Federal Court  Cour fédérale

Date: 20230529

Docket: IMM-4247-22

Citation: 2023 FC 747

Vancouver, British Columbia, May 29, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

VIKRAMJEET SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant applied for judicial review of a decision by the Immigration Division ("ID") of the Immigration and Refugee Board of Canada dated April 21, 2022. The ID concluded that the applicant was inadmissible for misrepresentation under paragraph 40(1)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 (the *"IRPA"*). The ID issued an Exclusion Order against him under paragraph 42(*a*) of the *IRPA.*

[2] The ID concluded that the applicant made a material misrepresentation when he applied for a study permit through an immigration "agent" in India. The letter of acceptance to a Canadian college and the accompanying receipt for tuition payment were both fraudulent. Both were prepared and filed by the agent on the applicant's behalf with his study permit application.

[3] The ID accepted that the applicant honestly believed that he was not making a misrepresentation in his study permit application, but held that his belief was not reasonable in the circumstances. The applicant and his father unreasonably put "blind faith" in the immigration agent and did not ensure the accuracy of the information provided to Canadian immigration authorities. The ID held that despite "red flags" in their interactions with the agent that led them to have concerns, the applicant did not take adequate steps to confirm that he had in fact been accepted into the Canadian college. Accordingly, the ID declined to apply the "innocent mistake" exception as outlined in this Court's decided cases.

[4] On this application, the applicant asks the Court to set aside the ID's decision as unreasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 563.

[5] For the reasons that follow, I conclude that the application must be dismissed.

I. The Applicant's Study Permit Application

[6] The applicant is a citizen of India. On or about August 28, 2019, the applicant applied for a study permit, using an immigration agent. Unknown to the applicant at the time, the

immigration agent had previously applied for a study permit for the applicant in March 2019 and June 2019. Both applications had been refused.

[7] In support of the August 2019 study permit application, the agent submitted a letter of acceptance and an official receipt for payment of fees from the College of the North Atlantic in Gander, Newfoundland ("CNA").

[8] In September 2019, the Canadian mission in New Delhi granted the applicant's study permit application.

[9] On November 7, 2019, the applicant entered Canada at Montreal-Trudeau International Airport. He then went to Vancouver to visit his twin brother, who was already studying in Canada. By that time, the applicant had decided to try to find another Canadian school to attend before classes began two months later. He found another school and successfully completed his studies in June 2021 at Canadian College in Vancouver.

[10] In June 2021, the CBSA made inquiries with CNA, which confirmed that the letter of acceptance submitted by the applicant in support of his application had not been issued by CNA. In addition, the receipt for payment of fees related to another student.

[11] In September 2021, an Inland Enforcement Officer with CBSA interviewed the applicant. The officer advised the applicant in that interview that his letter of acceptance and the receipt, purportedly from CNA, were fraudulent. They had been prepared by the immigration agent. The officer also advised the applicant that the agent had submitted two prior study permit

applications that had been rejected by CBSA, before the third application to study at CNA was granted based on the fraudulent documents.

[12] In October 2021, a CBSA officer prepared two reports under subsection 44(1) of the *IRPA*. Both reports concluded that the applicant was inadmissible to Canada for misrepresentation under *IRPA* paragraph 40(1)(*a*). The first report found that the applicant was inadmissible for misrepresentation because he submitted fraudulent documents in his application for the study permit. The second report found that the applicant had committed misrepresentation at the port of entry when he arrived in Canada, by failing to advise the border services officer reviewing his case that he no longer intended to attend CNA, and by failing to inform the officer that the information in the fraudulent documents was inaccurate.

[13] The ID held admissibility hearings on March 8, 2022 and April 21, 2022.

[14] On April 21, 2022, the ID delivered its decision and reasons orally. With respect to the first report under s. 44, the ID found that the applicant was inadmissible for misrepresentation and issued an Exclusion Order against him under paragraph 42(*a*) of the *IRPA*.

[15] On April 25, 2022, the respondent withdrew the second section 44 report against the applicant, which alleged misrepresentation at the port of entry.

II. The Decision under Review

[16] The ID concluded that the applicant made a material misrepresentation when he applied for a study permit through the immigration agent in India. The ID found that the first section 44 report was well founded. The letter of acceptance and the receipt for tuition payment were fraudulent. They constituted a misrepresentation, made indirectly by the applicant (through the agent), which was material and related to a matter relevant to the issuance of the study permit. The misrepresentation induced an error in the administration of the *IRPA*.

[17] In the course of its reasons, the ID found that the applicant was credible. The ID found he was straightforward in his testimony and did not find any inconsistencies. The ID also observed that the interviewing CBSA officer was "pretty overzealous" because it seemed likely he had made up his mind about the applicant's involvement in the process and accused him of lying on numerous occasions.

[18] The ID considered the "innocent mistake" exception under *IRPA* paragraph 40(1)(*a*). The ID concluded that the applicant honestly believed that he was not making a misrepresentation in his study permit application. However, the applicant's belief was not reasonable in the circumstances and the knowledge that he had not actually been accepted to study at CNA was not "beyond his control".

[19] The ID accepted that the applicant and his father were unfamiliar with the immigration process and, comparatively speaking, may not have been sophisticated with regard to the

requirements of immigration law in Canada and perhaps with respect to what was required to apply for and gain acceptance into an educational facility in Canada.

[20] However, the ID found that the applicant and his father "both gave blind faith over to" the immigration agent. It was unreasonable that everything was left in the immigration agent's hands. The applicant did not take any responsibility for the agent's actions or ensure the accuracy of the information provided to Canadian authorities by the agent. That was not reasonable because the applicant, in his testimony, acknowledged that there were "red flags" about that agent. The ID identified two reasons for the red flags. First, during the application process, there were delays. Second, the applicant and his father were concerned about the transfer of money to the CNA. His father had given tuition money to the immigration agent, who was to send it to CNA in Canada. The applicant had attempted to contact the CNA only once, which the ID concluded was insufficient in light of the red flags.

[21] In this proceeding, the applicant requested that the Court set aside the ID's decision.

III. Legal Principles

A. *Standard of Review*

[22] I agree with the parties that reasonableness is the applicable standard of review: *Kaur v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 87, at para 17; *Johnson v Canada (Citizenship and Immigration)*, 2023 FC 519, at para 17; *Goburdhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971, at para 19; *Oloumi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 428, at para 12.

[23] Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, [2019] 4 SCR 900, at paras 2, 28-33, 61.

B. ***Misrepresentation under IRPA Section 40 and the "Innocent Mistake" Exception***

[24] Paragraph 40(1)(*a*) of the *IRPA* provides:

Misrepresentation	Fausses déclarations
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(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;	a) directement ou indirectement, faire 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 présente loi;

[25] The Court's case law confirms that for inadmissibility under paragraph 40(1)(*a*), two criteria must be shown: (1) there must be a misrepresentation; and (2) the misrepresentation must be material, in that it induces or could induce an error in the administration of the *IRPA*: *Gill v*

Canada (Citizenship and Immigration), 2021 FC 1441, at para 14; *Ragada v Canada (Citizenship and Immigration)*, 2021 FC 639, at para 18; *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004, at para 11.

[26] The general principles on misrepresentation under paragraph 40(1)(*a*) are well-established in the jurisprudence. Justice Strickland has summarized them in *Pandher v Canada (Citizenship and Immigration)*, 2022 FC 687, at paras 21 and 27, and in *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368, at paras 15-19. See also *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153, at paras 38-39.

[27] The Court has recognized a narrow exception under paragraph 40(1)(*a*), because genuine mistakes occasionally occur when filing immigration applications. An applicant who made an honest or innocent mistake may not be inadmissible under that provision. There are two requirements for the innocent mistake exception to apply: the applicant must have honestly believed that they were not making a misrepresentation, and that belief must be reasonable. The first is a subjective assessment: the applicant must have a genuine belief that they were making a misrepresentation or be truly unaware that they were withholding information. The second involves an objective assessment of the specific circumstances when the applicant made the misrepresentation. See *Appiah v Canada (Citizenship and Immigration)*, 2018 FC 1043, at para 18; *Gill*, at para 18.

[28] The innocent mistake exception must also be placed in the following legal context under paragraph 40(1)(*a*):

a) Section 40 is interpreted broadly to achieve its purposes. The purpose of section 40 is to promote the integrity of Canada's immigration scheme, by deterring misrepresentation and ensuring applicants provide complete, honest and truthful information in every manner.

   See *Kaur*, at para 34; *Munoz Gallardo v Canada (Citizenship and Immigration)*, 2022 FC 1304, at para 18; *Ji v Canada (Citizenship and Immigration)*, 2022 FC 1210, at para 24; *Gill*, at para 15; *Pandher*, at para 21; *Wang*, at para 15; *Kazzi*, at para 38.

b) The language in paragraph 40(1)(*a*) expressly captures both an erroneous statement in an application (a misrepresentation) and an omission in an application (information that is withheld): *Malik*, at paras 27, 28, 32, 35.

c) Applicants have a duty of candour – they must provide complete, honest and truthful information in every manner when applying for entry into Canada: *IRPA*, subsection 16(1). The requirement of candour is an overriding principle of the *IRPA* and aids in the interpretation of various provisions, including section 40.

   See: *Sidhu v Canada (Citizenship and Immigration)*, 2019 FCA 169, [2019] 4 FCR 508, at para 17; *Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425, at paras 38-39; *Pandher*, at para 21; *Wang*, at para 16; *Haghighat v Canada (Citizenship and Immigration)*, 2021 FC 598, at para 25; *Muniz v Canada (Citizenship and Immigration)*, 2020 FC 872, at para 17; *Ahmed v Canada (Citizenship and Immigration)*, 2020 FC 107, at para 31; *Goburdhun, at para 28; Bodine v Canada (Minister of Citizenship and Immigration*), 2008 FC 848, at para 41; *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299, at para 15.

d) The applicant has the onus to ensure both the accuracy and the completeness of their application. Otherwise, it is "too easy to later claim innocence and blame a third party" for a misrepresentation or omitted information.

   See: *Goudarzi*, at para 40; *Pandher*, at para 21; *Wang*, at para 15; *Kaur*, at para 37; *Malik*, at para 28; *Oloumi*, at para 39.

e) Applicants are responsible under paragraph 40(1)(*a*) for misrepresentations that were deliberate, negligent, intentional or unintentional.

   See: *Del Pilar Capetillo Mendez v Canada (Citizenship and Immigration)*, 2022 FC 559, at para 20; *Malik*, at paras 27, 32, 35; *Bains v Canada (Citizenship and Immigration)*, 2020 FC 57, at para 63; *Yang v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1484, at para 13; *Li v Canada (Minister of Citizenship and Immigration)*, 2018 FC 87, at para 10; *Sidhu v Canada (Citizenship and Immigration)*, 2014 FC 419, at para 17; *Goudarzi*, at paras 30 to 44; *Bellido v Canada (Minister of Citizenship and Immigration)* 2005 FC 452, at paras 27 and 28.

f) Applicants are responsible under paragraph 40(1)(*a*) for representations and misrepresentations they made themselves ("directly") and those made on their behalf by others ("indirectly"), such as immigration consultants or agents.

See: *Wang v Canada (Citizenship and Immigration)*, 2023 FC 62, at para 35; *Vahora v (Citizenship and Immigration)*, 2022 FC 778, at para 13; *Ibe-Ani v Canada (Citizenship and Immigration)*, 2020 FC 1112, at para 29.

g) An applicant may be responsible under paragraph 40(1)(*a*) even if the misrepresentation is made without their knowledge, including if another party makes the misrepresentation without the applicant's knowledge.

See: *Sufaj v Canada (Citizenship and Immigration)*, 2021 FC 1285, at para 13; *Pandher*, at para 27; *Wang*, at para 16; *Kaur*, at para 33; *Sbayti v Canada (Citizenship and Immigration)*, 2019 FC 1296 at para 28; *Moon v Canada (Citizenship and Immigration)*, 2019 FC 1575, at para 34; *Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327, at para 20; *Jiang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 942, at para 35; *Goburdhun at para 28.*

[29] In this legal context, the innocent mistake exception only applies in "truly exceptional" circumstances: *Pandher*, at paras 21, 27; *Malik*, at para 31; *Wang*, at para 17; *Appiah*, at para 18; *Patel v Canada (Citizenship and Immigration)*, 2017 FC 401, at para 25; *Paashazadeh* at para 20; *Goudarzi*, at para 33; *Oloumi*, at para 32.

[30] There is a wrinkle, which arises in the present case. It concerns the objective reasonableness assessment of the innocent mistake exception. Many, but not all, recent decisions of this Court have required that the facts demonstrate that the misrepresentation or withholding of information was beyond the applicant's control: see e.g., *Afe v. Canada (Citizenship and Immigration)*, 2023 FC 105, at para 17; *Malhi v Canada (Citizenship and Immigration)*, 2023 FC 392, at para 22; *Goudarzi*, at paras 37, 40; *Pandher*, at paras 30, 42; *Moon*, at paras 34-35.

IV. Analysis

[31] The central issue on this application is whether it was unreasonable for the ID to find that the "innocent mistake" exception did not apply to the applicant.

[32] In my view, the applicant's submissions can be distilled into two questions:

a) was the ID's decision unreasonable owing to one or more errors of law, specifically concerning the "innocent mistake" exception or the burden of proof? and

b) was the ID's decision unreasonable because it misapplied the "innocent mistake" exception to the facts, or otherwise failed to respect the factual constraints in the evidence?

[33] I will address each question in turn.

A. *Was the ID's decision unreasonable owing to one or more errors of law, specifically concerning the "innocent mistake" exception or the burden of proof?*

[34] The applicant submitted that the ID's decision should be set aside as unreasonable because it erred in law by requiring him to show that knowledge of the misrepresentation was beyond his control. The applicant argued that the ID erred in law by relying excessively on this Court's decision in *Goudarzi*, without adequate consideration of more recent cases that do not apply a requirement that knowledge be beyond his control.

[35] In light of this Court's case law and applying the reasonableness standard in *Vavilov*, I conclude that these submissions cannot succeed.

(a) *The ID's Legal Analysis was not unreasonable*

[36] The applicant's position on this Court's innocent mistake cases is reflected in Justice McHaffie's summary of the case law in *Gill*:

> [18] There appear to be two strains of case law from this Court regarding innocent misrepresentations as an exception to inadmissibility under paragraph 40(1)(a). In one, the Court has concluded there are effectively two requirements for an innocent misrepresentation: (i) that subjectively the person honestly believes they are not making a misrepresentation; and (ii) that objectively it was reasonable on the facts that the person believed they were not making a misrepresentation. This approach can be seen in cases such as *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 18; *Karunaratna v Canada (Citizenship and Immigration)*, 2014 FC 421 at para 14; *Punia* at paras 66–68; *Singh Dhatt* at para 27; *Canada (Citizenship and Immigration) v Robinson*, 2018 FC 159 at para 6; *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at paras 15–16; and *Alkhaldi v Canada (Citizenship and Immigration)*, 2019 FC 584 at para 19.
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> [19] In the other, an additional requirement has been adopted which considerably narrows the availability of the exception, namely that "knowledge of the misrepresentation was beyond the applicant's control." This additional requirement appears to stem from *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 39, drawing on language from *Mohammed v Canada (Minister of Citizenship & Immigration)*, [1997] 3 FC 299 at para 41. It was then adopted in Justice Strickland's decision in *Goburdhun*, a decision which has been frequently applied: see, e.g., *Suri v Canada (Citizenship and Immigration)*, 2016 FC 589 at para 20; *Brar v Canada (Citizenship and Immigration)*, 2016 FC 542 at para 11; *Tuiran* at paras 27, 30; *Appiah* at para 18.
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> [20] Mr. Gill argues that the "beyond the applicant's control" requirement is inconsistent with cases such as *Punia*, *Berlin* and *Karunaratna*, in which the undisclosed information was clearly known to the applicant, but the inadmissibility findings were still found unreasonable in light of the innocent misrepresentation exception: *Punia* at paras 68–70; *Berlin* at paras 2, 19–22; *Karunaratna* at paras 5–6, 16. I agree that these cases clearly did not impose a "beyond the applicant's control" requirement. I also question whether this requirement is consistent with the very purpose behind the exception, namely to recognize that mistakes can happen and "honest errors" can occur. However, the preponderance of this Court's case law, particularly after Justice Strickland's 2013 decision in *Goburdhun*, appears to include this requirement.

[37] The applicant argued that the ID erred by applying decided cases of this Court that require him to show that his knowledge of the misrepresentation was beyond his control, and failing to apply certain cases that did not.

[38] According to *Vavilov*, the standard of review for questions of law is reasonableness. It is not correctness, so the Court does not decide whether an administrative decision maker correctly selected one or the other of the Court's two lines of cases (assuming both were open to the decision maker to select). Counterintuitive as it may seem to some observers, it is first up to the decision maker to decide which cases to prefer, and then to apply them, subject to the Court's review on reasonableness grounds.

[39] On judicial review, the Court's case law acts as a constraint on what the ID could reasonably decide: *Vavilov*, at paras 108, 112; *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30, at para 128 (Karakatsanis, J., dissenting). As the Supreme Court stated in *Vavilov*, at paragraph 112, a decision:

> … may be unreasonable on the basis that the body failed to explain or justify a departure from a binding precedent in which the same provision had been interpreted. Where, for example, there is a relevant case in which a court considered a statutory provision, it would be unreasonable for an administrative decision maker to interpret or apply the provision without regard to that precedent. The decision maker would have to be able to explain why a different interpretation is preferable by, for example, explaining why the court's interpretation does not work in the administrative context … There may be circumstances in which it is quite simply unreasonable for an administrative decision maker to fail to apply or interpret a statutory provision in accordance with a binding precedent…

[40] The ID in this case applied the bulk of the Court's cases at the second step in the innocent mistake exception. It was not constrained to do otherwise.

[41] The ID expressly relied on *Goudarzi,* finding that it remained good law. Having regard to the state of the Court's decisions, doing so was not unreasonable. Decisions of this Court before and after the ID's decision have referred to *Goudarzi* and other cases on the need to show proof of knowledge beyond the applicant's control: see *Rawat v Canada (Citizenship and Immigration)*, 2023 FC 476, at paras 22, 25-26; *Wang v Canada (Citizenship and Immigration)*, 2023 FC 62, at para 48, 55; *Malik*, at paras 10-11; *Muniz, at para 8ii; Appiah, at para 18*. Given the state of the Court's cases on this topic, the ID may have had to explain its departure from requiring such proof, if it had decided to do so: *Vavilov,* at para 112.

[42] The applicant did not identify any cases in which the Court disagreed with the requirement to show that knowledge was beyond the applicant's control or found it was unreasonable to apply it, and I am not aware of any. I note also that while two strains of cases were identified in *Gill*, at para 18, Justice McHaffie found no need to resolve any possible conflict in that case: *Gill,* at para 21.

[43] There may be circumstances in which a decision maker acts unreasonably by erroneously distinguishing a binding authority: *Entertainment Software Association*, at paras 149-153 (Karatkasanis, J., dissenting). However, that is not what the ID did here – at worst, it decided to apply the preponderance of this Court's cases on the scope of the exception.

[44] The ID also canvassed and distinguished the cases cited to it by the applicant's counsel, including *Moon*, *Gill* and *Purashaj v Canada (Citizenship and Immigration)*, 2021 FC 663. The applicant did not argue that the ID made any specific legal errors in its analysis of those cases.

[45] Finally, as noted, the ID made two findings on the second part of the innocent mistake exception, one of which was unaffected by any alleged legal error. In the present case, that independent finding was lawful and was itself sufficient to decide that the exception did not apply to the applicant's circumstances.

[46] For these reasons, I conclude that the applicant has not demonstrated that the ID's legal analysis of the innocent mistake exception was unreasonable.

(b) *The ID did not err on the burden of proof*

[47] The applicant also argued that the ID failed to apply the proper burden of proof on a balance of probabilities and, in law, imposed an unreasonable burden of awareness on the applicant.

[48] The applicant did not specify where such alleged legal errors arose in the ID's reasons and I see none. The ID's reasons were conscious of, and made no material legal error relating to, the applicant's responsibilities for the accuracy and completeness of his study permit. The applicant's position amounts to a disagreement with the ID's analysis on the merits, which is not a proper matter for judicial review.

B. ***Was the ID's decision unreasonable because it misapplied the "innocent mistake" exception to the facts, or otherwise failed to respect the factual constraints in the evidence?***

(a) *The ID's Objective Analysis of the Applicant's Mistake was Reasonable*

[49] The ID's decision on the objective part of the innocent mistake exception rested on two findings: first, that the applicant's "blind faith" or complete reliance on the immigration agent was unreasonable; and second, that knowledge of the facts about the misrepresentation was within his control. These two findings were distinct, but factually connected.

[50] On the first finding, the ID found that "everything was left at the hands of the agent". Based on his testimony, the applicant did not review any application and there was no discussion about what steps had to be taken or what had to be filed. The ID found that the applicant took no responsibility to ensure that what the agent was doing, or that the information that was being filed with Canadian authorities on his behalf, was in fact accurate. On this basis, the ID found that applicant's belief was not reasonable.

[51] This first finding comports with the legal context in which the innocent mistake exists, including the applicant's responsibility in law for the agent's representations on his behalf, that he had the onus to ensure his application was accurate and complete, and that he was responsible for the misrepresentations even if he did not know about them. The applicant did not contend that his testimony did not support the conclusions reached by the ID, including that he did not review the application for a study permit and did not take steps to ensure the information in it was accurate. Nor did the applicant point to any error of law in these findings.

[52] The ID's second finding was that knowledge of the facts about the misrepresentation was within the applicant's control. In this case, the misrepresentation was in both the study permit application form (misstating that the applicant had been accepted to study at CNA) and in the fraudulent documents filed in support of the application (the acceptance letter and the receipt for payment). Both were prepared and filed by the immigration agent.

[53] The ID found that there were "red flags" that caused concerns to the applicant and his father. They were concerned about delay in the application and about whether CNA had received the applicant's tuition money (which his father had transferred to the immigration agent). The applicant's father was concerned enough to instruct the applicant to contact CNA directly, which he attempted to do in one telephone call to the college. The call did not connect.

[54] The ID found that the applicant should have placed more phone calls, asked more questions to the immigration agent, and sent emails to the college to find out what was going on. The ID found the required knowledge was within his control: "figuring out whether or not you had been accepted to the college was definitely something that was without your control".

[55] In effect, the ID concluded that if the applicant had followed up with CNA with reasonable diligence, he would have been advised that he had not actually been accepted into CNA as his study permit application represented. Knowledge of the misrepresentation caused by the filing of fraudulent documents by the immigration agent was within his control if he had acted reasonably.

[56] The applicant did not argue that the evidence (including his own testimony) did not support the facts found and relied upon by the ID. The ID's analysis was reasonably open to it on the record.

[57] The applicant has also not demonstrated any error of law in the ID's analysis. The applicant submitted that in three cases, the Court did not "strictly impose" the requirement that the circumstances be "beyond the control" of the applicant (citing *Punia v Canada (Citizenship and Immigration)*, 2017 FC 184*; Karunaratna v Canada (Citizenship and Immigration)*, 2014 FC 421; *Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117). However, none of those cases concluded that the "beyond the control" requirement did not exist or was incorrect in law. Rather, these decisions are silent about it. Accordingly, as discussed above, they do not impose a legal constraint on the ID.

[58] The applicant maintained that he did not and could not reasonably have knowledge of the fraudulent documents – knowledge of those facts was outside his control as they were deliberately and successfully hidden by the immigration agent. Whatever the merits of that argument may have been if made to the original decision maker, it was open to the ID to reach its findings on "beyond the applicant's control" in this case. The applicant did not prepare or check his own application for the study permit prior to its filing, and the "red flag" concerns about delay and the transfer of funds were in part concerns about the immigration agent.

[59] For judicial review purposes, the ID's conclusion that the applicant should have followed up more diligently with the college itself was intelligible and justified on the standards described in *Vavilov*.

(b) *The ID Addressed the Applicant's Additional Submissions*

[60] In his written submissions, the applicant contended that the ID erred by concluding that it was unreasonable for the applicant to leave everything in the hands of the agent, because it was at odds with the "unique relationship of trust" between the applicant and the immigration agent. The applicant emphasized that the ID failed to take into account the severe consequences of the misrepresentation ban to the applicant and his family.

[61] The applicant also maintained that the ID failed to properly consider and weigh certain facts, including that IRCC officials had also been deceived by the fraudulent documents; the clear findings of credibility and honest belief; the applicant's youth, background from a rural village in India and relative lack of sophistication and similar traits of his father on whom he relied when dealing with the immigration agent; the immigration agent's non-disclosure of the two previous applications for a study permit that were refused; and that the applicant had not genuinely consented to the submission of the study permit application containing fraudulent documents by the agent on his behalf.

[62] Similar submissions were also made emphatically at the hearing in this Court.

[63] These submissions mostly concerned the merits of the ID's decision. As is well established, the merits of the original application cannot be re-argued on a judicial review application. This Court is not permitted to come to its own view of the inadmissibility of the applicant under section 40, nor re-assess or re-weigh the evidence: *Vavilov*, at paras 83, 116, 125.

[64] The ID must take into account the evidentiary record and the general factual matrix that bears on its decision, and its decision must be reasonable in light of them. Only if the ID fundamentally misapprehended, failed to account for or ignored evidence could its decision be jeopardized: *Vavilov*, at para 126.

[65] In this case, the ID heard and assessed the applicant's testimony and reviewed the documents. It methodically analyzed the individual elements of paragraph 40(1)(*a*) including the misrepresentation in the application form and the fraudulent documents, that the misrepresentations were made indirectly by the agent, that they were material and induced an error in the administration of the *IRPA*.

[66] The ID considered the application of the innocent mistake exception to the applicant's circumstances and provided an analysis that was responsive to the evidence of his interactions with the immigration agent and his conduct in attempting to contact CNA. The ID expressly considered the applicant's youth and relative lack of sophistication concerning Canadian immigration applications, and that he was following his father's lead. It accepted that he was genuinely unaware of the misrepresentation and the fraudulent nature of the acceptance letter and

receipt. The ID was aware of the complete reliance by the applicant (and his father) on the immigration agent, but concluded that the applicant should not have done so.

[67] The ID was also conscious of the impact of its decision on the applicant. The ID was at pains to emphasize that he testified credibly at its hearing, was genuinely deceived by the immigration agent and had been exposed to overzealous questioning during the interview by the CBSA officer. The ID was aware that others had been deceived by the same immigration agent. The ID member expressed a wish that it was within his jurisdiction to take into account humanitarian and compassionate factors. He hoped that there would be increased focus on those who dupe potential immigrants to Canada, rather than the applicants who are victims.

[68] While I am sympathetic to the applicant's situation, it is clear that the ID considered the additional points he raised in this Court. Its conclusions were based mostly on its assessment and weighing of the applicant's testimony. The applicant has not shown that ID's findings or overall conclusions failed to respect the factual constraints in the record or the applicant's position on the evidence.

[69] Finally, at the Court hearing, the applicant attempted to challenge the original conclusion that the acceptance letter and the receipt from CNA were fraudulent. The respondent objected, noting both that the applicant had acknowledged the fraudulent documents at the ID and that the argument was not put to the decision maker and therefore, in law, not permitted on this judicial review application.

[70] I agree with the respondent on this issue. Courts generally will not consider a new issue on judicial review where the issue could have been, but was not, raised before the administrative decision-maker: see e.g., *Firsov v Canada (Attorney General),* 2022 FCA 191, at para 49, and the cases cited there.

[71] I therefore conclude that the applicant has not shown that the ID made a reviewable error in its decision as alleged.

V. Conclusion

[72] For these reasons, the application will be dismissed.

[73] Neither party proposed a question for certification. No certifiable question appropriate for appeal arises in the factual circumstances of this case.

JUDGMENT in IMM-4247-22

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4247-22
STYLE OF CAUSE:	VIKRAMJEET SINGH v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JANUARY 16, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	MAY 29, 2023

APPEARANCES:

Kajal Sharma	FOR THE APPLICANT
Cheryl D. Mitchell	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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