Federal Court  Cour fédérale

Date: 20230512

Docket: IMM-7199-22

Citation: 2023 FC 677

Vancouver, British Columbia, May 12, 2023

PRESENT: Mr. Justice McHaffie

BETWEEN:

GURPREET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Gurpreet Singh's immigration file shows that in October 2018 he was found inadmissible to Canada for five years for misrepresentation. In 2022, a visa officer refused Mr. Singh's work permit application based on the earlier misrepresentation finding in his file. Mr. Singh argues the refusal was unreasonable, because he has never been found inadmissible. He claims the inadmissibility finding must relate to someone else and must have ended up in his

immigration file by human or software error. He also argues it was unfair for the visa officer to refuse his work permit application on grounds of inadmissibility without first verifying with him whether the inadmissibility truly related to him.

[2] For the reasons that follow, I conclude Mr. Singh has not met his burden to show that the decision was unreasonable. There were limitations in the evidence each party presented with respect to the earlier inadmissibility finding. On balance, and given the onus on Mr. Singh, I conclude the evidence is not sufficient to show the entry in Mr. Singh's file is erroneous or that the refusal of his work permit should be set aside. I also conclude that the duty of procedural fairness did not require the officer to advise Mr. Singh of the prior inadmissibility finding before relying on it to refuse his application.

[3] The application for judicial review is therefore dismissed.

II. Issues and Standard of Review

[4] Mr. Singh raises the following issues on this application:

A. Was the refusal of his work permit application reasonable?

B. Did the visa officer breach the duty of procedural fairness?

[5] The merits of the work permit refusal are to be reviewed on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Samra v Canada (Citizenship and Immigration)*, 2020 FC 157 at para 9. A

reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

[6] The fairness of the process leading to the decision is reviewed by assessing whether the procedure was fair having regard to all of the circumstances, that is, whether the applicant knew the case to meet and had a full and fair chance to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56. This may be described as applying a correctness standard, or as applying no standard at all: *Canadian Pacific* at para 54.

III. Analysis

A. *The refusal of the work permit was not unreasonable*

(1) The grounds for the refusal

[7] The officer who refused Mr. Singh's work permit application was Roopali Kapoor, a Non-Immigrant Officer with Immigration, Refugees and Citizenship Canada [IRCC] based in New Delhi. Ms. Kapoor swore an affidavit on this application, setting out information contained in the Government of Canada's Global Case Management System [GCMS]. As Ms. Kapoor describes it, the GCMS is "IRCC's integrated worldwide electronic information management system used internally to process applications for citizenship, immigration, and certain passport services." In the GCMS, information with respect to an applicant is associated with a Unique Client Identifier [UCI]. The UCI is an 8-digit number assigned to foreign nationals who make immigration applications, and is used by IRCC to assist in identifying them.

[8] Mr. Singh's work permit application, filed in March 2021, included his UCI. The GCMS notes associated with this UCI show that an application for an Electronic Travel Authorization [eTA] was filed in July 2016. They also show that in October 2018, an officer and then a manager reviewed the file and concluded that the applicant for the eTA had made a misrepresentation because they "declared to be a lawful permanent resident of the United States with a valid alien registration card (Green Card)," when that card was not valid. The eTA application was therefore refused and a finding of misrepresentation was made pursuant to paragraph 40(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The GCMS notes do not show that a procedural fairness letter or other notice was sent before the 2018 misrepresentation finding was made.

[9] The GCMS notes of Ms. Kapoor's decision in 2022 show that she saw the earlier eTA refusal and misrepresentation finding based on the invalid US Green Card. Since paragraph 40(2)(*a*) of the *IRPA* provides for a five-year period of inadmissibility, she concluded Mr. Singh was inadmissible until October 2023 and refused the application.

(2) The challenge to the grounds for the refusal

[10] In the ordinary course, the reasonableness of an administrative decision is assessed on the basis of the record before the administrative decision maker at the time of the decision: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20. The usual rule is therefore that no new evidence going to the merits can be filed on an application for judicial review: *Access Copyright* at para 19.

[11] In the present case, the information before Ms. Kapoor at the time of the decision consisted of Mr. Singh's application, together with the other information contained in the GCMS. On its face, it appears reasonable for Ms. Kapoor to have reviewed the GCMS file associated with Mr. Singh's UCI, seen the information regarding the earlier misrepresentation finding, and applied it to conclude that Mr. Singh was inadmissible and refuse his work permit application. At the same time, as the Minister accepts, if the information about the earlier misrepresentation in the GCMS is incorrect or related to a third party and appears in Mr. Singh's file only as the result of error, the decision refusing his work permit on this basis is plainly unreasonable and cannot be sustained, regardless of the reasonableness of Ms. Kapoor's conduct.

[12] In these circumstances, and given that he did not have an opportunity to raise the issue before Ms. Kapoor's decision, a matter discussed below, it would be unfair to Mr. Singh to apply the usual rule precluding new evidence to prevent him from showing that the information in the GCMS was erroneous. Such evidence does not offend the rationale behind the rule: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 14–15, 19, 28. The Minister, appropriately, did not object to Mr. Singh's affidavit regarding the issue, and Mr. Singh, appropriately, did not object to Ms. Kapoor's affidavit.

(3) The evidence regarding the prior misrepresentation finding

[13] This leads to the evidence before the Court with respect to the earlier finding of misrepresentation. Mr. Singh swears that other than the 2021 work permit application and another visitor visa that was refused in May 2018 on other grounds, he has not filed any other

application for the purpose of entering Canada. He states that he has never been found inadmissible to Canada for misrepresentation.

[14] Ms. Kapoor's affidavit states that the GCMS notes regarding the earlier misrepresentation finding are in the GCMS associated with Mr. Singh's UCI. She attaches as an exhibit a copy of a letter dated October 18, 2018, which refuses the eTA application and sets out the inadmissibility finding for misrepresentation. The letter contains Mr. Singh's UCI. It is addressed to Gurpreet Singh at a mailing address that contains odd formatting (including the unexplained language "delhi for travel only") but appears to be similar to Mr. Singh's address in Delhi. Ms. Kapoor's affidavit also exhibits a screenshot from the GCMS pertaining to the eTA application that shows Mr. Singh's UCI, his birth date, a travel document expiry date that coincides with Mr. Singh's passport expiry date, and other information. The screenshot shows a Correspondence tab indicating that an eTA refusal letter was sent on October 18, 2018, to the Gmail email address associated with the eTA application.

[15] Ms. Kapoor's affidavit was filed by the Minister as a "further affidavit" pursuant to the Court's order granting leave to commence this application for judicial review. It effectively replaced an earlier affidavit from a legal assistant that had been filed at the leave stage. Mr. Singh did not file a further affidavit pursuant to the order granting leave, and did not seek leave to file an affidavit to respond to Ms. Kapoor's affidavit. Neither Mr. Singh nor Ms. Kapoor was cross-examined on their affidavits.

[16] Each party levels criticisms at the evidence filed by the other party. The Minister submits that Mr. Singh's evidence is a bare denial of having filed the earlier eTA application or having been found inadmissible for misrepresentation, and that it contains no specific denials of, for example, having ever had a Green Card, or owning the Gmail address identified in the GCMS notes. Mr. Singh notes that Ms. Kapoor's affidavit does not attach a copy of the earlier eTA application itself, which appears to have been filed online, which would have permitted Mr. Singh and the Court to confirm whether it was or was not in fact filed by him.

[17] Each of these criticisms has merit. While I accept that it may be difficult for Mr. Singh to "prove a negative" in denying that he filed the eTA application or was found inadmissible, his evidence could have included more direct responses to the information contained in the GCMS, which was put forward initially by the legal assistant and subsequently by Ms. Kapoor. Similarly, I accept that evidence of an electronically filed application may be more difficult to obtain from the GCMS, but there was no evidence before me that Ms. Kapoor or IRCC could not have obtained further evidence from the GCMS regarding the original eTA application that might have settled the issue more clearly.

[18] Each party also points to indicia of the credibility of their own evidence. Mr. Singh argues that his disclosure of prior visa refusals in his work permit application shows his forthrightness. The Minister argues that documents from the GCMS, which contain Mr. Singh's UCI, are inherently compelling and reliable. The Minister refers to the proposition that "officers are entitled to rely on what they are told by other officers" and that a challenge to the accuracy of GCMS entries cannot be mere speculation with no "air of reality": *Hehar v Canada (Citizenship*

and Immigration), 2016 FC 1054 at paras 30–31, citing *Dieng v Canada (Citizenship and Immigration)*, 2009 FC 217 at para 22.

[19] At the hearing of this application, Mr. Singh raised a new argument, asserting that since he was an Indian national who was residing in India, he could not have applied for an eTA in 2016, even if he had had a Green Card. This, he argued, meant that the inadmissibility finding arising from the 2016 eTA application could not have pertained to him, or at least increased the likelihood that it did not pertain to him. The Minister objected to this argument being raised for the first time at the hearing, indicating that he was unable to respond to it without the opportunity to consider it and present responding argument and/or evidence pertaining to the eTA process in 2016. In the alternative, the Minister requested the opportunity to present such argument and/or evidence after the hearing.

[20] I am not inclined to give weight to this argument, or to seek further submissions or evidence on it, for two reasons. First, the hearing of an application for judicial review is intended to be the final step in a summary process, and this Court has long indicated it will generally decline to hear new arguments raised for the first time at the hearing: *Zhou v Canada (Citizenship and Immigration)*, 2018 FC 182 at para 6 and the cases cited therein. Second, and in any event, the record before the Court contains little evidence to substantiate the argument, particularly as it pertains to Mr. Singh's residence and/or possession of a Green Card. At the time he swore his affidavit in October 2022, Mr. Singh was aware from the GCMS notes that the inadmissibility finding arose from an eTA application associated with an invalid Green Card. Yet his affidavit does not speak to whether he ever held a Green Card or to his presence or absence

from the United States, questions that are central to the new argument. While Mr. Singh's affidavit speaks to his employment in India, and his work permit application includes a copy of his passport, I am not prepared in the circumstances to rely on these uncertain references to draw factual conclusions that might support the new argument regarding Mr. Singh's eligibility to apply for an eTA.

[21] Having reviewed the evidence and the parties' arguments, I am not satisfied Mr. Singh has met his burden to demonstrate that the refusal of his work permit was unreasonable because it was based on erroneous information in the GCMS. Although the Minister's evidence could have been more complete, the evidence pertaining to the eTA application in the GCMS associated with Mr. Singh's UCI has indicia of reliability and connection with Mr. Singh. Keeping in mind the difficulty of proving a negative, I am not satisfied that Mr. Singh's plain statements that he only filed two applications to enter Canada and was never found inadmissible are enough to demonstrate that the information in the GCMS is incorrect.

[22] For clarity, I make no findings about whether Mr. Singh in fact filed an eTA application in 2016, was found inadmissible in 2018, or received the refusal and inadmissibility letter of October 18, 2018. It may well be that, as he contends, the information in the GCMS was incorrect or related to a third party, and is associated with his UCI only as a result of a computer or human error. I conclude only that on the evidence before this Court on this application for judicial review, I am not satisfied Mr. Singh has met his burden to demonstrate that the decision was unreasonable.

B. *The refusal of the work permit was not procedurally unfair*

[23] Mr. Singh argues that before refusing his work permit application, Ms. Kapoor ought to have given him notice of the issue regarding his inadmissibility for misrepresentation and an opportunity to respond to it. This, he argues, would have allowed him to advise Ms. Kapoor that the GCMS entry regarding his inadmissibility was an error. He contends that by failing to give him notice and an opportunity to respond, Ms. Kapoor breached the duty of fairness, citing *Canadian Pacific* at paras 54, 56 and *Brar v Canada (Citizenship and Immigration)*, 2022 FC 1522 at para 19.

[24] I cannot agree. The information before Ms. Kapoor at the time was that there had already been a finding of misrepresentation, and that this finding and its consequences had been conveyed to Mr. Singh. This earlier finding meant that Mr. Singh's work permit application had to be refused as the automatic consequence of paragraphs 40(1)(*a*) and 40(2)(*a*) of the *IRPA*. In these circumstances, procedural fairness did not require Ms. Kapoor to inquire of Mr. Singh whether the information was accurate, or advise him of the earlier inadmissibility finding before relying on it to refuse his application. The situation is thus different to that in *Brar* and similar cases, which address the need to give an applicant notice and an opportunity to respond to concerns about a possible misrepresentation *before* a finding of inadmissibility under paragraph 40(1)(*a*) is made: *Brar* at paras 11–14, 19; see also *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 at paras 17–18; *Bayramov v Canada (Citizenship and Immigration)*, 2019 FC 256 at para 15.

[25] As noted above, the evidence does not show that a procedural fairness letter was sent before the inadmissibility finding was made in 2018. Nor does the evidence show, if one was in fact not sent, why it was not sent. However, this application for judicial review is not a challenge to the fairness of the 2018 inadmissibility finding but to the decision refusing the work permit in 2022. For the reasons above, I conclude that the duty of fairness did not impose an obligation on Ms. Kapoor to raise the prior inadmissibility finding with Mr. Singh before refusing the work permit application.

IV. Conclusion

[26] As I conclude that Mr. Singh has not met his burden to show the decision was unreasonable and that there was no procedural unfairness in making the decision, this application for judicial review must be dismissed.

[27] Neither party proposed a question for certification and I agree that no question meeting the requirements for certification arises in the matter.

JUDGMENT IN IMM-7199-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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