Federal Court

Cour fédérale

Date: 20221108

Docket: IMM-3879-21

Citation: 2022 FC 1522

Ottawa, Ontario, November 8, 2022

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

PARGAT SINGH BRAR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Pargat Singh Brar ("Mr. Brar"), applied for a work permit under the International Mobility Program in 2019, hoping to join his wife who was in Canada on a post-graduate work permit. A Visa Officer in the High Commission of Canada in New Delhi ("the Officer") refused Mr. Brar's work permit application and found him inadmissible for misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC

2001, c 27 [*IRPA*]. The Officer based their misrepresentation finding on Mr. Brar's alleged failure to disclose a visitor visa refusal from the United States of America [US]. Mr. Brar is challenging the misrepresentation determination in this judicial review.

[2] A finding of misrepresentation has serious consequences for Mr. Brar. It means that, for a period of five years following the misrepresentation finding, he cannot enter Canada or apply for permanent residence here.

[3] Mr. Brar argues that the Officer failed to reasonably consider his explanation that any misrepresentation was an innocent mistake on his part because he did not know that the visitor visa had been refused. He also argues that the Officer unreasonably discounted his hardship arguments.

[4] During the judicial review hearing, it became evident that there was scant information in the Certified Tribunal Record about the alleged misrepresentation. The only available information is a notation in the Officer's notes that states there was a "US refusal." There are no details about how the Officer learned the information, the exact date of the refusal, nor how the refusal was issued or communicated to Mr. Brar.

[5] In my view, the Officer's failure to set out clearly the alleged misrepresentation renders the decision unreasonable, particularly given the Applicant's assertion that he had no knowledge of the visa refusal and continues to have no information about the refusal. After reviewing the Officer's reasons, procedural fairness letter, the Certified Tribunal Record, and Mr. Brar's

evidence, I do not have confidence that this central element, namely that there was a misrepresentation, has been established. The Officer's decision lacks transparency and justification on the existence of a misrepresentation and therefore is unreasonable.

[6] Based on the reasons set out below, I grant the judicial review.

II. Issues and Standard of Review

[7] The sole issue in this judicial review is whether the Officer reasonably found Mr. Brar inadmissible based on misrepresenting a visa refusal from the US in Mr. Brar's application for a work permit.

[8] Both parties agree that the standard of review applicable is reasonableness. 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.

III. Analysis

[9] In order to find a person inadmissible for misrepresentation under paragraph 40(1)(a) of *IRPA*, an officer must determine first that there has been a misrepresentation; and second that the misrepresentation was material in that it could induce an error in the administration of *IRPA*.

[10] 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 enter Canada (*IRPA*, ss 40(2), 40(3)). This Court has found that, given these severe consequences, 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).

[11] The basis for the Officer's misrepresentation finding was the allegation that Mr. Brar failed to disclose a past US visitor visa refusal. Mr. Brar disputes that he ever knew about the visitor visa refusal and could provide no information to confirm that his visitor visa was refused.

[12] On Mr. Brar's work permit application he 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?"

[13] The High Commission of Canada sent Mr. Brar a procedural fairness letter, stating: "You have failed to disclose complete answers to your statutory questions, namely you did not disclose having been refused any kind of visa, admission, or been ordered to leave any other country?

Explain why this information was not provided, and provide copies of documentation you have to support your response, which may include copies of refusal letters or any other correspondence."

[14] The procedural fairness letter did not set out the specific misrepresentation alleged. This Court has explained in a number of cases that the specific allegations of misrepresentation must be set out so that an applicant knows the case to meet (*Bayramov v Canada (Minister of Citizenship and Immigration)*, 2019 FC 256 at para 15). Mr. Brar assumed the Officer was referencing his application to the US in 2016 for a visitor visa. The only other visa Mr. Brar had applied for is the one at issue in this judicial review.

[15] In response to the procedural fairness letter, Mr. Brar provided a letter from his immigration consultant and another from his wife. The immigration consultant said that Mr. Brar had previously applied for a US visitor visa in 2016 and provided the notice of the interview confirmation that took place on June 2016. Mr. Brar's consultant indicated that Mr. Brar was not provided with a refusal at the time of his interview, and was not aware that the visitor visa was refused. After receiving the procedural fairness letter, Mr. Brar and his wife also checked with their former travel agent who had assisted with the US visitor visa application and were told that the travel agent's office had not received a refusal in Mr. Brar's case.

[16] Mr. Brar's consultant also indicated that, after attending the interview for the US visitor visa, the "travel plans [of Mr. Brar] were instead cancelled." The Applicant's memorandum states that Mr. Brar "communicated his decision not to travel to the U.S. to his travel agent who

had then cancelled the U.S. visa application process." As I noted at the hearing, this information is contained in the affidavit of Mr. Brar filed on judicial review. However, the evidence before the Officer was not as clear; it only said that Mr. Brar's "travel plans were instead cancelled" and it did not say that Mr. Brar asked his travel agent to cancel his visa application. I explained to Applicant's Counsel at the hearing that the information in the affidavit is not appropriately before the Court as it does not fit within one of the exceptions for new evidence on judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20). I note that I did not rely on the information in the affidavit in coming to my determination.

[17] The upshot of Mr. Brar's response to the procedural fairness letter is his lack of knowledge about the visitor visa refusal: he never received a refusal to his visitor visa application, was unaware that it was refused, and continues to have no information about the refusal. Mr. Brar assumes that the former travel agent may have misled him and not provided him with the refusal letter, but there is no admission from the former travel agent to that effect.

[18] I asked counsel at the hearing to point the Court to evidence in the record showing that there had been a refusal of Mr. Brar's visitor visa. The only reference counsel could find was the following notation in the Officer's notes, prior to issuing the procedural fairness letter: "[Principal Applicant] did not declare US refusal." As I noted, the procedural fairness letter had no details about the alleged misrepresentation. Neither Mr. Brar nor his former travel agent have admitted that they have received a visitor visa refusal. The Officer's reasons describe the misrepresentation as follows: "Applicant did not declare a previous US visa refusal from 2016 on

his application and clearly indicated this in his application when asked if he has previously been refused a visa to any country." There is a reference to 2016, but no specific date. I note that Mr. Brar himself provided his interview confirmation appointment letter that was dated January 21, 2016.

[19] Given the serious consequences of a misrepresentation finding as set out above, I find that the Officer failed to provide sufficient information about the specifics of the misrepresentation alleged, particularly where the evidence from Mr. Brar is that he never received a refusal decision. Not only does this failure impact an applicant's ability to fully respond to the allegation, it also leaves the Court reviewing the decision and the record with little confidence in the Officer's decision. The Officer's decision was not transparent nor justified in establishing that there was a misrepresentation.

[20] The application for judicial review is granted. Neither party raised a question for certification and I agree that none arises.

JUDGMENT IN IMM-3879-21

THIS COURT'S JUDGMENT is that:

1. The decision of the Officer dated April 21, 2021 is set aside;

2. The matter is sent back to be redetermined by a different officer; and

3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3879-21
STYLE OF CAUSE:	PARGAT SINGH BRAR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	OCTOBER 25, 2022
JUDGMENT AND REASONS:	SADREHASHEMI J.
DATED:	NOVEMBER 8, 2022

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