Federal Court  Cour fédérale

Date: 20180911

Docket: IMM-5193-17

Citation: 2018 FC 907

Ottawa, Ontario, September 11, 2018

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

FRANKLIN CHINEDU NWALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Franklin Chinedu Nwali seeks judicial review of a decision by an officer with Citizenship and Immigration Canada to refuse his application for a study permit. Mr. Nwali was also found to be inadmissible to Canada for misrepresentation pursuant to s 40(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA].

[2] The visa officer's decision was reasonable. Following an interview, the officer found Mr. Nwali to lack credibility. He could not provide a clear account of the discrepancies in the information he provided in support of his many applications for a study permit. He submitted a misleading letter from one of his employers. He was unable to provide a satisfactory explanation for why he had considered only one Canadian university for his studies, or how a degree offered by that institution might apply in the African context. He said he wanted to help his employer expand its operations in Africa, although he was working for a different employer at the time of his initial application. Ultimately, the officer was unsure where the truth began and where it ended.

II. Background

[3] Mr. Nwali is 39 years old and a citizen of Nigeria, where he currently resides. He works as a purchasing manager at Shopdirect Resources Ltd. He is unmarried and has no children. Mr. Nwali applied to Royal Roads University in British Columbia to complete a Master of Global Management degree. His application was accepted in May 2016. Since then, he has made several attempts to obtain a study permit.

[4] Mr. Nwali's first request for a study permit was refused in January 2016. He applied a second time. When this application was denied in August 2016, Mr. Nwali brought an application for leave and judicial review. The refusal was remitted for redetermination on consent. Mr. Nwali made further submissions on January 20 and April 12, 2017, and the application was refused a third time on May 16, 2017. This decision was also remitted for

redetermination on consent. Mr. Nwali made further submissions on August 25, 2017, and attended an interview in Accra, Ghana on October 26, 2017.

[5] During the interview, Mr. Nwali said he wanted to obtain a degree from Royal Roads University in order to help his company expand in Africa and better understand Western business practices. He admitted that he had not considered any universities other than Royal Roads, saying only that Canada is a positive place to study.

[6] The visa officer noted that Mr. Nwali had provided inconsistent dates for his past employment in his numerous applications and during the interview. Counsel for the Minister provided the Court with the following table of inconsistencies, the accuracy of which was accepted by counsel representing Mr. Nwali.

Employer	**Jan 2016**	**June 2016**	**Aug 2017**	**Interview**
Fortis	Dec 2008- Feb 2010	Dec 2008- Sept 2010	Dec 2008- Sept 2010	Dec 2008- Jul 2010
ALS	Sept 2012- Nov 2013	Sept 2012- Jul 2014	Sept 2012- Jul 2014	Sept 2012- May 2014
Deuces	Mar 2015- present	Mar 2015- present	Mar 2015- Apr 2017	Mar 2015- Mar 2017
Shopdirect	--	--	May 2017- present	Apr 2017- present

Fortis: Fortis Microfinance Bank
ALS: Airline Logistical Services
Deuces: Deuces Supermarket
Shopdirect: Shopdirect Resources Ltd

[7] Mr. Nwali said the inconsistencies were unintentional mistakes. However, the visa officer noted that Mr. Nwali had provided a letter from Deuces Supermarket dated March 30, 2017 confirming he was employed there as a sales manager, and a written job offer from Shopdirect dated March 20, 2017 with a starting date of April 3, 2017. Mr. Nwali said he was unsure if he would take the job at Shopdirect if the permit were granted. When asked by the officer why he did not acknowledge working at Shopdirect in the third set of written submissions he forwarded on April 12, 2017, Mr. Nwali replied that he thought it was too soon to provide this information.

[8] The visa officer suggested to Mr. Nwali that he had exaggerated his employment to create the impression he was better established in Nigeria, and to make his proposed plan of study seem more reasonable. The officer noted that Mr. Nwali's brother had immigrated to Canada, and he also had family members in Australia and the United Kingdom. He questioned why Mr. Nwali would not seek to immigrate as well. Mr. Nwali insisted that he intended to return to Nigeria, and that his proposed studies would give him better opportunities in his homeland.

III. Decision under Review

[9] The visa officer rejected Mr. Nwali's application for a study permit on November 9, 2017. Based on the discrepancies in the dates provided for his past employment, the officer concluded that Mr. Nwali had exaggerated his work experience. The officer also noted that Mr. Nwali claimed in his submissions dated April 12, 2017 that he was still working for Deuces Supermarket when he was actually working for Shopdirect, thus presenting himself as a stable

employee of two years rather than a new hire. The officer observed that Mr. Nwali had stated his education would assist his employer in expanding in Africa, although he was working for a different employer at the time of his initial application for a study permit.

[10] The visa officer also found Mr. Nwali's explanation of why he wanted to study at Royal Roads University to be "generic," because it was largely focused on the merits of Canada and his desire for international experience. His explanation did not address the utility of a Canadian education in the African context. The officer concluded that he did not have enough consistent information to determine "where the truth begins and ends". The officer therefore found Mr. Nwali to be inadmissible for misrepresentation, and refused the application.

IV. Issue

[11] The sole issue raised by this application for judicial review is whether the visa officer's decision to refuse Mr. Nwali's request for a study permit, and to find him inadmissible for misrepresentation, was reasonable.

V. Analysis

[12] A visa officer's decision whether to grant a study permit is reviewable by this Court against the standard of reasonableness (*Li v Canada (Citizenship and Immigration)*, 2008 FC 1284 at paras 14-16). A finding of misrepresentation under s 40(1)(a) of the IRPA is also subject to review against the standard of reasonableness (*Seraj v Canada (Citizenship and Immigration)*,

2016 FC 38 at para 11 [*Seraj*]). The Court will intervene only if the decision falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[13] Paragraph 40(1)(a) of the IRPA states that a foreign national is inadmissible for misrepresentation "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." Pursuant to s 40(2)(a), a finding of misrepresentation causes a foreign national to be inadmissible to Canada for five years.

[14] Findings of misrepresentation should not be made lightly. An applicant who is found to be inadmissible for misrepresentation faces important and long-lasting consequences in addition to having his or her application rejected (*Seraj* at para 1).

[15] The principles applied by this Court in assessing misrepresentation under s 40 of the IRPA were comprehensively discussed by Justice Cecily Strickland in *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at paragraph 28 [*Goburdhun*]:

> - Section 40 is to be given a broad interpretation in order to promote its underlying purpose;
> - Section 40 is broadly worded to encompasses misrepresentations even if made by another party, including an immigration consultant, without the knowledge of the applicant;
> - The exception to this rule is narrow and applies only to 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;
>
> - The objective of section 40 is to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the applicant to ensure the completeness and accuracy of their application;
>
> - An applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada;
>
> - As the applicant is responsible for the content of an application which they sign, the applicant's belief that he or she was not misrepresenting a material fact is not reasonable where they fail to review their application and ensure the completeness and veracity of the document before signing it;
>
> - In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose;
>
> - A misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process;
>
> - An applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application. The materiality analysis is not limited to a particular point in time in the processing of the application. [citations omitted]

[16] Mr. Nwali argues that evidence of misrepresentation must be compelling, given the severe consequences of such a finding (citing *Seraj* at para 1, *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 at para 31). He says the visa officer made an unreasonable finding of misrepresentation based on innocent mistake.

[17] In my view, Mr. Nwali is understating both the nature and the extent of the discrepancies in his evidence. The visa officer interviewed him in person and was able to assess his

demeanour. His notes of the interview indicate a number of hesitations and evasions. The most troubling aspect of Mr. Nwali's application was the letter from Deuces Supermarket bearing the same date as the last day he worked there. The letter wrongly stated that he remained an employee. Mr. Nwali waited an inordinate length of time to correct this false information. It was reasonable for the officer to conclude this was an attempt by Mr. Nwali to misrepresent his employment in Nigeria as more stable than it actually was.

[18] The "innocent error exception" established in *Medel v Canada (Employment and Immigration)*, [1990] 2 FC 345 (FCA) and *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 is narrow and applies only in truly extraordinary circumstances. An applicant must demonstrate he or she honestly and reasonably believed that material information was not withheld. Mr. Nwali was responsible for verifying the accuracy of his written submissions before he signed them (*Goburdhun* at para 28; *Cao v Canada (Citizenship & Immigration)*, 2010 FC 450 at para 31). Applicants must ensure that their documents are complete and accurate, consistent with the duty of candour (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 22).

[19] Furthermore, Mr. Nwali was found to lack credibility. He was unable to provide a satisfactory explanation for why he had considered only Royal Roads University for his studies, or how a degree offered by that institution might apply in the African context. He said he wanted to help his employer expand its operations in Africa, although he was working for a different employer at the time of his initial application for a study permit. Ultimately, the officer was unsure where the truth began and where it ended.

[20] Mr. Nwali challenges the visa officer's decision on two other grounds, neither of which was emphasized by his counsel in oral argument. He says the officer failed to take steps to verify the facts before refusing the application. To the extent an officer has an obligation to resolve ambiguities or inconsistencies in an application, this arises only when the confusion may be alleviated with minimal effort (*Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183 at 39; *Dimgba v Canada (Citizenship and Immigration)*, 2018 FC 14 at 19-20). The level of procedural fairness owed to an applicant for a study permit is at the low end of the spectrum (*Ahmed v Canada (Citizenship and Immigration)*, 2004 FC 251 at para 29).

[21] Mr. Nwali also complains that the visa officer improperly focused on the possibility that he might possess a "dual intent" of studying in Canada initially, and lawfully immigrating in due course (citing *Wijesinghe v Canada (Citizenship and Immigration)*, 2010 FC 54). I am not persuaded that this consideration materially influenced the officer's decision. The determinative issue was Mr. Nwali's lack of credibility.

[22] I therefore conclude that the visa officer's decision to refuse Mr. Nwali's request for a study permit and to find him inadmissible for misrepresentation was reasonable.

VI. Conclusion

[23] The application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

JUDGMENT

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

"Simon Fothergill"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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