Federal Court Cour fédérale

Date: 20211008

Dockets: IMM-7639-19
IMM-7643-19

Citation: 2021 FC 1051

Ottawa, Ontario, October 8, 2021

PRESENT: The Honourable Justice Fuhrer

Docket: IMM-7639-19

BETWEEN:

SHAHIL ANWARALI ISRANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-7643-19

AND BETWEEN:

SHARON SHAHIL ISRANI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are citizens of India and a married couple. In 2018, Ms. Israni applied for a work permit following a positive Labour Market Impact Assessment [LMIA] from Subway Restaurants. Mr. Israni applied for a work permit as an accompanying dependent on his wife's application under the Temporary Foreign Worker Program. Following their response to a procedural fairness letter, the Immigration Section of the High Commission of Canada in New Delhi, India deemed the Applicants inadmissible for a period of five years for misrepresenting or withholding material facts [Decision], further to paragraph 40(1)(a) and subsection 40(2) of the *Immigration and Refugee Protection Act*, SC 2011, c 27 [*IRPA*].

[2] These matters were heard together. At the hearing, the Applicants informed the Court that, because the LMIA long since has expired, they seek judicial review of the Decision only in respect of the finding of misrepresentation resulting in the 5-year bar to reapplying. There is no dispute that the presumptive reasonableness standard of review applies to the merits of the Decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 10. Having considered the parties' written material, their oral submissions and the applicable law, I am not satisfied the Applicants have met their onus of demonstrating that the

Decision is unreasonable: *Vavilov*, at para 100. I thus dismiss these judicial review applications for the reasons that follow.

II. Analysis

[3] The work permit applications contained the following standard question: "Have you ever been refused a visa or permit, denied entry or ordered to leave Canada **or any other country or territory**?" [emphasis added.] The Applicants responded: "No." They previously were refused USA visas, however. Pursuant to the *IRPA* s 16(1), the procedural fairness letter questioned the truthfulness of their applications on the basis of failing to declare the previous USA visa refusals.

[4] The Applicant's response consisted of a letter from their consultant and an email letter from Ms. Israni. Both documents point to two possible and, in my view, somewhat contradictory reasons for the omission. First, they did not see the question on the applications or missed the inquiry regarding any other country or territory. Second, they did not think to disclose the USA visa refusals because there were no formal refusal letters and nothing stamped in their passports. The consultant confirmed, however, that the Applicants had declared a Dubai trip in their travel history. I find the second reason points to the Applicants having seen the question but not having thought about the USA visa refusals, contrary to the first reason of not having seen the question.

[5] In my view, the foregoing provides context for the following statements (of the reviewing officer) in the GCMS notes pertaining to Mr. Israni's application: "Applicants state they did not intentionally attempt to hide this information. Partner information …shows otherwise." With this context in mind, and noting the decision maker or deciding officer based the Decision (for both

Applicants) "on the information on file," I find the following brief reasons, sufficient to permit the Court to understand the rationale for the Decision: "The PA was provided with an opportunity to address this concern and has failed to provide any information which overcomes said concern."

[6] That the deciding officer did not refer specifically in the reasons to the Applicants' response to the procedural fairness letter does not rebut, in my view, the presumption that the decision maker considered all material on file, and simply found the information provided wanting: *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598. The response to the procedural fairness letter was acknowledged in the GCMS notes as follows: "RESPONSE TO PF LETTER RECEIVED AND UPLOADED IN E-DOCS." Further, the reasons do not state that the Applicants failed to respond to the procedural fairness letter but rather they state the Applicants have failed to provide any information overcoming the concern that arose because of the omitted fact in their work permit applications of the USA visa refusals.

[7] I agree with the Respondent that decision makers are not held to a standard of perfection in a reasonableness review and, further, "[t]he review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings": *Vavilov*, above at para 91.

III. Conclusion

[8] For the foregoing reasons, and applying "common sense and ordinary logic," I am not persuaded that "an apparent shortcoming in the reasons is [], in fact, a failure of justification,

intelligibility or transparency" in the circumstances of the matters before me: *Vavilov*, above at paras 88 and 94. I thus dismiss the Applicants' judicial review applications.

[9] Neither party proposed a serious question of general importance for certification and I find that none arises here.

JUDGMENT in IMM-7639-19 & IMM-7643-19

THIS COURT'S JUDGMENT is that:

1. The Applicants' judicial review applications are dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Provisions

***Immigration and Refugee Protection Act* (S.C. 2001, c. 27)**
***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**

Immigration to Canada **Obligation — answer truthfully** **16 (1)** A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.	**Immigration au Canada** **Obligation du demandeur** **16 (1)** L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.
Inadmissibility **Misrepresentation** **40 (1)** A permanent resident or 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; … **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; and **(b)** paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility**.**	**Interdictions de territoire** **Fausses déclarations** **40 (1)** Emportent interdiction 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** **(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; **b)** l'alinéa (1)b) ne s'applique que si le ministre est convaincu que les faits en cause justifient l'interdiction.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7639-19
STYLE OF CAUSE:	SHAHIL ANWARALI ISRANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
DOCKET:	IMM-7643-19
STYLE OF CAUSE:	SHARON SHAHIL ISRANI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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