Federal Court  Cour fédérale

**Date: 20191016**

**Docket: IMM-586-19**

**Citation: 2019 FC 1296**

**Montréal, Quebec, October 16, 2019**

**PRESENT: The Honourable Mr. Justice Pamel**

**BETWEEN:**

**KARIM EL SBAYTI**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Nature of the Matter

[1] This is a case about a young man who thought he had answered a question truthfully, and in fact possibly did, but was found to have misrepresented the truth on his visa application.

[2] The Applicant seeks judicial review of a decision of a visa officer at the High Commission of Canada in Ghana [Visa Officer], dismissing his application for a temporary

resident/visitor visa. The Visa Officer denied the application on the ground of misrepresentation pursuant to subsection 40(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], causing the Applicant to be inadmissible to Canada for five years. He also found that he was not satisfied that the Applicant was a genuine visitor who would leave Canada.

[3] I find that the Visa Officer's decision was unreasonable. Accordingly, I allow the present application for the reasons set out below.

## II. Facts

[4] The Applicant is a citizen of Lebanon who is living in Ghana. He was born on January 11, 1990.

[5] In 2010, after attending a private American high school in Ghana, the Applicant moved to the United States [U.S.] to continue his education. He entered the U.S. on an F1 student visa to attend Knox College in Galesburg, Illinois. He transferred to Richland College in Dallas, Texas, and eventually to the University of Texas.

[6] The Applicant had difficulty transferring his visa information, and thus failed to maintain his F1 non-immigrant status by not enrolling at the University of Texas before the U.S. Student and Exchange Visitor Information System [SEVIS] deadline. As a result, the Applicant was terminated from the SEVIS system on April 11, 2011, yet he did nothing until August 31, 2011, when he was arrested by U.S. Immigration and Customs Enforcement [ICE] for overstaying his visa. He was released on bond.

[7] Following his arrest by ICE, the Applicant went into a depression which affected his ability to reinstate his F1 student status. Some seven months following his arrest and release, on April 2, 2012, the Applicant filed an application seeking to reinstate and extend his F1 student status. On March 26, 2013, U.S. Citizenship and Immigration Services [USCIS] denied his application [Denial Notice].

[8] On May 15, 2013, a U.S. immigration judge rendered an order declaring the Applicant eligible for voluntary departure in lieu of a removal order [Voluntary Departure Order]. The Applicant was required to leave the U.S. by September 12, 2013. Rather than face a deportation order, the Applicant returned voluntarily to Ghana on June 19, 2013, after completing his college degree.

[9] In 2017, while in Ghana, the Applicant met a Canadian woman and they fell in love. They eventually decided to marry, and in August 2018, they visited the Applicant's parents in Lebanon so that she could meet her prospective in-laws. The young couple intended to then visit Canada during the holidays in December 2018 so that the Applicant could meet his prospective in-laws.

[10] On October 23, 2018, the Applicant applied to the High Commission of Canada in Ghana for a visitor visa by completing a form online.

[11] The Applicant's file included an invitation letter from his future bride, as well as an affidavit from his future father-in-law, a Canadian citizen living in Canada, confirming the

purpose of the Applicant's visit and his financial support of the Applicant during his stay. The record also provided extensive documentation as to the Applicant's business affairs in Ghana, the companies with which he was involved, and other personal information relevant to the visa process.

[12] The online visa application prompted the Applicant to answer the following question: "Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?" [the Question]. The Applicant answered "no".

[13] On November 16, 2018, a procedural fairness letter was sent to the Applicant indicating that the Visa Officer was concerned that the Applicant may be inadmissible for misrepresentation since he declared that he had never been refused any kind of visa or been ordered to leave Canada or any other country. The Visa Officer noted that this declaration was contrary to information available to the Visa Officer, to the effect that the Applicant had been under an enforcement action in the U.S. with an apprehension warrant, possibly related to overstaying his F1 student visa.

[14] On November 21, 2018, the Applicant responded to the procedural fairness letter by providing a letter from a U.S. attorney attesting to the circumstances surrounding the events that occurred between 2011 and 2013. He also attached the following documents:

(a) a letter from the University of Texas setting out the chronology of the Applicant's attempt to have his F1 status reinstated;

(b) a letter from a psychologist at the University of Texas Student Counseling Center attesting to the crisis intervention session in which the Applicant participated after he was released from ICE detention on August 31, 2011;

(c) the Denial Notice, which stated the following: “This decision leaves you without lawful immigration status; therefore, you are present in the United States in violation of the law. You are required to depart the United States.”; and

(d) the Voluntary Departure Order, which stated the following: “in lieu of an order of removal the Respondent is granted voluntary departure under section 240B(a) of the Act, without expense to the United States, to be effected on or before Sept. 12, 2013.”

[15] In his letter, the U.S. attorney noted that the Applicant’s deep depression (following his termination from SEVIS and the ICE arrest) affected his ability to file for reinstatement of his F1 student status in a timely manner.

[16] The U.S. attorney explained that under U.S. law, the Applicant’s U.S. visa was voided (not refused) and that the Applicant was not ordered to leave the U.S.; rather, he was permitted to leave voluntarily after he had graduated from college.

## III. Decision under Review

[17] On November 23, 2018, the Visa Officer refused the Applicant’s application for a temporary resident visa [Decision]. The Visa Officer determined that the Applicant’s answer to

the Question was a material misrepresentation, and dismissed his application pursuant to subsection 40(1) of the IRPA.

[18] Further reasons for the Decision were included in the Global Case Management System Notes [GCMS Notes]. The GCMS Notes state that the Visa Officer reviewed the response to the procedural fairness letter and that the Applicant had stated therein "that his arrest by U.S.A officials led to depression and that eventually he was allowed to depart the U.S.A." The Visa Officer noted that this information was not disclosed initially in his application, and thus found that the Applicant withheld a material fact related to a relevant matter that could have induced an error.

[19] In addition, the Decision states that the Applicant did not satisfy the Visa Officer that he would leave Canada at the end of his stay as a temporary resident. The Visa Officer checked off the "Purpose of visit" box as the factor he considered in reaching this decision. On this issue, the GCMS Notes contain the following statement: "By not providing truthful background information I am not satisfied as to the true purpose of this visit and further cannot be satisfied the Applicant is a genuine visitor who would leave Canada before the end of the period authorized for his stay."

## IV. Relevant Provisions

*Immigration and Refugee Protection Act*, SC 2001, c 27

| **Misrepresentation** | **Fausses déclarations** |
|---|---|
| 40(1) A permanent resident or | 40(1) Emportent interdiction |

| | |
|---|---|
| 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; | de territoire pour fausses déclarations les faits suivants : 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): (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; | (2) Les dispositions suivantes s'appliquent au paragraphe (1) : 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; |

## V. Issues

1. Was the Decision unreasonable on account of the Visa Officer ignoring evidence that the Applicant did not misrepresent a material fact or on account of the Applicant honestly and reasonably believing he was not misrepresenting a material fact?

2. Was the Decision unreasonable on account of the Visa Officer failing to provide sufficient reasons and not addressing evidence which contradicted his findings?

3. Was the Decision unreasonable on account of the Visa Officer ignoring evidence pertaining to the Applicant's purpose of travel?

[20] Other than the issue of having answered the Question improperly, no other credibility issues arise in the Decision and no issue is raised by the Applicant as regards any breach of procedural fairness on the part of the Visa Officer.

## VI. Standard of Review

[21] Both parties submit that the appropriate standard of review for a visa officer's finding of inadmissibility on the ground of misrepresentation is reasonableness (*Patel v Canada (Citizenship and Immigration)*, 2017 FC 401 at para 14). I agree.

## VII. Analysis

### A. *Was the Decision unreasonable on account of the Visa Officer ignoring evidence that the Applicant did not misrepresent a material fact or on account of the Applicant honestly and reasonably believing he was not misrepresenting a material fact?*

[22] The Applicant submits that he did not misrepresent a material fact, or that he honestly and reasonably believed that he was not misrepresenting a material fact. He relies on the letter from the U.S. attorney submitted to the Visa Officer, which opined that he was not refused a visa in the U.S., but rather his visa was voided. The Applicant argues that the removal order against him never became enforceable because he voluntarily left the United States.

[23] The Respondent takes the position that paragraph 40(1)(a) of the IRPA should be given a broad interpretation (*Khan v Canada (Citizenship and Immigration)*, 2008 FC 512 at para 25 [*Khan*]). As a result, that provision should apply, barring "truly exceptional circumstances"

(*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 32 [*Oloumi*]). The Respondent submits that the Visa Officer reasonably refused the visitor visa application because of a direct misrepresentation by the Applicant on his visa application form.

[24] Subsection 16(1) of the IRPA states that a "person who makes an application must answer truthfully all questions put to them for the purpose of the examination […]." It is clear that every visa Applicant has a duty of candour to provide complete, honest and truthful information when applying for entry to Canada (*Oloumi* at paras 37–39; *Bodine v Canada (Citizenship and Immigration)*, 2008 FC 848 at paras 41–42 [*Bodine*]; *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15).

[25] As a corollary to subsection 16(1) of the IRPA, section 40 of the IRPA has been broadly interpreted by this Court so as to apply to any misrepresentation, whether direct or indirect, that either induces, or could induce, an error by a visa officer in the performance of his or her duties, thus promoting the IRPA's underlying purpose, namely curbing abuse and ensuring truthful representations to immigration authorities (*Khan* at para 25; *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 at para 38). It is therefore the general rule that visa officers should be given a wide discretion as regards possible reasonable outcomes when determining whether an Applicant misrepresented a material fact (*Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324 at paras 25–26).

[26] The following was noted in *Bodine* at paragraph 44:

> […] The purpose of section 40(1)(*a*) of the Act is to ensure that Applicants provide complete, honest and truthful information in

> every manner when applying for entry into Canada (see *De Guzman v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 (F.C.T.D.), *Khan v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 512 (F.C.T.D.), *Wang v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 (F.C.T.D.), aff'd on other grounds, 2006 FCA 345 (F.C.A.)). In some situations, even silence can be a misrepresentation (see *Mohammed v. Canada (Minister of Citizenship and Immigration)*, [1997] 3 F.C. 299) and the present facts went well beyond mere silence.

[27] I agree with the Respondent that obtaining a visa is not a right. An Applicant has what is tantamount to a negative burden that is, showing why he or she is not ineligible. In a way, a tie in this case does not go to the runner (the Applicant), but to a negative decision as to his or her visa application.

[28] It has also been established that a determinative misrepresentation can occur without the Applicant's knowledge (*Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 [*Wang*]).

[29] There is, however, an exception to the application of section 40 of the IRPA, for exceptional circumstances where the Applicant *honestly and reasonably* believed that he or she was not misrepresenting a material fact (*Medel v Canada (Minister of Employment and Immigration)*, [1990] 2 FC 345, [1990] FCJ No 318 (FCA) (QL); *Oloumi* at para 32).

[30] A good example of the innocent misrepresentation exception may be found in *Osisanwo v Canada (Citizenship and Immigration)*, 2011 FC 1126, a case involving an Applicant who did not know that her husband was not the biological father of one of her children

until Citizenship and Immigration Canada ordered DNA testing. Mr. Justice Hughes reviewed the case law in the area of misrepresentation and found that the cases all contained an element of *mens rea* or subjective intent on the part of the Applicant or on the part of third parties in situations where the applicant is assisted by a third party, possibly a consultant, who may have been the source of the misrepresentation.

[31] In *Appiah v Canada (Citizenship and Immigration)*, 2018 FC 1043 [*Appiah*], Mr. Justice Martineau stated the following at paragraph 18:

> The innocent misrepresentation exception is narrow and shall only excuse withholding material information in extraordinary circumstances in which the Applicant honestly and reasonably believed he was not misrepresenting a material fact, knowledge of the misrepresentation was beyond the Applicant's control, and the Applicant was unaware of the misrepresentation (*Wang* at paragraph 17; *Li v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 87 at paragraph 22; *Medel v Canada (Minister of Employment and Immigration)*, [1990] 2 FC 345). Some cases have applied the exception if the information given in error could be corrected by reviewing other documents submitted as part of the application, suggesting that there was no intention to mislead: *Karunaratna v Canada (Citizenship and Immigration)*, 2014 FC 421 at paragraph 16; *Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117 at paragraphs 18-20. Courts have not allowed this exception where the Applicant knew about the information, but contended that he honestly and reasonably did not know it was material to the application; such information is within the Applicant's control and it is the Applicant's duty to accurately complete the application: *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at paragraphs 31-34; *Diwalpitiye v Canada (Citizenship and Immigration)*, 2012 FC 885; *Oloumi* at paragraph 39; *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at paragraph 18; *Smith v Canada (Citizenship and Immigration)*, 2018 FC 1020 at paragraph 10.

[32] Having considered the matter, I am of the view that the facts of the present case should have caused the Visa Officer to consider this exception (*Agapi v Canada (Citizenship and Immigration)*, 2018 FC 923 at paras 16–17 [*Agapi*]).

[33] I think the easiest way to describe the present case is to first set out what it is not:

(a) This is not a case where the Applicant, following questioning by a visa officer, looked to correct a misrepresentation which he had previously adopted to his benefit (see for example *Khan*).

(b) This is not a case where the Applicant is pleading ignorance of a fraud that forms part of his application record, possibly even without the Applicant's knowledge (see for example *Oloumi*; *Agapi*).

(c) This is not a case where the Applicant was looking to plead "innocent mistake" on the basis that he forgot about the events between 2011 and 2013 (see for example *Appiah*), or that he misread the question on the visa application (see for example *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328).

(d) This is not a case where the Applicant simply forgot about events that he was specifically prompted to disclose, then later requested that his oversight be forgiven (see for example *Diwalpitiye v Canada (Citizenship and Immigration)* 2012 FC 885; *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971).

(e) This is also not a case where the Applicant did not disclose past illegalities because he thought they had become irrelevant (see for example *Smith v Canada (Citizenship and Immigration)*, 2018 FC 1020).

[34] This is a case where the Applicant answered “no” to a question to which the Visa Officer says he should have answered “yes”, but to this day the right answer is still a live issue.

[35] If one is to accept the U.S. attorney’s opinion, the Applicant was never formally deported from the U.S. or denied a visa, and thus a plain reading of the Question would require a negative answer based on the Applicant’s factual circumstances.

[36] It is not for me to make a finding on U.S. law as to whether or not the expiration of a student visa equates to a “refusal” of the visa, or whether the option of electing a voluntary departure in lieu of a formal deportation order constitutes an “order” to be removed from a country, or even whether the U.S. attorney was correct on what is no doubt a subtle distinction under U.S. law. Nor is it for me to determine the effect of the Voluntary Departure Order.

[37] The issue in this case is whether the determination by the Visa Officer of misrepresentation on the part of the Applicant was reasonable; in particular whether the Visa Officer should have turned his mind to whether any misrepresentation was innocent for having been made on the basis that the Applicant honestly and reasonably believed that he was telling the truth.

[38] Looking at the online application form itself, the Applicant was prompted to answer either “yes” or “no” to a very specific question. It is only when an Applicant answers “yes” that a drop-down box that then solicits further details pops open.

[39] It seems to me that if the Applicant answers “no”, honestly and reasonably believing it to be true, there is no reason for him to go into the background information as to what transpired in the U.S. between 2011 and 2013 as the online application form neither calls for it nor provides room for it.

[40] The Respondent takes the position that the Voluntary Departure Order confirmed that the Applicant was subject to a removal order, thus equating to an “order to leave” the United States. I do not read the Voluntary Departure Order in the same way.

[41] The Voluntary Departure Order clearly states the following: “It is hereby ordered that in lieu of an order of removal the Respondent is granted voluntary departure under section 240B(a) of the Act” and “if the Respondent fails to depart as required […] the above order shall be withdrawn […] and the following order shall become immediately effective: the Respondent shall be removed to Lebanon […]” [emphasis added].

[42] It is not simply a question of semantics, as suggested by the Respondent. Possibly “becoming subject to” a removal order is not quite the same as “being ordered to leave” the United States.

[43] The Respondent further proposes that it would otherwise be too easy for an Applicant to somehow not disclose, or conveniently forget, facts which are necessary for the Government of Canada to assess whether or not he or she should be allowed to enter our country. I agree, and this Court has on numerous occasions indicated that one cannot trifle with the truth, give incomplete answers to rather open questions, or give false answers to very specific questions and then look to correct the record after the fact (*Navaratnam v Canada (Citizenship and Immigration)*, 2011 FC 856 [*Navaratnam*]).

[44] But that is not the case here. There is evidence to seriously suggest that the Applicant answered the Question correctly and without misrepresenting the truth. It seems to me that the Visa Officer should have considered whether the Applicant fell under the innocent misrepresentation exception.

[45] The Respondent suggests that by disclosing the background of what went on in the U.S. only in answer to the procedural fairness letter, the Applicant was looking to correct a misrepresentation after the fact. I do not agree. The Applicant provided the letter from the U.S. attorney in answer to the specific request for information. It does not automatically follow that the information provided was a correction of the original statement, or that it was even required to properly answer the Question.

[46] The Respondent further suggests that the Visa Officer's determination that the Applicant misrepresented or withheld material facts was reasonable given that events such as those that the Applicant experienced from 2011 to 2013 are not easily forgettable. I agree; what happened to

the Applicant between 2011 and 2013 is no doubt engraved in his memory. Yet, that is not the point.

[47] The issue is not whether the Applicant should have provided the background information, but rather whether he should have answered “yes” rather than “no” to the Question. The requirement of providing the background information flowed from that answer. In making that determination, and given the material in the file suggesting the correct answer was in fact “no”, the Visa Officer should have turned his mind to considering whether the Applicant honestly and reasonably thought he was telling the truth. From what I can tell, he may well have been.

[48] One can hardly fault the Applicant, whose answer to the Question may have been correct, for not providing background information when the online visa system does not allow for it under the circumstances.

[49] The Respondent also took issue with the delay between the voiding of the Applicant’s F1 visa on April 11, 2011, and his arrest on August 31, 2011. It is not for me to decide whether the failure to act promptly in the U.S. to file for the reinstatement of his visa status was determinative in the denial. That is an issue for the U.S. immigration department, which did in fact decide that the Applicant’s failure to act promptly justified denying him the right to reopen his F1 student status.

[50] The Respondent suggests that the Question was sufficiently open ended to have meant that the Applicant should have provided the background information that he did eventually

provide following the procedural fairness letter. I disagree. A simple reading of the form shows that there is no room – suggesting that there is no requirement – to provide background information where an Applicant answers the Question with a “no”. Consequently, in the determination of any possible misrepresentation, the focus should be on the way the question was answered. The Visa Officer focused, rather, on the background information not having been provided as the source of the misrepresentation.

[51] Where there is no request to provide the background information, there can be no misrepresentation for not providing it.

[52] I note Mr. Justice Shore’s exhortation in *Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38, that findings of misrepresentation must not be taken lightly and must be supported by compelling evidence that a misrepresentation did in fact occur.

[53] To this day, and according to the U.S. attorney, the proper legal answer to the Question – under U.S. law – is “no”. However, if the legally correct answer was in fact “yes”, I believe this to be a case that should have prompted the Visa Officer to expressly consider the innocent misrepresentation exception.

B. *Was the Decision unreasonable on account of the Visa Officer failing to provide sufficient reasons and not addressing evidence which contradicted his findings?*

[54] The Applicant submits that the Decision is mere boilerplate, and that other than a short reference to the Applicant's bout of depression following his arrest by ICE, the GCMS Notes are simply an exercise in cut and paste.

[55] I indicated to both counsel that I have no issue in principle with the use of boilerplate language *per se*. Clearly visa officers are busy. They receive and process countless visa applications, and resorting to a more efficient way of rendering those decisions is not fatal in and of itself.

[56] What is important is that the entire decision – even where much of it is boilerplate – be tailored to the situation at hand. A visa officer should provide the Applicant and the Court sufficient information so as to properly understand the decision that was made in relation to the fundamental issues at play. Reasonableness calls for the articulation of reasons so that the decision is transparent and intelligible.

[57] In *Boukhanfra v Canada (Citizenship and Immigration)*, 2019 FC 4, Mr. Justice Grammond stated the following at paragraph 9:

> Under the pressure of mass adjudication, decisions-makers [*sic*] may be tempted to resort to standard or "boilerplate" language that has survived judicial review or that courts have used to describe the test that they have to apply. Nothing forbids such a practice. Decision-makers are required to be transparent, not to be original (*Cojocaru v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 at paras 31-33, [2013] 2 SCR 357). The use of standard language, however, is not a vaccine against judicial

> review. If the conclusion does not flow from the premises, or if the use of boilerplate gives cause to doubt that the decision-maker duly considered the specific facts of the case, the decision may well be unreasonable. Conversely, the lack of standard language or the decision-maker's failure to state the test he or she is applying does not automatically pave the way to the intervention of the Court. What is important is that the reasons be intelligible and that they describe a reasonable path to the decision that was made.
>
> See also *Song v Canada (Citizenship and Immigration)*, 2019 FC 72.

[58] In addition, visa officers are to be given a wide berth in making their determination. I accept the Respondent's position that the application process is streamlined, that there are generally no interviews, and that often the process is online. I also accept that in a streamlined process one cannot be as thorough as one would necessarily be in a more robust process such as the regime set out in respect of refugee determination.

[59] However, this does not diminish the obligation of a visa officer to turn his or her mind to the part of the file that would lend itself, arguably, to a different determination than the one he or she is making, especially as regards a finding of misrepresentation.

[60] Where there is a fundamental issue going to the crux of the matter, reference should be made to any credible document that deals with that matter head on. If the Visa Officer disagreed with the U.S. attorney, it was open to him to do so, but he should have at least addressed the position set out by the U.S. attorney and provided reasons as to why he disagreed.

[61] In *Begum v Canada (Citizenship and Immigration)*, 2017 FC 409 [*Begum*], Mr. Justice Russell stated the following at paragraph 81:

> According to relevant jurisprudence, this Court may infer that a decision-maker has made an erroneous finding of fact without regard to the evidence from a failure to mention in the reasons evidence that is relevant to the finding and which points to a different conclusion: *Cepeda-Guiterrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 15. Such errors made without regard to the evidence and which significantly affect the decision justify judicial intervention, even if it is not obvious that those errors were made in a perverse or capricious fashion: *Maqsood v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 1699 at para 18. This Court has also found that the IAD cannot overlook key evidence that contradicts its findings without addressing such contradictory evidence; if such evidence is not referred to, it will be assumed to have been ignored: *Ivanov v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1055 at para 23.
>
> See also *Winifred v Canada (Citizenship and Immigration)*, 2011 FC 827 [*Winifred*].

[62] Letters from foreign jurisdictions regarding the interpretation of foreign law constitutes relevant evidence that directly pertains to the present case (*Xiao v Canada (Citizenship and Immigration)*, 2009 FC 195, [2009] 4 FCR 510 at paras 24-25). Although not evidence of foreign law (by itself), the letter in this case supports the Applicant's belief that he was never deported nor denied a visa in the United States.

[63] The issue here is not whether the method of proving foreign law was properly followed, nor whether the opinion of the U.S. attorney was right or wrong. The issue before me is simply whether or not the Visa Officer, in ascertaining that the Applicant made a misrepresentation in answering the Question as regards previous visas and removal orders, should have specifically addressed the one piece of evidence that, on its face, would lend itself to the conclusion that there was no misrepresentation. In coming to the determination that the Applicant

misrepresented the truth, at no point does the Visa Officer make any reference to the letter to the contrary provided by the U.S. attorney.

[64] In fact, it seems as though the Visa Officer did read the U.S. attorney's letter given that his rendition of the facts in the Decision as regards the Applicant's depression following the arrest in August 2011 stemmed directly from that letter and the documents attached to it. However, reference to the other part of the U.S. attorney's letter addressing the crux of the alleged misrepresentation on the part of the Applicant seems oddly to be missing.

[65] As stated, I am not suggesting that the Visa Officer was bound to accept the opinion of the U.S. attorney, but it seems to me that the Visa Officer should have turned his mind to this legal opinion and addressed it so as to be consistent with the principle that decision-makers should not ignore expert evidence that lies at the heart of the case and goes in the claimant's favour (*Makomena v Canada (Citizenship and Immigration)*, 2019 CF 894 at paras 32-42).

[66] Moreover, where a visa officer overlooks credible evidence that would go to contradict his or her findings, the evidence will be assumed to have been ignored (*Ivanov v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1055 at para 23; *Begum.*

[67] The Visa Officer's failure to consider such evidence renders his decision unreasonable.

[68] The Respondent asked that I put the Decision in context and that I consider the fact that this is not a situation where a person is being deported to a potentially hostile country or where a

refugee claim is being dismissed. The Respondent argues that on the scale of importance the consequence of the decision is somewhat on the lower end and accordingly the Court should be more generous with its analysis of the reasons given by the Visa Officer to refuse the application.

[69] I take the point that not all situations require the same degree of vigilance, but in this case, suspending the Applicant's ability to apply for a visa for five years so that he is unable to visit his in-laws (maybe even with grandchildren in the near future) does seem to me to be a serious consequence of the Decision.

### C. *Was the Decision unreasonable on account of the Visa Officer ignoring evidence pertaining to the Applicant's purpose of travel?*

[70] As for the refusal on the ground that the Applicant had not satisfied the Visa Officer that he would leave Canada at the end of his stay, the only reason box checked off is the one specific to "Purpose of visit". There is no other reason provided by the Visa Officer for reaching that conclusion.

[71] As stated earlier, there is no doubt that it has become commonplace for visa officers to use form letters with a series of check-the-box reasons when rendering their decisions, especially when faced with a high volume of applications. Visa officers should be able to find efficiencies in the manner in which they review applications. But this does not diminish their obligation to provide reasons that are supported by the evidence.

[72] The Applicant provided a range of documents which would support the contrary view. No credibility concerns are expressed in relation to those documents, which include evidence of interest in companies in Ghana, an invitation letter from his bride-to-be, and an affidavit sworn to by her father, a Canadian citizen, in Montréal, attesting to the fact that the purpose of the Applicant's visit was to meet his future in-laws. Yet none of these documents are addressed in the Decision.

[73] Rather, the Visa Officer simply suggested that he had lost faith in the answers given by the Applicant and therefore was not satisfied as to the true purpose of the visit. In the GCMS Notes, the Visa Officer cites this Court's decision in *Navaratnam* in support of the proposition that if an Applicant is found to have lied, it may be difficult to believe the remaining part of his or her story.

[74] However, *Navaratnam* was a case where a determination of misrepresentation was made after very extensive evidence and testimony was given. Here, even the suggestion of misrepresentation is debatable. The Visa Officer made no reference in his Decision to the documents bolstering the Applicant's claim that he was coming to Canada to visit his new family. Nor did the Visa Officer address any of the documents on file showing that the Applicant has commercial ties to Ghana and that he had substantial business dealings there, documents which are often used as criteria in the determination of whether an Applicant will leave Canada prior to the expiry of his or her visitor's visa (*Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245).

[75] Again, the Visa Officer's Decision was unreasonable because it failed to address the basic criteria for determining whether the Applicant will leave Canada prior to the expiry of his visitor's visa, evidence that would militate against a finding that he would not.

[76] The determination that the Applicant would not leave Canada at the end of his stay was predicated on the finding of misrepresentation. As that finding is unreasonable, so goes the said determination.

## VIII. Conclusion

[77] Under the circumstances, I allow the application for judicial review and return the matter for reconsideration by a different visa officer.

**JUDGMENT in IMM-586-19**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is allowed, the decision of the Visa Officer is set aside and the matter is remitted back to a different visa officer for redetermination.

2. There is no question for certification.

"Peter G. Pamel"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-586-19 |
| **STYLE OF CAU.S.E:** | KARIM EL SBAYTI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTREAL, QUEBEC |
| **DATE OF HEARING:** | JULY 25, 2019 |
| **JUDGMENT AND REASONS:** | PAMEL J. |
| **DATED:** | OCTOBER 16, 2019 |

**APPEARANCES:**

| | |
|---|---|
| Me David Berger | FOR THE APPLICANT |
| Me Suzanne Trudel | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Goldberg Berger<br>Montréal, Quebec | FOR THE APPLICANT |
| Attorney General of Canada<br>Montréal, Quebec | FOR THE RESPONDENT |