Federal Court  Cour fédérale

Date: 20230727

Docket: IMM-10284-22

Citation: 2023 FC 1024

Ottawa, Ontario, July 27, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

JOUHANA YOUNES

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a decision of a visa officer [Officer] dated October 6, 2022 refusing the application of Ms. Jouhana Younes, the Applicant, for a temporary resident visa [TRV].

Background

[2] The Applicant is a citizen of Lebanon and a permanent resident of the United Arab Emirates.

[3] On October 8, 2020, the Applicant submitted a TRV application. In an accompanying letter, her representative stated that the Applicant has been in a common-law relationship with Jihad Jahed [Spouse], who has been a permanent resident of Canada since March 2019, and provided various documents in support of the TRV application.

[4] On June 8, 2022, an officer sent the Applicant a procedural fairness letter [PF Letter]. In that letter, the officer outlined their concerns that the Applicant had not truthfully answered all questions put to her as required by s 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. Specifically, although the Applicant and her Spouse had been in a common-law relationship since 2017, when asked by a migration officer in a phone call why she was not included as a family member in her Spouse's application for permanent residence [PR Application], the Applicant responded that her Spouse had applied many years before and that he did not want to delay his application by adding the Applicant. The PF Letter also noted that the Spouse's PR Application, received by Immigration, Refugees and Citizenship Canada [IRCC] in early 2017, indicated that he was included as a family member (husband) of the principal applicant (now his ex-wife) of that application. That application was approved in late 2018 and the Spouse entered Canada and became a permanent resident in early 2019, but did not at any time declare the Applicant as a family member. Given the timeline of the Applicant's

relationship with her Spouse, the PF Letter indicated that it was reasonable that she would have known when, speaking with the migration officer in January 2021, that her Spouse had been divorced since mid 2016 and, given the length of the Applicant's relationship with her Spouse, that she would also have reasonably known in 2017 that he had misrepresented his marital status in the PR Application in order to properly obtain permanent resident status in Canada as a family member of the principal applicant to whom he was, in fact, no longer married. The PF Letter stated that the Applicant may have knowingly withheld material facts which could have induced an error in the administration of the *IRPA*.

[5] The Applicant's legal representative provided a response to the PF Letter [PFL Response] as well as narratives of both the Applicant and her Spouse, the contents of which were referenced in the PFL Response. The PFL Response stated that the Applicant first met her Spouse in 2014. At that time, the Spouse was separated from his wife. He obtained a divorce in September 2016. The Applicant and her Spouse moved in together in 2017. Prior to meeting the Applicant, the Spouse and his ex-wife had commenced the process to immigrate to Canada in 2011 under the Quebec Skilled Worker Program. In 2018, the Spouse and his ex-wife received the request for "Medicals" and the Spouse landed in February 2019. Throughout this time, the Spouse and his ex-wife were receiving professional advice from legal representatives. With respect to the concerns identified in the PF Letter, the PFL Response refers to the Applicant's narrative in which she states she wished to clarify that, when she stated that her Spouse had applied for permanent residence many years before and she did not want to delay his application by adding her, she guessed there was a misunderstanding about what she had said. This was because while she was aware and stated that her Spouse applied many years before, she "could not have

mentioned adding me as to the application would delay any process, because I was not aware that this was a possibility". She claimed that she and her Spouse were not legally married under the laws of the UAE or Lebanon and that the common-law partner concept was unknown to them until October 2020 when their immigration lawyer advised her to apply as the common-law partner of her Spouse to expedite her TRV application. With respect to the concern that her Spouse had misrepresented his marital status to improperly obtain permanent residence status, the Applicant responded that her Spouse had hired lawyers who were guiding him through the appropriate process. The PFL Response also asserted that the Applicant herself had not withheld any information, rather, she had now addressed issues that should have been addressed earlier. The Applicant asserted that she honestly and reasonably believed that she was not misleading or withholding material information and did not intend to deceive the Canadian immigration authorities.

[6] The PFL Response also included a letter dated September 6, 2022, from the Spouse, which, among other things, asserts that he had consulted with the immigration consultant assisting him with his PR Application regarding the fact that he was divorced. He claimed that he was informed that he could land separately from his ex-wife but to just keep his divorce papers at hand if he was asked any questions in that regard. He also stated that he did not realize that "living with my girlfriend had any official representation in the eyes of the immigration law in Canada, and that I had to declare her as my 'common-law spouse'".

[7] On October 6, 2022, the Applicant was notified that her TRV application was refused and that she was found inadmissible to Canada in accordance with s 40(1)(a) of the *IRPA*.

Decision Under Review

[8] In the decision letter, IRCC advised that the Applicant's TRV application was refused as: the Applicant had directly or indirectly misrepresented or withheld material facts that could induce an error in the administration of the *IRPA*, and therefore, was inadmissible in accordance with paragraph 40(1)(a) of the *IRPA*; the purpose of the Applicant's visit was not consistent with a temporary stay, given the details she provided in her application; and, IRCC was not satisfied that the Applicant had truthfully answered all questions asked of her.

[9] The Global Case Management System [GCMS] notes, which form a part of the reasons, contain the notes of two officers. The officer who spoke with the Applicant and her Spouse sent the PF Letter, considered the PFL Response and recommended a finding of misrepresentation [Recommending Officer], as well as the notes of the Officer, who reviewed the PFL Response and made the final finding of misrepresentation. The Officer found that the PFL Response did not disabuse them of the concerns of misrepresentation that were put to the Applicant. The Applicant had failed to disclose the truth of the matter when asked why she had not been included in her host's (Spouse's) PR Application and, consequently, why she was not declared when her host became a permanent resident. Her response omitted the fact that her host had continued to allow his marital status to be represented as married, after it changed to divorced, such that he misrepresented his relationship to the permanent residence principal applicant (his ex-wife) as her family member after he was no longer married to her. His failure to disclose those material facts was relevant to his ineligibility to obtain permanent residence status. Accordingly, the Officer noted "[t]he assessment of the purpose of this TRV application – to

visit a PR who has been her common law partner since before he obtained PR status in Canada as the spouse of his ex-wife – was impacted by the untruthfulness of her response", and found that the Applicant had misrepresented, making her inadmissible for five years.

Relevant Legislation

***Immigration and Refugee Protection Act*, SC 2001 c 27**

> **PART 1 Immigration to Canada**
>
> **DIVISON 2** Examination
>
> **Obligation — answer truthfully**
>
> **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 reasonably requires.
>
> **DIVISION 4** Inadmissibility
>
> **Misrepresentation**
>
> **40 (1)** A permanent resident or a foreign national is inadmissible for misrepresentation
>
> > **(a)** for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;
>
> **Application**
>
> **(2)** The following provisions govern subsection (1):
>
> > **(a)** The permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced; …

Immigration and Refugee Protection Regulations **(SOR/2002-227) [IRP Regulations]**

> **PART 9 Temporary Residents**
>
> DIVISION 1
>
> **Temporary Resident Visa**
>
> **Issuance**
>
> **179** An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national
>
> > **(a)** has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;
> >
> > (**b)** will leave Canada by the end of the period authorized for their stay under Division 2;
> >
> > **(c)** holds a passport or other document that they may use to enter the country that issued it or another country;
> >
> > **(d)** meets the requirements applicable to that class;
> >
> > **(e)** is not inadmissible;
> >
> > **(f)** meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and
> >
> > **(g)** is not the subject of a declaration made under subsection 22.1(1) of the Act.

Issue and Standard of Review

[10] The matters raised by the Applicant are all encompassed by the question of whether the Officer's decision was reasonable.

[11] In assessing the merits of the Officer's decision, there is a presumption that the reviewing court should use the reasonableness standard (*Canada (Minister of Immigration and Citizenship) v Vavilov*, 2019 SCC 65 at paras 23, 25 [*Vavilov*]). Here, none of the circumstances warrant a departure from that presumption.

Was the Decision Reasonable?

The Applicant's Position

[12] The Applicant submits that in refusing her TRV on the ground that the purpose of her visit was not consistent with a temporary stay, the Officer failed to consider her evidence, failed to follow the TRV guidelines in OP-11, and failed to explain why the purpose of her visit was not consistent with a temporary stay.

[13] Further, with respect to the Officer's primary reason for refusal, their finding of misrepresentation, the Applicant submits that the Officer failed to consider and/or grapple with the evidence submitted by the Applicant and her Spouse which demonstrated that the Applicant was unaware of the content of the PR Application commenced in 2012, before she met her Spouse, and that she was unaware of how and why he was granted permanent residency in Canada. Moreover, the Officer failed to explain why the alleged failure to identify a misrepresentation in a different, unrelated application by a completely different party was material to a TRV application.

[14] The Applicant also submits that the Officer erred by not referring to any of her or her Spouse's responses to the PF Letter.

The Respondent's Position

[15] The Respondent submits that the Spouse's failure to disclose to Canadian immigration authorities, when landed as the accompanying spouse of another person (his ex-wife), that he was divorced and was in a spousal relationship with the Applicant, meets the definition of indirect misrepresentation on a relevant matter that could have induced an error in the administration of the *IRPA*, as defined in the case law. His misrepresentation, which allowed him to become a permanent resident, was relied upon by the Applicant in her TRV application, hence her culpability for indirect misrepresentation.

[16] The Respondent further submits that, in any event, the Applicant's conduct in her TRV application meets the test for misrepresentation or withholding of material facts relating to a relevant matter that could have induced an error in the administration of the Act. Specifically, the Applicant withheld, kept back, or refrained from disclosing to the migration officer a material fact regarding the marital status of her Spouse when he landed in Canada. The Applicant was aware that her Spouse misrepresented his marital status in order to gain admission as an accompanying spouse, yet she failed to disclose this even when a migration officer asked her why her Spouse did not list her on his application. The Officer was entitled to find her initial explanation that her Spouse did not want to delay the process as not credible as well as her PFL Response that she was not aware that she could have been added even if they were not married.

This arose in the context of the assessment of the merits of the Applicant's TRV application and could have induced an error in the administration of the *IRPA.*

[17] Finally, the Respondent submits that the purpose of s 40(1) supports the Officer's determination of inadmissibility for misrepresentation. The purpose of s 40(1), which is found within the Division 4, is to render inadmissible any permanent resident or foreign national who misrepresents or withholds material facts that could induce an error in the administration of the *IRPA* as their conduct endangers the integrity of the entire immigration system. The conduct of both the Applicant and her Spouse engages this very rationale.

Analysis

[18] Contrary to the Applicant's assertion, the Officer did not fail to grapple with the Applicant's submissions that she was unaware of the content of the PR Application commenced before she met her Spouse and that she was unaware of how and why he was granted permanent residency in Canada.

[19] The GCMS notes record that when asked why she had not been included in the Spouse's PR Application, the Applicant stated that he had applied many years before and that he did not want to delay his application by adding her. Further, the Spouse was asked why he did not declare the Applicant on the permanent resident application, given that the couple declared having been in a common-law relationship since 2016/17 which pre-dated the Spouse becoming a permanent resident in 2019. The Spouse responded that "he applied so long ago and that he did not want to delay his application any further" and when asked why he continued in his ex-wife's

permanent resident application after he was no longer married to her, instead of cancelling and remaining in the UAE with the Applicant, his now common-law wife, the Spouse responded that "he waited so long and that the lawyers and consultants that he asked told him not to say anything and to keep the marriage/divorce documents with him in case he intended to remarry".

[20] The Recommending Officer also considered the Applicant's submission by way of the PFL Response that she was not aware of the content of her Spouse's PR Application, but found otherwise in light of other evidence before them:

> Given the timeline of their common-law relationship, it is reasonable that the PA would have known before speaking with the migration officer in January 2021 that her common-law partner was divorced since mid-2016. It is also reasonable that the PA and Mr. Jahed would have thoroughly discussed the couple's immigration plans to Canada prior to speaking with the migration officer in January 2021. Furthermore, given the similarity in the couples responses to my questions as to why Ms. Younes was not declared on Mr. Jahed's PR application, the duration of the common-law relationship, and the use of a law firm and immigration consultant firm in the preparation of the application and some uploaded documents, on balance it does not appear reasonable that the PA would have been oblivious to the fact that her common-law spouse had misrepresented his marital status to Ms. Irani in order to improperly obtain Permanent Resident status in February 2019.

[21] The Officer also referred to the PFL Response but found that it did not relieve the misrepresentation concerns that had been put to the Applicant. The Officer referred to the phone contact and found that the Applicant had failed to disclose the truth when asked why she had not been included in her Spouse's PR Application and, consequently, why she had not been declared when her Spouse became a permanent resident. Her response omitted the fact that her Spouse had continued to allow his marital status to be represented as married after he and his ex-wife

divorced, thus misrepresenting his relationship as her family member. His failure to disclose this material fact was relevant to his ineligibility to obtain permanent residence status. The Officer found that the assessment of the purpose of the Applicant's TRV status – to visit a permanent resident who had been her common-law partner since before he obtained permanent residence in Canada as the spouse of his ex-wife – was impacted by the untruthfulness of her response.

[22] In other words, the Applicant withheld this material fact and failed to disclose the real reason why she had not been declared as the Spouse's common-law partner when he became a permanent resident.

[23] In my view, the GCMS notes demonstrate that there was no failure to grapple with the Applicant's submissions with respect to her Spouse's PR Application. It was simply not accepted as credible that both the Applicant and her Spouse gave the same reason for the Applicant not being included on his PR Application – because he had applied many years before and did not want to delay his application by adding her – or the efforts by the Applicant to subsequently explain this away in the PFL Response.

[24] As the Recommending Officer pointed out, the Spouse claimed to have relied on his counsel and immigration consultants throughout the process. For example, in the narrative of the Applicant supporting the PFL Response, the Applicant states that "as far as I know, Jay was constantly being advised by his lawyer on all the necessary steps to be taken, and his landing was planned and effected in 2019". As to the Applicant's statement during the call from the Recommending Officer that her Spouse did not want to delay his permanent resident application

by adding the Applicant, in her PFL Response she states that she guesses that there was a misunderstanding about what she said (although she and her Spouse said exactly the same thing). There she asserted that, while she was aware of the permanent residence application made years ago, she "could not have mentioned that adding me to the application would delay any process, because I was not aware that this was a possibility".

[25] This is based on her assertion in the PFL Response that her understanding was that she could only be added to the application if she and her Spouse were legally married, as opposed to being in a common-law relationship. Yet, that was not the explanation that she gave to the migration officer and it also suggests that at the time of the call the Applicant and the Spouse had considered the possibility of adding her to his PR Application but rejected it on the premise that they were not married.

[26] As to her knowledge of her Spouse's misrepresentation, she stated in the PFL Response that "for every status change he was guided by his lawyers and at that time, who are supposedly guiding him in following Canadian rules righteously, in whom he has trusted as he expected lawyers/consultants to provide him with the correct and right ways for applications due to their years of experience". From this it would appear that the Applicant's Spouse took advice on status changes – which he acknowledged included his divorce – if not the common-law relationship.

[27] Although the Spouse in his letter accompanying the PFL Response states repeatedly that he was relying on his immigration consultants and lawyers, the former of which during discussions in 2015/2016 advised him that all he had to do was "keep my divorce papers with me

when I land in case I am asked about that matter", I note that there is no evidence in the record of the advice sought and received in this regard or that the Applicant or the Spouse have filed a complaint against their immigration consultants or lawyer. When appearing before me, counsel for the Applicant indicated that she was not relying on an allegation of counsel incompetence.

[28] In my view, the Officer reasonably did not accept the suggestion that both the immigration consultant and lawyer ill advised the Spouse. In any event, based on the record before them and all of the reasons they set out, the officers reasonably concluded that the Applicant would not have been oblivious to the fact that her Spouse had misrepresented his marital status in order to improperly obtain permanent resident status in February 2019 and did not fail to grapple with her submissions in that regard.

[29] Or, as the Respondent puts it, the reason the Spouse did not add the Applicant to his PR Application was because he knew he was applying as the accompanying spouse of his (former) wife. When his application was approved and when he landed in Canada, he failed to disclose both his divorce and that he was co-habiting with the Applicant. The Officer reasonably believed that the Applicant knew that this was the real reason why her Spouse did not add her to his PR Application and the Officer did not believe her explanation about delaying the processing of the existing application.

[30] In my view, the Officer reasonably found the Applicant to be untruthful and that her PFL Response did not provide a reasonable explanation for this. The result was that she breached the

duty of candour required of all applicants pursuant to s 16(1) of the *IRPA*. This was a sufficient basis upon which to deny her TRV application.

[31] The Applicant also submits that the Officer failed to explain how a misrepresentation in the Spouse's PR Application, in which she was not involved, is material to her TRV application to enter Canada in 2020.

[32] Section 40(1) of *IRPA* states that a permanent resident or foreign national is inadmissible for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the *IRPA*. In *Song v Canada (Citizenship and Immigration)*, 2019 FC 72, Justice Norris held that "a misrepresentation does not need to be decisive or determinative to an application to be material; it only needs to be 'important enough to affect the process'" (para 27 citing *Oloumi v Canada (Minister of Citizenship & Immigration)*, 2012 FC 428 at para 36).

[33] In my view, although the Applicant frames this issue as a failure by the Officer to explain "how an alleged misrepresentation in a permanent residency application commenced in 2012 by her present common law spouse, and finalized in 2018, concerning his marital status in 2018, is in any way material to the Applicant's TRV to enter Canada in 2020", this does not accurately frame this issue or reflect what the Officer found.

[34] Rather, the Officer concluded that the Applicant was not truthful in her explanation as to why she was not added to the Spouse's application. The Officer stated that "[t]he assessment of

the purpose of this TRV application – to visit a PR who has been her common law partner since before he obtained PR status in Canada as the spouse of his ex-wife – was impacted by the untruthfulness of her response". The material misrepresentation was that the Applicant did not disclose, and was not truthful about, the reason why she had not been added to her Spouse's PR Application. Had her Spouse's real marital status – being divorced and being the common-law partner of the Applicant – been disclosed prior to his application for permanent residence being approved and his landing, this would likely have effected how the Applicant's TRV application would have be considered and processed. That is, when she applied for the TRV, had the Applicant disclosed her Spouse's marital status at the time his application for permanent residence was approved as divorced, and that they had been in a common-law relationship since 2016, then her TRV to visit her Spouse may have been considered in light of her Spouse's misrepresentation. This is because her Spouse may not have been eligible to receive permanent residence and may therefore have been found to be inadmissible. The purpose of her visit to Canada and her TRV application was to visit her Spouse – whose status was at issue.

[35] This is not a circumstance like *Sohrabi v Canada (Minister of Citizenship & Immigration)*, 2012 FC 501 at para 19, or *Wang v Canada (Minister of Citizenship & Immigration)*, 2005 FC 1059 at para 56 [*Wang*], both relied upon by the Respondent. In those cases, the indirect representation was related to the misrepresentation of a family member who was a part of the same application for permanent residence. However, the misrepresentation by the Applicant, being the withholding of material facts, was related to a relevant matter that could have induced an error in the administration of the *IRPA* – the granting of a TRV to the Applicant

for the purpose of visiting her Spouse when she was aware that her Spouse gained his permanent residence by way of misrepresentation.

[36] Although not addressed by the Applicant – other than her assertion that she reasonably and honestly believed that she did not misrepresent – I note that when an applicant challenges the merits of the inadmissibility decision, even if the truth of the applicant's explanation is accepted, they may still be inadmissible because an innocent failure to provide material information still constitutes misrepresentation (*Tofangchi v Canada (Citizenship and Immigration)*, 2012 FC 427at paras 33,40; *Jiang v Canada (Citizenship and Immigration)*, 2011 FC 942 at para 35; *Wang* at paras 56-58 ;*Wang v Canada (Citizenship and Immigration)*, 2015 FC 647 at paras 24-25; *Smith v Canada (Citizenship and Immigration)*, 2018 FC 1020 at para 10). While there is a narrow exception to s 40(1)(a) of *IRPA* when an applicant honestly and reasonably believed that they were not misrepresenting a material fact and where the knowledge of the material fact was beyond their control, the exception applies only in truly exceptional cases. Here the Applicant acknowledged that she knew of the application for permanent residence made with her Spouse's former wife and she knew of their divorce. The basis upon which her Spouse sought and obtained his permanent residence status in 2019 was not information beyond her control given their common-law relationship, which commenced in 2017. The explanation that the Applicant was not added to her Spouse's PR Application to avoid delay in the Spouse's permanent residence process was found not to be credible. In these circumstances, the Officer reasonably found that the Applicant had misrepresented.

[37] Finally, as to the Applicant's submission that the Officer erred in failing to refer to OP-11 Guidelines, which address the assessment of TRV applications, I note that OP-11 no longer appears to be active, based on the "Operation instructions and guidelines" website of Immigration, Refugees and Citizenship Canada. In any event, pursuant to s 179 of the *IRP Regulations*, an officer shall issue a TRV to a foreign national if the listed matters are established. One of these, s 179(e), is that the foreign national is not inadmissible. Here, the Applicant was found to be inadmissible for misrepresentation. Accordingly, the Officer was under no obligation to refer to OP-11.

JUDGMENT IN IMM-10284-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. There shall be no order as to costs; and

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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