

Federal Court



Cour fédérale

Date: 20210820

Docket: IMM-965-20

Citation: 2021 FC 855

Ottawa, Ontario, August 20, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

THANH NGOC THUY QUACH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision from the Consulate General of Canada, Visa Section, in Vietnam dated December 12, 2019, which refused her application for a work permit for misrepresentation according to the *Immigration and Refugee Protection Act*, SC 2001, c 27, s 40(1)(a) [IRPA or Act].

[2] The Applicant is a citizen of Vietnam and has applied for a work permit to Canada under her own new start-up business.

[3] The Consulate dismissed the Applicant's application for inadmissibility for directly or indirectly misrepresenting or withholding material facts on whether she had been refused a visa or permit, denied entry or ordered to leave Canada or any other country, which induces or could induce an error in the administration of the IRPA. As a result, the Applicant was found inadmissible for a set period under section 40(2)(a) of the Act.

[4] This judicial review relates to the reasonability of the Consulate's decision. As set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*], a "reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation of the facts and law that constrain the decision maker".

[5] The Applicant submits that the agent erred in the appreciation of whether she had previously had a visa refused by a country, where she responded to the negative. It is advanced that the agent unreasonably elevated the cancelation of a United States (U.S.) visa to that of a refusal of a visa, without reasons or regard to the evidence, indicating the Applicant had been admitted into the country. Further, the Applicant contends that where there was misrepresentation, it occurred innocently and should not result in inadmissibility.

[6] In the present case, the Consulate found through U.S. information that the Applicant was issued a business and pleasure visa in 2015, which was later revoked for misrepresentation under

their immigration regime. This was not declared by the Applicant in her application for a work permit in Canada in January 2019, neither in response to a procedural fairness letter from April 2019. According to the Consulate, the cancellation of the visa has the same effect and consequence of a refusal – that is: not being permitted to travel to the U.S. The Canadian work permit application was then refused for misrepresentation.

[7] This Court has previously upheld as reasonable that the omission to disclose the cancellation of a U.S. visa may qualify as a misrepresentation, where it is not an innocent mistake such that knowledge of the misrepresentation is beyond a claimant's control (*Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324 at paras 25, 27-30, 32).

[8] It is admitted that the U.S. visa was cancelled and with knowledge of such at the time of the application for a Canadian work permit. The Consulate can reasonably find on the record that there was in fact misrepresentation.

[9] The Applicant is in essence offering a different opinion on semantics and asking the Court to substitute itself for the Consulate decision maker in appreciating the record, which it cannot do on judicial review (*Vavilov*, above, at para 83) as the decision in judicial review is reasonable.

[10] For the foregoing reasons, the application for judicial review should be dismissed.

JUDGMENT in IMM-965-20

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

There is no serious question of general importance to be certified.

"Michel M.J. Shore"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-965-20

STYLE OF CAUSE: THANH NGOC THUY QUACH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 18, 2021

JUDGMENT AND REASONS: SHORE J.

DATED: AUGUST 20, 2021

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