Federal Court  Cour fédérale

Date: 20230412

Docket: IMM-1420-22

Citation: 2023 FC 502

Ottawa, Ontario, April 12, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

SURINDER PAL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Surinder Pal, is a citizen of India. His application for a temporary resident visa [TRV] was refused by a visa officer [Visa Officer] at the High Commission of Canada in New Delhi, India, on December 17, 2021. He seeks judicial review of that decision.

Background

[2] The IRCC received the Applicant's TRV on October 19, 2021. On November 26, 2021, the Visa Officer sent the Applicant a procedural fairness letter indicating that the Visa Officer had concerns that the Applicant had not truthfully answered a question put to him in the application, contrary to the requirements of s 16(1) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [*IRPA*] and, advising that the Applicant may be inadmissible to Canada, pursuant to s 40(1) of the *IRPA*. Specifically, in response to the question "have you ever been refused a visa or permit, denied entry to, or ordered to leave any country or territory?"

[3] In his application, the Applicant responded in the affirmative to that question. He indicated that he was removed from the United States of America [US] in 2018 and that he was refused a visitor visa for Canada on February 7, 2016 because he had not disclosed that he was deported from the US in 1998. At that time, he was also found to be inadmissible under s 40(1) of the *IRPA*.

[4] The Applicant sent a reply to the procedural fairness letter. He indicated that in 1999, he had entered Canada from the US via a land crossing. He was detained and released. After a couple of months, he applied for refugee status but decided to leave Canada before a final hearing before the Immigration and Refugee Board. He stated that he hoped his claim was abandoned when he left Canada in March 2000 and re-entered the US. He also stated that in 1998, he applied for refugee status in the US but missed his hearing date and a deportation order was issued. Regardless, he remained in the US until June 25, 2011 when he returned to India.

[5] He further stated that he applied for a visitor visa for Canada in 2013 but he did not disclose his deportation from Canada or his application for refugee protection in Canada in that application. A visa was issued and he travelled to Canada. He applied for another visitor visa in 2015. However, this was refused on February 7, 2016 because he had not truthfully answered all of the questions in his application and he was found to be inadmissible for five years.

[6] He stated that when his period of inadmissibility was over, he applied for a visitor visa on October 17, 2021. He declared his previous travel to Canada and his refugee claim and deportation from the US. He stated that "[t]he reason for not declaring the details of my entry into Canada in the year 1999 because I assumed that Canada Immigration already knew of my history of entering Canada when my previous application was refused in Feb 07, 2016. I firmly believed that the Immigration did a detailed background check on me when they imposed 05 years ban and making me inadmissible for not disclosing the information".

[7] He stated that he did not hide the information intentionally and that there was no reason to do so because in his last two applications, IRCC did not raise any questions before giving him a positive decision in 2013 and a negative decision in 2016.

Decision Under Review

[8] By letter dated December 17, 2021, the Visa Officer refused the Applicant's TRV request as they were not satisfied that the Applicant truthfully answered the question asked of him. The Visa Officer also advised the Applicant 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 induces or could induce an error in the administration of the *IRPA*. The Visa Officer was also not satisfied that the Applicant would leave Canada the end of his temporary stay, as stipulated in s 179(b) of the *Immigration and Refugee Protection Regulations*, SOR /2002-227.

[9] The Global Case Management System [GCMS] notes also form a part of the reasons for the decision. With respect to the Applicant's response to the procedural fairness letter, the entry indicates that information available to IRCC indicated that the Applicant was the subject of a removal order and refusal of a claim for refugee protection in 1999 but that his had not been disclosed by the Applicant. Further, that in his reply, the Applicant had outlined the facts "confirming in effect that he is one and the same as the client fingerprints now match him to, which was previously known to us only under an AKA". And while the Applicant had expressed confusion over the fact that IRCC would not have known of these events, particularly because of his prior finding of inadmissibly for failing to disclose his removal from the US, "we were unaware, and now are only aware that he was also in Canada via the biometric match to the alias under which he claimed protection". Based on the information before them, the Visa Officer was not satisfied that the Applicant had provided complete and truthful information and found that the Applicant had misrepresented material facts in the submission of his application. He was therefore inadmissible to Canada under s 40(1) of the *IRPA*.

Standard of Review

[10] The Visa Officer's decision is reviewable on the reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25).

Applicant's Submissions

[11] The Applicant submits that there was no clear and convincing evidence that he misrepresented. Rather, there was evidence before the Officer that the Applicant made an innocent misrepresentation and that IRCC had knowledge of the omitted information before the Applicant submitted his TRV application. He submits that because of this prior knowledge, the omission could not have induced an error in the administration of the *IRPA*. Further, that the Visa Officer's reasons do not reflect the profound consequences to the Applicant of being found to be inadmissible.

[12] Moreover, even if the omission could have induced an error, the Visa Officer failed to say what that error could be and how it could come about, with the result that the reasons lack transparency and justification. He submits that the evidence established both a subjective and objective basis for the Applicant's honest belief that he was not misrepresenting, but the Visa Officer failed to conduct an innocent misrepresentation analysis of this evidence, rendering the decision unreasonable.

[13] Finally, and apparently in the further alternative, the Applicant submits that he did not omit any information in answering the question at issue as the *Immigration Act*, RSC 1985, c I-2 [*Immigration* Act] was in operation at that time and, pursuant to s 28(2) of that act, the Applicant was never ordered to leave Canada because the conditional departure order never became effective.

Analysis

[14] I would first note that the evidence relied upon by the Applicant in support of his submission is limited to his letter in reply to the procedural fairness letter.

[15] Second, the Applicant does not acknowledge in his reply to the procedural fairness letter or in his submissions to this Court that when he entered Canada in 1999, he did so under an alias. As pointed out by the Respondent, the GCMS notes indicate that the Applicant was wanted for removal since 2001 “under AKA 3846637”. His UCI (unique client identifier) used in his current application is 904887. His fingerprints submitted with his most current application were found to be a match with his prior alias. According to the GCMS entries, IRCC only became aware that the Applicant was in Canada in 1999 because the 2021 biometric match connected his two identities. In his reply to the procedural fairness letter, the Applicant himself confirmed his prior entry in 1999 – in essence confirming his prior alias – which he had failed to disclose in his TRV application.

[16] As to the reason for the failure to disclose this information, in his reply to the procedural fairness letter, the Applicant answered this directly stating: “The reason for not declaring the details of my entry in Canada in the year 1999 [*sic*] because I assumed that Canada Immigration already knew of my history entering Canada when my previous application was refused in Feb 07, 2016”. Further, that he firmly believed that IRCC did a detailed background check on him at that time.

[17] The Applicant points to no evidence establishing that IRCC knew about his 1999 entry into Canada prior to his most recent TRV application. Further, his "assumption" appears to be contradicted by the Visa Officer's reference to the biometric data match. This is supported by the letter contained in the Applicant's Record from IRCC to the Applicant, dated October 22, 2021, advising him that under the *IRPA*, he was required to have his fingerprints scanned and his photograph taken (i.e. his biometrics) at a collection service point and providing him with the information needed to arrange this.

[18] The procedural fairness letter identified that in response to the question "have you ever been refused a visa or permit, denied entry to, or ordered to leave Canada or any other country or territory", the Applicant withheld a significant amount of information regarding the outcome of his entry to Canada in 1999. When referring to that letter, the GCMS notes state that "Specifically, information available to IRCC indicates that the client was the subject of a removal order and a refusal of a claim for protection made in 1999, yet the client has not disclosed this fact as required". Counsel for the Applicant urges the Court to read this reference in the GCMS notes as confirming that IRCC knew of the 1999 entry and removal order when the Applicant was denied a visa in 2017. However, that interpretation requires reading that sentence in isolation from all of the subsequent reasons in the GCMS notes, which explain that IRCC was not aware of the connection of the Applicant to the 1999 entry until his identity was linked to his alias by way of the biometric match. In my view, such parsing of the reasons does not lead to an accurate portrayal of the reasons in whole.

[19] For these reasons, the Applicant's arguments that because the IRCC had prior knowledge of his 1999 entry into Canada, it cannot assert that his omission did or could induce an error in the administration of the *IRPA*, are without merit.

[20] And, in any event, the onus lies on the Applicant to fully and accurately answer the questions in his Application. It is not open to applicants to make assumptions as to IRCC's knowledge of their past history and, based on that assumption, to elect not to make full disclosure. The duty of candour found in s 16(1) of *IRPA* includes a duty to ensure that documents are complete and accurate (*Tofangchi v Canada (Citizenship and Immigration)*, 2012 FC 427 at para at paras 38-40 [*Tofangchi*]; *Muniz v Canada (Citizenship and Immigration)*, 2020 FC 872 at para 17 [*Muniz*]; *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107 at para 31).

[21] Nor do I agree with the Applicant that the Visa Officer's reasons do not identify the potential harm arising from the nondisclosure. As the Respondent points out, the Visa Officer explained that the failure to disclose the 1999 entry and refugee claim "was material to the proper assessment of the client's genuineness as a temporary resident, and may have been relevant to the client's admissibility to Canada depending on the specific reason for the undisclosed refusal". The Visa Officer also stated that they were not satisfied "based on client history, lack of candour as to material matters, and the client's extended stay in the USA subsequent to the deportation order that his proposed visit would be genuinely temporary". There can be little doubt that undisclosed entry into Canada under an alias and his extended stay in the

US after he was ordered deported from that country speaks to both the genuineness of the Applicant's intention and whether he would leave Canada at the end of his stay.

[22] As to the Applicant's assertion that his was an innocent misrepresentation, first, the Applicant offered a clear explanation for the misrepresentation – his assumption of the IRCC's state of knowledge of his past immigration history. And while his counsel now submits that there is no evidence that any conditional departure order issued in 1999 ever became effective, the Applicant did not raise this in his reply to the procedural fairness letter and did not offer this as the reason why he did not disclose his prior entry in 1999. There is no evidence that the Applicant believed that he had not been issued an effective removal order.

[23] In any event, even an innocent failure to provide material information constitutes misrepresentation (*Tofangchi* at paras 33, 40; *Jiang v Canada (Citizenship and Immigration)*, 2011 FC 942 at para 35; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 56-58; *Wang v Canada (Citizenship and Immigration)*, 2015 FC 647 at paras 24-25; *Smith v Canada (Citizenship and Immigration)*, 2018 FC 1020 at para 10).

[24] And while there is a narrow exception to s 40(1)(a) when an applicant honestly and reasonably believed that they were not misrepresenting a material fact and where the knowledge of the material fact was beyond their control, the exception applies only in truly exceptional cases. In *Appiah v Canada (Citizenship and Immigration)*, 2018 FC 1043 [*Appiah*], Justice Martineau discussed the innocent misrepresentation exception stating:

> [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.

(see also *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at paras 16-18).

[25] Here, the Applicant's entry into Canada in 1999 and his claim for refugee protection at that time was not knowledge beyond his control nor, as demonstrated by his response to the procedural fairness letter, did he suggest that he was unaware of the misrepresentation. Rather, he chose not to disclose the information based on his own assumption that IRCC was already are of it. This matter is therefore factually distinguishable from *Pandher v Canada (Citizenship and Immigration)*, 2022 FC 687, upon which the Applicant relies.

[26] To the extent that the Applicant submits that the Officer erred in not conducting an innocent misrepresentation exception analysis, as stated in *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at paragraph 16, "the [innocent misrepresentation] exception has no potential application in the absence of a conclusion that the error was indeed innocent" (see also *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004 at para 36). Here, the Officer explicitly stated that IRCC only became aware of the Applicant's 1999 entry into Canada and claim for refugee protection by way of the biometric match to the alias under which he claimed protection. The Officer found that "[b]ased on the information before me, I am not satisfied that the client has provided complete and truthful information on this matter". Accordingly, the Officer implicitly concluded that the omission was not an innocent misrepresentation. Given this, the Visa Officer was not required to conduct a further analysis of whether the innocent misrepresentation exception applied.

[27] As to the Applicant's submission that he did not omit any information because, based on s 28 of the *Immigration Act,* no conditional departure order issued in 1999 became effective, as the Respondent points out, the Applicant appears to be engaging in speculation as to whether the removal order ever became effective after he left Canada. The Applicant provided no evidence to support this position and the GCMS notes indicate that the Applicant (under his alias) was wanted for removal since 2001. Further, as discussed above, nor is there any evidence that the reason the Applicant did not disclose his 1999 removal from Canada was because of a belief that his conditional departure order did not become effective. The Applicant could have, but did not, made this submission to the Officer when responding to the procedural fairness letter. Because the issue is being raised for the first time before the Court on judicial review, it need not be considered (*Oleynik v Canada (Attorney General),* 2020 FCA 5 at para 71).

[28] In my view, for the reasons above, the Officer did not err in their assessment of information before them and their decision was reasonable.

JUDGMENT IN IMM-1420-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

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

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1420-22
STYLE OF CAUSE:	SURINDER PAL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
DATE OF HEARING:	APRIL 3, 2023
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	APRIL 12, 2023

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