Federal Court  Cour fédérale

Date: 20160527

Docket: IMM-4677-15

Citation: 2016 FC 589

Ottawa, Ontario, May 27, 2016

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

ATUL RAMESH SURI AND GAURI ATUL SURI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Background

[1] This is a judicial review, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of a decision by Citizenship and Immigration Canada Program Manager [the Officer] to refuse a permanent residence visa under the Federal Skilled Worker [FSW] class to the Principal Applicant. The decision is dated August 20, 2015.

[2] As per the Applicants' request and the consent of counsel for the Minister, their names within the style of cause have been corrected.

[1] The Applicants are citizens of India. On November 19, 2013, the Principal Applicant, Mr. Suri, applied for a Temporary Resident Visa [TRV], joined with the applications of his wife [the co-Applicant], son, and now-deceased father. These applications were refused.

[2] On December 24, 2013, the Applicants submitted new TRV applications, including in them information outlining their financial status in detail. These TRVs were granted and the Applicants travelled to Canada in June 2014 for just under a week.

[3] On October 30, 2014, the Primary Applicant applied for permanent residence as a member of the FSW class under National Occupation Code [NOC] 0711, Construction Managers. The co-Applicant was included as an accompanying dependent.

[4] On or around April 21, 2015, the Applicants received a procedural fairness letter [Fairness Letter] informing them that they may be inadmissible to Canada for misrepresentation under paragraph 40(1)(a) of the Act, which reads:

> 40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation
>
> (a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act.

[5] The Fairness Letter stated that the Principal Applicant's employment history in his TRV application did not match the history in his FSW application. In the FSW application, the Principal Applicant stated that he had been employed by "Makkar Construction Company" since October 2007, while both of his TRV applications stated that he was the owner of "Suri Housing and Construction" [SHC].

[6] The Fairness Letter also stated that the co-Applicant's employment history details in the temporary and permanent visa applications did not align. In the FSW application, the co-Applicant indicated that she had been employed at "Creative Instruments and Controls" since September 2008 and "Hind Motor Work Shop" from 2004-2008; her TRV applications, by contrast, indicated that she was employed by "Direct International Clothing" from 2002-2007 and "Mayur International" from 2007-2008 and was self-employed as a freelance designer from 2012 on.

[7] The Applicants replied to the Fairness Letter on May 11, 2015. They explained that they did not mention SHC in their permanent residence application since it is a joint family-run business and thus it was not the Principal Applicant's primary, full-time, or regular profession. The Applicants further stated in their response that SHC was registered under the Principal Applicant's name as he is the eldest of his siblings but that he was <u>not</u> an active member of the business. The Applicants explained that after the Principal Applicant's father's death and a difference of opinion among the family members, he no longer wished to be associated with the business and planned to terminate it: as a result, he did not declare any connection to SHC on his FSW application.

[8] The Principal Applicant also stated that he did not believe he needed to furnish complete employment details for the TRV application and that his visa consultant suggested it was not relevant or necessary for a short-term visa. Conversely, when he submitted the FSW application, his previous visa consultant informed him that he should not disclose his involvement in SHC as it was so limited.

[9] Turning to the co-Applicant's employment history, the Applicants explained that she has been employed by Creative Instruments and Controls since 2008 but that she has also worked as a freelance designer since 2012 at a level that did not meet the part-time eligibility criteria. As for Direct International and Mayur International, she had provided designs to each company to supplement her income but was never on the payroll of either. The Applicants acknowledged the mistake and stated there was never any intent to mislead.

[10] On August 20, 2015, the Officer rejected the FSW application. The Officer noted that the Applicants had provided an inaccurate account of their employment histories "based on information provided in previous visa applications as well as [their] response to our procedural fairness letter" and that this amounted to "misrepresentation or withholding of… material fact(s)" (Certified Tribunal Record at 2). As a result, the Officer declared them inadmissible to Canada under paragraph 40(1)(a) of the Act.

[11] The Applicants argue that the Officer erred in unreasonably concluding that they engaged in misrepresentation. They submit that they provided extensive documentation confirming their employment history along with a reasonable explanation for the discrepancies in their

applications and that the Officer did not give any reasons as to why these should be ignored, dismissed, or found not credible.

[12] The Applicants also argue that declaring one's employment history in a TRV application serves a different purpose than in an FSW application. In TRV applications, applicants provide their employment history to establish that they have ties to their home country and possess sufficient funds for a short visit. This is why the Applicants identified SHC – as proof of their financial security in India. In an FSW application, by contrast, applicants provide considerably more employment detail since these permanent resident visas are contingent, in part, on the depth and quality of their work experience.

[13] There was therefore no reason to focus in their TRV applications on their allegedly long employment careers and/or the firms at which they worked. This information was more appropriately outlined in their FSW application. Furthermore, the Applicants contend that when they submitted the 2014 FSW application, Mr. Suri's position relative to – and indeed the entire status of – SHC had changed from when the TRV applications were submitted in 2013.

[14] The Applicants argue, in sum, that they did not engage in misrepresentation since they did not believe, reasonably, that they needed to provide the same level of detail in their TRV and FSW applications. They cite *Ghasemzadeh v Canada (Citizenship and Immigration)*, 2010 FC 716 at para 13 for the proposition that while "an applicant for permanent residence has a duty of candour to disclose all material facts during the application process as well as and after a visa is issued… an exception arises where an applicant can show reasonable belief that he or she was not withholding material information".

II. Analysis

[15] The determination of an applicant's foreign skilled worker application is reviewable on a reasonableness standard (*Butt v Canada (Minister of Citizenship and Immigration)*, 2013 FC 618 at para 13; *Kotanyan v Canada (Citizenship and Immigration)*, 2014 FC 507). As such, this Court shall intervene only if the Officer came to a conclusion that is not transparent, justifiable and intelligible and within the range of acceptable outcomes based on the evidence (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[16] Preliminarily, I agree with the Applicants' basic proposition that temporary and permanent residency applications are, in certain aspects, fundamentally dissimilar. However, I disagree with the Applicants when it comes to the materiality of the information they provided for the two applications and the impact that any inconsistences might have. In other words, while applications for different types of status engage different considerations, it does not necessarily flow that statements made in temporary residence applications cannot affect subsequent permanent residence applications (or vice versa). In this case, I find the Officer's concerns vis-à-vis the contradictions between the Applicants' temporary and permanent applications to be reasonable.

[17] A finding of inadmissibility under paragraph 40(1)(a) of the Act requires two elements: (i) a misrepresentation by the applicant(s) which is (ii) material, such that it could have induced an error in the administration of the Act.

[18] In *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28, Justice Strickland summarized the key considerations outlined in the jurisprudence, including the fact

that paragraph 40(1)(a) is to be given a broad interpretation, capturing misrepresentations even if made by a third party such as a consultant, without the knowledge of the applicant (see also *Wang v Canada (Citizenship and Immigration)*, 2015 FC 647 at para 25). The only exception to this rule is narrow and applies in the truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control.

[19] As described above, Applicants' counsel proceeded on the basis that this was the key question to be determined in this review: whether his clients (who he did not represent in either of the preceding applications) had a "reasonable belief" that they were not withholding material information in either application. In other words, was it reasonable for the Applicants to assume that the inconsistent information that they provided in their various applications was inconsequential? To answer that, one must look to the applications themselves.

[20] In the cover letter attached to his successful 2013 TRV application, Mr. Suri, after setting out the length and purpose for his visit to Canada (6-7 days and for "tourism only"), stated that the following:

> I would like to mention about my profession here. I am into construction business with the name M/s Suri Housing and Construction from last 15 Years. I have huge funds and assets worth Rs.6 Crores in India. The details of my assets are enclosed with this letter. I have sufficient funds to take care of my family expenses during our stay in Canada and have no intention to stay back. I have created this business with my hard work over the last 15 years. How can I leave my home country, my business when I am totally settled in my country. I will not. My wife is also working. She is Interior Designer by profession.
>
> (Applicant's Record at 244 [AR])

[21] In the course of the subsequent FSW application, the Officer stated in the Fairness Letter that "it is my belief that you and your spouse have deliberately tried to mislead me in a relevant matter [work history] which could induce an error in the administration of the [Act]" (AR at 36). On May 11, 2015, the Principal Applicant replied as follows:

> I had only mentioned about "Suri Housing & Construction" as it is a Joint-Family run business; it is registered under my name as I am the eldest son in the family.
>
> However, this is not my primary, regular and full-time profession. Considering this is only a temporary visa, I had not furnished my complete details, as per guidance from my visa consultant. Now that I am applying for [Permanent Residence] which is a skilled worker program, I had furnished my primary regular and full-time profession details, i.e. I am working with Makkar Construction Company from 2007.
>
> (AR at 32)

[22] Mr. Suri's two explanations paint an inconsistent version of his work experience. In the TRV application, he portrays himself as a self-made business owner. Yet the FSW application, which requires proof of Mr. Suri's skills as a construction manager, is replete with details about his employment history in that field. It is as if his years of hard work building up the family business never existed. In fact, in his May 2015 letter, Mr. Suri goes out of his way to explain that he was never involved in that family business, stating:

> Further, I have not added the experience of Suri Housing & Construction as I was never an active member of the firm, but perhaps, had always provided outside and tactical support for the development of the Joint-Family business – a tradition very much prevalent in our culture.
>
> (AR at 33)

[23] There is a considerable difference between saying "I have created this business with my hard work over the last 15 years" (AR at 244) and "I was never an active member of the firm" (AR at 33). Simply put, these two submissions (the 2013 cover letter for the TRV application and the reply to the 2015 Fairness Letter) describe entirely different career paths – one of a successful self-employed entrepreneur, another of a construction manager with an extensive employment history. Similarly, the co-Applicant is described as a self-employed consultant and designer in the 2013 (temporary) TRV application. Then in the 2014 (permanent) FSW application, she has a completely different profile – that of an employee. Again, this is a material rather than a trivial difference.

[24] The bottom line is that the Applicants provided substantially inconsistent information to the Respondent. The applications appear to describe two sets of considerably different and non-overlapping work histories. It was therefore reasonable for the Officer to view this inconsistency as a misrepresentation of material facts.

III. Conclusion

[25] The Officer found that the Applicants misrepresented material facts in their FSW application by providing inconsistent information that related to a relevant matter, all of which could have induced an error in the administration of the Act. I find no reason to interfere with this conclusion.

[26] This application for judicial review is dismissed. There are no questions for certification or costs awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. Pursuant to the request of the Applicants' and the acquiescence of the Respondent, the style of cause is hereby amended to reflect the correct spelling of the Applicants' name;
3. There are no costs or certified questions.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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