

Federal Court



Cour fédérale

Date: 20240306

Docket: IMM-8841-22

Citation: 2024 FC 379

Ottawa, Ontario, March 6, 2024

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

KRISHNABEN JASMINKUMAR POPAT

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Ms. Krishnaben Jasminkumar Popat (the “Applicant”) seeks judicial review of the decision of a Visa Officer (the “Officer”), refusing her application for a work permit. The Officer found the Applicant to be inadmissible for misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”).

[2] In her application for judicial review, the Applicant seeks costs.

[3] The Applicant is a citizen of India. On May 29, 2020, she applied for a work permit. In support of her application, she provided a letter from her intended Canadian employer, a positive Labour Market Impact Assessment, letters from previous employers showing her employment history, and a refusal letter from Immigration, Refugees and Citizenship Canada (“IRCC”) denying her a visitor visa in 2017.

[4] On October 19, 2020, the Applicant advised that she was withdrawing her application for a work permit.

[5] The Applicant received a Procedural Fairness letter, dated November 26, 2020, advising that there was an apparent discrepancy in her work history as set out in her application for a work permit, when compared to her application in 2017 for a visitor visa. The Officer allowed the Applicant 30 days to respond to the Procedural Fairness letter.

[6] By letter dated December 22, 2020, the Applicant requested an extension of time until February 24, 2021, to reply to the Procedural Fairness letter.

[7] Upon receiving no response, the Applicant repeated her request to withdraw her application by letter dated May 7, 2021.

[8] The Applicant now argues that the Officer breached her right to procedural fairness by failing to give her the opportunity to address the concerns about misrepresentation that were set out in the Procedural Fairness letter. She says that she received no response to her letter, asking to withdraw her application for a Work Permit and for an extension of time to respond to the Procedural Fairness letter.

[9] Otherwise, the Applicant argues that the decision is unreasonable because the Officer continued to process her application despite her withdrawal requests.

[10] The Minister of Citizenship and Immigration (the “Respondent”) submits that there was no breach of procedural fairness.

[11] Otherwise, the Respondent argues that the decision is reasonable.

[12] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[13] The merits of the decision are reviewable on the standard of reasonableness; see the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.).

[14] In considering reasonableness, the Court is to ask if the decision under review “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”; see *Vavilov, supra* at paragraph 99.

[15] I am not persuaded that there was a breach of procedural fairness.

[16] In my opinion, the Procedural Fairness letter put the Applicant on notice that further information was required. Silence about her prior request to withdraw her application did not relieve the Applicant from her obligation to address the discrepancies identified by the Officer.

[17] The Applicant’s second request to withdraw her application was not a response to the substantive allegations in the Procedural Fairness letter.

[18] In letters requesting the withdrawal of her application, the Applicant did not attempt to resolve the apparent discrepancies in her employment history.

[19] I turn now to the Applicant’s arguments challenging the reasonableness of the misrepresentation finding. In my opinion, the decision in *Geng v. Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1155 answers these submissions.

[20] At paragraph 35, Justice McDonald held that the date of the misrepresentation is the date to assess whether the misrepresentation could lead to an error in the administration of the Act. The Officer in this case considered whether the Applicant’s misrepresentation of her employment history could have induced an error in the administration of the Act, as of the date it

was made. The Applicant's subsequent requests to withdraw her application are not relevant to that issue.

[21] The Applicant argues for the first time on judicial review that her employment history was "primarily consistent".

[22] If the Applicant's position is that there was no discrepancy in her employment history, this should have been raised to the Officer in response to the Procedural Fairness letter.

[23] In my opinion, the Officer reasonably assessed the Applicant's application, consistently with the applicable jurisprudence. The Officer reasonably found that the discrepancies in the Applicant's employment history amounted to a misrepresentation.

[24] There was no breach of procedural fairness or any legal error that would justify judicial intervention. The application for judicial review will be dismissed and there will be no order as to costs. There is no question for certification.

JUDGMENT IN IMM-8841-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-8841-22

STYLE OF CAUSE: KRISHNABEN JASMINKUMAR POPAT v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 10, 2023

REASONS AND JUDGMENT: HENEGHAN J.

DATED: MARCH 6, 2024

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