Federal Court  Cour fédérale

Date: 20230816

Docket: IMM-3046-22

Citation: 2023 FC 1112

Calgary, Alberta, August 16, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

FOLAJOGUN BRIDGET AKINRINLOLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks judicial review of a decision by a visa officer to deny her application for a temporary resident visa [TRV] and find her 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.

I. Background

[2] The Applicant is a citizen of Nigeria. She applied for a TRV on January 15, 2020 to visit her brother in Canada. As part of her application, she had to disclose whether she had previously been refused a visa by Canada, or any other country.

[3] Specifically, question 2 b) of the application form asks "[h]ave you ever been refused a visa or permit, denied entry, or ordered to leave Canada or any other country or territory". The Applicant answered that she had been refused a visa from Canada, specifically indicating in her application: "[t]he consular officer was of the opinion that my trip to Canada is not justified may I will not return [*sic*]."

[4] On February 12, 2020, the Applicant was sent a procedural fairness letter [PFL] informing her that the visa officer had concerns that she had not truthfully disclosed all of her past visa refusals. The PFL indicated that the visa officer had reasonable grounds to believe that the Applicant had been refused a visa from at least one other country, which she did not disclose in her TRV application. The PFL offered the Applicant an opportunity to respond.

[5] On February 14, 2020, the Applicant provided a response to the PFL, in which she indicated that she had been refused a visa into the US in July 2018. She provided the following explanation: "[k]indly Consider The Fact that after this refusal for my visa application to the USA, I actually applied for my Canadian visitor visa in late 2018 and it was eventually granted. I

visited Canada and returned back to Nigeria without overstating or any issues [*sic* throughout]." The Applicant also indicated that she had not been intentionally untruthful or dishonest.

[6] On December 3, 2021, a visa officer [Officer] denied the Applicant's TRV and determined that she was inadmissible for misrepresentation [Decision]. The Officer was not satisfied with the Applicant's explanation, finding that it was not credible that (i) she believed that she did not need to provide details, when the plain text of the question indicated she had to do so; and (ii) she did not think that her immigration history with a partner country – the US – was not germane to her application.

II. Analysis

[7] The Applicant submits that there are two reviewable errors, in relation to (i) what she submits was procedural unfairness in the process that led to the Decision; and (ii) in relation to the reasonableness of the refusal.

[8] Specifically, the Applicant submits there was a breach of procedural fairness because she was self-represented and did not know she needed to provide details after answering "yes" to Question 2 b), which has been reproduced at paragraph 3 above. 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; *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57).

[9] In the present circumstances, I find that there was no breach of procedural fairness. The Officer's PFL specifically advised the Applicant of concerns that she may not have been truthful about her past visa refusals from countries other than Canada. The Applicant had a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada (*Goburdhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971 at paras 28 [*Goburdhun*]). The PFL put the Applicant on notice of the Officer's concerns and gave her the opportunity to respond and fulfill her duty of candour after the initial form was deficient. Still, she did not fulfill that duty.

[10] Having dealt with the questions of procedural fairness, I now move on to the Applicant's arguments as to why the Decision was unreasonable, namely that she made an innocent misrepresentation that was not material to her application, for which she 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).

[11] The Applicant argues that her failure to disclose all her past visa refusals does not constitute a misrepresentation, because the narrow exception of innocent misrepresentation applies. She argues that the Decision was unreasonable in four respects.

[12] First, she submits she honestly and reasonably believed she was not withholding material information, since she answered "yes" to Question 2 b) in her TRV application, which demonstrates her intention to disclose her past visa refusals. She contends that she also indicated

in her response to the PFL that the information about her 2018 US visa refusal is “verifiable” and thus shows her intention not to mislead or misrepresent any information.

[13] The Applicant is effectively asking this Court to come to a different conclusion than that of the Officer, by accepting her explanation that she had inadvertently and innocently omitted to disclose her US visa refusals in both her TRV application and her response letter to the PFL. I decline to do so. The role of this Court on judicial review is not to determine whether the Applicant’s explanation was reasonable, but rather, it is to determine whether, in light of the facts and law, the Officer’s conclusion was open to this explanation.

[14] I find that the Officer reasonably considered the Applicant’s explanation of unintentional oversight and did not accept it, finding that “[i]t is not credible that [the Applicant] did not read the plain text of the question or did not think that their immigration history with a partner country was not germane to this application”. As held by this Court in *Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at para 16, “the exception [of innocent misrepresentation] has no potential application in the absence of a conclusion that the error was indeed innocent.”

[15] I note that intention is not a prerequisite to a section 40 finding. Furthermore, that lack of awareness of a misrepresentation at the time of its making – including an accidental omission – may still constitute misrepresentation (*Vahora v Canada (Citizenship and Immigration)*, 2022 FC 778 at para 31, citing *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004 at para 22 and *Muniz v Canada (Citizenship and Immigration)*, 2020 FC 872 at para 8 [*Muniz*]).

[16] Second, the Applicant argues her past US visa refusals do not constitute a material fact because this information could not have led to an erroneous administration of the IRPA.

[17] This second argument simply does not concord with well-established law. This Court has consistently held that a past visa refusal is relevant to an inadmissibility determination as it may lead to investigations, interviews and verifications that may 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*]). As Justice Fuhrer wrote in *Muniz* at para 17:

> […] information on previous refusals is material to the issuance of a visa: *Mohseni v Canada (Citizenship and Immigration)*, 2018 FC 795 at para 41. 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, even if they are made innocently, to meet this requirement: *Goburdhun*, above at para 43.

[18] Accordingly, the Officer's materiality finding is consistent with established law. The Applicant's failure to disclose that she was refused multiple US visas was potentially relevant to her admissibility and sufficiently material to justify the finding of misrepresentation. Even if this information had been "verifiable" by the Officer, as the Applicant contends, this does not relieve the Applicant of her duty of candour (*Ram* at para 22).

[19] Third, the Applicant relies on *Punia v Canada (Citizenship and Immigration)*, 2017 FC 184 at paragraph 68 [*Punia*], to argue that she was not given a fair opportunity to address the Officer's concerns, because the PFL did not make it clear what these concerns were and the

Applicant was left confused as to what she had omitted. She submits the Officer failed to explain that they had specific concerns about the number of US visa refusals.

[20] This argument is also unpersuasive. The PFL was entirely clear on its face. It indicated to the Applicant that (i) she had answered "yes" to having been refused a visa to Canada or any other country; and (ii) that the Officer had reasonable grounds to believe she had been refused a visa from at least one other country.

[21] The Applicant had the onus to ensure the completeness and accuracy of her application (*Goburdhun* at para 28), which included disclosing all her past visa refusals. Based on her response to the PFL, the visa officer clearly, and reasonably, noted in the PFL that she had failed to provide complete information regarding her past visa refusals. I note that she admitted to being refused a US visa in 2018, so the argument that she misunderstood the nature of the question simply does not hold water.

[22] Notwithstanding the fact that she omitted to disclose five additional US visa refusals in her response to the PFL, the GCMS notes show that the finding of misrepresentation resulted from the Officer not being satisfied with the Applicant's explanation for her omission: "[t]he PA was provided with an opportunity to address this concern and has failed to provide any information which overcomes said concern."

[23] In short, it was reasonable for the Officer not to be satisfied with the Applicant's explanation that (i) she did not think her US visa refusals were relevant to her application, given

the plain language of the question asking visa applicants to disclose refusals to "Canada or any other country"; and (ii) that she had simply forgotten about her US visa refusals given the number of refusals.

[24] Fourth, the Applicant argues the Decision is unreasonable because one GCMS entry indicates the Applicant answered "no" to the Question 2 b) in her TRV application when she had in fact answered "yes", and that this constitutes "a clear case of contradiction".

[25] Once again, I cannot agree. This was peripheral to the Decision – a non-material error entered by a different visa officer who was not the decision-maker. The PFL was the key document that communicated the error to the Applicant, and it correctly indicated that she answered "yes" to Question 2 b). A complete review of the deciding Officer's GCMS entries shows that there was no misunderstanding that the Applicant had answered "yes" to the question, but failed to provide full disclosure of all her US visa refusals.

III. Conclusion

[26] The Officer's Decision was reasonable. The Applicant failed to fulfill her duty to provide complete, honest and truthful information first in her TRV application, and later in her response to the PFL, where she disclosed her 2018 US visa refusal, but did not disclose five additional US refusals. The Officer's finding of misrepresentation was justified and reasonable. The Parties propose no question of general importance for certification, and I agree that none arises.

JUDGMENT in file IMM-3046-22

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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