Federal Court  Cour fédérale

Date: 20160919

Docket: IMM-717-16

Citation: 2016 FC 1054

Ottawa, Ontario, September 19, 2016

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

SARANJIT KAUR HEHAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review by Saranjit Kaur Hehar [the Applicant] under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c27 [the IRPA] of a decision by a visa officer with the Consulate General of Canada in India concluding that the applicant misrepresented herself pursuant to s. 40(1)(a) of the IRPA and refusing her application for a

temporary resident visa (TRV) and open work permit to Canada. The final decision was rendered on October 21, 2015. Leave was granted June 8, 2016.

[2] In my respectful opinion, the application must be dismissed for the following reasons.

II. Facts

[3] The Applicant is a 28-year-old woman of Indian nationality. On January 3, 2015, the Applicant married Gurdeep Singh Hehar [Applicant's husband]. At the time of the Applicant's application, the Applicant's husband was completing a Master's degree in Sustainable Environmental Management at the University of Saskatchewan.

[4] On April 16, 2015, the Applicant applied for a TRV and work permit so that she could stay in Canada with her husband while he completed his studies. As a part of this application, the Applicant included employment history with AniWeb Designs (AniWeb) from May 2013-September 2014 and with Euclide Software Solutions (Euclide) from October 2014- April 2015. Both employers are located in India. The Applicant provided her letters of offer as well as letters from both employers detailing her tasks and standing as an employee.

[5] On September 14, 2015, parallel verification was conducted to verify the work experience documents that the Applicant had provided with her application. One officer [SK] spoke with her employer company, Euclide, through an individual named Naveen Kumar Verma, the same person who signed her offer of employment and confirmation of work that the

Applicant filed; he is the CEO of Euclide. The other officer, [AG], spoke with the Applicant in the parallel interview process.

[6] The following questions and answers were asked and provided during the verification conversation with the employer by SK

Q: Does Saranjit Kaur Hehar work with you?

A: Yes, she is workign [*sic*] as a web developer.

Q: Since when?

A: About an [*sic*] year.

Q: Where is she right now?

A: She is in the office dealing with a client on skype.

Q: Can you call her on line [*sic*]?

A: No, she is busy, call after 5 mins [*sic*].

Q: Who does she report to?

A: A Manoj, Team Lead.

[7] The following questions and answers were asked and provided during the verification conversation with the Applicant and AG:

Q: What are you working as?

A: I am a senior web developer at Euclide Software.

Q: Since how many years?

A: Since Oct 2014.

Q: Where are you currently?

A: I am with my inlaws since the past week.

Q: Who do you report to?

A: A Ravi, Project manager.

Q: What is the address for Euclide Software Solutions?

[8] The phone line with the Applicant disconnected after the Applicant was asked for the address of her employer. The officer's notes state: "tried calling [the Applicant] many times…but she did not respond" , and "[A]ppeared PA intentionally disconnected the phone and did not attend to our phone TVE-2."

[9] On September 18, 2015, a Procedural Fairness Letter (PFL) was sent to the Applicant, outlining the officer's concerns regarding her employment with Euclide in the following terms:

> Work experience: You failed to provide truthful information regarding your stated employment with Euclide Software Solutions. During our parallel telephone interview the answers you provided were inconsistent of those of your stated employer.

[10] The PFL noted, in two separate places, that a possible consequence of misrepresentation is a five year ban on admissibility: first, this was stated in the text of the letter and then it was repeated in the excerpt of subsection 40(2) of the IRPA included in the PFL. Subsection 40(2) of the IRPA sets out the five year ban on admissibility.

[11] On September 30, 2015, the Applicant provided a response letter in which she stated:

- That she had provided truthful information regarding her employment with Euclide;

- That she had been travelling with her mother-in-law at the time of the interview;
- That the “chance of answering few questions improperly cannot be ruled out” ;
- That she is a qualified computer professional with MCA qualifications, previously training and working with AniWeb;
- That she was issued an appointment letter by Euclide on September 20, 2014 and began working there on October 1, 2014; and,
- That after getting married, she requested that she be permitted to work from home, to which her employer agreed.

[12] She also filed an additional letter signed by her alleged employer, Euclide’s CEO, Naveen Kumar Verma to the effect that she was still at Euclide; it also identified projects she was working on, and confirmed she is allowed to work from home in certain conditions.

III. The Decision

[13] On October 21, 2015, the final Decision was sent to the Applicant, which found that the Applicant had not answered all questions truthfully, as required by subsection 16(1) of the IRPA. The decision was made by a third officer [CM] who reviewed the notes that SK made of his and AG’s parallel conversations with the employer and the Applicant respectively. The conclusion was drawn from the discrepancies between the answers provided to similar questions posed to the employer and the Applicant during the parallel verification process.

[14] The Decision states:

> I do not find the applicant's work experience documents credible given the different answers provided by the employer and the applicant and I am not satisfied the employment documents provided with this application are genuine. Applicant's response did not satisfy me as she merely stated she did work for Euclide and had no plausible explanation for the discrepancies. By providing employment documents that are not genuine the applicant withheld a material fact related to a relevant matter that could have induced an error in the administration of the IRPA. Specifically: - the applicant is applying for a work permit to work in Canada. By not providing genuine employment records the officer [*sic*] I am not satisfied as to true purpose of travel and I cannot be satisfied that the applicant is a genuine worker who would leave Canada before the end of the period authorized for his [sic] stay. The applicant is inadmissible under A40(1) of the IRPA. Refused on bonafides and for misrepresentation. 5 year bar applies.

IV. Issues

[15] The issue is whether the Decision is reasonable. The Applicant says it is not, and that too much was made of too little; while the application could have been dismissed on the basis the evidence failed to satisfy the officer on its merits, the finding of misrepresentation was not reasonable particularly having regard to the fact it essentially renders both the Applicant and her husband inadmissible for 5 years, thereby frustrating their path to permanent resident status. The Applicant also says there were procedural fairness breaches in that the PFL was inadequate, and in the parallel interview process. Finally the Applicant argued that the appropriate test for misrepresentation was not met. The Respondent disagrees on all counts.

V. Relevant Provisions

[16] Sections 11, 16(1), 40(1)(a), (2) and (3) of the IRPA provide:

Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
Obligation — answer truthfully	**Obligation du demandeur**
16 (1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	16 (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.
Misrepresentation	**Fausses declarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants:
(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;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

…	…
Application	**Application**
(2) The following provisions govern subsection (1):	2) Les dispositions suivantes s'appliquent au paragraphe (1) :
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; and	a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;
…	…
Inadmissible	**Interdiction de territoire**
(3) A foreign national who is inadmissible under this section may not apply for permanent resident status during the period referred to in paragraph (2)(a).	(3) L'étranger interdit de territoire au titre du présent article ne peut, pendant la période visée à l'alinéa (2)a), présenter de demande pour obtenir le statut de résident permanent.

[17] The relevant rules from the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [the IRPR] provide:

DIVISION 3 **Issuance of Work Permits**	**SECTION 3** **Délivrance du permis de travail**
Marginal note: Work permits	**Permis de travail — demande préalable à l'entrée au Canada**

200 (1) Subject to subsections (2) and (3) — and, in respect of a foreign national who makes an application for a work permit before entering Canada, subject to section 87.3 of the Act — an officer shall issue a work permit to a foreign national if, following an examination, it is established that	200 (1) Sous réserve des paragraphes (2) et (3), et de l'article 87.3 de la Loi dans le cas de l'étranger qui fait la demande préalablement à son entrée au Canada, l'agent délivre un permis de travail à l'étranger si, à l'issue d'un contrôle, les éléments ci-après sont établis :
(a) the foreign national applied for it in accordance with Division 2;	a) l'étranger a demandé un permis de travail conformément à la section 2;
(b) the foreign national will leave Canada by the end of the period authorized for their stay under Division 2 of Part 9;	b) il quittera le Canada à la fin de la période de séjour qui lui est applicable au titre de la section 2 de la partie 9;
…	…

VI. Standard of Review

[18] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is unnecessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." When determining whether an immigration officer made a reviewable error in concluding that an applicant made a material misrepresentation pursuant to paragraph 40(1)(a) of the IRPA, the standard of review is that of reasonableness: *Sidhu v Canada (Citizenship and Immigration)*, 2014 FC 176 at para 16. Issues of procedural fairness are reviewed on the correctness standard: *Canada (Citizenship and Immigration) v*

Khosa, 2009 SCC 12 at para 43. Where reasons have been provided and there has been no breach of the duty of procedural fairness, the adequacy of reasons is also reviewed on the reasonableness standard: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*].

[19] In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

> A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[20] In terms of the Decision's reasonableness, the task of the Court is not to decide if the decision is correct or incorrect, but to determine if it is reasonable. It is well-settled that judicial review is not a treasure hunt for errors. The reviewing court is duty bound to consider the decision as an organic whole.

[21] The Supreme Court explains in *Dunsmuir*, at para 50, the requirements of the correctness standard of review:

> When applying the correctness standard, a reviewing court will not show deference to the decision maker's reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal's decision was correct.

VII. Analysis

[22] The fundamental difficulty with the Applicant's case is that she gave very different answers from those of her employer in the parallel interviews conducted by Canadian immigration officials. The employer's representative with whom the visa officer spoke, Naveen Kumar Verma, had essentially been identified by the Applicant as, in effect, the "go to person" in her application; it was he who provided the job offer and certification of continued employment letters filed by the Applicant; he was her alleged employer's CEO. It is reasonable to conclude that the officer was entitled to accept his answers as accurate. However, Naveen Kumar Verma gave radically different answers from those given by the Applicant during the verification process in response to the same two simple questions. First, in response to the question, "Who does she report to/Who do you report to," two different individuals, with different job titles were named. Second, in response to the question, "Where is she right now/Where are you currently", the employer replied that the Applicant was in the office but busy with a client on Skype, but the Applicant said she had been with her in-laws "since the past week." In each case, both answers could not be correct. In my respectful view, it was reasonable, as *Dunsmuir* teaches, for the officer to conclude on this basis alone that there was a misrepresentation. It was open to the officer to draw the conclusion drawn.

[23] Much was made of the five-year inadmissibility ban. I note that under the IRPA, the ban on the Applicant extends to her husband. I am not sure, however, how this consequence could have been made any plainer to the Applicant than it was in the PFL, which very explicitly drew the Applicant's attention to the possibility of this ban not just once, but twice. I agree the

consequences are very unfortunate for this couple, but the issue here is not the consequences of a misrepresentation. The issue is whether the finding of misrepresentation was itself unreasonable. As noted above, I have found that the officer's finding was reasonable.

[24] The time to pay attention to the five-year ban was when making the application. In addition, a second chance lay in providing responses to the parallel verification interviews and yet a third chance was afforded to the Applicant in affording an opportunity to respond to the PFL.

[25] It is, with respect, no answer to a PFL to assert that the previous answers are accurate but to add that her response also said that the "chance of answering few questions improperly cannot be ruled out." I give this statement no effect at all; it is completely unresponsive.

[26] The record shows the Applicant was asked four questions. While she was not told what specific concerns arose out of her interview, she could have formulated her response with these four questions in mind. Essentially, the officer found the Applicant's reply to the PFL non-responsive; it was: I am unable to detect unreasonableness in this respect.

[27] The Applicant raised concerns about the process in terms of procedural fairness, suggesting the same officer should have interviewed both the employer and the officer, that the officer should have called the employer again in 5 minutes as requested, that the call by AG as reported was double hearsay, that AG should have kept and separately recorded his or her notes,

and that departmental policy regarding the careful record-keeping of interviews was not followed.

[28] In my respectful view, there is no reason why the same officer should conduct parallel interviews of the Applicant and his or her employer generally, particularly where a work permit is involved, as is the case here. Assuming parallel interviews are conducted simultaneously it would be impossible to do so. Moreover, as I understand it, the purpose of a parallel interview process is to determine the truthfulness of an application. It is clearly best if such interviews are conducted simultaneously i.e. in parallel in order to avoid having individuals tailor responses given in the second call to match those given in the first. This advantage would be eliminated if the same officer must make both calls.

[29] Additionally, it is well-established that there is no obligation on officers to make repeated calls to speak to an applicant at an applicant's workplace, particularly when the Applicant herself was the subject of a parallel call by another officer who found her at her in-laws: see *Heer v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1357 at paras 19-21. An applicant must put forward his or her best case in his or her application; this onus extends to related interview processes, and any response to a procedural fairness letter.

[30] It is apparent that SK recorded the results of his interview with the employer and also entered AG's information concerning his or her call to the Applicant. I see no reviewable error in AG reporting his parallel interview with the Applicant directly to SK, nor with SK then entering the responses both he and AG received into the GCMS notes. It is well-established that officers

are entitled to rely on what they are told by other officers: *Dieng v Canada (M.C.I.)*, 2009 FC 217 at para 22:

> [22] FOSS notes are admissible as information appearing in a file which the judge can take cognizance of: *Ally v. Minister of Citizenship and Immigration*, 2008 FC 445, at paragraph 20, where Justice James Russell wrote: "The Officer was entitled to rely upon information that appeared in the file even though it was information provided by the Applicant to another officer."

[31] Insofar as hearsay and double hearsay are concerned, it is trite to observe that the rules of evidence applicable in a court of law do not apply to officers making and relying on interview notes: IRPA s. 173(c). The Applicant offers nothing but speculation to challenge the accuracy of the entries in the GCMS. Without establishing an air of reality or other cause, the Applicant may not attack the GCMS notes, which must therefore be accepted for what they state. There is no merit to this objection.

[32] Consequently, the ultimate decision-maker, CM, acted properly in relying on the GCMS notes of the two other officers, SK and AG.

[33] Objection was also taken to the following plausibility finding made by CM: "Applicant's response did not satisfy me as she merely stated she did work for Euclide and had no plausible explanation for the discrepancies." Applicant's counsel states that there is a plausible explanation for these discrepancies, namely, that the Applicant was allowed to work from home and she was travelling at the time of the parallel verification. While plausibility findings should be supported with reasons and be based on the evidence, I am frankly unable to see how either of these explanations might, in any way, be said to clarify why her answers regarding where she

was, and to whom she reported, were starkly different from the answers of her employer. With respect, there is no ground of judicial review in this submission.

[34] The Applicant also referred to the fact the GCMS notes said the Applicant's telephone interview ended prematurely, and that subsequent calls by AG to the Applicant were not answered with the suggestion there was deliberate evasion by the Applicant. However, as already noted, this aspect of the officer's interview notes was not in fact referred to by actual decision-maker, CM. As such, the reasonableness of the Decision in this respect cannot be attacked; it is a red herring.

[35] Finally, the Applicant emphasized that findings of misrepresentation must be made on a balance of probabilities as set out in departmental Guidelines, not merely on the basis of reasonable grounds to believe as otherwise required by section 133 of the IRPA. I agree, and I also agree that clear and convincing evidence is needed: *Chughtai v Canada (Citizenship and Immigration*), 2016 FC 416 [*Chughtai*]:

> [29] An applicant for a permanent residence visa may be refused if he or she fails to meet the evidentiary burden necessary to satisfy the officer as to his or her eligibility. On the other hand, a finding of inadmissibility is more serious in nature. Under paragraph 40(1)(a) of IRPA, a person is inadmissible to Canada if that person "withhold[s] material facts relating to a relevant matter that induces or could induce an error in the administration of th[e] Act". As my colleague Justice Barnes states in *Xu* at para 16, "[a] finding of misrepresentation under section 40 of the IRPA is a serious matter which should not be made in the absence of clear and convincing evidence […]" [emphasis added]. Similarly, in *Berlin* at para 21, Justice Barnes states, "[a] misrepresentation is not established by mere appearances. As the Respondent's Operational Manual on Enforcement acknowledges, a misrepresentation must be established on a balance of probabilities." While an applicant for permanent residence has a

> duty of candour requiring the disclosure of material facts, and while even an innocent failure to provide material information can result in a finding of inadmissibility (*Baro* at para 15), there must still be clear and convincing evidence that an applicant, on the balance of probabilities, has withheld material facts for a finding of misrepresentation to be made.
>
> [33] Overall, it appears from the decision that the only evidence the officer used to support the misrepresentation finding was the determination that the employer may not have had an actual business need for the position of office manager. As a result, the reasons do not support the officer's finding of misrepresentation on a basis of clear and convincing evidence. I am therefore not satisfied that the determination of inadmissibility by the visa officer falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir* at para 47).

[36] In my respectful view, these tests are satisfied in this case. There was no unsupported leap from the evidence to the conclusion as in *Chughtai.* As is apparent, such a decision is a fact-driven matter. Here, the Applicant gave completely different answers from those of her employer to simple and direct questions. In my view, the conclusion on misrepresentation was reasonably made on the facts.

VIII. Conclusion

[37] For the foregoing reasons, I have come to the conclusion that the Decision meets the tests set out in *Dunsmuir* in respect of justification, transparency and intelligibility within the decision-making process, in that they fall within the range of possible, acceptable outcomes which are defensible in respect of the facts of this case, and on the law. Therefore, judicial review must be dismissed.

IX. Certified Question

[38] Neither party proposed a question to certify, and none arises.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, no question is certified, the whole without costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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