Federal Court Cour fédérale

Date: 20120918

Docket: IMM-6016-11

Citation: 2012 FC 1092

Ottawa, Ontario, September 18, 2012

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

BALASUBRAMANIYAM SINNACHAMY

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant, Mr. Balasubramaniyam Sinnachamy, a Tamil citizen of Sri Lanka, wishes to come to Canada to join his son. In 2009, he applied for permanent residence through sponsorship by his son (Son) who came to Canada as a refugee claimant in December 1996 and is now a Canadian citizen. The Applicant applied on behalf of himself and his wife and two dependent daughters.

[2] In a decision dated August 2, 2012, an immigration officer (the Officer) denied the application. The Officer found that, under s. 11(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], the Applicant was inadmissible to Canada on two grounds. First the Officer concluded that the Applicant provided incomplete and inconsistent background information and did not discharge his burden to demonstrate that he was not inadmissible. Secondly, the Officer determined that the Applicant was inadmissible for two years under s. 40(1)(a) of the *IRPA* on the basis of misrepresenting or withholding facts regarding "[d]etails of arrests, detentions and residence histories". In the Officer's view, the misrepresentation or withholding of these facts induced or could have induced errors in the processing of the Applicant's application for permanent residence which could have led to an incorrect decision.

[3] The Applicant seeks to overturn the decision, raising the following issues:

1. Did the Officer err in finding that the Applicant had misrepresented or withheld information because the Applicant provided the information through documents that were part of the application and provided all of the details that the Officer alleged were withheld?

2. Did the Officer err in finding that there was a misrepresentation given that the Applicant clearly provided the information in a timely fashion?

3. Did the Officer fail to properly consider the explanations and exercise his discretion as to whether or not there should be a finding of misrepresentation?

4. Did the officer err in his finding under s. 11 of the *IRPA*?

[4] The determinative issue in the application is whether the Officer's decision that there had been misrepresentation, within the meaning of s. 40(1) of the *IRPA*, was reasonable. If the Officer's conclusion that there was misrepresentation is reasonable, it follows that the Applicant had not met his burden of demonstrating that he was not inadmissible as required by s. 11 of the *IRPA*.

[5] The parties agree that the decision is reviewable on a standard of reasonableness (see, for example, *Berlin v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1117 at para 10, 397 FTR 205 [*Berlin*]; *Sivayogaraja v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1112 at para 9, [2010] FCJ No 1466; *Osisanwo v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1126 at paras 14-15, 398 FTR 55 [*Osisanwo*]). The role of the court on review of a decision on a reasonableness standard is to determine of whether "the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190 [*Dunsmuir*]).

[6] The Applicant agrees that, in his application form and that of his wife, the Applicant failed to list his various times of detention by the Liberation Tigers of Tamil Eelam (LTTE) or other forces. Similarly, neither the Applicant nor his wife listed, as residences, their stays with the LTTE, with durations of up to three months. The question is whether, on the facts before the Officer, these omissions amount to misrepresentation.

[7] From a review of the Computer Assisted Immigration Processing System (CAIPS) notes on the Certified Tribunal Record (CTR), it appears that review of the application began around March 2010. On June 25, 2010, a letter was sent to the Applicant asking him to provide certain information, including the Personal Information Form (PIF) with Narrative that the Son had submitted when he arrived to Canada. The Applicant provided the Son's PIF in August 2010. The PIF Narrative included somewhat general reference to detentions of his mother and father (the Applicant) by the LTTE.

[8] It is clear from the CAIPS notes that the PIF raised concerns on the part of the reviewing officer; as written in the CAIPS notes, "Son's PIF relates problems with the LTTE". A further letter was sent to the Applicant on March 22, 2011 seeking further information. By letter dated April 19, 2011, the Applicant provided more information on his history with the LTTE, admitting that "My wife and I were arrested and detained by LTTE in many situations" and that he and his family "were detained in a [refugee] camp for three months" by the SLA in 1997..

[9] The Applicant's key argument is that he disclosed all the information about his detentions and changes of addresses prior to any concerns being communicated to him. Moreover, the Applicant interpreted the question of whether he had ever "been detained or put in jail" as applying only to arrests by government forces. In the Applicant's submission, the information in the PIF regarding the detentions of the Applicant and his wife was entirely consistent with the information subsequently and voluntarily given by the Applicant, in his letters dated April 19, 2011 and June 9, 2011. On these facts, the Applicant asserts that his failure to disclose his detentions by the LTTE was entirely innocent.

[10] I do not agree.

[11] The first point to make in response to the Applicant's arguments is that, contrary to the submissions of the Applicant, the information about the detentions was not always part of his application. The Son's PIF was not disclosed voluntarily; it was produced only after a specific request was made by immigration officials who were reviewing the file. It appears that, later on in the process, the Applicant was forthcoming with information that appears to be consistent with the information in the PIF. However, had the Applicant not been forced to provide the PIF and further information, the LTTE detentions might not have been discovered.

[12] The concerns of the Officer are clearly set out in the CAIPS notes. Based on that concern, the letter of March 22, 2011 was sent. Only after this letter, did the Applicant provide a more detailed history of his detentions by the LTTE.

[13] In sum, the record shows that the Applicant was not forthcoming about his involvement with the LTTE. The information was only provided after the concerns were expressed through: (a) the request for the Son's PIF; and (b) the request of March 22, 2011.

[14] Without question, the Applicant's history with the LTTE, a designated terrorist organization, is highly material to a permanent residence application. As stated by the Officer in the CAIPS notes:

> the information [of detentions and residences] is critical to a determination of admissibility. They come from an area and a time of active war, bribery, human rights abuses, terrorism and a host of other serious problems. The information that someone tells us in

> their application determines our course of investigation and assessment. If the information is not true, our determination of admissibility will suffer.

[15] It is reasonable to believe that the Applicant was well aware that any involvement with the LTTE would be scrutinized with care during the review of his application. I conclude – as did the Officer, it appears – that the Applicant likely knew that detentions by the LTTE should have been included in his application form and took the deliberate step of omitting them.

[16] The Applicant cites a number of cases where omissions from permanent residence application forms were not misrepresentations (*Osisanwo*, above; *Koo v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 931, [2009] 3 FCR 446; *Berlin*, above). These cases are distinguishable. In *Osisanwo*, the Applicant honestly believed the allegedly misrepresented information regarding the paternity of a child, supported by the child's birth certificate. In *Koo*, the omissions were not material, the officer failed to conduct a materiality analysis and the Applicant provided some of the information in supporting documentation included with original application. Similarly, in *Berlin*, the Applicant submitted the information allegedly withheld with his original application.

[17] The Applicant argues that he provided a reasonable explanation for not including the detentions or residences on his application form and that the Officer erred by failing to consider the explanation. With respect to detention, in his letter of June 9, 2011, the Applicant stated that the arrests/detainments were not declared because they were not "by any government forces for any violations of [the] country's law". In addition, the Applicant explained that he withheld information "to avoid confusion". In my view there was no error. There is no duty on the Officer

to accept every explanation or excuse. In this case, the explanations are simply not credible given the history of the Sri Lanka conflict. The Officer did not ignore the excuses; they simply were not enough to persuade the Officer that the Applicant made an honest mistake or innocently misunderstood the questions asked. Further, given the seriousness of the misrepresentation, the Officer did not err in failing to exercise his discretion to overlook the omissions.

[18] In sum, the record provides ample support for the Officer's conclusion that the Applicant had directly or indirectly misrepresented or withheld material facts related to a relevant matter that induces or could induce an error in the administration of justice.

[19] Neither party proposes a question for certification. None will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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