Federal Court  Cour fédérale

Date: 20211103

Docket: IMM-7452-19

Citation: 2021 FC 1172

Ottawa, Ontario, November 3, 2021

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

QINYAO YU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of an immigration officer's decision refusing the Applicant's application for a temporary resident visa ("TRV"), finding the Applicant inadmissible for misrepresentations due to her failure to disclose charges on two previous TRV applications.

II. Background

[2] The Applicant is a citizen of China who came to Canada as a student on May 10, 2012. She met her husband while in Canada, and had a daughter in 2014. She alleges that her ex-husband began to abuse her early in their relationship, and she felt unable to leave him.

[3] In August 2014, the Applicant was arrested and charged with assault under s. 266 of the *Criminal Code of Canada*, RSC 1985 c C-46. As a result, she was ordered a peace bond of 12 months, after which time the charge was withdrawn. She reconciled with her ex-husband at this time. The Applicant stayed in Canada, and applied for a work permit in May 2015. In her application, she failed to disclose the 2014 criminal charge when asked if she had been charged with a criminal offence in any country.

[4] In April 2016, the Applicant was again arrested, this time for the charge of assault with a weapon. Though I note that the criminal record check shows this assault with a weapon charge being May 18, 2017, which is the date the charges were withdrawn. She ultimately left her now ex-husband. There were no charges after this time. The Applicant remained in Canada, and in August 2018, applied for another work permit, again failing to disclose her criminal charge or any of the details thereof.

[5] The Applicant returned to China in or around July 2019. She applied to return to Canada under a TRV in August 2019. On the application form, she was asked whether she had ever committed, been arrested for, been charged with, or convicted of any criminal offence, in any

country or territory. She answered no. On August 21, 2019, Immigration, Refugees, and Citizenship Canada ("IRCC") check identified the Applicant's previous criminal charges, which had not been disclosed. She was sent a procedural fairness letter notifying her that she may be inadmissible to Canada on grounds of misrepresenting her criminal history. In response, she requested and was granted a 60-day extension to respond. When her legal representative responded, she did not challenge the concerns regarding misrepresentation, but rather requested discretionary relief on humanitarian and compassionate ("H&C") grounds under s. 25 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], and in the alternative, a temporary resident permit ("TRP") under s. 24 of the *IRPA*.

[6] The decision-maker found the Applicant inadmissible to Canada in accordance with paragraph 40(1)(a) of the *IRPA* for misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the *IRPA*. The decision-maker noted her history of failing to disclose the charges in two previous work permit applications. This instance marked the third time she did not disclose these charges, and the decision-maker noted that the question on this application was very clear. There is evidence in the Global Case Management System ("GCMS") notes that the Applicant answered yes to a similar question in her Canadian Experience Class ("CEC") application, which is a separate file and matter.

III. Issue

[7] The issue in this case is whether the Officer's decision was reasonable.

IV. Standard of Review

[8] On the merits of the Officer's decision, the standard of review is reasonableness. As set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraph 23, "where a court reviews the merits of an administrative decision … the starting point for the analysis is a presumption that the legislature intended the standard of review to be reasonableness." Reasonableness review begins with the principle of judicial restraint and respect for the distinct role of administrative decision-makers, and the Court does not conduct a *de novo* analysis or attempt to decide the issue itself (*Vavilov*, at paras 13, 83). Rather, it starts with the reasons of the administrative decision-maker and assesses whether the decision is reasonable in outcome and process, considered in relation to the factual and legal constraints that bear on the decision (*Vavilov*, at paras 81, 83, 87, 99). A reasonable decision is one that is justified, transparent, and intelligible to the individuals subject to it, reflecting "an internally coherent and rational chain of analysis" when read as a whole and taking into account the administrative setting, the record before the decision-maker, and the submissions of the parties (*Vavilov*, at paras 81, 85, 91, 94-96, 99, 127-128).

V. Analysis

A. *Was the Officer's decision reasonable?*

[9] During oral submissions, the Applicant's argument focused on whether the Officer had to explain their conclusion that the misrepresentation induced an error in the administration of the *IRPA*. The Applicant argued that the reasons do not have any analysis on this point, and only

note that there were misrepresentations, as conceded by the Applicant's Immigration consultant. The Applicant argued this failure to explain is unreasonable, given that she had disclosed the criminal charges in another Immigration application.

[10] The Applicant's secondary argument centered on whether there is discretion regarding H&C relief in this case, given that she was a victim of abuse, and that in their submissions this was the root of the charges.

[11] On their first argument, the Applicant submitted that it does not naturally follow that non-disclosure of charges could induce an error in the administration of the *IRPA*, and thus the Officer's failure to explain it was unreasonable. On their second argument, as to discretion regarding H&C relief, the Applicant cites case law with the aim of demonstrating that the Officer has such discretion, and that on these facts, this discretion should have been exercised. Relatedly, the Applicant argues that the misrepresentation must have been, an innocent one, since the Applicant was separately granted a TRP.

[12] I begin by noting that the cases relied on by the Applicant deal with innocent misrepresentations, and in my view, that is not what happened in the instant case. At no time (until their further memorandum) did the Applicant present that not mentioning her criminal charges and arrest were innocent misrepresentations The innocent misrepresentation jurisprudence is distinguishable as the facts in this case do not support an innocent misrepresentation as there was no evidentiary basis or argument presented to decision-maker of one. It is noted that the misrepresentations happened more than on one application and that

incompetence of former counsel is not an issue in this case, as confirmed by Applicant's counsel at the hearing.

(1) Did the Officer err in concluding that the misrepresentation could induce an error in the administration of the *IRPA?*

[13] The law in this area derives from both statute and case law. S. 40(1)(a) of the *IRPA* sets out that an individual may be inadmissible to Canada 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." Justice Snider, in *Bellido v Canada (Citizenship and Immigration)*, 2005 FC 452, wrote that for this inadmissibility, there must be two factors present: first, there must be a misrepresentation, and second, the misrepresentation must be material in that it could have induced an error in the administration of the *IRPA*. S. 40(1)(a) is to be given a broad interpretation so as to promote its object of deterring misrepresentation and maintaining the integrity of the immigration process (*Khan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 512 at para 25). To do so, the onus is placed on the applicant to ensure the completeness and accuracy of their application (*Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28; S. 16 of *IRPA*).

[14] Applicants are to answer questions on their applications truthfully. The Applicant has conceded that she made a misrepresentation on her TRV application, and thus, the first prong, the existence of a misrepresentation, is met.

[15] Turning to the second prong, we now ask whether her misrepresentation was material such that it could have induced an error in the administration of the *IRPA*. When her misrepresentation, and the possibility of inadmissibility resulting therefrom, was raised to the Applicant's attention in a procedural fairness letter, the Applicant conceded. Her counsel asserts that the concession pertained merely to the existence of the misrepresentation, not to its materiality. I disagree. The phrasing of her concession was that "Ms. Yu is not challenging the concern stated in the (procedural fairness letter)" which may "lead to a finding of misrepresentation rendering her inadmissible to Canada." In my view, this is not a concession that she made a misrepresentation, but rather a concession that she made such a misrepresentation that may render her inadmissible to Canada, i.e. that she made a s. 40(1)(a) misrepresentation - that is, a material misrepresentation. Her representative, who would or ought to have known this, wrote this response. Regardless, I do not find the Applicant's argument as to a "partial concession" to be persuasive. The wording indicates a concession both of a misrepresentation and of the materiality thereof.

[16] The Applicant's alternative argument, that if the misrepresentation was material, the Officer failed to provide sufficient explanation as to why, fails similarly. Indeed, stemming from the Applicant's concession, it was reasonable for the Officer to not provide detailed reasons for a conclusion which had been already conceded by the Applicant. For a similar reason, the Officer did not, for instance, need to dedicate a large portion of their reasons justify the use of the *IRPA* as the relevant statute - it had been agreed upon. While not quite as cut-and-dried here, the Officer was not required - in order to write a reasonable decision - to spend time explaining why they reached a conclusion that the Applicant herself had conceded.

[17] Additionally, contrary to the Applicant's submissions, I do not find that the Officer failed to explain their reasoning. In the GCMS notes, the Officer explained why this misrepresentation could induce an error:

> The PA does not offer any explanation for her failure to declare. The PFL response is directed at a TRP request. As indicated in the PFL, I am concerned that the PA may be inadmissible for misrepresentation for directly misrepresenting a material fact that could have induced an error in the administration of the Act. This undeclared information could have led the officer to be satisfied that the applicant was a *bonafide* visitor who would leave Canada at the end of their authorized stay in accordance with R179(b).

[18] In sum, I find that the Officer reasonably concluded, based on the Applicant's own words in conceding, that she had made a misrepresentation which was material under s. 40(1)(a), and it rendered her inadmissible to Canada. Stemming from this, the Officer did not need to provide detailed reasons explaining the materiality of this misrepresentation, though some were provided.

(2) TRP Issuance

[19] The Applicant asked for a TRP to be issued, given her personal circumstances. This was a separate application, which was successful and she resultantly returned to Canada. In addition, she also asked for H&C relief under s. 25(1) of the *IRPA*. The Applicant now acknowledges that this request is not applicable for a TRV application, but submits that the Officer erred in declining to use their residual discretion to not find her inadmissible due to her personal circumstances. In essence, she is arguing despite her misrepresentations and their potential materiality, that the Officer should have used their discretion to find that she was not inadmissible nonetheless because of her personal circumstances.

[20] The Applicant cites jurisprudence establishing that officers do have the discretion to find an applicant to be not inadmissible, for instance, when the omission is a simple oversight. I find the case law cited by the Applicant to be inapplicable here. For instance, *Karunaratna v Canada (Citizenship and Immigration)*, 2014 FC 421, dealt with a simple oversight of failing to disclose a previous TRV application. In the other case cited by the Applicant, *Koo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 931, at issue was the applicant's name change, non-disclosure of previous applications for permanent residency, and a misstatement as to his level of education.

[21] There is no evidence that these were innocent misrepresentations, and I find that argument to be an oversimplification of what occurred, coupled with a beautification of the facts. The Applicant conceded that she made misrepresentations, and it was reasonable for the Officer to find that there were misrepresentations. The Officer was not required to dig around other applications to find that she disclosed it on another unrelated file; what was relevant was her failure to disclose it in the application before them.

[22] Similarly, I do not find it to be unreasonable to grant the TRP while at the same time not granting the TRV, nor is this indicative of the Applicant's misrepresentations being innocent ones. In her application, the Applicant filed evidence of ongoing family law matters related to custody, which were ongoing in Ontario. It is not a surprise that the Officer granted the TRP for the Applicant to enter Canada in order to handle those issues. Regardless, that application is not the decision before the Court in this judicial review.

[23] The Officer reasonably declined to exercise their discretion in failing to find the Applicant to be not inadmissible.

JUDGMENT IN IMM-7452-19

THIS COURT'S JUDGMENT is that:

1. This application is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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