Federal Court  Cour fédérale

**Date: 20220331**

**Docket: IMM-2541-20**

**Citation: 2022 FC 454**

**Vancouver, British Columbia, March 31, 2022**

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

**BETWEEN:**

**RUCHI BAGGA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant seeks judicial review of a decision [the Decision] by an immigration officer at the High Commission of Canada in New Delhi, India [the Officer], conveyed by letter dated April 17, 2020, rejecting her work permit application and finding her inadmissible to Canada for misrepresentation under s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in more detail below, this application is dismissed, as the Applicant's arguments do not undermine the reasonableness of the Decision or the procedural fairness afforded to the Applicant.

## II. Background

[3] The Applicant, Ms. Ruchi Bagga, is a citizen of India who applied for a Canadian work permit on September 6, 2019, with the assistance of an immigration consultant [the Consultant]. Her application answered "no" to the question, "Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country?"

[4] As reflected in Global Case Management System [GCMS] notes, an immigration officer reviewing the application identified information surrounding prior United States [US] travel that conflicted with the above answer. As a result, a procedural fairness letter [PFL] was sent to the Applicant on September 19, 2019, stating that she had failed to disclose complete answers in response to the above-noted question and asking that she explain why this information was not provided. She was also asked to provide copies of documentation to support her response, which may include copies of refusal letters or other correspondence.

[5] On September 19, 2019, the Consultant responded by letter to the PFL, advising that the Applicant had been refused a US visitor visa in January 2018 and, although she had informed the Consultant about this visa refusal, due to a clerical error the Consultant's office missed that information in her application form. The Consultant's letter states that the Applicant had no intention to misrepresent herself or hide this information.

[6] GCMS notes dated September 26, 2019, record the following analysis of the Consultant's letter:

> … The response from the paid representative indicates that the applicant has disclosed the refusal to them, however the rep's office made a clerical error and did not disclose the same. Applicant is a young educated female and is responsible for ensuring that all the information submitted with her application is truthful, complete, and accurate and that all documents submitted are genuine even in the event of using a representative. I am not satisfied that the applicant has not withheld the information pertaining to her USA refusal deliberately. Based on the information on file and the applicant's response to the procedural fairness letter, I am of the opinion that the misrepresentation or withholding of this material fact could have induced errors in the administration of the Act. I am forwarding this application to the senior officer for review for misrepresentation.

[7] The GCMS notes also record the following entry, dated April 17, 2020, the date of the Officer's letter to the Applicant conveying the Decision:

> 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. I have reviewed the application, supporting documents and notes on this application. The applicant applied for a work permit to work temporarily in Canada. During the course of the review of the application, the officer noted that the applicant had immigration history in the USA that was not disclosed. A procedural fairness letter was sent to the applicant providing an opportunity to disabuse the officer of their concerns. The procedural fairness letter outlined their concerns as well as the consequences of a finding under A40 including a five year ban from entering Canada. The applicant has responded to the letter but has failed to disabuse me of the concerns presented. In my opinion, on the balance of probabilities, the applicant was not truthful on his application form and failed to disclose that he has derogatory information history in the USA. This could have caused an error in the administration of the Act and Regulations as it could have satisfied an officer that this applicant met the requirements of the Act with respect to having a genuine temporary purpose for travel to Canada and that he would abide by the conditions of entry to Canada. I am

> therefore of the opinion that the applicant is inadmissible to Canada under section 40 of the Act. This application is refused on A40 grounds. Pursuant to A40(2)(a), a permanent resident or foreign national determined to be inadmissible for reasons of misrepresentation continues to be inadmissible for a period of five years following, in the case of a determination made outside Canada, the date of the refusal letter.

[8] The Applicant was sent a refusal letter on April 17, 2020 communicating that her application had been refused for misrepresentation and that she would remain inadmissible to Canada for five years.

[9] On August 25, 2020, the Applicant commenced this application for judicial review of the Decision.

## III. Issues

[10] Having considered the parties' arguments, I regard this application to raise the following issues for the Court's determination:

A. Did the Officer breach the duty of procedural fairness?

B. Is the Decision reasonable?

## IV. Analysis

### A. Did the Officer breach the duty of procedural fairness?

[11] The parties agree that issues of procedural fairness attract review on the standard of correctness.

[12] The Applicant argues that she has not been afforded procedural fairness, because the PFL did not identify that the concerns raised therein about misrepresentation related to the US visa refusal. She submits that she was left to guess which questions in the work permit application were not truthfully answered and which information was not disclosed.

[13] I find no merit to this argument. The PFL expressly identified the question in her work permit application that gave rise to the concern. While the PFL does not identify that the concern relates to her application for a US visa, it is clear from the response submitted by the Consultant, which addressed that issue in particular, that there was no misunderstanding of the specific issue to be addressed. The Applicant was not deprived of an opportunity to know the case to meet and to provide a response.

[14] The Applicant also asserts that she was denied procedural fairness, because the GCMS notes reflect concerns about her finances, noting that there were large unexplained transactions in her bank account and that her annual income was inconsistent with her stated occupation, which concerns were not presented to her in the PFL. Again, I find no merit to this argument. These concerns are identified in an entry in the GCMS notes that predates the entry setting out the analysis of the Consultant's response to the PFL. That analysis, the subsequent analysis in the Officer's GCMS notes, and the letter conveying the Decision, place no reliance on concerns surrounding the Applicant's finances.

[15] The Applicant also argues that the Officer's reasons are inadequate and characterizes this argument as a matter of procedural fairness. As the Respondent submits, it is trite law that the

adequacy of reasons is not a standalone basis for quashing an administrative decision. Rather, in considering the reasonableness of a decision, the Court must consider a decision-maker's reasons, to determine whether they provide the requisite justification, transparency and intelligibility (see, e.g., *Solopova v Canada (Citizenship and Immigration)*, 2016 FC 690 at para 31 [*Solopova*]). I will undertake that determination below in considering the Applicant's arguments challenging the reasonableness of the Decision.

B. Is the Decision reasonable?

[16] The Applicant submits that the Decision is unreasonable, because the refusal letter does not demonstrate whether the Officer considered the Consultant's response to the PFL. Again, I find no reviewable error. As the Respondent submits, it is well-established that GCMS entries form part of the reasons for a decision (see, e.g., *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 9). The notes of the first officer involved in the decision-making process expressly refer to the Consultant's response and the explanation therein, that the Applicant had disclosed the US visa refusal to the Consultant but the Consultant made a clerical error and failed to disclose the same in her application. The officer was not satisfied by that explanation, because the Applicant has the responsibility for ensuring that all the information submitted with her application was truthful, even when employing a representative. Subsequent GCMS notes by the Officer who issued the Decision state that the Officer reviewed the application, supporting documents and notes and explain that the response to the PFL failed to disabuse him of the concerns presented.

[17] It is clear from the GCMS notes underlying the Decision that the Consultant's response to the PFL was taken into account. Those notes also disclose the reasoning underlying the rejection of the Consultant's explanation and provide the justification, transparency and intelligibility necessary to withstand reasonableness review.

[18] In challenging the reasonableness of the Decision, the Applicant also notes that the Consultant's response is dated the same date as the PFL. She argues that the spontaneity of this response militates in favour of its credibility. While I understand the logic of that position, her argument does not undermine the reasonableness of the Decision.

[19] The Applicant also takes issue with a portion of the GCMS notes that employ masculine pronouns in referring to the Applicant and reference a "derogatory immigration history in the USA". She submits that these entries demonstrate the use of template or standard form language, such that the Decision fails to engage with the particulars of her case, including explaining how the one-time refusal of a US visa represents a derogatory immigration history.

[20] I do not find the error in the pronouns employed by the Officer to undermine the reasonableness of the Decision. As explained in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, reasonableness review is not a line-by-line treasure hunt for error (at para 102) but rather focuses upon whether a decision demonstrates an internally coherent and rational chain of analysis (at para 85). The use of template or standard form language also does not render a decision unreasonable, provided it demonstrates the required

justification and intelligibility. I find no difficulty understanding the Decision's reference to the Applicant's US visa refusal as derogatory immigration history. The refusal represents an adverse immigration event that the Applicant was required to disclose so that the decision-maker had an accurate understanding of her immigration history when making the decision on her work permit application.

[21] Finally, the Applicant submits that the Officer should have applied the innocent error exception, which can preclude a finding of inadmissibility due to misrepresentation where an applicant reasonably and honestly believed that they were not withholding material information (see *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 at para 15). However, as explained in *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at para 16, this exception cannot apply in the absence of a conclusion that the error was indeed innocent. Given the Officer's conclusion that the Applicant was not truthful in her application, the innocent error exception has no potential application.

[22] As I have found no reviewable error in the Decision or want of procedural fairness, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

**JUDGMENT IN IMM-2541-20**

**THIS COURT'S JUDGMENT is that** this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2541-20 |
| **STYLE OF CAUSE:** | RUCHI BAGGA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HEARD VIA VIDEOCONFERENCE |
| **DATE OF HEARING:** | MARCH 21, 2022 |
| **JUDGMENT AND REASONS:** | SOUTHCOTT J. |
| **DATED:** | MARCH 31, 2022 |

**APPEARANCES:**

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| Aminollah Sabzevari | FOR THE RESPONDENT |

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