

Federal Court



Cour fédérale

Date: 20220420

Docket: IMM-1870-20

Citation: 2022 FC 562

Ottawa, Ontario, April 20, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SAHIL JAIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Jain, did not include three months of employment in his application for a Temporary Resident Visa (TRV) in 2018. This was discovered by an officer at Canada Border Services Agency [CBSA] when Mr. Jain applied for a work permit at the port-of-entry in 2019. A CBSA officer referred Mr. Jain's case to the Immigration Division [ID] where, after an oral hearing, a Member of the ID determined that Mr. Jain was inadmissible for misrepresenting

these three months of employment in his 2018 TRV application and accordingly issued an exclusion order, which resulted in Mr. Jain being inadmissible for a five-year period, during which he would not be able to enter Canada without special authorization.

[2] Mr. Jain is challenging the decision of the ID on two grounds. First, Mr. Jain argues that there was no misrepresentation because included with the TRV application were payslips for the work that had been omitted from the employment question on the TRV application form. Second, even if the decision was reasonable with respect to whether there was a misrepresentation, Mr. Jain argues that the ID's determination that this omission was material was unreasonable because of the failure to consider the specific facts in relation to the application being made.

[3] On the first issue, whether there was in fact a misrepresentation, the ID's decision turns on its finding that it did not believe on a balance of probabilities that Mr. Jain had submitted payslips for the omitted three months of work as part of his TRP application. In light of the facts before the ID, including Mr. Jain's sworn testimony and the Minister's admission that they could not confirm whether the payslips were included or not, I find it unreasonable that the ID reached this conclusion. As I agree with Mr. Jain that the ID decision was unreasonable in finding that Mr. Jain had not included the payslips with his application, I need not consider the second issue he has raised on the materiality of the omission.

[4] For the reasons that follow, I grant the judicial review.

II. Background Facts

[5] Mr. Jain is a citizen of India. He successfully applied to come to Canada as a visitor on two occasions, 2017 and 2018. It is alleged that he misrepresented his employment history in the 2018 TRV application.

[6] In October 2019, Mr. Jain applied for a work permit at a Canadian border crossing. Included with his application was a resume. In his resume and on the work permit application form, Mr. Jain indicated that he worked at a company called Navkar Dyeing and Finishing Mills (“Navkar Dyeing”) from June 2018 to June 2019. The CBSA Officer noticed that this was not consistent with the information Mr. Jain had provided in his 2018 TRV application that was filed in September 2018.

[7] In that application, Mr. Jain noted that he worked at M/S Navkar Clothing Co (“Navkar Clothing”) from August 2011 to September 2018 and there was no mention of employment at Navkar Dyeing. If the information in his resume and work permit application was true, this would mean that Mr. Jain had not included three months of employment at Navkar Dyeing in his 2018 TRV application.

[8] A CBSA officer confronted Mr. Jain with this information by presenting him with his TRV application forms. Mr. Jain admitted that the information in the 2018 TRV application was incorrect. He told the CBSA officer that his accountant had advised him that he need not include it because it was for a short period of time. A s 44(1) report was prepared that alleged that Mr.

Jain was inadmissible on the basis of s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for misrepresenting his employment history on his 2018 TRV application.

[9] Mr. Jain's case was then referred to an admissibility hearing at the ID. A hearing was held on March 10, 2020. Mr. Jain testified at his hearing. At the conclusion of the hearing, the ID gave their oral reasons for accepting the Minister's allegations that Mr. Jain was inadmissible for misrepresentation and an exclusion order was issued.

III. Issues and Standard of Review

[10] The issues raised by Mr. Jain go to the substance of the ID decision and therefore are to be reviewed on a reasonableness standard. Both parties agree that the reasonableness standard applies. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[11] In *Vavilov*, the Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the starting point of the analysis begins with the decision-maker's reasons (at para 13). A decision-maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103). The Court described a reasonable decision as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Administrative

decision-makers, in exercising public power, must ensure that their decisions are “justified, intelligible and transparent, not in the abstract, but to the individuals subject to it” (*Vavilov* at para 95).

IV. Analysis

A. *Legal framework for misrepresentation finding*

[12] In order to find a person inadmissible for misrepresentation under paragraph 40(1)(a) of IRPA: first, there has to be a misrepresentation; and second, the misrepresentation has to be material in that it could induce an error in the administration of the IRPA.

[13] As noted above, my decision only addresses the first issue—whether it was reasonable for the ID to have found a misrepresentation.

[14] An inadmissibility finding due to misrepresentation has serious consequences for an applicant. It leads to a five-year period of inadmissibility during which they cannot apply for permanent residence and they must obtain Ministerial permission to be able to enter Canada (IRPA, ss 40(2), 40(3)). This Court has found, given these severe consequences, that findings of misrepresentation must be made on the basis of clear and convincing evidence (*Xu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 784 at para 16; *Chughtai v Canada (Minister of Citizenship and Immigration)*, 2016 FC 416 at para 29), that there is a heightened duty of procedural fairness owed (*Likhi v Canada (Minister of Citizenship and Immigration)*, 2020 FC 171 at para 27), and that the reasons provided must reflect the profound consequence to the

affected individual (*Gill v Canada (Minister of Citizenship and Immigration)*, 2021 FC 1441 at para 7; *Vavilov* at para 133).

[15] The ID accepted that whether there was information in the 2018 TRV application that disclosed Mr. Jain's employment at Navkar Dyeing—information that was otherwise omitted from employment history question on the application form—was relevant to their misrepresentation finding. In other words, it is relevant to the misrepresentation determination whether there was information in the complete application before the officer that disclosed the very information that is omitted from the form—the basis for the misrepresentation allegation. This is consistent with this Court's jurisprudence (see for example: *Alves v Canada (Minister of Citizenship and Immigration)*, 2021 FC 716 at para 17; *Berlin v Canada (Minister of Citizenship and Immigration)*, 2011 FC 117 at paras 17-18, 20).

B. Evidence before the ID on inclusion of payslips in TRV application

[16] The sole issue on judicial review is whether the ID's finding that, on a balance of probabilities, Mr. Jain had not submitted the payslips from Navkar Dyeing with the 2018 TRV application was reasonable. The ID made this key determination on the basis of Mr. Jain's silence on the payslips during his interviews with CBSA officers at the port of entry. Prior to considering the ID's evaluation of these interviews and the inferences drawn from them, I want to set out the evidence before the ID on whether the payslips were submitted.

[17] At the ID, the Minister produced the application form and none of the other supporting material filed with the TRV application. The Minister did not produce any evidence that stated the contents of the full TRV application.

[18] Mr. Jain provided an affidavit to the ID where he stated that he had provided the payslips from Navkar Dyeing with his TRV application and included those payslips in his disclosure to the ID. Mr. Jain did not keep a copy of what was submitted.

[19] Mr. Jain testified before the ID that he provided the payslips from Navkar Dyeing with his 2018 TRV application. He advised that these documents were provided to him from his accountant and then he personally submitted them with his paper application when he filed it at the VAC office in New Delhi. He testified that he brought a number of other documents with him to apply (e.g. marriage certificate, passport copy, tax documents, business documents) and was advised by those receiving the applications at the VAC office that he need not file all of these documents because of the stream that he was applying in. Mr. Jain testified that he told them to submit all of them and the payslips were included within these documents.

[20] Mr. Jain made an Access to Information and Privacy (“ATIP”) request for the full application; only the application form from the 2018 TRV application was provided, as well as entries and notes in the Global Case Management System (“GCMS”). As noted by Mr. Jain, the record is incomplete because it is uncontroversial that there would have been other material filed with the TRV application form in order for it to be approved, including his identity documents and financial information; none of these materials are in the ATIP record.

[21] During the hearing, the Minister's Counsel asked for a break in order to check the GCMS to determine whether the payslips had been submitted in the application, and after completing this check, advised the ID: "I cannot confirm if the paystubs were or were not submitted." Later in their submissions, the Minister's Counsel stated, "I cannot refute if that was or was not submitted."

[22] To summarize: the ID was faced with a situation where, i) the Minister had only disclosed the TRV application form and had not provided any evidence of what other documents were filed with the application; ii) the Minister's Counsel checked the GCMS system and advised that they could not know either way whether the documents had been submitted; iii) Mr. Jain did not keep a copy of the full application he had filed in 2018; iv) Mr. Jain attempted to get access to the full file through an ATIP request but the response was incomplete; v) Mr. Jain provided an affidavit to the ID where he stated that he had filed the payslips for the omitted work in the 2018 TRV application; and vi) Mr. Jain testified about the circumstances in which he filed the payslips with his 2018 TRV application.

C. *ID made an unreasonable inference*

[23] The ID's determination that Mr. Jain had not submitted the payslips in his 2018 TRV application relied heavily on his failure to raise their existence during his interviews with the CBSA officers at the port of entry. I find the inferences drawn by the ID from Mr. Jain's silence on this point to be unreasonable.

[24] The ID held that during the course of the two interviews with CBSA officers, “as an educated person, with an MBA,” the ID “would have expected [him] to volunteer [the] information [about the payslips] if in fact [he] had ever provided those paystubs.”

[25] The Minister disclosed two solemn declarations of CBSA officers who had interviewed Mr. Jain on October 17, 2019. There was no audio recording disclosed of the interviews, nor any transcript of the verbatim questions and answers. Notes of the questions and answers provided during these interviews are included in the solemn declarations of the officers. Officer Lane, the first officer who interviewed Mr. Jain, noted in his declaration that “some answers have been paraphrased with responses being confirmed by Mr. Jain.” The duration of the interviews were not recorded in these declarations. However, based on the number of questions and answers recorded in the notes, it appears that both of these interviews happened on October 17, 2019 and were of short duration.

[26] In neither interview is Mr. Jain asked specifically whether he submitted anything with his application that indicated that he worked at Navkar Dyeing. The only material he was asked to review was the TRV application form from 2018. He was asked specifically about the misinformation in the form and to confirm his signature on the form. The main focus of the interview was why Mr. Jain had put the wrong information on the form.

[27] Mr. Jain’s explanation before the CBSA officers was not that the reason he had omitted the information in the form was because he had provided the payslips from his work. The payslips from his most recent employment happened to have been included with his TRV

application; separate and apart from that, he stated that he did not accurately record his employment history in the form on the advice that that he need not because it had been of such a short duration, and also did not properly review the form himself.

[28] The ID reasoned that if Mr. Jain had in fact submitted the payslips, then he would have volunteered this information to the officer even if he was not directly asked. From this silence, the ID determined that, on a balance of probabilities, Mr. Jain had lied in his affidavit and during his testimony to the ID. This inference is drawn only based on his failure to volunteer information to the CBSA officers about the payslips submitted with the 2018 TRV application—information that he may not have remembered filing the year prior, or known would be relevant to the officer’s misrepresentation assessment. This reasoning is not grounded in a rational chain of analysis.

[29] Given the context of the interviews that occurred at the port of entry, where Mr. Jain was first confronted with the conflicting information, the focus of the interview questions, and that Mr. Jain was not asked directly about whether he had submitted any other documents about his omitted work, I find the ID’s conclusion that Mr. Jain’s silence about the payslips at these interviews meant that he was lying about including them was a giant leap in reasoning that does not follow a rational chain of analysis. In short, the conclusion is based on reasoning that does not “add up” (Vavilov at para 104).

[30] For the foregoing reasons, I conclude that the ID's decision is unreasonable. The application for judicial review is granted. The parties did not pose a question for certification, and none will be certified.

V. Proper Respondent

[31] As this is a judicial review where the decision of the Immigration Division is being challenged, I agree with the Minister that the proper Respondent is the Minister of Citizenship and Immigration.

VI. Costs

[32] Mr. Jain argued for costs in his written submissions but advised that he was withdrawing this request in oral submissions. I do not see a basis for ordering costs in this case.

JUDGMENT IN IMM-1870-20

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted.
2. The style of cause is amended with immediate effect with the Respondent being named as the Minister of Citizenship and Immigration.
3. No question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1870-20

STYLE OF CAUSE: SAHIL JAIN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 5, 2021

**REASONS FOR JUDGMENT
AND JUDGMENT:** SADREHASHEMI J.

DATED: APRIL 20, 2022

APPEARANCES:

Harry Virk FOR THE APPLICANT

Boris Kozulin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Liberty Law Corporation FOR THE APPLICANT
Barristers and Solicitors
Abbotsford, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia