Federal Court  Cour fédérale

Date: 20240507

Docket: IMM-11668-22

Citation: 2024 FC 698

Ottawa, Ontario, May 7, 2024

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

TAJINDER PAL SINGH BHATIA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Tajinder Pal Singh Bhatia, seeks judicial review of a decision made by an Officer on October 24, 2022, rejecting the Applicant's application for a Temporary Resident Visa (TRV).

[2] The Applicant was found inadmissible for misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c27 [*IRPA*]. In accordance with paragraph 40(2)(a) of the *IRPA*, the Applicant will remain inadmissible to Canada for a period of five years.

[3] For the reasons set out below, I am allowing this application.

II. **Background**

[4] The Applicant is a citizen of India. His daughter resides in Canada as a Permanent Resident (PR).

[5] At the time the Applicant applied for a TRV, his daughter was a new PR of Canada who had received her COPR (Confirmation of Permanent Residence). The Applicant wanted to help her settle down.

[6] The Applicant is an engineering graduate and, since 2010, a Director and equity holder in an international trading company, Isha Texmach India Pvt. Ltd. The Applicant's daughter is a Certified Professional Accountant (CPA) who has been employed by Deloitte Toronto as an audit manager since June 2022.

[7] The Applicant has held a valid US visa for the past 20 years. His previous US visa expired on 24/03/2021. The Applicant states in his affidavit that he is in the process of having his US visa renewed.

[8] In 2022, the Applicant applied for a TRV, but his application was refused. The Officer found the Applicant to be inadmissible to Canada under paragraph 40(1)(a) of the *IRPA* for misrepresentation of material facts, which would have induced an error in the administration of the Act. Specifically, the Applicant submitted an Indian Income Tax Return ('ITR') in order to substantiate his financial status in India. This ITR was assessed by the Officer who confirmed it to be fraudulent.

[9] A procedural fairness letter (PFL) was sent to the Applicant advising him of the misrepresentation concerns, but his answer failed to satisfactorily disabuse the Officer of the concerns regarding misrepresentation. Although the Applicant claimed in his response that the ITR was genuine, the Officer was not satisfied that the document was valid, and as such, found the Applicant's misrepresentation could have led to the granting of a visa without satisfying the requirements of the *IRPA*.

[10] Accordingly, the Officer concluded that the Applicant is inadmissible to Canada under paragraph 40(1)(a) of the *IRPA* and, he is therefore inadmissible for a period of five years.

III. **Decision under Review**

[11] The Officer cited the following concerns in his reasons for decision:

A. PA submitted an Indian Income Tax Return (ITR) in order to substantiate their financial status in India. This ITR was verified and confirmed fraudulent.

B. A Procedural Fairness Letter (PFL) was sent to the PA advising of our misrepresentation concerns. The PA was given 10 days to provide us with a response regarding these concerns.

C. The PA's response to the PFL was thoroughly and carefully considered; however, I am not satisfied that the concerns regarding misrepresentation identified have been satisfactorily disabused.

D. In their PFL response, the applicant stated that their 2021-2022 ITR was genuine. However, as this document was verified and confirmed fraudulent, PA has not alleviated my concerns.

E. As indicated in the PFL, I am concerned that the PA may be inadmissible for misrepresentation for directly misrepresenting a material fact that could have induced an error in the administration of the Act.

F. Had the ITR been assessed as genuine, it could have led the Officer to be satisfied that the Applicant met the requirements of the Act with respect to their level of establishment in their home country and that it served as motivation to depart Canada at the end of the period authorized, in accordance with subRule 179(b). The PA could have been granted a visa without satisfying the requirements of the Act. File forwarded for A40 review by delegated decision maker.

[12] Having considered the circumstances of the Applicant and having examined all of the submitted documentation, the Officer concluded that the Applicant was inadmissible to Canada under paragraph 40(1)(a) of the *IRPA*, and he was therefore inadmissible to Canada for a period of five years.

III. **Issues and Standard of Review**

[13] This application for judicial review raises the following issue:

> Was the Officer's refusal of the Applicant's temporary resident visa application a reviewable error?

[14] The Supreme Court of Canada has established that, when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]. While this presumption is rebuttable, no exception to the presumption is present here.

[15] The appropriate standard of review for the Officer's refusal of the study permit application is reasonableness.

[16] A reasonable decision is one that displays justification, transparency and intelligibility with a focus on the decision actually made, including the justification for it: *Vavilov* at para 15. Overall, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

V. Analysis

[17] In order to find a person inadmissible for misrepresentation under paragraph 40(1)(a) of *IRPA*: first, there has to be a misrepresentation; and second, the misrepresentation has to be material in that it could induce an error in the administration of the IRPA.

[18] An inadmissibility finding due to misrepresentation has serious consequences for an applicant. In this case, a finding of misrepresentation precludes the Applicant from re-applying for a 5-year period and potentially reflects on the Applicant's character: *IRPA*, subsection 40(2) and, 40(3).

[19] This Court has found, given the above-noted severe consequences, that findings of misrepresentation must be made on the basis of clear and convincing evidence (*Xu v Canada (Minister of Citizenship and Immigration*), 2011 FC 784 at para 16; *Chughtai v Canada (Minister of Citizenship and Immigration*), 2016 FC 416 at para 29), that there is a heightened duty of procedural fairness owed *(Likhi v Canada (Minister of Citizenship and Immigration)*, 2020 FC 171 at para 27), and that the reasons provided must reflect the profound consequence to the affected individual *(Gill v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1441 at para 7; *Vavilov* at para 133).

[20] I agree.

[21] In *Bui v Canada (Citizenship and Immigration)*, 2019 FC 440 at paragraph 29 [*Bui*], it was noted that an officer may put concerns to an applicant by way of a procedural fairness letter.

However, that letter must contain enough detail to enable the applicant to know the case to meet, meaning that the applicant is provided with a reasonable understanding of why the officer is inclined to deny the application: *Bayramov v Canada (Citizenship and Immigration)*, 2019 FC 256 at para 15; *Ezemenari v Canada (Citizenship and Immigration)*, 2012 FC 619 at para 11.

[22] In *Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at paragraph 21 it was noted that the duty of fairness, even if it is at the low end of the spectrum in the context of visa applications requires visa officers to inform applicants of their concerns so that an applicant may have an opportunity to disabuse an officer of such concerns*: Chiau v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16793 (FCA), [2001] 2 FC 297 at para 41; *Trivedi v Canada (Minister of Citizenship and Immigration)*, 2010 FC 422 at para 39.

[23] In the case at hand, the Officer did not provide further information as to why the Applicant's ITR was found to be fraudulent, other than stating that it was, "verified and confirmed fraudulent". Regarding this, the Respondent argues that, "it is well established that Visa Officers have considerable expertise in assessing Applicants and their documents". However, this does not allow the Applicant to provide further information to argue otherwise and state the genuineness of his ITR, if in fact it is genuine.

[24] Further, although the Officer provided the Applicant with the opportunity to respond to the PFL letter, he once again failed to provide more than general concerns as to why the Applicant's response to the PFL did not alleviate his concerns. An officer is required to provide more than general concerns in the fairness letter as a refusal will result in a finding of

misrepresentation and a five (5) year ban: *Toki v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 606 at paras 17, 24-25.

[25] As stated in *Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38 at paragraph 1:

> Findings of misrepresentation must not be taken lightly. They must be supported by compelling evidence of misrepresentation occurred by an applicant; thereby an applicant faces important and long lasting consequences in addition to having his/her application rejected.

[26] I agree with the Respondent that the onus is on the Applicant to provide sufficient evidence to the Officer to address the concerns of inadmissibility, such as the genuineness of his ITR: *Bhamra v Canada (Citizenship and Immigration)*, 2014 FC 239 at para 43. However, it was unreasonable and incorrect of the Officer to make an "unsupported leap from the reasonable finding of insufficiency of evidence to one of misrepresentation": *Xu v Canada (Citizenship and Immigration)*, 2011 FC 784 at para 16.

[27] Further, the Officer failed to address the corroborating evidence provided by the Applicant, including a 20-year USA visa, frequent international travel for business, his business documentation that included three years of personal tax records, and his bank statements.

[28] All the evidence noted above may serve as proof of the Applicant's established standing in his home country and his motivation to depart Canada at the end of the period authorized, in accordance with sub-rule 179(b).

VI. Conclusion

[29] 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.

[30] For the reasons set out above, this Application is allowed and no costs are awarded.

[31] This matter is to be sent back to a different Officer for redetermination.

JUDGMENT in IMM-11668-22

THIS COURT'S JUDGMENT is that:

1. This Application is allowed.
2. The Decision is set aside and this matter is to be sent back for redetermination by a different Officer.
3. There is no question for certification.
4. No costs are awarded.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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