Federal Court Cour fédérale

Date: 20240312

Docket: IMM-4286-23

Citation: 2024 FC 416

Ottawa, Ontario, March 12, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

KIRANDEEP KAUR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant, a citizen of India, was found inadmissible to Canada under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for misrepresenting her marital status. The Applicant challenges the decision of the Immigration Division [ID] of the Immigration and Refugee Board of Canada on the basis that the ID Member erred in concluding that she failed to satisfy the innocent mistake exception test.

[2] I am dismissing this application because the ID Member reasonably concluded that the Applicant failed to satisfy the two prongs of the innocent mistake exception test.

II. Background

[3] The Applicant came to Canada on a study visa in August 2018. She began living with her then common-law partner in November 2018. The Applicant applied for a work permit in March 2020, indicating her marital status as "single".

[4] In November 2020, the Applicant appeared before the ID as a bondsperson for her then common-law partner after he was arrested and detained by immigration officials. The Applicant testified that they married in January 2020. The Minister subsequently reported the Applicant for misrepresentation, arguing that she had misrepresented her marital status on her work permit application.

[5] After conducting an admissibility hearing, the ID Member issued an exclusion order against the Applicant pursuant to paragraph 229(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The ID Member concluded that the Applicant had misrepresented her marital status on her work permit application as she had been in a common-law relationship when she submitted her application. The Applicant was therefore found inadmissible to Canada.

III. Issues and Standard of Review

[6] At the hearing, the Respondent sought an order amending the style of cause to name the Minister of Citizenship and Immigration as the Respondent, rather than the Minister of Public Safety and Emergency Preparedness. The Applicant agreed with this amendment. I am satisfied that the Minister of Citizenship and Immigration is the proper respondent as the Minister responsible for the administration of the *IRPA*, except in certain enumerated circumstances, none of which apply in this case: *IRPA*, ss 4(1), (2). The style of cause is accordingly amended to name the Minister of Citizenship and Immigration as the Respondent.

[7] The only issue for determination on the merits of the application is whether the ID Member erred in finding that the Applicant failed to satisfy the innocent mistake exception test. While the Applicant raised bias and procedural fairness issues in her written submissions, the Applicant's counsel withdrew those arguments at the hearing of the judicial review application and confirmed that she was only challenging the reasonableness of the ID Member's application of the innocent mistake exception.

[8] There is no dispute that the applicable standard of review for determinations of admissibility for misrepresentation is that of reasonableness: *Singh v Canada (Citizenship and Immigration)*, 2023 FC 747 at para 22 [*Singh*]; *Johnson v Canada (Citizenship and Immigration)*, 2023 FC 519 at para 17.

[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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59-61.

IV. Analysis

[10] An applicant is inadmissible to Canada where they misrepresent or withhold material facts that could induce an error in the administration of the *IRPA*, pursuant to paragraph 40(1)(a) of the Act. The underlying purpose of paragraph 40(1)(a) is to ensure that applicants provide compete, honest, and truthful information: *Singh* at para 28(a); *Munoz Gallardo v Canada (Citizenship and Immigration)*, 2022 FC 1304 at para 18 [*Munoz Gallardo*]. There is, however, a narrow exception to a misrepresentation finding under paragraph 40(1)(a): the innocent mistake exception.

A. *The Applicant failed to satisfy the innocent mistake exception test*

[11] The test for the innocent mistake exception is whether an applicant can demonstrate both an honest and reasonable belief that they were not withholding material information: *Munoz Gallardo* at para 19; *Ram v Canada (Citizenship and Immigration)*, 2022 FC 795 at para 19; *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 31.

[12] There are two prongs to the test. The first is subjective and asks whether the applicant honestly believed that they were not making a misrepresentation; the second is objective and asks whether it was reasonable, on the facts, that the applicant believed they were not making a misrepresentation: *Shao v Canada (Citizenship and Immigration)*, 2023 FC 973 at para 14; *Munoz Gallardo at para 19; Alkhaldi v Canada (Citizenship and Immigration)*, 2019 FC 584 at para 19; *Canada (Citizenship and Immigration) v Robinson*, 2018 FC 159 at para 6 [*Robinson*].

(1) First prong – the Applicant's honest belief was not established

[13] The onus is on an applicant to establish that they honestly believed they were not making a misrepresentation. Here, the Applicant did not discharge her burden to satisfy the first prong of the test because there was a lack of evidence to support her honest belief. The ID Member reasonably concluded that the arguments made by the Applicant's counsel were not "grounded in evidence but rather provided as explanations in submissions": Transcript of Proceeding: Admissibility Hearing dated March 14, 2023 at p 4, lines 188-190 [March 14, 2023 Transcript].

[14] During oral submissions at the admissibility hearing, the Applicant's counsel argued that the Applicant did not know what the term "common-law" meant and thus had made an innocent mistake in not disclosing her common-law relationship. When the ID Member challenged counsel and stated that the Applicant had not testified to that effect, the Applicant's counsel attempted to provide evidence:

> **MEMBER**: Sorry, Counsel, how do you know there is no motive? And how do you know that she did not know what a comment [*sic*] law relationship was? She did not testify to that.
>
> **COUNSEL**: So, Mister Member, that is why the cultural setting from where she comes, I know, because I come from the same land,

> and I can definitely say that how the cultural setting works according there. And ---
>
> **MEMBER**: Counsel, just one (1) second. I am dealing with evidence. Do you have evidence of that because Counsel's role is not to give evidence. So, that is the first point I want to make. And the second one (1) was she has not explained that she did not list common law because of a cultural reason. You are putting that into the hearing without any evidence to actually support that.
>
> **COUNSEL**: So, Mister Member, she testified to the fact that her parents are not aware about it. And this has one (1) such strong reason that she has said no to that answer and she has written single.
>
> **MEMBER**: That is not how I recall the testimony. Those are two (2) separate areas, and you are trying to connect them, but the testimony as far as I can recall, did not make that exact connection. But anyway, I am not going interrupt you, but I just want you to be mindful of -- your submissions are supposed to be based on evidence that was either heard or presented in document form, and of course, case law.
>
> Transcript of Proceeding: Admissibility Hearing dated February 27, 2023 at p 27, lines 4-22 [February 27, 2023 Transcript].

[15] The ID Member properly held that it was not counsel's role to give evidence. In order to satisfy the subjective prong of the innocent mistake exception test, it was incumbent on the Applicant to testify about her honest belief that she was not making a misrepresentation when she did not disclose her common-law relationship: *Robinson* at paras 7-8.

[16] As found by the ID Member, the Applicant did not testify that she "did not know what was meant by common-law" on the basis that it was a "foreign concept not utilized in Indian culture": March 14, 2023 Transcript at p 4, lines 172-177. The ID Member further noted that there was no evidence "that in India a person is only single or married with nothing else or nothing in between": March 14, 2023 Transcript at p 4, lines 178-179.

[17] Significantly, as noted by the ID Member, the Applicant did testify that a friend assisted her in completing the application form. According to the Applicant, if there was something that she did not understand, she asked her friend to explain. The following exchange between the Minister's representative and the Applicant sets out the Applicant's evidence in this regard:

> **MINISTER'S REPRESENTATIVE:** Thank you, Mister Member. Ms. KAUR, you indicated that a friend helped you with your work permit application, correct?
>
> **PERSON CONCERNED (without interpreter)**: Yes.
>
> **PERSON CONCERNED:** Yes. Because that was mine and Amit's mutual friend. Because (inaudible) and (inaudible). Because that was mine and Amit's mutual friend.
>
> **MEMBER:** Okay, please continue, Minister's Counsel.
>
> **MINISTER'S REPRESENTATIVE:** Now to confirm, did you submit the application yourself or did he submit it for you?
>
> **PERSON CONCERNED:** We were both sitting together when we submitted that file.
>
> **MINISTER'S REPRESENTATIVE:** Were there anything in the application that you did not understand?
>
> **PERSON CONCERNED:** No. Because if there was anything I did not understand, I ask that person to make me understand because that person had submitted their own file also.
>
> **MINISTER'S REPRESENTATIVE:** All right. So lastly, you stated that this person is a mutual friend of you and Amit. You testified earlier that your friend is aware of you and Amit's relationship. Does he know of your -- you and Amit living together?
>
> **PERSON CONCERNED**: Yes.
>
> February 27, 2023 Transcript at p 23, lines 15-40.
>
> [Emphasis added]

[18] In post-hearing written submissions, the Applicant argued that the friend who assisted her in completing the application form "had no knowledge of the terminology of the common law relationship": Post Hearing Submissions dated February 28, 2023 at paras 6, 9. However, as the ID Member noted, no evidence had been tendered that the friend did not understand what the term "common-law" meant: March 14, 2023 Transcript at pp 3-4, lines 150-154.

[19] Based on the foregoing, the ID Member's conclusion was reasonable in light of the evidence before them. There was insufficient evidence to establish that the Applicant honestly believed that she was not making a misrepresentation when she indicated that her marital status was single rather than disclosing her common-law relationship. Notwithstanding this finding, the ID Member proceeded to consider the second prong of the innocent mistake exception test in the event that they were mistaken on the first prong.

(2) Second prong – the Applicant's belief was objectively unreasonable

[20] The ID Member relied on a number of relevant considerations to find that the Applicant's belief was objectively unreasonable. These considerations included: the number of times the term "common-law" was used on the application form, the Applicant's education, the length of time that she had been living in Canada, and her close relationship with her landlords (who understood what the term "common-law" meant). Viewed holistically, all of these considerations reasonably support the conclusion that the Applicant could have sought the assistance of others or taken steps herself to inquire about the meaning of the term "common-law".

[21] As the ID Member noted, the term “common-law” appeared at least three times in the work permit application. Specifically, question 9B requires an applicant, if they are married or in a common-law relationship, to provide the date on which they were married or entered into the common-law relationship. Question 10 asks “have you previously been married or in a common-law relationship” and asks for details about a previous spouse or common-law partner. Additionally, applicants are required to provide details about their spouse or common-law partner on the family information form.

[22] The ID Member held that it would be reasonable to expect that if the Applicant was “only familiar with the concepts of being single or married”, as asserted, that she would inquire into what the term “common-law” meant given its repeated use throughout the application: March 14, 2023 Transcript at p 5, lines 209-211. This is a wholly reasonable finding. Indeed, the onus was on the Applicant to ensure both the accuracy and completeness of her application: *Singh* at para 28; *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004 at para 11.

[23] The ID Member also reasonably considered the Applicant’s level of education and length of time in Canada. The Applicant came to Canada in 2018 to pursue post-graduate studies. At the time she completed the work permit application, the Applicant had lived in Canada for a year and a half. These considerations, coupled with the fact that the term “common-law” was used numerous times in the application, further support that it was objectionably reasonable to expect that the Applicant would inquire into what the term meant before signing the application form and declaring that she had “answered all questions in the application fully and truthfully”.

[24] The ID Member also reasonably held that the Applicant could have conducted an internet search or asked her landlords about what the term meant. I do not agree with the Applicant that the letters from her landlords do not support that they knew what "common-law" meant. The letters expressly stated that the Applicant and her partner were not married and "never underwent a wedding ceremony", but were "in a common law relationship". Based on the letters' repeated use of the term, and the distinction drawn between a marriage and a common-law relationship, the ID Member reasonably inferred that the landlords understood what the term meant.

[25] Moreover, there is no merit to the Applicant's argument that the ID Member unreasonably applied a "Canadian-centric" lens when they stated that "completing a Canadian immigration application form and details or concepts are to be viewed from the Canadian legal perspective and not the perspective of how others outside the country may view this concept": Applicant's Memorandum of Argument at para 27. Contrary to the Applicant's assertions, the ID Member was not expecting her to abandon her cultural perspective when answering questions about herself. Rather, it is clear from reading the ID Member's reasons that they were simply stating that it was incumbent on the Applicant to inform herself and inquire into any concepts that she did not fully understand in completing her application.

[26] The ID Member reasonably determined that ignorance of the law did not excuse the Applicant from avoiding her obligations and that the onus remained on the Applicant to ensure that the information provided in her application was accurate: *Mhlanga v Canada (Citizenship and Immigration)*, 2021 FC 957 at para 27.

V. Conclusion

[27] The ID Member's finding that the Applicant failed to satisfy the innocent mistake exemption test is reasonable in the circumstances. Furthermore, the ID Member's reasoning is intelligible, justified, and transparent. I am therefore dismissing the application.

[28] The parties did not propose a question for certification and I agree that none arises in this case.

JUDGMENT in IMM-4286-23

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended so that the Minister of Citizenship and Immigration is the Respondent.

2. The application for judicial review is dismissed.

3. No question is certified for appeal.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4286-23
STYLE OF CAUSE:	KIRANDEEP KAUR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 7, 2024
JUDGMENT AND REASONS FOR JUDGMENT:	TURLEY J.
DATED:	MARCH 12, 2024

APPEARANCES:

Khatidja Moloo-Alam	FOR THE APPLICANT
Amy King	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Green and Spiegel LLP Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT