Federal Court  Cour fédérale

**Date: 20220527**

**Docket: IMM-2440-20**

**Citation: 2022 FC 778**

**Ottawa, Ontario, May 27, 2022**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**SHAHIL ALIMAHAMAD VAHORA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The applicant, Mr. Vahora, seeks judicial review of the decision of a visa officer at the High Commission of Canada in New Delhi [the Officer], dated April 16, 2020. The Officer refused Mr. Vahora's application for a temporary work permit, finding that he had not truthfully answered all questions asked of him. In particular, the Officer found that Mr. Vahora had failed to disclose on his application form that he had previously been refused visas to the United States [US] and his explanation for this omission did not address the Officer's concerns. The Officer

found Mr. Vahora inadmissible to Canada for misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] The Officer's reasons are brief, as is typical in work permit applications, and use some template wording, which has been used in other similar decisions. However, as explained below, the Officer's reasons convey that the evidence was considered and the decision is sufficiently transparent, intelligible, and justified.

## I. Background

[3] Mr. Vahora is a citizen of India. On November 2, 2019, he applied for a temporary work permit to come to Canada as owner and operator of his own company, Match-Tech Structural Consultant Ltd., based in Surrey, British Columbia.

[4] On the application form, Mr. Vahora 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 or territory?" The Global Case Management System [GCMS] notes that the officer reviewing Mr. Vahora's application found this was untrue and that Mr. Vahora had failed to disclose two previous US visa refusals.

[5] On January 2, 2020, the officer sent a procedural fairness letter to Mr. Vahora, noting concerns that Mr. Vahora had not been truthful about his previous visa refusals and requesting that Mr. Vahora "[e]xplain why this information was not provided, and provide copies of

documentation [he had] to support [his] response, which may include copies of refusal letters or other correspondence."

[6] Mr. Vahora replied by letter, apologized and stated that the information was "omitted innocently by human error." He then disclosed that he had been refused a student visa to the UK in 2004, subsequently granted a UK student visa in 2006, and refused two visitor visas to the US for business purposes in 2015 and 2016. He provided letters indicating that the US visas were refused because Mr. Vahora had not demonstrated, to the satisfaction of the US immigration authorities, that he had sufficient ties that would compel him to return to India after his travel. Mr. Vahora also submitted a letter from his lawyer stating that Mr. Vahora had omitted this information innocently and with no intention to mislead and asking for "clemency."

## II. The Decision

[7] The letter dated April 16, 2020 and the GCMS notes provide the reasons for the decision. The letter advised Mr. Vahora that his application for a temporary work permit was refused and stated that the Officer was not satisfied that Mr. Vahora had truthfully answered all questions asked of him. The letter stated that Mr. Vahora was inadmissible to Canada for misrepresentation, pursuant to paragraph 40(1)(a) of the Act, and that he would remain inadmissible for a period of five years, in accordance with paragraph 40(2)(a).

[8] The GCMS notes reflect that the officer who had first reviewed Mr. Vahora's application and sent the procedural fairness letter considered Mr. Vahora's submissions in response. The officer's entries state:

> In response to the [procedural fairness letter], PA states that he answered no to the [statutory] question due to human error. PA states that he was refused two study permits from the UK and two business visas from the US. Based on the information on file and the applicant's response to the procedural fairness letter, I am of the opinion that PA withheld information regarding his refusal and 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 further review of misrepresentation.

[9] The GCMS notes include those of the Officer (the senior officer who further reviewed the application), which state that the Officer "reviewed the application, supporting documents and notes on this application" and that a procedural fairness letter was sent and a response received. The GCMS entries of the Officer state:

> 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 immigration 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.

## III. Issue and Standard of Review

[10] The standard of review of a decision refusing a work permit and of a finding of inadmissibility under paragraph 40(1)(a)—which is a factual determination—is reasonableness: *Bains v Canada (Citizenship and Immigration)*, 2020 FC 57 at para 49; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17 [*Vavilov*]. The only issue in this application is whether the Officer's decision was reasonable.

[11] A reasonable decision is 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 paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91). A decision should not be set aside unless it contains "sufficiently serious shortcomings … such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

[12] In the context of decisions for work permits and similar applications, given the volume of applications and the need for timely processing, it is understood that the reasons are necessarily and usually brief (*Patel v Canada (Citizenship and Immigration)*, 2020 FC 77 at paras 15 and 17 [*Patel*]); nonetheless, the reasons must permit the Court to understand why the application was refused and to determine that the conclusion falls within the range of reasonable outcomes.

## IV. The Applicant's Submissions

[13] Mr. Vahora submits that the Officer who made the decision relied only on the notes of the first officer who reviewed the application and did not consider Mr. Vahora's response to the procedural fairness letter. Mr. Vahora points to the Officer's reference in the GCMS to only the application, supporting documents and file notes, with no mention of his response. Mr. Vahora submits that it cannot be presumed that the Officer considered his response. Mr. Vahora adds that the duty of procedural fairness includes not only the opportunity to respond to the Officer's concerns, which Mr. Vahora did, but to have the response considered, which he submits the Officer did not do.

[14] Mr. Vahora adds that the Officer failed to follow the relevant policy guidelines, which require that information provided in response to a procedural fairness letter be carefully assessed.

[15] Mr. Vahora further submits that the Officer reached a conclusion without any analysis or explanation of why Mr. Vahora's response—that his omission was due to a human error—did not allay the Officer's concerns. Mr. Vahora submits that the Officer was required to analyze his response and the documents attached, for example to assess the reasons for the two US visas as part of the assessment of his explanation.

[16] Mr. Vahora argues that the serious consequences of a finding of misrepresentation impose a greater duty on the Officer to provide responsive reasons.

[17] Mr. Vahora points to the use of boilerplate or template language in the GCMS that is identical to language used in other visa decisions. He submits that this demonstrates that the Officer reached conclusions without regard to his explanation and that the reasons are not responsive. Mr. Vahora adds that the GCMS notes are not entirely accurate because he was only refused one UK study permit, as one was approved.

[18] Mr. Vahora further argues that the Officer erred in failing to consider whether his omission to disclose his US visa refusals was an innocent mistake rather than a misrepresentation, noting that he explained that it was unintentional. He also submits that the Officer failed to explain why this omission was a material misrepresentation and how this could have caused an error in the administration of the Act.

## V. The Respondent's Submissions

[19] The Respondent notes that visa officers are not required to give detailed reasons for work permit applications.

[20] The Respondent submits that the Officer's use of template wording in this case does not render the decision unreasonable. The Respondent submits that the Officer's reasons read in context sufficiently convey why Mr. Vahora's work permit was ultimately refused. Despite some template language, the reasons for the decision are transparent, justified and intelligible.

[21] The Respondent disputes Mr. Vahora's contention that the Officer failed to consider his response to the procedural fairness letter, noting that the GCMS notes refer to the response.

[22] The Respondent submits that Mr. Vahora's response was not an explanation for his omission. The Officer's brief conclusion that the response did not disabuse the Officer of the concerns is sufficient given that Mr. Vahora stated only that it was a human error.

[23] The Respondent further submits that the Officer reasonably determined that Mr. Vahora's omission was a misrepresentation and did not fall within the narrow scope of the innocent mistake exception, given that Mr. Vahora was aware of his previous visa refusals, including the two recent US refusals; he was in control of that information, and he failed to disclose it on his application.

[24] The Respondent notes that the jurisprudence has established that the omission of previous visa refusals is a material fact and submits that the Officer's reasons sufficiently explain how the

misrepresentation was material. The Respondent argues that the nexus between a refused US visa and Mr. Vahora's work permit application is obvious; an analysis of the materiality of the misrepresentation is not required.

## VI. The Decision Is Reasonable

[25] I appreciate the serious consequences of a finding of misrepresentation and inadmissibility to Canada for Mr. Vahora, who seeks to establish a business in Canada. However, the five-year period of inadmissibility is by operation of the Act. There are no degrees of misrepresentation; once misrepresentation is established, the consequences follow and the Officer has no discretion in this regard.

### A. *The relevant principles*

[26] The purpose of section 40 of the Act in deterring misrepresentation and the importance of being truthful as a statutory requirement and a fundamental principle have been repeatedly highlighted in the jurisprudence.

[27] Section 40 is intended to promote integrity in the immigration system and it has been broadly interpreted: *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 15 [*Wang*]; *He v Canada (Citizenship and Immigration)*, 2022 FC 112 at para 15 [*He*]; *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23; *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28 [*Goburdhun*]. An applicant has a duty to ensure the completeness and accuracy of their application: *Wang* at paras 15–16.

[28] In addition, section 16 sets out the duty to answer truthfully all questions in all applications.

[29] However, given the consequences, findings of misrepresentation must be supported by clear and convincing evidence: *Xu v Canada (Citizenship and Immigration)*, 2011 FC 784 at para 16.

[30] In *Malik v Canada (Citizenship and Immigration*), 2021 FC 1004 at paras 10–11 [*Malik*], Justice Strickland summarized the key principles established in the jurisprudence regarding misrepresentation:

> [10] In *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 [*Wang*], I addressed s 40 and stated as follows:
>
> > [15] I have previously summarized the general principles concerning misrepresentation in *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28. For the purposes of this application they include that s 40 is to be given a broad interpretation in order to promote its underlying purpose (*Khan v Canada (Citizenship and Immigration)*, 2008 FC 512 at para 25 ("*Khan*")), its objective being to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the applicant to ensure the completeness and accuracy of their application (*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23 ("*Oloumi*"); *Jiang* at para 35; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 55-56 ("*Wang*")).
> >
> > [16] In this regard an applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada (*Bodine v Canada (Citizenship and Immigration)*, 2008 FC 848 at paras 41-42

("*Bodine*"); *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15 ("*Baro*"); *Haque v Canada (Citizenship and Immigration)*, 2011 FC 315 at para 11 ("*Haque*")). Section 40 is intentionally broadly worded and applied and encompasses even misrepresentations made by another party, including an immigration consultant, without the knowledge of the applicant (*Jiang* at para 35; *Wang* at paras 55-56).

[17] The exception to s 40 is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control (*Masoud v Canada (Citizenship and Immigration)*, 2012 FC 422 at paras 33-37 ("*Masoud*"); *Goudarzi v Canada (Citizenship and Immigration)*, 2012 FC 425 at para 40 ("*Goudarzi*")). That is, the applicant was subjectively unaware that he or she was withholding information (*Medel v Canada (Minister of Employment and Immigration)*, [1990] 2 FC 345 (FCA) ("*Medel*"); *Canada (Citizenship and Immigration) v Singh Sidhu*, 2018 FC 306 at para 55 ("*Singh Sidhu*")).

[18] In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose (*Oloumi* at para 22). It is necessary, in each case, to look at the surrounding circumstances to decide whether the withholding of information constitutes a misrepresentation (*Baro* at para 17; *Bodine* at paras 41-42; *Singh Sidhu* at paras 59-61). Further, a misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process (*Oloumi* at para 25).

[19] Nor can an applicant take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application. The materiality analysis is not limited to a particular point in time in the processing of the application (*Haque* at paras 12, 17; *Khan* at paras 25, 27, 29; *Shahin v Canada*

> *(Citizenship and Immigration)*, 2012 FC 423 at para 29 ("*Shahin*")).
>
> (See also *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 at paras 38-39; *Turian v Canada (Citizenship and Immigration)*, 2018 FC 324 at paras 25-28 [*Turian*]).
>
> [11] Two factors must be present for a finding of inadmissibility under section 40(1). There must be a misrepresentation by the applicant and the misrepresentation must be material in that it could have induced an error in the administration of the IRPA (*Bellido v Canada (Minister of Citizenship and Immigration)*, 2005 FC 452 at para 27 [*Bellido*]).

[31] In addition to the principles noted above, a finding of misrepresentation does not require that the applicant intended to deceive or that the applicant was aware of the misrepresentation: *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 at para 15; *Malik* at para 22; *Muniz v Canada (Citizenship and Immigration)*, 2020 FC 872 at para 8 [*Muniz*]. An innocent failure to provide material information still constitutes misrepresentation (*Malik* at para 27).

B. *The Officer did not fail to consider and assess Mr. Vahora's explanation*

[32] As noted by Mr. Vahora, in *Vavilov*, at para 86, the Supreme Court of Canada explained that a decision must not only be justifiable but also justified by the reasons given. *Vavilov* (at para 100) further explains that a decision should not be set aside unless there are sufficiently serious shortcomings. The context for the decision remains relevant, and the jurisprudence has established that the decisions in work permit and other visa applications are not expected to provide extensive reasons. As noted in *Patel* at para 17, "simple, concise justification will do."

[33] Mr. Vahora's submissions that the decision is not justified stem from his first argument that the Officer failed to consider his response to the procedural fairness letter. This is not supported by the GCMS notes, which reflect that both the officer who sent the procedural fairness letter and the Officer who reviewed the first officer's finding regarding misrepresentation reviewed Mr. Vahora's letter. The Officer specifically states, "[t]he applicant has responded to the letter but has failed to disabuse me of the concerns presented." Read in context, this explains that the Officer's concerns were not allayed by Mr. Vahora's response, which conveys that the Officer read his letter. In addition, the Officer's specific reference to "the application, supporting documents and notes on this application" does not mean that the Officer did not review Mr. Vahora's letter. The "supporting documents" would encompass Mr. Vahora's letter in response to the procedural fairness letter, which is also a supporting document for his application.

[34] Contrary to Mr. Vahora's submission that failing to mention important evidence may support an inference that an erroneous finding of fact was made without regard to the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at para 17, [1999] 1 FC 53 [*Cepeda-Gutierrez*]), the Officer did not fail to mention the letter and did not make any erroneous finding of fact. In addition, the principle as stated in *Cepeda-Gutierrez* at para 17 adds that "when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact." In the present case, the brief GCMS notes do not mention other evidence in detail, but group it in

broader categories, as noted above. In addition, Mr., Vahora's letter is not contradictory evidence; it says very little.

[35] The onus is at all times on an applicant to support their application and this includes any response to a procedural fairness letter. Mr. Vahora's response was nothing more than a statement that he made a "human error." While the applicable guidelines for visa officers acknowledge that mistakes occur, something more than a bald statement that a mistake was made is required to constitute an explanation—such as why or how the mistake occurred. In the present case, Mr. Vahora characterizes his mistake as an omission, but this is not a situation where he omitted to answer a question completely; he provided an inaccurate answer.

[36] Ideally, the Officer could have added a few words or a line to expand on why Mr. Vahora's explanation for answering "no" rather than "yes" to the question of whether he had ever been refused a visa was unsatisfactory; however, the Officer's finding that Mr. Vahora "has failed to disabuse me of the concerns presented" concisely explains that the explanation is not sufficient. As the Respondent notes, the reason is apparent. Mr. Vahora offered nothing more by way of explanation than "human error" despite that the question was clearly set out in the application and his US visa refusals were fairly recent.

C. *The use of template language is not fatal*

[37] Although the Officer's conclusion as set out in the GCMS is more or less identical to the reasons of the officer cited in *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441 [*Gill*], *Singh v Canada (Citizenship and Immigration)*, 2021 FC 828, and *Bagga v Canada (Citizenship*

*and Immigration)*, 2022 FC 454 [*Bagga*], the issue for the Court on judicial review is whether the reasons and record support the Officer's conclusion—in other words, whether the reasons are justified, transparent and intelligible. The reasonableness of any decision is assessed on its particular facts.

[38] The jurisprudence has established that the use of template language is not problematic *per se*; however, the template language must fit the circumstances in that it provides the necessary justification and intelligibility: *Ekpenyong v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1245 at paras 22–23; *Bagga* at para 20.

[39] I agree with Justice McHaffie's comment in *Gill* that "the use of identical template language to express not just the relevant legal test or framework, but the reasoning applicable to an applicant's particular case undermines to at least some degree the presumption that the officer has considered and decided each individual case on its merits" [Emphasis added] (para 34). However, the use of template language does not rebut the presumption and is not fatal where the language, when considered in the context of the GCMS notes and letter of refusal as a whole, fits the facts before the Officer.

[40] In the present case, the use of template language such as "has failed to disabuse me of the concerns presented" and "failed to disclose that he has derogatory immigration history in the USA. This could have caused an error in the administration of the Act…"—when read in the context of the GCMS notes as a whole and with Mr. Vahora's letter—does respond to the facts before the Officer and is intelligible and justified in the circumstances.

[41] As noted, a few extra words, for example, to more clearly state what is apparent—that an assertion of a "human error" without more is not an explanation for the incorrect response to an important question on the application—would be preferable. However, in the present case, the record supports the reasonableness of the Officer's succinct conclusion that Mr. Vahora's response did not allay or "disabuse" the Officer of their concerns.

D. *Innocent misrepresentation exception does not apply*

[42] Mr. Vahora did not pursue his argument that the Officer erred by failing to consider whether the innocent misrepresentation exception applied. However, the Court notes that this narrow exception is not established through mere inadvertence, which appears to be Mr. Vahora's position: *Ahmed v Canada (Citizenship and Immigration),* 2020 FC 107 at para 30. In addition, an intent to deceive or to deliberately withhold information is not required to find misrepresentation.

E. *The omission is material*

[43] Contrary to Mr. Vahora's submission, the Officer did not err by failing to explain why his omission (or inaccurate answer) was a material misrepresentation that could have caused an error in the administration of the Act.

[44] To be material, a misrepresentation need not be determinative or decisive—it need only affect the process. In addition, it is only necessary that the misrepresentation could have induced an error in the application of the Act, not that it has actually done so (*Goburdhun* at paras 28, 37; *Muniz* at para 8). A correction made via a response to a procedural fairness letter or the fact that

immigration officials have access to the withheld information by other means does not render a misrepresentation immaterial: *Muniz* at para 8; *Goburdhun* at para 44; *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at paras 21–23; *Wang* at para 19.

[45] The Officer's use of template or typical language to note that the omission "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" is not problematic in the circumstances. Inaccurate information or omissions in an application are relevant to the officer's considerations, including whether the applicant would leave Canada at the end of their period of work. Failure to disclose previous visa refusals may foreclose further avenues of investigation by immigration officials, which makes a misrepresentation material: see for example, *Alkhaldi v Canada (Citizenship and Immigration)*, 2019 FC 584 at para 25; *Algohar v Canada (Citizenship and Immigration)*, 2019 FC 1364 at para 24.

[46] Although the outcome of this Application has harsh consequences for Mr. Vahora, the Court cannot conclude that the Officer erred.

**JUDGMENT in file IMM-2440-20**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Catherine M. Kane"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2440-20 |
| **STYLE OF CAUSE:** | SHAHIL ALIMAHAMAD VAHORA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | MAY 18, 2022 |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | KANE J. |
| **DATED:** | MAY 27, 2022 |

**APPEARANCES:**

| | |
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| Diane Gyimah | FOR THE RESPONDENT |

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