporting and assisting the Applicant throughout the application process and is therefore apprised of all of the facts of the matter. Further, that the evidence contained within the brother-in-law's affidavit provides all of the relevant context to the facts of the case. Moreover, hearsay evidence can be admitted if it meets the requirements of necessity and reliability. The Applicant is a young man from rural India and the brother-in-law was "the most reliable and accessible individual" to swear the contents of the affidavit.

[11] I note that where there is no evidence based on personal knowledge filed in support of an application for judicial review, any error asserted by the applicant must appear on the face of the record (*Turcinovica v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 164 (CanLII), [2002] FCJ No 216 (QL) at para 14).

[12] It is also beyond dispute that, as a general rule, the evidentiary record before a Court on judicial review is restricted to the evidentiary record that was before the decision-maker. Evidence that was not before the decision-maker and that goes to the merits of the matter is, with certain limited exceptions, not admissible. The recognized exceptions are an affidavit that: provides general background in circumstances where that information might assist the court in understanding the issues relevant to the judicial review; brings to the attention of the reviewing court procedural defects that cannot be found in the evidentiary record of the administrative decision-maker, so that the judicial review court can fulfil its role of reviewing for procedural unfairness; or, highlights the complete absence of evidence before the administrative decision-

maker when it made a particular finding (*Association of Universities and Colleges of Canada v Canadian Copyrights Licensing Agency*, 2012 FCA 22 at para 19-20; also see *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 19-25; *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 45; *Namgis v Canada (Fisheries and Oceans)*, 2019 FCA 149 at paras 7-10).

[13] The brother-in-law's affidavit states only that, as the Applicant's brother-in-law, the deponent has personal knowledge of the facts and matters deposed to, except where stated to be based upon information and belief, in which case, he believes same to be true. The remainder of the affidavit does not identify any information based on information and belief. Nor does the affidavit explain how the brother-in-law acquired his purported knowledge. Thus, its content is based solely on the deponent's stated status as the Applicant's brother-in-law.

[14] The affidavit also does not indicate that the Applicant is unable to provide a supporting affidavit. The submissions made by counsel for the Applicant in Reply, including that the Applicant is located in rural India and that his brother in-law is best positioned to provide an affidavit, are not supported by any evidence. Indeed, the Applicant signed his study permit application and also filed an affidavit which was submitted as an attachment to the Procedural Fairness Letter.

[15] The brother-in-law's affidavit is comprised of his depiction of events related to the filing of the Applicant's application and actions taken in response to the Procedural Fairness Letter. It is hearsay and the Applicant has not established that his brother-in-law's affidavit is either necessary or reliable. It is not admissible on this basis. It is also inadmissible because it does not

fall within any of the exceptions to the general rule that evidence that was not before the decision-maker and that goes to the merits of the matter is not admissible on judicial review. Indeed, the Applicant does not raise any procedural fairness questions that might justify the admission of new extrinsic evidence to establish defects in the process adopted by the Visa Officer. Nor does the content of the brother-in-law's affidavit fall within the general background exception.

[16] That said, little turns on this finding because most of what the brother-in-law deposes to is simply a summary restatement of the reply to the Procedural Fairness Letter which is found in the record and was before the Visa Officer when they made their decision.

[17] As to the second preliminary issue, the Respondent submits that in paragraphs 3, 5 and 27 of his memorandum of argument the Applicant improperly relies on information which is not found in the record. The Respondent is correct that the Applicant may not rely on information that is not found within the record. Such information will not be considered in these reasons.

Analysis

Applicant's position

[18] The Applicant submits that the Visa Officer erred by failing to consider whether the alleged misrepresentation was honestly and reasonably made and whether it fell within the narrow innocent misrepresentation exception as set out in *Medel v Canada (Employment and Immigration)*, [1990] 2 FC 345 [*Medel*]. The Applicant submits that he did not know that his

former consultant had submitted fraudulent grades, that this knowledge was beyond his control and that he honestly and reasonably believed that his application was true and accurate. Further, that the Visa Officer erred in failing to consider the totality of the evidence in making the finding of misrepresentation. The Visa Officer ignored the complaint the Applicant claimed to have made to the police [Complaint] which supported the Applicant's submission that he was the victim of a deceit.

Respondent's position

[19] The Respondent submits that the jurisprudence is clear that applicants who chose to be represented by consultants are bound by the submissions made by those representatives. It is the applicant's duty to ensure that the submissions are complete and correct. Because the Applicant signed his application form as true and correct, his circumstance is distinguished from those cases where the innocent representation exception applied. Nor does the Applicant's reliance on his Complaint to the police assist him as there is no evidence that he actually filed the Complaint or whether there was any response by the police. The Applicant also seeks to reverse his onus by asserting that there was no evidence that the Complaint was not filed.

Analysis

[20] I, and others, have previously summarized the jurisprudence pertaining to s 40(1)(a) of the IRPA (see, for example, *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 40; *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 at paras 38-39; *Tuiran v*

Canada (Citizenship and Immigration), 2018 FC 324 at paras 25-28; *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28).

[21] For purposes of the matter now before me, this includes that that s 40(1)(a) is to be given a broad interpretation in order to promote its underlying purpose: its objective being to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the applicant to ensure the completeness and accuracy of their application and the applicant has a continuing duty of candour to provide complete, honest and truthful information when applying for entry into Canada. The exception to s 40(1)(a) is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control. That is, the applicant was subjectively unaware that they were withholding information.

[22] As to the innocent misrepresentation exception, as stated in *Appiah v Canada (Citizenship and Immigration)*, 2018 FC 1043:

> [18] The innocent misrepresentation exception is narrow and shall only excuse withholding material information in extraordinary circumstances in which the applicant honestly and reasonably believed he was not misrepresenting a material fact, knowledge of the misrepresentation was beyond the applicant's control, and the applicant was unaware of the misrepresentation (*Wang* at paragraph 17; *Li v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 87 at paragraph 22; *Medel v Canada (Minister of Employment and Immigration*), [1990] 2 FC 345). Some cases have applied the exception if the information given in error could be corrected by reviewing other documents submitted as part of the application, suggesting that there was no intention to mislead: *Karunaratna v Canada (Citizenship and Immigration)*, 2014 FC 421 at paragraph 16; *Berlin v Canada (Citizenship and*

> *Immigration)*, 2011 FC 1117 at paragraphs 18-20. Courts have not allowed this exception where the applicant knew about the information, but contended that he honestly and reasonably did not know it was material to the application; such information is within the applicant's control and it is the applicant's duty to accurately complete the application: *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at paragraphs 31-34; *Diwalpitiye v Canada (Citizenship and Immigration)*, 2012 FC 885; *Oloumi* at paragraph 39; *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at paragraph 18; *Smith v Canada (Citizenship and Immigration)*, 2018 FC 1020 at paragraph 10.

(see also *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23 [*Oloumi*]; *Sayedi v Canada (Citizenship and Immigration)*, 2012 FC 420 [*Sayedi*] at paras 37- 40; *Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 [*Goudarzi*] at paras 37- 40.)

[23] In this matter, the Applicant does not dispute that a misrepresentation occurred, that it was material or that it could have induced an error in the administration of the IRPA. Rather, the Applicant submits that the Visa Officer failed to consider the narrow exception to s 40 where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control.

[24] More specifically, the Applicant submits that he provided his original grades document to this former consultant and did not know that his former consultant had submitted a fraudulent grades document after the Applicant signed his application. He submits that this knowledge was beyond his control.

[25] The Applicant distinguishes *Sayedi*, which in turn distinguished *Medel* as in the latter case the applicant reasonably believed that she was not withholding information, while in *Sayedi*

the applicants did not act reasonably because the principle applicant failed to review his application to ensure its accuracy. In *Sayedi*, the Court stated:

> [37] When considered within its factual context, therefore, the exception in *Medel* is relatively narrow. As Justice MacKay noted while distinguishing the case before him in *Mohammed v Canada (Minister of Citizenship & Immigration)*, [1997] 3 FC 299:
>
> > 41 The present circumstances may also be distinguished from those in Medel on the basis that the information which the applicant failed to disclose was not information regarding which he was truly subjectively unaware. The applicant in the present case was not unaware that he was married. **Nor was it information, as in Medel, the knowledge of which was beyond his control.** This was not information which had been concealed from him or about which he had been misled by Embassy officials. The applicant's alleged ignorance regarding the requirement to report such a material change in his marital status and his inability to communicate this information to an immigration officer upon arrival does not, in my opinion, constitute "subjective unawareness" of the material information as contemplated in Medel. (Emphasis added)
>
> Furthermore, I emphasize that a determinative factor in the *Medel* case was that the applicant had *reasonably believed* that she was not withholding information from Canadian authorities. In contrast, in the case before this Court the applicants did not act reasonably—the principal applicant failed to review his application to ensure its accuracy.
>
> [emphasis in *Sayedi*]

[26] The Applicant also refers to *Goudarzi* where the applicant claimed that her immigration consultant had, unbeknownst to her, included with her application an International English Language Testing System test result that turned out to be fraudulent. As in the matter before me,

the applicant in *Goudarzi* claimed that she had been the victim of a fraudulent immigration consultant.

[27] When considering whether to be found inadmissible pursuant to section 40(1)(a) an applicant must have acted with subjective intent, i.e. knowledge of the misrepresentation, Justice Tremblay-Lamer found that the general rule is that a misrepresentation can occur without the applicant's knowledge (at para 33, referencing *Jiang v Canada (Citizenship and Immigration)*, 2011 FC 942 [*Jiang*] at para 35) and that this Court has held that section 40 applies to an applicant where the misrepresentation was made by another party to the application and the applicant had no knowledge of it (at para 24, citing *Jiang* at para 35; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 55-56). A few cases had carved out a narrow exception to the rule, which will only apply for truly exceptional circumstances, where the applicant honestly and reasonably believed they were not misrepresenting a material fact. Justice Tremblay-Lamer quoted paragraph 41 of *Mohammed v Canada (Minister of Citizenship & Immigration)*, [1997] 3 FC 299, set out above in paragraph 37 of *Sayedi*, and held that:

> [41] The applicants allege that they had no knowledge of the misrepresentation and wish to exonerate themselves by blaming their immigration consultant. Indeed, they claim to have not even seen the submitted copy of their application forms. As a result, they submit that the fraudulence of their immigration consultant should serve as a defence to the application of section 40(1)(a).
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> [42] In response to this submission, I find the comments of Justice Mosley in *Haque v Canada (Minister of Citizenship and Immigration)*, 2011 FC 315 to be instructive:
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> > [16] The applicant was in Bangladesh at the time the updated application was submitted. He admitted during the phone conversation on May 26th that he "could have signed the blank form for the consultant". The new form had further discrepancies. The applicant apparently chose to

> rely on the consultant to submit the required information without personally verifying that it was accurate.
>
> The applicants in this case chose to rely on their consultant. The principal applicant claims that she was not given the opportunity to review her application. It would be contrary to the applicant's duty of candour to permit the applicant to rely now on her failure to review her own application. It was her responsibility to ensure her application was truthful and complete—she was negligent in performing this duty.

[28] The Applicant asserts that his circumstances are not a situation where he signed a blank application (*Haque v Canada (Minister of Citizenship and Immigration)*, 2011 FC 315) or failed to review an application prepared by a consultant (*Goudarzi; Sayedi; Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107). In his written submissions, he argues that he signed the completed forms, checked them for accuracy and provided original documents to the consultant to support his study permit applications. He submits that he could not have done more and that he was himself a victim of deceit. Accordingly, in these circumstances, he fits within the narrow exception to misrepresentation as he honestly and reasonably believed that he was not withholding material information and the knowledge of the misrepresentation was beyond his control. He submits that the Visa Officer erred by failing to consider the exception.

[29] The GCMS notes make it clear that the Visa Officer afforded no weight to the Applicant's explanation that his former consultant changed his marks without the Applicant's knowledge on the basis that the Applicant was "solely responsible for his application".

[30] This is true, however, the innocent misrepresentation exception, as set out in in *Medel*, allows for an exception to s 40(1)(a) where the applicant was subjectively unaware of the subject

information and the misrepresentation relates to “information … the knowledge of which was beyond [the applicant’s] control” (*Sayedi* at para 37; *Oloumi* at para 36; *Goudarzi* at para 37).

[31] The problem in this case is that the response to the Procedural Fairness Letter states that the Applicant was not aware that his former consultant had changed the original graduating marks, which the Applicant had provided to the consultant, because he had *already signed* the forms prior to this change being made. Further, that the Applicant was not given a copy of the application when it was submitted. Therefore, he was not aware of the misrepresentation and could not alert the Visa Officer to it. In effect, that the Applicant had exercised due diligence but that after he signed the application he had no further control over what was submitted.

[32] As stated in *Moon v Canada (Citizenship and Immigration)*, 2019 FC 1575 [*Moon*]:

> [34] The definition of misrepresentation in paragraph 40(1)(a) refers to a direct or indirect misrepresentation. This paragraph encompasses a misrepresentation even if made by a third party, including an immigration consultant, without an applicant’s knowledge (*Jiang v Canada (Citizenship and Immigration)*, 2011 FC 942 at para 35). The exception to this is narrow; it applies only”where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant’s control” (*Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28).
>
> [35] In my view, Ms. Moon’s circumstances fall within this narrow exception. She did not have any knowledge of the eTA application filed by the consultant and it was impossible for her to know she was misrepresenting. The misrepresentation was beyond her control since the consultant admitted to filing the application in a hurry and without asking the proper questions. It was unreasonable for the Officer not to have considered whether Ms. Moon’s circumstances fell within this exception.

[33] Had the Visa Officer found, based on the record, that the Applicant's explanation for the misrepresentation was not supported by the evidence, i.e. that it was not innocent and/or that the Applicant had or should have had knowledge of it, then the Visa Officer may not have been required to consider the innocent misrepresentation exception (*Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at paras 15-16; *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004 at para 36; *Agapi v Canada (Citizenship and Immigration)*, 2018 FC 923 at para 16-17; *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107 at paras 24-26; *Bagga v Canada (Citizenship and Immigration)*, 2022 FC 454 at para 21; *Takhar v Canada (Citizenship and Immigration)*, 2022 FC 420 at para 21). However, although the explanation offered in the response to the Procedural Fairness Letter clearly raised the issue of the innocent misrepresentation exception, the Visa Officer made no finding as to whether or not the exception applied and rejected the Applicant's explanation solely on the basis that "the applicant is solely responsible for his application".

[34] The Respondent submits that the Visa Officer was not required to provide a detailed analysis, that there is a presumption that the Visa Officer considered all of the evidence even if it was not specifically mentioned, that the Visa Officer's reasons acknowledge that the Applicant claimed that the document was changed without his knowledge but that the Visa Officer did not accept that explanation and, that the sufficiency of the Visa Officer's reasons is not, alone, a basis for granting judicial review.

[35] In my view, the Visa Officer was certainly entitled to give brief reasons when deciding the study permit visa application (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77

[*Patel*] at paras 15, 17; *Yuzer v Canada (Citizenship and Immigration)*, 2019 FC 781 at para 9; as long as those reasons are "responsive to the factual matrix put before them" (*Patel* at para 17; *Vavilov* at paras 127-128). It is not apparent from the Visa Officer's reasons that they considered the Applicant's submissions and, having done so, rejected the Applicant's explanation on the basis that the explanation was not supported by the evidence or otherwise. The Visa Officer did not refer to the Complaint to the police or the Applicant's affidavit and their analysis began and ended when they found that the Applicant was solely responsible for his application.

[36] Because the Visa Officer found that the Applicant was solely responsible for his application, they did not consider whether or not the misrepresentation was innocent or if the exception had application.

[37] I agree with the Applicant that the issue before me is not whether the Applicant would fall within the narrow exception, but whether the Visa Officer should at least have considered whether the exception had application. If not, the Visa Officer was required to justify that determination (*Vavilov* at paras 96, 103, 127-128). In my view, the Visa Officer erred in failing to do so.

[38] That said, as the Respondent points out, there is no sworn evidence from the Applicant supporting his submission that he checked the completed forms for accuracy before he signed them and that he provided original documents to his former consultant to support his study permit applications. The Applicant's "Affidavit of Support" submitted with the response to the

Procedural Fairness Letter states only that “the information of my final grade mark was changed by my prior Immigration Consultant without my prior knowledge”.

[39] Further, as to the Complaint to the police, there is no evidence in the record indicating that the report was actually filed by the Applicant. His “Affidavit of Support” does not make any mention of the Complaint. Thus, while his representative makes submissions in the response to the Procedural Fairness Letter about the former consultant changing the Applicant’s grades *after* the Applicant had signed the application forms, that the former consultant had confessed to this when confronted by the Applicant and, that the police had raided the former consultant’s home and office but had not located him, none of this is found in the accompanying Affidavit of Support of the Applicant nor is it supported by any other evidence.

[40] The Respondent also points out that the Use of a Representative form submitted by the Applicant with his application identifies his representative as Abhishek Singh Saini of Hargun Overseas, SCO 2 – Ground Floor, Sukhmani Complex, Opp. Punjabi University, near Petrol Pump, Patilia. However, the police report refers to the “accused” as Karandeep Singh S/o Balwant Singh R/o House No. 315, Street No.7, near Gurdwara Sahib, Lalheri Road, Khanna, District Ludhiana. The Respondent submits that the representative who allegedly submitted the fraudulent document is not the same person the Applicant complained of in the police report.

[41] All of these concerns with the submissions made on behalf of and by the Applicant as pointed out by the Respondent are valid. However, unlike the Respondent, the Visa Officer made

no assessment of, or findings with respect to, the submissions. The Visa Officer also did not make any determination that the innocent misrepresentation exception had no application.

[42] Although the Respondent adamantly argued before me that the Applicant was bound by the submissions of his representative, apparently regardless of any and all surrounding circumstances, I am not persuaded that when there are submissions before a visa officer asserting that the applicant reviewed the application for accuracy before signing it, provided valid original documentation to the representative to be submitted with the application and that the applicant was not aware of and could not have known of an alleged inclusion of a fraudulent document – that is, knowledge of the misrepresentation was beyond the applicant's control – that the visa officer is not required to assess that evidence to determine if it would support the application of innocent misrepresentation exception (see *Moon*).

[43] This is not a circumstance such as *Zhou v Canada (Citizenship and Immigration)*, 2018 FC 880 where an officer found that the applicant was aware, at least two weeks before the study permit application was approved, that his consultant had submitted the unauthorized study permit application (at para 27). And, unlike in *Tofangchi v Canada (Citizenship and Immigration)*, 2012 FC 427, *Goudarzi*, *Ahmed*, and *Sayedi* where the applicants had not properly reviewed their own applications, the Consultant's response to the Procedural Fairness Letter alleged that the marks were changed by the former consultant *after* the Applicant had signed his application and without the Applicant's knowledge.

[44] Accordingly, I agree with the Applicant that the Visa Officer erred in failing to consider whether the innocent misrepresentation exception had application in the matter before them.

[45] Of course, it is important to note that to engage a consideration of whether the exception had application in a circumstance where an applicant alleges that the misrepresentation is attributable to the act of their immigration consultant, an applicant would have to demonstrate to the satisfaction of the visa officer that they were diligent in reviewing their application (including all supporting documents), that it was complete, true, accurate and final when they signed it, that any alleged subsequent changes were made without their knowledge and, knowledge of the changes was beyond their control.

JUDGMENT IN IMM-7196-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted;

2. The decision is set aside and the matter shall be remitted to another officer for redetermination; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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