Federal Court  Cour fédérale

Date: 20230523

Docket: IMM-2535-21

Citation: 2023 FC 714

Toronto, Ontario, May 23, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

EKENE AMOBI EZE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a Decision of the Minister's delegate [MD] to deny his application for a study permit and to find him inadmissible to Canada for misrepresentation pursuant to para 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. For the reasons that follow, I will dismiss the Judicial Review.

II. Background

[2] The Applicant is a citizen of Nigeria. He applied for a study permit in October 2020. In January 2021, the Applicant received a Procedural Fairness Letter [PFL] indicating concerns that he had omitted to disclose material information, namely that he "omitted to answer truthfully to background question 2b) 'Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other Country or territory?'"

[3] The Applicant's former counsel—who he engaged to respond after receiving the PFL—responded to the PFL explaining that the Applicant had hired a consultant to help him prepare and review the study permit application, and that the Applicant provided the consultant with a detailed account of his previous US and Canadian visa refusals, but the consultant had mistakenly submitted the wrong version to the visa office, namely the one that failed to disclose a US visa refusal. The consultant had not filed an Authorized Representative form (IMM 5476), nor had there been any other indication that anyone had assisted the Applicant prior to counsel's response to the PFL.

[4] With the PFL response, counsel for the Applicant included an affidavit from the Applicant's former consultant confirming that the consultant had two versions of the application form and had mistakenly uploaded the form that did not include the US visa refusal.

[5] In his Decision, the MD reviewed all the information and submissions and concluded that the Applicant had misrepresented material facts by failing to disclose his US visa refusal in his

study permit application. The MD found that this failure could have induced an error in the administration of the IRPA and that as such, the Applicant was inadmissible to Canada.

III. Issues and Standard of Review

[6] The Applicant argues that the Decision is unreasonable because he made an innocent misrepresentation that was not material to his application, for which he should not be inadmissible to Canada. The standard of review for the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[7] The Applicant further submits there was a breach of procedural fairness because the MD relied in part on the timing of his family's entry to Canada for the finding that he was inadmissible, without disclosing these concerns to him in the PFL or the Decision letter. The Applicant contends that the MD failed to interact with him in a transparent and procedurally fair manner. Questions of procedural fairness are to be reviewed by asking whether the process leading to the Decision was fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-55).

IV. Analysis

[8] The Applicant concedes that he failed to disclose in his study permit application that he was denied a US visa, but argues that this omission does not constitute a misrepresentation, because he contends he had no idea that the consultant submitted the wrong application form, and thus the innocent misrepresentation exception applies.

[9] I cannot agree with this characterization. The Applicant has failed to persuade me that he honestly and reasonably believed he was not withholding material information, and that knowledge of the misrepresentation was beyond his control (*Goburdhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971 at paras 28 [*Goburdhun*]).

[10] First, the Applicant argues that it is unclear from the Global Case Management System [GCMS] notes how his refusal for a US visa could have lead to an erroneous administration of the IRPA.

[11] This argument does not hold water: a past visa refusal is relevant to an inadmissibility determination as it may lead to investigations, interviews and verifications that will not take place if the officer is unaware of the visa refusal (*Goburdhun* at para 42; see also: *Ram v Canada (Minister of Citizenship and Immigration)*, 2022 FC 795 at paras 28-29 [*Ram*]). These cases and many others they refer to make it crystal clear that failing to disclose a visa refusal is material as it could have affected the process.

[12] The Applicant further submits that Canada has access to information about his US visa refusal through the "Five Eyes" program. However, similar arguments were rejected by this Court in *Ram* and *Goburdhun*, where Justice Strickland held at paragraph 43:

> I also cannot accept the Applicant's submission made when appearing before me that, because CIC has access to the whole of his immigration history, an incorrect answer in his application is not material. His submission was that the incorrect answer did not affect the process because it was caught by CIC before a decision was rendered. This reasoning is contrary to the object, intent and provisions of the IRPA which require applicants for temporary residency visas to answer all questions truthfully. The penalty for

> failing to do so is that an applicant may be found to be inadmissible to Canada if the misrepresentation induces or could induce an error in the administration of the Act. It matters not that CIC may have the ability to catch, or catches, the misrepresentation. What matters is whether the misrepresentation induced or could have induced such an error. Accordingly, applicants who take the risk of making a misrepresentation in their application in the hope that they will not be caught but, if they are, that they can escape penalty on the premise of materiality, do so at their peril.

[13] As further held by Justice Fuhrer in *Muniz v Canada (Citizenship and Immigration)*, 2020 FC 872 at paragraph 17: "information on previous refusals is material to the issuance of a visa […]. Even if that information was accessible by the Officer, the omission need not be determinative, and this did not relieve Ms. Muniz of the obligation to fulfill her duty of candour: IRPA s 16(1). Applicants cannot rely on the immigration system to catch their errors".

[14] The MD's materiality finding in this case is completely consistent with this Court's jurisprudence: the Applicant's failure to disclose that he was refused a US visa was potentially relevant to his admissibility and thus sufficiently material to justify the finding of misrepresentation.

[15] Second, the Applicant argues that the narrow exception of innocent misrepresentation applies because he honestly and reasonably believed he was not withholding material information, and that knowledge of the misrepresentation was beyond his control. The Applicant relies on *Moon v Canada (Citizenship and Immigration)*, 2019 FC 1575, in which this Court found that the misrepresentation was beyond Ms. Moon's control since her consultant admitted to filing the visa application in a hurry, without asking the proper questions, which resulted in the

failure to disclose her criminal record. The Applicant submits that he also relied on a consultant who mistakenly submitted the wrong application that did not contain the information about his US visa refusal.

[16] Once again, these arguments are unpersuasive. The innocent mistake exception only applies to truly extraordinary circumstances where an applicant honestly and reasonably believed they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond their control (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 17).

[17] Here, the MD was unsatisfied with the explanations regarding the errant form, writing "[b]ased on the information before me I am satisfied PA [Principal Applicant] misrepresented material facts in the context of this application". The MD noted that the Applicant not only failed to indicate that he had a previous US visa refusal, but even that he had retained the services of a consultant to submit his student permit application. The Applicant submitted no "Use of Representative Form" in conjunction with his application, nor did he disclose that he used a representative in his application. Effectively, he had engaged the services of an unauthorized or "ghost" consultant, and there is no reason to condone unauthorized practice under the IRPA (see, for instance, *Lyu v Canada (Citizenship and Immigration)*, 2020 FC 134 at para 32).

[18] Specifically, in answer to Question 2(b) about whether he had ever been refused a visa or permit, denied entry, or ordered to leave Canada or any other country, he indicated that he previously applied for a visa to Canada but was refused. In Schedule A: Background/Declaration, he checked "No" to the question about whether he had ever been

refused admission or ordered to leave Canada or any other country. Despite these discrepancies in his application forms, he nonetheless attested to the truthfulness of the information contained in those forms, and signed the application forms. Although Affidavits were provided, both by the unauthorized consultant and the Applicant, neither explained why a false form would have been signed in the first place, nor provided evidence to corroborate the Applicant's explanation.

[19] Ultimately, the Applicant signed forms that misrepresented an important aspect of his application. Applicants have a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada (*Goburdhun* at para 28). As pointed out by the MD in the GCMS notes, "[w]hether the mistake of the incomplete form was done by the PA or the agent, PA has signed the application that best of his knowledge [*sic*] the application was complete." In light of all these circumstances, it was entirely reasonable for the MD to conclude that the narrow exception of innocent misrepresentation does not apply in this case.

[20] Finally, the Applicant submits there was a breach of procedural fairness because the MD relied in part on the timing of his family's entry to Canada for the finding that he was inadmissible, without disclosing these concerns to the Applicant in the PFL or Decision.

[21] I do not agree. The MD did not rely on the timing of the Applicant's family's entry for the finding of inadmissibility, but solely on the misrepresentation with regard to the undisclosed US visa refusal. This misrepresentation was the determinative issue in finding the Applicant was inadmissible. The Applicant was given a fair opportunity to respond to the MD's concerns and

provided a detailed response to the PFL. The MD considered the response, but remained unconvinced about the explanation. For all the reasons above, those concerns were reasonably held, elucidated, and reasoned. The fact that the Applicant was unable to overcome the misrepresentation to the MD's satisfaction was entirely justifiable, on the basis of the record.

V. Conclusion

[22] The Applicant was found to be inadmissible based on his failure to disclose his US visa refusal, and there was accordingly no breach of procedural fairness in this case. The Applicant had the opportunity in his PFL to address the MD's concerns about the failure to be truthful in his application. The MD reasonably explained why his explanations fell short. The Judicial Review is thus dismissed. The Parties propose no question of general importance for certification, and I agree that none arises.

JUDGMENT in file IMM-2535-21

THIS COURT'S JUDGMENT is that:

1. The judicial review is dismissed.

2. No questions for certification were argued and I agree none arise.

3. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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