Federal Court  Cour fédérale

Date: 20221128

Docket: IMM-585-22

Citation: 2022 FC 1638

Ottawa, Ontario, November 28, 2022

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

RIAZ ALI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision of an immigration officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated June 21, 2021, denying the Applicant's request that the refusal of his work permit be reconsidered.

[2] The Applicant received an email on June 21, 2021, stating that if, upon reviewing his reconsideration request, no errors arose and the file was not re-opened, this email would serve as notification of the decision on his request and there would be no further correspondence. The Applicant received no further correspondence after June 21.

[3] The Applicant submits that the Officer's decision was unreasonable because it applied the incorrect test for a reconsideration request and did not consider any new evidence proffered by the Applicant, particularly evidence relating to the misguidance of his immigration consultant.

[4] For the reasons that follow, I find the Officer's decision is reasonable. I therefore dismiss this application for judicial review.

II. Facts

A. *The Applicant*

[5] The Applicant is a 51-year-old citizen of Pakistan. He is a professional cook and chef from District Swat, Pakistan.

[6] In April 2019, the Applicant retained an immigration consultant based in Islamabad, Pakistan, Tauseef Rehman (Mr. "Rehman"), to obtain a multiple entry visa to Canada. In June 2019, he received a multiple entry visa valid for four years.

[7] On July 11, 2019, the Applicant entered Canada on a visitor's visa. While in Canada, the Applicant retained another immigration consultant, Ray Abdusalam (Mr. "Abdusalam"), to help him obtain a work permit to work as a cook in Canada.

[8] On December 16, 2019, Mr. Abdusalam told the Applicant that his work permit application had been approved and that in order to obtain the work permit, he must return to Pakistan, come back to Canada, and give the Canada Border Services Agency ("CBSA") officers his Labour Market Impact Assessment ("LMIA") document.

[9] On December 29, 2019, the Applicant returned to Pakistan for one month. On January 30, 2020, he flew back to Canada and arrived in Toronto, Ontario. He presented his LMIA document to CBSA officers at Pearson Airport, but they told the Applicant this was the incorrect document to obtain his work permit and he had to get a work permit from outside Canada.

[10] A CBSA officer gave the Applicant a document and allowed him to leave Canada. The Applicant then contacted Mr. Abdusalam, who told him to sign the document he was given, in order to obtain a work permit outside Canada. The Applicant signed it.

[11] The Applicant then contacted Mr. Rehman, his previous immigration consultant, to help him obtain a work permit. He sent Mr. Rehman an email with his documents on February 3, 2020. On February 5, the Applicant sent Mr. Rehman a copy of his visa and the signed document the CBSA officer gave him at Pearson Airport. On February 6, Mr. Rehman asked the Applicant to come to his office to sign documents and provide fingerprints, which he did.

[12] Mr. Rehman then informed the Applicant that he had already submitted his work permit application because it did not require the Applicant's signature. The Applicant never reviewed this application before it was submitted. Mr. Rehman told the Applicant it would take several weeks to obtain the work permit.

[13] On February 20, 2020, the Applicant received an email from the visa office in Warsaw, advising him of a possible misrepresentation in his application pursuant to subsection 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*"), and gave him an opportunity to respond by March 1, 2020. The email specified that the Applicant failed to disclose his earlier refusal of admission to Canada. The Applicant forwarded this email to Mr. Rehman and asked him what to do. Mr. Rehman told the Applicant to ignore this email as it was fake. As such, the Applicant did not reply to the visa officer's email.

[14] On March 2, 2020, the Applicant received an email from the visa office in Abu Dhabi, advising him that his work permit application had been refused. He was issued a five-year exclusion order for misrepresentation. The Applicant's current counsel obtained the decision notes and advised him to make a request for reconsideration of the visa officer's decision. This request was sent on July 20, 2020.

[15] On June 21, 2021, the Applicant received an email from the visa office stating that his request for reconsideration was being reviewed and that if the file was re-opened, he would receive further instruction. If not re-opened, this email would serve as notice of the review.

[16] The Applicant received no further correspondence from the visa office. In January 2022, the Applicant's counsel advised him that he had received the decision notes and his request for reconsideration was refused. The Applicant applied for judicial review of this refusal on January 20, 2022.

B. *Decision Under Review*

[17] In *Kaur v Canada (Citizenship and Immigration)*, 2015 FC 674 ("*Kaur*"), this Court established that "a judicial review for a decision of reconsideration cannot be thoroughly conducted without looking at the original decision" (at para 36). I reviewed both the original decision and the Officer's decision not to reconsider. These decisions are largely contained in the Global Case Management System ("GCMS") notes, which form part of the reasons for the decision.

(1) Original Decision

[18] The GCMS notes show the initial email sent to the Applicant on February 20, 2020, regarding a finding of misrepresentation under subsection 40(1)(a) of *IRPA*, which states:

> Your application and all of the documents you submitted in support of it have been reviewed and it appears that you may not meet the requirements for issuance of a work permit. Subsection 11 (1) of the Immigration and Refugee Protection Act (IRPA) provides that a foreign national must, before entering Canada, apply to an officer for a visa or any other document required by the Immigration and Refugee Protection Regulations. The visa or document shall be issued if, following an examination, the officer

> is satisfied that the foreign national is not inadmissible and meets the requirements of the Act.
>
> I have concerns that you have not fulfilled the requirement put upon you by subsection 16(1) of the Immigration and Refugee Protection Act which states:
>
> 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 reasonable requires.
>
> Specifically, I have concerns that you have failed to fully disclose adverse immigration information from Canada or other countries such as visa application refusals or other enforcement action. You have failed to disclose at least one refusal of admission to Canada.
>
> This is material to the assessment of your application.
>
> Please note that if it is found that you have engaged in misrepresentation in submitting your application for a temporary resident visa, you may be found to be inadmissible under section 40(1)(a) of the Immigration and Refugee Protection Act. A finding of such inadmissibility would render you inadmissible to Canada for a period of five years according to section 40(2)(a): […]

[19] The email also offered the Applicant an opportunity to respond to this information, stating that if he did not respond within ten days, his application would be refused and a finding of misrepresentation would be final.

[20] After he failed to respond, the GCMS notes show that the Applicant was sent another email on March 2, 2020, stating that his work permit application was refused due to a finding of misrepresentation under subsection 40(1)(a) of *IRPA*.

[21] The GCMS notes for this refusal state:

> Applicant has failed to disclose one or more previous Canadian, USNIV, or other country's refusals and/or other enforcement action and thus has not been wholly truthful on application. This calls into question applicant's actual intentions and overall credibility and thus is material to any assessment.

(2) Decision on Reconsideration Request

[22] On June 21, 2021, the Officer sent the Applicant an email about the status of his reconsideration request, stating:

> Your request for reconsideration of the refusal of your application has been forwarded to a Migration Officer for review. This delegated official will review the contents of your message, the application and the refusal decision. Based on a review of all of these factors, they will consider whether an error in fact, in law, or in procedural fairness has occurred and whether or not your file will be re-opened.
>
> Should the Migration Officer decide to re-open the file, you will be contacted shortly with information on next steps,
>
> If the Migration Officer determines the decision was rendered with no error in fact, law, or procedural fairness, this message will serve as notification of the review and you will receive no further correspondence from our office on this request. Thank you for the interest you have shown in Canada.

[23] An accompanying GCMS note states:

> No error in fact, law or procedural fairness. Refusal stands.

III. Issue and Standard of Review

[24] This application for judicial review raises the sole issue of whether the Officer's decision to refuse the reconsideration request is reasonable.

[25] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) ("*Vavilov*"). I agree. This is consistent with the Federal Court's review of decisions on reconsideration requests: *Kaur* at para 32; *Rashed v Canada (Citizenship and Immigration)*, 2013 FC 175 at para 44 ("*Rashed*"); *Trivedi v Canada (Citizenship and Immigration)*, 2010 FC 422 at paras 17-18.

[26] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). 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 para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

IV. Analysis

[27] The Applicant submits that the Officer erred in applying the wrong test for a reconsideration request, indicated by the GCMS notes stating that the previous decision did not contain errors in fact, law or procedural fairness. The Applicant also submits that the decision lacked reasons and thus failed to show how the decision was made and whether the new evidence and submissions were considered. While the Applicant concedes that extensive reasons are not required, he submits that the Officer erred by relying on a template for the decision.

[28] The Applicant further submits that the Officer unreasonably upheld the initial refusal of the work permit despite the Applicant's new evidence clearly indicating that the refusal was unreasonable. He submits that this new evidence undermines the misrepresentation finding by showing that Mr. Rehman submitted the work permit application without giving the Applicant a chance to review it and later told him the visa officer's email was fake. Conceding that an exception to a misrepresentation finding must meet a high standard, the Applicant submits that his evidence clearly qualifies him for an exception as a result of Mr. Rehman's misguidance.

[29] The Respondent maintains that the Officer's decision is reasonable and that this Court's jurisprudence on misrepresentations in applications involving fraudulent consultants is persuasive here. Citing *Cao v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 260 ("*Cao*") and *Li v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1151 ("*Li*"), the Respondent submits that the Applicant bears the burden of presenting correct information and being fully truthful in interactions with IRCC.

[30] The Respondent also relies on the analogous case of *Haghighat v Canada (Citizenship and Immigration)*, 2021 FC 598 ("*Haghighat*"), where this Court found that even if withholding the procedural fairness letter was unfortunate, an applicant is not absolved from the consequences of misrepresentation (at para 21). The Respondent submits that in retaining an unregulated consultant, it was the Applicant's responsibility to review his application before sending it and he failed to fulfil his duty of candour as an applicant.

[31] In my view, the Officer's refusal of the reconsideration request is reasonable in light of the available evidence. The underlying decision to refuse the work permit on the basis of misrepresentation was also reasonable.

A. *Original Decision*

[32] This Court has held that subsection 40(1)(a) of *IRPA* "encompasses innocent failures to disclose material information" and that this does not require that the information be "decisive or determinative," only that it be "important enough to affect the process" (*Duquitan v Canada (Citizenship and Immigration)*, 2015 FC 769 at para 10, citing *Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327 at paras 18, 25, 26). In light of this jurisprudence, the Officer reasonably found that the Applicant failed to disclose the material fact of his previous refusal of entry into Canada, considering the evidence.

[33] The Applicant submits that the Officer "should have accepted" the Applicant's additional evidence proffered on the reconsideration request because it clearly undermined the reasonableness of the underlying decision. It is not this Court's role to reweigh and reassess the

evidence before the decision-maker (*Vavilov* at para 125). The question on reasonableness review is whether the decision is reasonable in light of the evidence before the decision-maker, viewing the decision as a whole (*Vavilov* at para 126). The evidence showing that Mr. Rehman told the Applicant that the procedural fairness letter was fake was not available to the initial visa officer on assessment of the Applicant's work permit application. The Officer was constrained to the evidence before them, which simply showed that the Applicant had not disclosed key information regarding his attempts to come to Canada.

[34] The misrepresentation finding and subsequent refusal of the work permit application did not require more extensive reasons than those provided in the GCMS notes. Although proper justification for a decision is one hallmark of reasonableness, reasons are not always required. Even in the absence of extensive or any reasons, the priority on reasonableness review is to "look to the record as a whole to understand the decision" and uncover the underlying rationale (*Vavilov* at paras 77, 137). The correspondence clearly communicating the basis of the misrepresentation finding is sufficient to reveal a rational line of reasoning between the Applicant's failure to disclose a material fact and the Officer's decision (*Vavilov* at para 102).

B. *Decision on Reconsideration Request*

[35] In *Kaur*, this Court outlined the standard for assessing a reconsideration request, stating:

> [43] Nevertheless, the Federal Court of Appeal in *Kurukkal* has held that "the principle of *functus officio* does not strictly apply in non-adjudicative administrative proceedings and that, in appropriate circumstances, discretion does exist to enable an administrative decision-maker to reconsider his or her decision"

> (*Kurukkal* at paragraph 3). According to *Kurukkal*, a decision-maker's obligation at the reconsideration stage is "to consider, taking into account all relevant circumstances, whether to exercise the discretion to reconsider" (*Kurukkal* at paragraph 5).
>
> [44] […] Further, in *Rashed*, this Court found if an underlying decision was reasonable and there was no breach of procedural fairness, it is dispositive of an application under a decision for reconsideration (*Rashed* at paragraph 50).
>
> [Emphasis added]

[36] In *Kaur*, this Court found that the decision to refuse a request for reconsideration was reasonable because, in part, the underlying decision was reasonable. Similarly, in *Rashed*, my colleague Justice Shore found that it was reasonable to deny the reconsideration request because "the underlying decision was reasonable" and this was "dispositive of the Application" (at para 50). Applying this reasoning, the Officer's refusal to reconsider the underlying decision is reasonable in this case because the refusal of the work permit application was reasonable on the basis of the available evidence.

[37] This Court's jurisprudence on misrepresentations made in applications involving fraudulent immigration consultants is relevant. In *Haghighat*, this Court reviewed a migration officer's refusal of an applicant's temporary resident visa application, which contained a misrepresentation submitted by her fraudulent immigration consultant. The applicant in *Haghighat* claimed that the consultant never provided her with the procedural fairness letter that gave her an opportunity to respond to the misrepresentation finding (*Haghighat* at para 18). My colleague Justice Manson found that while these circumstances were unfortunate, this did not absolve the applicant of the consequences of her misrepresentation (*Haghighat* at para 21). This

principle is affirmed in similar jurisprudence (*Cao* at para 17; *Li* at para 78; *Chen v Canada (Minister of Citizenship and Immigration)*, 2005 FC 678 at para 10).

[38] It is therefore reasonable for the Officer to refuse to reconsider a request on the basis of the additional evidence revealing Mr. Rehman's negligence. The Applicant ultimately bore the responsibility for being truthful in his interactions with IRCC and reviewing his application for completeness. Regardless of his consultant's misguidance, he failed to fulfil this responsibility.

[39] I also do not agree with the Applicant that the Officer's truncated reasons indicate a lack of consideration of the facts and evidence. Reasonableness review is inherently contextual and must be "attentive to all relevant circumstances," including "the record, the statutory scheme and the particular issues raised by the applicant" (*Vavilov* at para 293). In *Kaur*, Justice O'Keefe stated "although the officer only provided one line" in their refusal, "there was little for the officer to comment on in rendering the reconsideration decision" (at para 45). Although there was new evidence offered by the Applicant in this case, the Officer was not required to provide lengthy reasons explaining the refusal when there is persuasive jurisprudence stating that this new evidence would not alter the finding that the Applicant was not truthful in his application.

V. Conclusion

[40] The Officer's refusal of request for reconsideration is reasonable on the basis of the available evidence. The underlying refusal of the Applicant's work permit application due to a finding of misrepresentation is also reasonable. The application for judicial review is dismissed. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-585-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-585-22
STYLE OF CAUSE:	RIAZ ALI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 7, 2022
JUDGMENT AND REASONS:	AHMED J.
DATED:	NOVEMBER 28, 2022

APPEARANCES:

Paul E. Briggs	FOR THE APPLICANT
Erica Louie	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Paul Briggs Law Barristers and Solicitors Surrey, British Columbia	FOR THE APPLICANT
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT