Federal Court  Cour fédérale

Date: 20150309

Docket: IMM-1253-14

Citation: 2015 FC 296

Ottawa, Ontario, March 9, 2015

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

AMAL AOUN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review brought by Ms. Amal Aoun from a decision of a visa officer based in Warsaw, Poland. Ms. Aoun had applied in 2009 for a permanent residency visa under the skilled-worker class. That application was denied by letter dated February 23, 2014 based on a finding that she had withheld information about her work experience that could have induced an error in the administration of the law.

[2] This matter was heard in Windsor, Ontario on February 19, 2015. Ms. Aoun could not attend the hearing but she was ably represented by her brother, Talal Aoun.

[3] In her initial application for a visa signed on July 6, 2009, Ms. Aoun identified four previous employers, namely TM Alieh, Amelieh College, Jamal Trust Bank and an unnamed family business. In 2011, Ms. Aoun was asked to update her application and she did so in January 2012. In that supplemental disclosure, Ms. Aoun identified Greenfield College as a previous employer in the period between 1997 and 2012.

[4] On March 30, 2012, Ms. Aoun's application was refused for insufficient points. When she challenged that decision, the Department acknowledged an error and it agreed to a reassessment. Once again, the application was refused on the basis that Ms. Aoun had failed to establish sufficient experience as a teacher. That decision was also challenged, and the Respondent ultimately consented to an Order in this Court remitting the visa application for redetermination on the merits in 2013.

[5] In the course of the 2013 reconsideration, the visa officer had concerns about whether Ms. Aoun had the requisite experience as a teacher. In the result, a fairness letter was sent to Ms. Aoun identifying the perceived deficiencies in her letters of reference and requesting clarification. Ms. Aoun responded and for the first time disclosed that she had worked as a chemistry teacher for the Association of Charity and Culture in the academic years 2009-2010 and 2010-2011. This disclosure triggered a second fairness letter seeking an explanation for

Ms. Aoun's failure to provide the full particulars of her past employment. Ms. Aoun responded with the following explanation:

> The Applicant did not include working for the Association of Charity and Culture in her Jan of 2012 schedule 1, because at the time she applied for immigration, she was not working for them, and her work there ended before the update took place.
>
> She was confident that she had enough experience to support her immigration application with the already provided information, and that she will not be credited any points for this period of employment since it happened after she applied for immigration back in May 2009.
>
> …
>
> - There is no attempt on the part of the Applicant to mislead the visa officer by hiding information, had it been provided, may have made a difference in favor of the applicant.
>
> - Any discrepancies may have came from omission, interpretation and result of the long process of applying and appealing.

[6] The visa officer was not satisfied with Ms. Aoun's explanation and her application was denied for the following reasons:

> When you submitted your application, you misrepresented or withheld the following material facts:
>
> -You did not submit a complete and accurate employment history
>
> I reached this determination because the officer noticed discrepancies in your employment history on your application form. When you were given an opportunity to address this issue, you stated that you did work at the Association of Charity and Culture but did not feel that you needed to add this information on your form since it as not necessary for you to qualify. Applicants must provide a complete and accurate employment history, not just the employment experiences they need to meet the eligibility requirements. A complete and accurate employment history is necessary for the assessment of admissibility. You also stated that

> your period of employment with Greenfield College was accurately reflected in your schedule 3. I have noted that this period of employment was missing from the schedule 1 you submitted in 2009. Employers must be listed on the schedule 1 with their correct name, again to enable the officer to fully assess admissibility. Simply listing the position occupied on the schedule 3 is not sufficient. These misrepresentations/omissions of your work experiences could have induced an error in the administration of the Act since a complete and accurate employment history is material to the assessment of your eligibility and your admissibility.
>
> As a result, you are inadmissible to Canada for a period of two years from the date of this letter.

[7] Ms. Aoun challenges the above decision and asks that it be set aside. She asserts that she did not intend to deceive the Department by failing to disclose all of her previous employment and that she had no motive to do so. She describes the information as immaterial because the omitted employment was only part-time and it was not needed to establish the threshold of teaching experience required to support her application. She also characterizes the officer's decision as technical, and inconsistent with the departmental policy for applying the misrepresentation provision found in section 40 of the *Immigration Refugee and Protection Act*, SC 2001, c27, [IRPA].

[8] The authority of the Court to review decisions of this sort is limited. The question is not whether the Court would have made the same determination but, rather, whether the visa officer's decision was reasonable, based on the evidence. To put it another way, the Court is required to show deference to the decision-maker whose job it is to assess and decide visa applications. There is rarely a single right answer available to a decision-maker when evidence is being examined and applied to the statutory criteria for admissibility to Canada. For the Court

to intervene, the impugned decision must be one that could not have been reasonably reached on the available evidence.

[9] It seems to me that Ms. Aoun's arguments miss the point. The application of section 40 of the IRPA does not depend on an applicant's intentions or motives for failing to disclose information: see *Bellido v Canada*, 2005 FC 452, [2005] FCJ no 572. The law is very clear that a failure to disclose information that could be material to the admissibility of a visa applicant is sufficient to support a finding of misrepresentation. That failure may have been innocent or the missing information may not have led to a finding of admissibility. The test is whether the failure to disclose foreclosed avenues of enquiry into matters that were potentially relevant to the pending decision. In *Cao v Canada*, 2010 FC 540; [2010] FCJ no 537, Justice Robert Mainville described the legal test in the following way:

> [28] Under paragraph 40(1)(a) of the Act, the Applicant is inadmissible to Canada if she has misrepresented or withheld material facts on a relevant matter that induces or could induce an error in the administration of the Act. I conclude that this provision, read in combination with paragraph 16(1) of the Act, imposes a general and broad duty on the Applicant to disclose all facts which may be material to her application for permanent residence. The Canadian immigration system rests on the premise that all persons applying under the Act will provide truthful and complete information on the basis of which decisions regarding their eventual admission into Canada will be made. The integrity and credibility of that system requires that this duty be taken seriously by all those concerned, including in this case the Applicant.

[10] In my view, Ms. Aoun was the author of her own misfortune. The application documents she signed on two occasions are clear. She was directed to provide her personal employment history without any gaps starting from the age of 18. When she signed her application, she

declared that the information provided was "truthful, complete, and correct". The declaration further stated that she fully understood the questions being asked of her and she undertook to make corrections if any of the supplied information changed. She also acknowledged that a finding of misrepresentation would bar her entry to Canada for 2 years. Notwithstanding these acknowledgements and directions, Ms. Aoun knowingly omitted some of her employment history because she did not think it to be important.

[11] The issue in this case is not whether the employment information Ms. Aoun failed to disclose would have made any difference to the final assessment of her application. The issue is whether the nature of that information is typically treated by the Department as material. Employment histories are not only relevant to the determination of a person's experience profile. They are also important to the assessment of a person's security profile. Some employers can raise security concerns and, in other situations, the reasons for a person's termination from employment could be extremely important. In a situation like this, the Department was initially deprived of the opportunity to make relevant enquiries. That was sufficient to apply section 40 to Ms. Aoun's application.

[12] I accept that this decision was not inevitable and a more lenient approach could have been taken on these facts; but this does not mean the decision was legally deficient. Indeed, it was reasonably open to the visa officer to find that the omissions from Ms. Aoun's visa application were potentially material and, therefore, fell within the scope of section 40.

[13] It is not open to a visa applicant to selectively disclose relevant and required personal information on the basis that she did not think it would make any difference. Applicants do not get to decide what is potentially material nor can they expect to be excused if, on further enquiry by the decision-maker, the full story is ultimately disclosed. The time for complete disclosure is when the application is submitted. Mr. Aoun is correct that visa officers are instructed by Departmental policy to be alert to the possibility of minor or innocent errors and not to blindly apply section 40 to every situation where it may technically apply. However, that does not mean the failure to disclose important information ought to be routinely excused.

[14] Our immigration system relies heavily on the honesty and good faith of visa applicants. Those standards would quickly erode if there were few, if any, consequences for withholding potentially material information from a visa application. I recently made the same point in the case of *Bundhel v MCI*, 2014 FC 1147, 247 A.C.W.S. (3d) 923, which involved a similar failure to disclose information. In that case, a very similar argument was made with respect to two serious criminal charges against the applicant that were ultimately dismissed. The applicant argued that his acquittal rendered the requested information immaterial. The visa officer disagreed and I upheld that decision on the following basis:

> [9] The fact is, our system of immigration control relies heavily on the truthfulness of those who apply to come here. Those who misrepresent their histories or withhold material information with a view to enhancing their chances for entry are undeserving of special consideration. The consequences for Mr. Bundhel are undoubtedly serious but they result from his failure to disclose material information. The integrity of Canada's control over its borders demands nothing less than scrupulous honesty from applicants and the rigid enforcement of that obligation. The Officer's decision fulfills this principle and is in all respects reasonable.

[15] In my view, the visa officer's finding that Ms. Aoun had breached the statutory obligation of full disclosure by withholding material information from her visa application was reasonable and, therefore, lawful. This application is, accordingly, dismissed.

[16] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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