Date: 20170509

Docket: IMM-2917-16

Citation: 2017 FC 472

Ottawa, Ontario, May 9, 2017

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

HAPPYBEN SHAILESHBHAI PATEL

Applicant

and

**THE MINISTER OF CITIZENSHIP
& IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I.   Overview

[1]   In 2016, Ms Happyben Shaileshbhai Patel married Rikinkumar Patel, a student who was in Canada on a post-graduate work permit. Soon thereafter, Ms Patel applied for her own work permit. She stated on her application that she had no previous visa refusals, which was untrue: she had twice applied for a US visa in 2015, and was rejected both times because her ties to her home country of India were insufficient to assure that she would return home after her visa

expired. Based on Ms Patel's error, an immigration officer denied her a Canadian work permit because she had misrepresented or withheld material facts (pursuant to s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] - see Annex).

[2]   Ms Patel submits that the officer treated her unfairly by not allowing her to respond to the officer's concerns. In addition, she argues that the officer's conclusion that she had misrepresented or withheld material facts was unreasonable. She claims to have made an innocent error. Ms Patel asks me to quash the officer's decision and order another officer to reconsider her application.

[3]   I cannot find any unfairness in the manner in which the officer treated Ms Patel. Further, the officer's decision was not unreasonable on the evidence. Accordingly, I must dismiss this application for judicial review.

[4]   There are two issues:

    1. Did the officer treat Ms Patel unfairly?

    2. Was the officer's assessment unreasonable?

[5]   As a preliminary matter, Ms Patel disputes the admissibility of an affidavit tendered by the Minister and authored by the officer who refused Ms Patel's application. Since I have not relied on this affidavit, I need not decide whether it is admissible.

II.   Issue One: Did the Officer Treat Ms Patel Unfairly?

[6]   Ms Patel submits that the officer treated her unfairly by failing to provide her a meaningful opportunity to respond to the officer's concerns.

[7]   I disagree.

[8]   The officer sent Ms Patel a letter setting out the officer's concern that Ms Patel may not have been truthful in her answers relating to previous visa refusals. The officer offered Ms Patel an opportunity to respond and she did so: Ms Patel explained that she had made an honest mistake as English is not her first language, and that she believed the question was directed only to Canadian visa refusals, of which she had none. On this evidence, I find that the officer treated Ms Patel.

III.   Issue Two: Was the Officer's Assessment Unreasonable?

[9]   In my view, no. It was open to the officer to find that Ms Patel had misrepresented or withheld material facts on her visa application.

[10]   A person is inadmissible to Canada if he or she "withhold[s] material facts relating to a relevant matter that induces or could induce an error in the administration" of IRPA (s 40(1)(a)). The onus fell on Ms Patel to ensure that her application was complete and accurate *(Goudarzi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 425 at para 24).

[11]   Although I accept that innocent mistakes can occur, Ms Patel has not shown that she falls within the exception for errors that are both honest and reasonable (*Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 at para 15). She was fully aware of her failed visa applications, and no information about those applications was disclosed in her application. Although Ms Patel asserts that the error was due in part to language difficulties, I note that she was aided by an English-speaking assistant.

[12]   Further, the officer reasonably concluded that the mistake was material. The error went directly to the question of whether Ms Patel was a bona fide temporary worker who would leave Canada upon the expiry of her visa.

[13]   Although I sympathize with the situation in which Ms Patel and her husband now find themselves, I cannot conclude that the officer's decision was unreasonable.

IV.   Conclusion and Disposition

[14]   The officer afforded Ms Patel an opportunity to respond to the officer's concerns, considered the relevant evidence, and reasonably concluded that Ms Patel had misrepresented or withheld material information on her application. I must, therefore, dismiss this application for judicial review. Neither party proposed a question for certification, and none is stated.

<u>JUDGMENT IN IMM-2917-16</u>

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,

and no question of general importance is stated.

"James W. O'Reilly"

Judge

ANNEX

Immigration and Refugee Protection Act, SC 2001, c 27	*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27

Misrepresentation

Fausses déclarations:

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;

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2917-16

STYLE OF CAUSE: HAPPYBEN SHAILESHBHAI PATEL v THE
                                  MINISTER OF CITIZENSHIP & IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 25, 2017

JUDGMENT AND REASONS: O'REILLY J.

DATED: MAY 9, 2017

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