Federal Court Cour fédérale

Date: 20211122

Docket: IMM-4339-20

Citation: 2021 FC 1279

Ottawa, Ontario, November 22, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

SADIA AHMED OSMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Sadia Ahmed Osman, seeks judicial review of a decision of the visa officer at the Canadian High Commission in Nairobi, Kenya, dated August 29, 2019, refusing her application for permanent residence as part of the Convention refugee abroad class on the grounds that she did not answer truthfully the questions in her application and those put to her

during her examination, contrary to the provisions of subsections 11(1) and 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] Ms. Osman admitted in her response to a procedural fairness letter that she indeed lied on her application as to whether she had ever been issued a passport and whether she had in the past ever used another name or applied for a visa, however, she argues that she should be forgiven for her transgressions on account of the policy imperative inherent in section 22 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. Ms. Osman argues that because she is applying under the Convention refugee abroad class, subsection 16(1) of the Act – the obligation to answer truthfully – should be read in conjunction with section 22 of the Regulations, which exempts refugee claimants from the application of paragraph 40(1)(a) of the Act – inadmissibility for misrepresentation. Ms. Osman proposes that the same policy imperative upon which section 22 of the Regulations is premised should also shield her from the consequences of breaching subsection 16(1) of the Act in the context of an application for a permanent residence visa under the Convention refugee abroad class.

[3] I am dismissing Ms. Osman's application. Although the issue raised by Ms. Osman may well justify a review by the Minister of Immigration, Refugees and Citizenship [Minister], however, what Ms. Osman is seeking, in short, is a judicial amendment to the Act, something I cannot do. If Parliament intended to extend the policy imperative supporting section 22 of the Regulations to forgive breaches of subsection 16(1) of the Act in this context, it would have done so.

II. Facts

[4] Ms. Osman is a 36-year-old woman who was born in Somalia. She was the co-owner, along with her uncle and aunt, of a restaurant in the city of Mogadishu. On December 5, 2013, five men entered the restaurant and demanded that Ms. Osman marry one of them; she refused. The men were members of Al-Shabab and Ms. Osman's refusal had consequences: Ms. Osman's uncle and aunt were assassinated by the Al-Shabab members, who returned to the restaurant looking for Ms. Osman, after her uncle refused to reveal where she was.

[5] On October 19, 2015, while in Thailand, Ms. Osman submitted an application for refugee protection under the Private Sponsorship of Refugees Program, sponsored by the Diocese of Rupert's Land, for herself and for her dependants – the children of her deceased uncle and aunt who were living in Somalia at the time and who Ms. Osman undertook to care for following the death of their parents. The children's applications were disassociated from that of Ms. Osman in December 2015 because the children were considered "ineligible family members" on account of the fact that they were not living together with Ms. Osman.

[6] In her application, Ms. Osman declared that she had never used any other name other than her own. Moreover, during her interview with an immigration officer in October 2018 in Ethiopia – Ms. Osman had been deported from Thailand two months earlier – Ms. Osman stated that she had never applied for or been refused refugee protection or applied for a visa to Canada or any another country. She also declared that she had never been issued a passport.

[7] Biometric tracing – information sharing with the United States – revealed that Ms. Osman's biometrics were associated with a 2015 U.S. visa application originating from Malaysia made by Ms. Osman under a different name and with a different date of birth. It would seem that Ms. Osman had travelled to Malaysia under a false identity prior to travelling to Thailand and Ethiopia and had used that same false name to apply for a U.S. visa while she was there. She had also obtained a Somali passport under that alias.

[8] On June 5, 2019, a visa officer sent a procedural fairness letter to Ms. Osman giving her the opportunity to address the visa officer's concerns:

> In your application, you have stated that Sadia Ahmed Osman has never been known by any other name; that she had never applied for or been refused a visa to any country; and that she had never been issued a passport. However, this office has received information that Sadia Ahmed Osman used a Somali passport under the name of Fardowso Ahmed Hussein to apply for a US visa in Kuala Lumpur, Malaysia on January 29, 2015.
>
> I am therefore concerned that you have not been truthful regarding Sadia Ahmed Osman's identity; whether she has been known by another name; whether she has applied for or been refused a visa to any country, and if she has been issued a passport in the past.
>
> Before a decision is made in your case, I am providing you with the opportunity to comment on the above concerns or provide any documents or explanation in writing.

[9] It would seem that the visa officer's concerns went beyond the truthfulness in and of itself of Ms. Osman's responses; the Global Case Management System [GCMS] notes indicate that the visa officer also had concerns regarding her identity:

> [March 4, 2019] I have reviewed the US info sharing. Sadia's name and biographic details do not return a hit however her biometrics do. Her biometrics demonstrate that she applied for a US visa while in Malaysia in 2015 under a different name and

> DOB. On her forms, Sadia declared that she had no other names and had never been known by any other names. During interview, she testified that she had never applied for or been refused a visa to any country other than being smuggled to Malaysia. During interview, she testified that she had never been issued a passport however US info sharing shows that she was in possession of a Somali passport. This applicant has not been truthful or honest regarding her age or identity. She has not been honest regarding her history. <u>This information is necessary to assess her identity and to ensure that proper admissibility screening can be done</u>. To await results from UNHCR verification so that if issues [with that] document, applicant can be confronted [with] everything at once.
>
> [Emphasis added.]

[10] In a letter dated June 10, 2019, Ms. Osman responded to the procedural fairness letter and acknowledged that she used the name of Fardowso Ahmed Hussein to apply for a U.S. visa, with the following explanation:

> . . . I would like to provide my honest explanations to the best of my ability. This is the first time I feel secure to disclose the truth and the whole truth to your respected office who has given me the opportunity to explain the reasons behind using different names including my relatives in Canada. . . . In a desperate attempt to save our lives I and my family were living in disguised while trying to seek protection from place to place because I had lost many relatives and family members to the horrible crimes committed by AL SHABAB and their supporters. Since then I have been leaving [*sic*] in fear all my life to the present time. <u>Because of fearful life surrounding me and my family I took a desperate step to hide my real identity to avoid being a target and in attempt to lead a normal life in the community as I have witnessed a gross violation of human right abuse and barbaric actions taken against many innocent human beings even after I escaped serious persecutions at home land</u>. While in search of protection being displaced inside the country and trying to save my life I was advised many times to avoid using my real identity. And the name Fardowso Ahmed Hussein was the name that I was given by a broker who advised me to use his diseased sister's name so that I can be able to flee from Somalia. Together with other community members I have applied using this name for the visa lottery program to USA in 2015 in search of protection and to live a peaceful life. <u>Because my life was at risk I honestly and</u>

> reasonably believed I was not misrepresenting a material fact. I am still having that fear until now, and scares [*sic*] for my life in my day to day survival as refugee because there is always risk of being targeted by individuals and groups who are associated with AL SHABAB, informants and their sympathizers. . . .
>
> [Emphasis added.]

[11] On August 29, 2019, the visa officer refused Ms. Osman's application for a visa as a permanent resident [the refusal decision] because she did not meet the requirements of the Act: Ms. Osman was found to have been untruthful in her application. Citing subsection 16(1) of the Act, the visa officer stated:

> In your application, you have stated that Sadia Ahmed Osman has never been known by any other name; that she had never applied for or been refused a visa to any country; and that she had never been issued a passport. However, this office has received information that Sadia Ahmed Osman used a Somali passport under the name of Fardowso Ahmed Hussein to apply for a US visa in Kuala Lumpur, Malaysia on January 29, 2015.
>
> I am therefore not satisfied that you have been truthful regarding Sadia Ahmed Osman's identity; whether she has been known by another name; whether she has applied for or been refused a visa to any country; and if she has been issued a passport in the past.
>
> [Emphasis added.]

[12] The visa officer refused Ms. Osman's application pursuant to subsection 11(1) of the Act. The refusal decision did not refer to Ms. Osman's reply to the procedural fairness letter, nor did it address her explanation as to why she lied. As stated earlier, the GCMS notes of the visa officer reflect a concern not only with respect to the truthfulness of Ms. Osman's answers, but also more particularly with respect to the fact that such untruthfulness affected the establishment of her identity:

> [August 29, 2019] Application reviewed this day. Info-sharing shows the [*sic*] Sadia Ahmed Osman applied for a US visa with a Somalia passport under the name of Fardowso Ahmed Hussein in Malaysia. She had stated in her present application that she had no other names, had never been known by any other names, that she had never applied for or been refused a visa to any country, and that she had never been issued a passport. A16 and identity concerns sent in PFL. PFL response received confirming that the applicant had a false name and passport. I have reviewed the response in detail. After having reviewed the response, I am not satisfied that the applicant has met the requirements of the act.
>
> [Emphasis added.]

[13] On September 17, 2020, Ms. Osman filed her application for leave and judicial review of the refusal decision. Leave was granted by this Court along with an extension of time.

[14] The sole issue in the present application is whether the refusal decision is reasonable. The parties agree that the applicable standard of review under the circumstances is reasonableness. I should also mention that I have set out the applicable statutory and regulatory provisions in the annex to my decision.

III. Analysis

[15] I will deal with each of Ms. Osman's arguments separately. I should mention that Ms. Osman cites no case law in support for her assertions other than on the issue of the standard of review.

A. *The consequences of misrepresentation*

[16] Subsection 11(1) of the Act provides that a visa officer may issue a visa to a foreign national if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of the Act. Both conditions must be met before a visa officer exercises his or her discretion in respect of the issuance of a visa.

[17] One of the grounds of inadmissibility is misrepresentation in relation to material facts in relation to a relevant matter that induces or could induce an error in the administration of the Act (paragraph 40(1)(a) of the Act). However, the application of paragraph 40(1)(a) of the Act is suspended in the case of individuals who have claimed refugee protection where the disposition of their claim is pending (section 22 of the Regulations). In addition, one of the requirements of the Act is for applicants for a visa to enter Canada to answer truthfully all questions put to them for the purpose of their examination (subsection 16(1) of the Act).

[18] Ms. Osman focuses on the interplay between paragraph 40(1)(a) of the Act and section 22 of the Regulations on the one hand and subsection 16(1) of the Act on the other hand. I accept that both subsection 16(1) and paragraph 40(1)(a) of the Act are similar in that they both deal with the failure of an applicant to be forthright in his or her representations.

[19] Ms. Osman argues that there is no substantial difference between a "misrepresentation" and "untruthfulness" and that although the refusal decision does not refer to paragraph 40(1)(a) of the Act, in substance, the refusal was based on a finding of misrepresentation. Consequently, and even though her application was routed through the visa office, she was nonetheless

applying for a visa under the Convention refugee abroad class and should have been exempted from the application of paragraph 40(1)(a) of the Act pursuant to section 22 of the Regulations.

[20] The policy imperative underpinning section 22 of the Regulations is that in terms of refugee protection, the legislation recognizes that people must sometimes lie to escape persecution and that it would frustrate the very purpose of refugee legislation if one says that the means of escape becomes justification for denying protection. Ms. Osman submits that the Act must be read as a whole and not at cross-purposes with itself, and that the policy imperative which prohibits the denial of refugee protection for reasons of misrepresentation must apply regardless of the process undertaken by the applicant to seek such protection; she argues that paragraph 40(1)(a) of the Act and section 22 of the Regulations cannot be ignored when applying subsection 16(1) in this context as to do so would defeat the purpose and the policy underpinning of section 22 of the Regulations and thus allow a visa officer to do indirectly what he or she cannot do directly.

[21] The intent of section 22 of the Regulations, argues Ms. Osman, is reflected in paragraphs 198 and 199 of the Office of the United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status* (Reissued – Geneva, February 2019), which state:

> 198. A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case.
>
> 199. While an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for

> any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.
>
> [Emphasis added.]

[22] Ms. Osman says that she is a victim of circumstance. Had she arrived in Canada and made an inland claim for refugee protection, her claim would have been referred to the Refugee Protection Division and assessed accordingly, during which time subsection 16(1) of the Act would not apply as she would not be applying for a visa. In the event her refugee claim was accepted and she was determined to be a protected person, subsection 16(1) would come into play when it came time for Ms. Osman to apply for a permanent resident visa, however, by that point her risk of persecution would have been determined and she would not be removed from Canada if refused permanent residency on account of not complying with subsection 16(1) of the Act. However, by applying under the Convention refugee abroad class, her application for permanent residence must pass through the visa office, which subjects her application to the requirements of subsections 11(1) and 16(1) of the Act prior to having her claim for refugee protection assessed.

[23] Such a distinction in the application of the underlying principles of the Act, says Ms. Osman, cannot stand in light of the policy imperative underlying section 22 of the Regulations and the objectives of the Act set out in section 3, otherwise it would be too easy for a visa officer to deny a visa for permanent residence to an applicant seeking refugee protection for a reason for which refugee protection cannot be denied, in this case untruthfulness/misrepresentation.

[24] Although they both deal with deceitful conduct, subsection 16(1) and paragraph 40(1)(a) are separate provisions with different applications and consequences; the application of paragraph 40(1)(a) requires the elements of materiality and relevance and brings with it the stigma of being inadmissible to Canada for five years, none of which are applicable in the context of a breach of subsection 16(1) of the Act, which is much broader. Accordingly, argues Ms. Osman, a refugee claimant in an inland claim may be excused for making a misrepresentation regarding a material fact relating to a relevant matter, but the same claimant making the same claim under the Convention refugee abroad class may be barred for untruthfulness that is neither material nor relates to a relevant matter – a situation that makes no sense under the scheme of the Act.

[25] Moreover, Ms. Osman points to section 109 of the Act, which deals with the possible vacating of refugee protection, and asserts that for refugee protection to be vacated, three conditions must be met: the misrepresentation must be material, the misrepresentation must relate to a relevant matter, and there must be no other sufficient evidence to justify refugee protection. None of those conditions need be met so as to deny refugee protection for reasons set out in subsection 16(1) of the Act.

[26] Ms. Osman accepts that the Court cannot amend the Act but argues that what is required is that the obligation of truthfulness set out in subsection 16(1) of the Act be interpreted in a way as to avoid internal inconsistencies in the Act; subsection 16(1) cannot be viewed in isolation and must be looked at along with the objectives and policies of the Act so as to avoid conflict with

the remaining provisions of the Act. In short, Ms. Osman argues that the principles underlying refugee protection should not be sacrificed at the altar of truthfulness.

[27] The Minister argues that there is no room in this case for statutory interpretation as the provisions of the Act are clear and unambiguous and, in any event, suggests that the argument being raised by Ms. Osman has already been dealt with and dismissed by this Court in *Lhamo v Canada (Citizenship and Immigration)*, 2013 FC 692 [*Lhamo*]. I disagree; the decision in *Lhamo* is a family reunification case and is of no assistance to the Minister.

[28] In *Lhamo*, the issue was whether a family member of a foreign national already determined to be a Convention refugee in Canada was subject to the requirements of subsection 16(1) and thus could be refused a visa pursuant to subsection 11(1) of the Act for reasons of untruthfulness although not inadmissible pursuant to subsection 21(2) of the Act (reasons of security, human or international human rights violations, serious criminality, organized criminality or serious health grounds). Madam Justice Kane found that an applicant for a visa could indeed be refused a visa for this reason, and she stated the following:

> Although a person may not be inadmissible pursuant to the specific grounds of inadmissibility set out in subsection 21(3) [*sic*], they are not automatically admissible and provided with a visa. The requirements of the *Act* must be met. One of those requirements is that an applicant be truthful.

[29] In the matter before me, however, not only has Ms. Osman's refugee claim not yet been determined, but unlike the situation in *Lhamo*, the very ground for inadmissibility that relates to her situation – misrepresentation under subsection 40(1) of the Act – cannot be invoked against her in relation to her refugee claim on account of section 22 of the Regulations. In *Lhamo*, the

grounds of inadmissibility in question were specifically applicable, pursuant to subsection 21(2) of the Act, to family members of a claimant who had already been determined to be a Convention refugee.

[30] That said, and although I appreciate the situation in which Ms. Osman finds herself, I cannot agree with her position.

[31] As stated earlier, although this may be a situation that the Minister may wish to review going forward, the fact remains that section 22 of the Regulations relieves refugee claimants from the consequences of subsection 40(1) and not of subsection 16(1) of the Act. The Act encapsulates a series of policy considerations, and although context is important in statutory analysis, it is not for the Court to try to wade through all of the policy considerations to unravel why certain legislative schemes apply as they do in cases where the statutory provisions are clear and unambiguous. If Parliament intended to shield refugee claimants from the consequences of breaching subsection 16(1) where the vehicle used to seek refugee protection requires them to apply for permanent residency from abroad, it could easily have done so. Not only has it chosen not to, but it has in fact used different terms to identify what is commonly referred to as lying – the term “misrepresentation” is used in subsection 40(1) and the term “truthfulness” is used in subsection 16(1) of the Act (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 81; *Godbout v Pagé*, 2017 SCC 18 at para 115).

[32] I appreciate that Ms. Osman would like the Act to provide differently, however, it does not, and I see no reason to undertake the exercise of statutory interpretation being sought by Ms. Osman in this matter.

[33] In addition, Ms. Osman argues that the visa officer could have avoided the application of subsection 16(1) of the Act and applied the principles applicable to subsection 40(1) of the Act in dealing with her situation. The Minister concedes that it was open to the visa officer to engage the refugee claim determination procedure and convene an interview of Ms. Osman in order to assess her identity and credibility – if that was in fact the visa officer's true principle concern – and to exercise her/his discretion in not applying subsection 16(1) of the Act. However, the issue here is not whether the visa officer could have proceeded in this way, but whether the visa officer was obligated to so proceed. I cannot see that where the visa officer was so obliged, and therefore, I do not see anything unreasonable in the visa officer's application of subsection 16(1) of the Act under these circumstances.

[34] The visa officer was not satisfied that Ms. Osman had met the requirement of the Act to be truthful pursuant to subsection 16(1) of the Act and therefore refused her application. I see nothing unreasonable with such a decision.

B. *Failure of the refusal decision to address the reasons for the misrepresentation*

[35] There is no doubt that "individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 133 [*Vavilov*]).

[36] Ms. Osman argues that it was incumbent upon the visa officer to acknowledge her answer to the procedural fairness letter in the refusal decision, and to address the reasons provided by Ms. Osman on why she was untruthful on her application. Ms. Osman frames the issue as one of procedural fairness, but it is not; any shortcomings in the reasons goes to the reasonableness of the decision and the issue of how a court is to conduct its reasonableness review.

[37] Ms. Osman argues that by issuing the refusal decision as he/she did, the visa officer gave the impression that her attempt at explaining her actions was not even taken into consideration – it was all for not as the visa officer had already made up his/her mind regardless of what Ms. Osman had to say. As a result, Ms. Osman argues that the procedural fairness letter was therefore not a sincere opportunity for her to address the concerns of the visa officer; the refusal decision therefore fell short of the required level of responsive justification outlined by the Supreme Court in *Vavilov* given that refugee claims are considered to be on the higher level of the sliding scale discussed in that case (*Mohammad v Canada (Citizenship and Immigration)*, 2020 FC 473 at para 42 [*Mohammad*]).

[38] I cannot agree with Ms. Osman. The GCMS notes confirm that the visa officer considered her answer to the procedural fairness letter. Once the visa officer identified the reason for the refusal of Ms. Osman's application, *to wit*, that she failed to answer truthfully the questions put to her contrary to the requirements of the Act, there was little else to say; there was no reason for the visa officer to also address the reasons given by Ms. Osman to explain her actions.

[39] I am mindful that in refugee claims, where there is a heightened level of justification required, administrative decision-makers must "ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law" (*Vavilov* at paras 133 and 135). However, this is not a case similar to *Mohammad* – cited by Ms. Osman – where a finding of fact was made without regard for the material that was before the visa officer. Here, the GCMS notes confirm that the visa officer did review and consider Ms. Osman's explanation, however, clearly decided that her explanation as to why she was untruthful was not enough to avoid a finding that she contravened subsection 16(1) of the Act. The refusal letter was admittedly a decision with harsh consequences, but I have not been persuaded that it was not open to the visa officer to reasonably make that determination.

[40] In addition, although an acknowledgement in the refusal decision of receipt of Ms. Osman's answer to the procedural fairness letter and a simple statement that the visa officer remained nonetheless unpersuaded may have been preferable under the circumstances, the omission of such an acknowledgement and statement in the refusal decision rather than in the GCMS notes does not render the refusal decision unreasonable.

C. *The misrepresentations were not material*

[41] Ms. Osman further argues that if the visa officer indeed intended to indirectly apply paragraph 40(1)(a) of the Act, any misrepresentation on her part went to the assessment of her identity – the visa officer required clarity on identity "to ensure that proper admissibility

screening can be done" – and was therefore not material to the assessment of her well-founded fear of persecution.

[42] I cannot agree with Ms. Osman. Nothing suggests that the visa officer intended to apply paragraph 40(1)(a). Therefore, the concept of materiality is not applicable in this case.

[43] I would therefore dismiss Ms. Osman's application as I find nothing unreasonable in the visa officer's refusal decision.

D. *Certified questions*

[44] Ms. Osman proposes that the following questions be certified pursuant to paragraph 74(d) of the Act:

> In light of sections 40(1)(a) and Regulation 22 the Immigration and Refugee Protection Act, is it legally permissible for a visa office to find an applicant for permanent residence in Canada as a member of the Convention refugee abroad and the humanitarian protected persons abroad class inadmissible under section 16(1) of the Act without regard to the basis of the underlying application for membership in the class?
>
> Is the duty of fairness owed to an applicant for permanent residence in Canada as a member of the Convention refugee abroad and the humanitarian protected persons abroad class breached when the refusal letter replicates the personal fairness letter without acknowledgment of the response of the applicant to the personal fairness letter or an answer to the substance of that response?

[45] Both parties acknowledge that this specific issue has not been raised before the Court in the past. In any event, I am not persuaded that Ms. Osman has met the test for certifying a

question set out in *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168. Despite the very well argued case by counsel, the questions lack the hallmark of seriousness; put simply, paragraph 40(1)(a) of the Act and section 22 of the Regulations do not interact with subsection 16(1) of the Act. To do so would require an amendment to the Act. Consequently, the proposed questions do not contemplate issues of broad significance or general importance, and I decline to certify the questions submitted.

IV. Conclusion

[46] The present application for judicial review is dismissed with no question to be certified.

JUDGMENT in IMM-4339-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There are no questions for certification.

"Peter G. Pamel"
Judge

ANNEX

Immigration and Refugee Protection Act, SC 2001, c 27

Requirements	Formalités
Application before entering Canada	**Visa et documents**
11(1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11(1) L’étranger doit, préalablement à son entrée au Canada, demander à l’agent les visa et autres documents requis par règlement. L’agent peut les délivrer sur preuve, à la suite d’un contrôle, que l’étranger n’est pas interdit de territoire et se conforme à la présente loi.
Obligation – answer truthfully	**Obligation du demandeur**
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.	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.
Misrepresentation	**Fausses déclarations**
40(1) A permanent resident or a foreign national is inadmissible for misrepresentation	40(1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce	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

an error in the administration of this Act;	risque d'entrainer une erreur dans l'application de la présente loi;
…	[…]
Application	**Application**
(2) The following provisions govern subsection (1):	(2) Les dispositions suivantes s'appliquent au paragraphe (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; . . .	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; […]
Applications to Vacate	**Annulation par la Section de la protection des réfugiés**
Vacation of refugee protection	**Demande d'annulation**
109(1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.	109(1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.
Rejection of application	**Rejet de la demande**

(2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection.	(2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile.
Allowance of application	**Effet de la décision**
(3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified.	(3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle.

Immigration and Refugee Protection Regulations, SOR/2002-227

Misrepresentation	**Fausses déclarations**
22 Persons who have claimed refugee protection, if disposition of the claim is pending, and protected persons within the meaning of subsection 95(2) of the Act are exempted from the application of paragraph 40(1)(a) of the Act.	22 Les demandeurs d'asile, tant qu'il n'est pas statué sur leur demande, et les personnes protégées au sens du paragraphe 95(2) de la Loi sont soustraits à l'application de l'alinéa 40(1)a) de la Loi.

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

David Matas	FOR THE APPLICANT
Alexander M. Menticoglou	FOR THE RESPONDENT

SOLICITORS OF RECORD:

David Matas Barrister & Solicitor Winnipeg, Manitoba	FOR THE APPLICANT
Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT