

Federal Court



Cour fédérale

Date: 20230424

Docket: IMM-1851-22

Citation: 2023 FC 587

Ottawa, Ontario, April 24, 2023

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

SARAA SEMMOUH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an Application for judicial review of a decision by a Visa Officer [the Officer] at the Embassy of Canada in Rabat-Ryad, Morocco, dated December 31st, 2021, refusing the Applicant's work permit application on the basis of misrepresentations as per section 40(1)a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 [IRPA].

[2] For the reasons that follow, the application is granted.

II. Context

A. *Background facts*

[3] The Applicant is a citizen of Morocco with work experience as a supervisor in a Marrakech restaurant since 2018. Related to this, she completed a culinary training at the Association Marocaine des Maîtres Restaurateurs (AMMR) in 2020. Previously she completed a university degree in English studies.

[4] In June 2021, she submitted, along with the required documentary evidence, an application for a work permit for a job as a supervisor at a restaurant in Mont-Laurier, Quebec. The supporting documents included a certificate of employment from the Marrakech restaurant as well as a certificate of training in catering and cooking from the Association Marocaine des Maîtres Restaurateurs. She had previously received a positive Labour Market Impact Assessment [LMIA] and a Certificat d'Acceptation du Québec in May 2021.

[5] In September 2021, Immigration and Citizenship Canada sent the Applicant a letter requesting a new certificate of employment from the Moroccan restaurant along with the name and position of the signatory.

[6] In October 2021, the Applicant received a procedural fairness letter [PFL] raising the question of the authenticity of the certificate from the AMMR, stating that:

“Le diplôme de l'association marocaine des maitres restaurants (AMMR) que vous avez joint à votre demande de permis d'étude s'est avéré frauduleux.”

[7] The Applicant responded by providing two additional documents supporting the veracity of the certificate, the first being a receipt of deposit of the Constitutive Documents of the AMMR, indicating that the Association is legally constituted in Morocco, and the second document being a letter by the president of the association confirming that she had successfully completed a training program.

[8] On December 31st, 2021, her application was refused.

B. Decision under review

[9] After having examined the permit application and the Applicant's supporting evidence, an unnamed visa officer concluded that her application did not meet the requirements set out by IRPA for the following reasons:

Conformément à l'alinéa 40(1)a) de la Loi sur l'immigration et la protection des réfugiés (LIPR), vous avez été déclaré interdit de territoire au Canada pour avoir, directement ou indirectement, fait 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 LIPR.
Conformément à l'alinéa A40(2)a), l'interdiction de territoire court pour les cinq ans suivant la date de la présente lettre ou la date d'exécution d'une mesure de renvoi antérieure.

[10] The Global Case Management system (GCMS) notes, which form part of the reasons, state the following, in chronological order:

Requérante a fait deux ans à l'université en études Anglaises et une formation en cuisine en 2020. Vu diplôme de maitre restaurateur. Requérante semble avoir une seule expérience de travail. Vu attestation de travail pour la position de superviseur au services alimentaires au restaurant Eat Me à Marrakech. Le nom et position du signataire n'apparaissent pas sur l'attestation. Je note aussi que l'intitulé de position « superviseur aux services alimentaires » n'est pas utilisé au Maroc. Cet emploi n'est pas déclaré à la CNSS selon explication reçue. Diplôme au dossier à vérifier. À demander svp : nouvelle attestation de travail du restaurant EAT Me avec nom et position du signataire.

J'ai cherché dans les sources ouvertes et ne pas trouver aucune coordonnées (tel, courriel...) pour rejoindre l'association marocaine des maitres restaurants. Il n'y a pas donc possibilité de vérifier le diplôme délivré par cette association.

L'association marocaine des maitres restaurateurs n'existe pas selon sources ouvertes. LEP à envoyer svp pour diplôme frauduleux.

J'ai pris connaissance de la réponse à notre lettre d'équité procédurale. Req fournit de nouveaux documents dont un récépissé définitif de dépôt pour la constitution de l'Association marocaine des maitres restaurateurs. Toutefois, nos recherches en ligne ne donnent aucune information sur cette association, nous avons également fait une recherche avec l'Adresse indiquée sur le récépissé et l'adresse est introuvable. Les statuts de l'association ne sont pas fournis, nous ne pouvons déterminer la nature de l'Association. Il aurait été raisonnable de s'attendre à ce que ces documents soient soumis pour démontrer de l'existence de cette association. Une lettre écrite par le président confirme que la req a suivi une formation de deux mois qui se serait terminée le 30 février 2020. Il s'agit d'une lettre écrite par le président et non pas d'une lettre de l'Association. De plus, le diplôme soumis par la requérante indique qu'elle l'a reçu le 5 février 2020, ce qui est contradictoire avec l'information dans la lettre du président. Ces éléments ne lèvent pas mes préoccupations quant à la fausse déclaration. L'ensemble de ces documents me semblent peu crédibles et les informations contradictoires dans la réponse à notre lettre d'équité procédurale me préoccupent. Basé sur les éléments au dossier, et sur la prépondérance des probabilités suite à nos vérifications et informations recueillies dans la demande, je suis d'avis que la req a fait de fausses déclarations sur un fait important qui aurait pu induire l'agent en erreur dans l'application de la Loi. Demande refusée sous L40 par MPM pi. Interdit de territoire pour 5 ans.

III. Issues

[11] The Applicant raises three issues:

1. Did the Officer err by failing to communicate their precise concerns in their procedural fairness letter, depriving the Applicant of an opportunity to meaningfully respond?
2. Did the Officer unreasonably assess the Applicant's documentary evidence?
3. Did the Officer err by failing to assess whether the Applicant's alleged misrepresentation was material?

[12] In my view, these may be summed up by asking whether the decision was reasonable. That incorporates the duty of fairness to the affected individual.

IV. Analysis

[13] As stated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 28, the individual affected by an administrative decision “should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision”.

[14] In the particular context of this matter, the important consequences that follow from a finding of misrepresentation triggered a higher level of procedural fairness: *Asanova v Canada (Minister of Citizenship and Immigration)*, 2020 FC 1173 at para 30.

[15] The Officer was clearly concerned about the existence of the AMMR at an early stage of processing the application. Using open sources, the officer was unable to find information such as a phone number or email address for the organization. This led the Officer to conclude: «L'association marocaine des maitres restaurateurs n'existe pas selon sources ouvertes. LEP à envoyer svp pour diplôme frauduleux. ». This may have been premature.

[16] The fairness letter sent to the Applicant expressed concerns about her diploma being fabricated, not about the existence of the AMMR. Nothing was said of the underlying concerns about the existence of the association itself. Thus, the Applicant could not respond meaningfully to those concerns by providing proof of the nature and activities of the association. The conclusion that the association did not exist was unreasonable.

[17] It was also unreasonable for the Officer to conclude that the supporting documents submitted by the Applicant amounted to a misrepresentation. The Officer appears to have believed that the Applicant had fabricated the existence of the association. However, the evidentiary record submitted indicates that the association was legally constituted with the Moroccan government two years prior to her visa application, and included a sworn declaration from the president. The Officer failed to meaningfully engage with this evidence.

[18] It is a considerable leap from a finding of insufficiency to one of misrepresentation. As stated by Justice Barnes in *Xu v Canada (MCI)*, 2011 FC 784 at para 16:

The visa officer's misrepresentation finding is, however, problematic. A finding of misrepresentation under section 40 of the IRPA is a serious matter which should not be made in the absence of clear and convincing evidence: see *Baseer*

v Canada, 2004 FC 1005, 256 FTR 318. While a withholding of material information may be a basis for a finding of misrepresentation, here the refusal was that of Manco and not Ms. Xu. There is nothing in the record to show that Ms. Xu was complicit in the employer's decision – a decision which was apparently made for business reasons. The visa officer's decision makes a completely unsupported leap from the reasonable finding of insufficiency of evidence to one of misrepresentation. A misrepresentation is not proved where the evidence is found only insufficient to establish the necessary criteria for admissibility. As a result, I find that the misrepresentation finding was made without regard to the evidence and must be set aside.

[Emphasis added]

[19] This does not appear to be a case in which there is “clear and convincing evidence” of misrepresentation.

[20] That is not to say that the application was not problematic. The Officer provided reasons for why the documents submitted were not sufficient: the address provided in the Constitutive Document for the AMMR could not be found and there was a discrepancy between the date of completion of the Applicant's training in the President's sworn declaration and her diploma. But those discrepancies should have been brought to the attention of the Applicant in the fairness letter. She may have been able to provide explanations.

[21] It is not clear from the reasons for the decision whether the Officer considered whether the alleged misrepresentation was material to the degree required by s. 40 of *IRPA*. In *Ragada v Canada (Minister of Citizenship and Immigration)*, 2019 FC 378 at para 20, Justice Diner observed that for a decision regarding misrepresentation to be material, officers must undertake an analysis of how the act or omission could have or did affect the outcome.

[22] The alleged misrepresentations in this matter do not appear to touch on the any of the visa or work requirements. It is difficult to understand how they can be said to be “material” in the sense that they are central to whether or not the visa application should be granted. This was an application to work at a restaurant that might be described as a cut above a “casse-croûte”, not a fine dining establishment, in an economic environment in which such establishments were having difficulties finding workers. Misrepresentations are material if they are important enough to affect the process. Here the Officer did not explain how the alleged misrepresentations could have affected the outcome. Thus the finding of misrepresentation was unreasonable.

V. **Conclusion**

[23] For the foregoing reasons, the application is granted and the matter will be remitted for reconsideration by a different officer. Given that the Officer failed to communicate the precise concerns which led to the refusal, the Applicant shall be given an opportunity to address them in the redetermination.

JUDGMENT in IMM-1851-22

THIS COURT'S JUDGMENT is that:

1. The application is granted and the matter is remitted for consideration by a different officer;
2. The Applicant shall be given 60 days to submit additional supporting materials to address the concerns which led to the refusal of her application; and
3. No questions are certified.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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