Federal Court  Cour fédérale

Date: 20180515

Docket: T-1350-17

Citation: 2018 FC 514

Ottawa, Ontario, May 15, 2018

PRESENT: Mr. Justice Grammond

BETWEEN:

NASIMALSADAT HOSEINIAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Ms. Hoseinian is a citizen of Iran and has been a permanent resident of Canada since 2011. In 2016, she applied for Canadian citizenship. While her application was under review, it was discovered that an Iranian entry stamp on her passport had been altered. This raised doubts as to the duration of her residence in Canada in the four years preceding her application. She provided additional evidence showing that she travelled from Canada to Iran on the date purportedly shown on the disputed entry stamp. Nevertheless, Citizenship and Immigration

Canada [CIC] refused her application, because she had made a material misrepresentation. She now seeks judicial review of that decision. I am allowing her application, because the CIC officer who made the decision failed to assess the evidence provided by Ms. Hoseinian and to inquire into the truthfulness of the date of the disputed entry stamp. As a result, the finding of misrepresentation cannot stand.

[2] Two sections of the *Citizenship Act*, RSC 1985 c C-29 [the Act], are relevant to this case. At the relevant time, section 5 provided that citizenship shall be granted to a permanent resident who, among other conditions which are not in dispute here, has, "within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada." Section 22(1)(e.1) provides that citizenship shall not be granted "if the person directly or indirectly misrepresents or withholds material circumstances relating to a relevant matter, which induces or could induce an error in the administration of this Act."

[3] Ms. Hoseinian filed her application for citizenship in May 2015. In March 2016, she attended an interview with a CIC officer with respect to her residence in Canada. At that interview, the officer seized her Iranian passport, because of an apparent alteration. The passport was sent to a Canadian Border Services Agency document analyst. The analyst concluded that the passport was genuine, but two Iranian entry stamps had been altered.

[4] In October 2016, CIC wrote to Ms. Hoseinian, outlining CIC's concerns and asking for a response. Ms. Hoseinian replied that she did not know how and by whom the passport was altered. She provided additional evidence confirming that she travelled from Canada to Iran on

the date purportedly shown on the disputed entry stamp, namely, February 21, 2012. The evidence included credit card statements showing that she had made purchases in Canada up to February 14, 2012 and purchases in Frankfurt, Germany on February 20. In addition, she provided the passport of her son, who was 19 months old at that time, which also contains an Iranian entry stamp dated February 21, 2012. She also relied on her travelling history as recorded by the Integrated Customs Enforcement System [ICES], which corroborated certain Iranian exit stamps. However, ICES generally does not record information about travellers leaving Canada, so the information provided by Ms. Hoseinian did not corroborate the disputed Iranian entry stamp.

[5] CIC made a decision on August 1, 2017. It gave "great weight" to the document analyst report that concluded Ms. Hoseinian's passport had been altered. With respect to the evidence submitted by Ms. Hoseinian corroborating the date shown on the Iranian entry stamp, CIC wrote this:

> I reject your claim that notwithstanding the alterations in your passport that you have sufficient evidence to refute the allegations of misrepresentation. This decision is pursuant to S. 22(1)(e.1) of the Act, not 5(1)(c) of the Act which requirements relate to the residence requirements. While it would appear that information was altered in your passport in order to simulate your physical presence in Canada, the fact remains that you provided the department a document which has been altered and those are the grounds for misrepresentation.
>
> I am of the opinion that there [*sic*] analysis demonstrates that a material document, such as your passport, was altered in what appears to be an attempt to simulate your physical presence in Canada. […]
>
> I've reviewed your entire submissions and I find that ICES Traveller History report, translated copy of your passport and Scotiabank Visa statements do not refute the allegations that you supplied the department with a fraudulent/altered document.

[6] On an application for judicial review, the decision of a citizenship officer regarding a finding of misrepresentation will be set aside only if it is shown to be unreasonable: *El Sayed v Canada (Citizenship and Immigration)*, 2017 FC 39 at para 12. A decision may be unreasonable where the decision-maker did not apply case law from this Court (*Canada (Attorney General) v Canadian Human Rights Commission*, 2013 FCA 75 at para 14) or failed to consider relevant criteria (*Canada (Attorney General) v Almon Equipment Limited*, 2010 FCA 193 at para 39, [2011] 4 FCR 203). In assessing whether a decision is reasonable, however, my role is neither to reassess the evidence nor to make my own credibility findings.

[7] I now turn to this Court's jurisprudence concerning misrepresentation in the context of section 22 of the Act. Also relevant is our jurisprudence interpreting section 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], which is couched in similar language.

[8] This Court has consistently held that a misrepresentation under section 22 of the Act or section 40 of IRPA need not be intentional (*Cao v Canada (Citizenship and Immigration)*, 2010 FC 450 at para 31; *Sayedi v Canada (Citizenship and Immigration)*, 2012 FC 420 at paras 40-43). This rule was developed mainly in response to individuals suspected of misrepresentation who asserted that their applications were written by someone else, for example a family member or an immigration consultant, and that they did not know of the misrepresentation. In that context, this Court held that an applicant has the duty to ensure that the contents of his or her application are true and cannot benefit from a misrepresentation made by a family member or

other person. Thus, when a misrepresentation is discovered, immigration or citizenship officers need not inquire into the state of mind of the applicant.

[9] Nevertheless, there must be a misrepresentation at the outset. The Act does not define the concept of misrepresentation. In everyday language, it refers to a statement which contains false or erroneous information. For example, in the private law context, the tort of negligent misrepresentation is made out where, among other conditions, a statement is "untrue, inaccurate or misleading" (*Queen v Cognos Inc.*, [1993] 1 SCR 87 at 110). This minimal requirement also applies in the immigration context. In *Wang v Canada (Citizenship and Immigration)*, 2006 FCA 345, for example, the Federal Court of Appeal inquired into the truthfulness of a statement as the first step of the misrepresentation analysis.

[10] The wording of section 22(1)(e.1) also indicates that, to constitute a misrepresentation, a statement must relate to "material circumstances." It must also have the potential to "induce an error in the administration of this Act." Presenting a document that has been altered does not automatically create such a potential error. In *Zhamila v Canada (Citizenship and Immigration)*, 2018 FC 88 [*Zhamila*], at para 33, my colleague Justice Richard Mosley quoted from CIC's enforcement manual:

> Verification of documents sometimes reveals that documents submitted by applicants are fraudulent; this does not automatically lead to inadmissibility. These documents may not be material and/or relevant and/or may not induce an error in the administration of the Act. Officers should consider and be guided by the following principles: […]
>
> > Was the document provided to make a misrepresentation? Sometimes fraudulent documents are obtained to support true facts that cannot be verified because records are otherwise

> unobtainable or difficult to obtain. In these circumstances, if the facts are otherwise established to the satisfaction of the officer, it is questionable that the misrepresentation could have induced an error.

[11] An earlier case, *Dhatt v Canada (Citizenship and Immigration)*, 2013 FC 556, provides an example. The applicant in that case was found to have submitted a fraudulently-obtained birth certificate for his adopted daughter. Although the birth certificate was fraudulent, there was no attempt to conceal the adoption or evidence to suggest it was used for the purposes of misrepresentation. My colleague Justice Anne Mactavish concluded that it was unreasonable to say that the submission of a fraudulent document, on its own, constituted a misrepresentation.

[12] Thus, when immigration or citizenship officials find that a document was altered, they cannot conclude, on that basis only, that there was a misrepresentation. They must ask themselves whether the alteration conveyed false information that related to a circumstance that is material to the application before them (*Koo v Canada (Citizenship and Immigration)*, 2008 FC 931, [2009] 3 FCR 446). In that inquiry, evidence showing that the information is true would be highly relevant.

[13] The officer in this case omitted to do this. My understanding of his reasons, quoted above, is that the finding that Ms. Hoseinian's passport had been altered was conclusive and he therefore did not need to consider the additional evidence tendered by Ms. Hoseinian because this evidence did not contradict the fact that the passport was altered. Moreover, the officer stated that any evidence showing that Ms. Hoseinian travelled from Canada to Iran on February 21, 2012 would be relevant to a determination under section 5 of the Act (whether Ms. Hoseinian

resided in Canada during the relevant three years) but not to a determination under section 22 (whether she made a misrepresentation).

[14] At the hearing, counsel for the Respondent confirmed that this was also his understanding of the officer's reasons. He argued that the officer correctly applied the law in doing so. As I showed above, this is not so. The officer failed to assess Ms. Hoseinian's evidence and to make a determination as to whether it buttressed her argument that the alteration to her passport did not constitute a misrepresentation, as the information shown was actually true.

[15] Most importantly, nothing in the record shows that the officer reached any conclusion as to the truthfulness of the information conveyed by the disputed entry stamp. The document analysis report does not explain what the genuine entry date was and how it had been modified. Thus, the report does not support the conclusion that the date shown on the entry stamp was false. This is unlike the situation in *Zhamila*, where a cursory examination of the passport revealed that the date "2016" had been changed to "2018." In this case, the colour copy of Ms. Hoseinian's passport that was filed in the Certified Tribunal Record does not allow me to supplement the silence of the officer's reasons as to the nature of the purported misrepresentation.

[16] Ms. Hoseinian also argued that CIC, which has kept her original passport throughout, should have made it available for examination by her own expert. In not doing so, CIC would have breached procedural fairness. Ms. Hoseinian did not bring this argument forward before the CIC officer, nor in her application for judicial review, but only in her memorandum of argument.

In fairness to the other party, the Court may decline to deal with an argument brought at such a late stage of the proceedings. In any event, given my conclusion on the main issue, it is unnecessary to deal with this argument.

[17] As the decision of the officer is unreasonable, the application for judicial review will be allowed and the matter is sent back for redetermination by a different officer.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. the application for judicial review is allowed;

2. the matter is sent back for redetermination by a different officer;

3. no question is certified.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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