Federal Court Cour fédérale

Date: 20240305

Docket: IMM-10362-22

Citation: 2024 FC 362

Vancouver, British Columbia, March 5, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

ABDUS SALAM SIKDER
FARHA DIBA SIKDER
SADIA ZINAT
FARDINA TABASSUM

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Mr. Abdus Salam Sikder, accompanied by his wife, Ms. Farha Diba Sikder, and their two daughters, Sadia Zinat and Fardina Tabassum [together, the Sikder Family], are all citizens of Bangladesh. They seek judicial review of a decision made on August

29, 2022 by a Migration Officer [Officer] of the High Commission of Canada in Singapore [Decision] denying their application for permanent residence on the ground that they were inadmissible for misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Officer concluded that Mr. Sikder had withheld material facts relating to his daughter Sadia Zinat's inability to support herself financially due to a medical condition, in an effort to have her included as a dependent child in their permanent residence application. More specifically, the Officer found that Mr. Sikder's assertions that Ms. Zinat is dependent on her parents due to her medical condition are contradicted by the fact that Ms. Zinat is in Canada on a work permit and had previously applied for a study permit. The Officer found that she would likely be able to live independently and be self-supporting, notwithstanding any medical condition she currently lives with. The Officer further noted that Ms. Zinat is married to someone who appears to have income-earning potential.

[3] The Sikder Family submits that the Officer's Decision lacks transparency and intelligibility because the evidence on the record suggests that Ms. Zinat has been unable to hold a job for longer than a few weeks at a time, and that she never undertook studies in Canada. They also argue that the Officer confused insufficiency of evidence with misrepresentation under paragraph 40(1)(a) of the IRPA.

[4] For the following reasons, the application for judicial review will be dismissed. Even though I have sympathy for the Sikder Family's situation, I am unable to conclude that the Officer's Decision is unreasonable or that it was not responsive to the evidence. Moreover, the

Officer did not confound insufficiency of evidence with misrepresentation. There are no reasons justifying the Court's intervention.

II. Background

A. *The factual context*

[5] In 2010, the Sikder Family submitted an application to become permanent residents of Canada under the Federal Investor Program. At that time, Ms. Zinat qualified as a dependent child because of her age. On June 19, 2014, all pending applications under that program were terminated.

[6] In early March 2016, the Sikder Family submitted a new application for permanent residence, this time under the Quebec Investor Program. At the time of this application, Ms. Zinat was now older than 19 years of age and did not declare having a "serious disease or physical or mental disorder." However, she declared that she had completed a bachelor's degree. The Sikder Family otherwise met the criteria for the program, and were required to make a five-year deposit of $800,000 with Investissement Québec. Mr. Sikder made the deposit and was issued a five-year term note on December 21, 2015.

[7] On June 22, 2016, the Sikder Family was asked to provide documentation to prove that Ms. Zinat was actually dependent on her parents. I pause to observe that, pursuant to section 2 of the *Immigration and Refugee Protection Regulations*, SOR/2022-227 [IRPR], a "dependent child" includes a child who is 19 years of age or older "and has depended substantially on the financial support of the parent since before the age of 19 and is unable to be financially self-supporting due to a physical or mental condition." Mr. Sikder and his wife responded that Ms.

Zinat had medical issues resulting from a life-threatening surgery she underwent when she was under one month old, and that she suffered from epilepsy throughout her childhood. They noted that she "[lags] behind (under graduation level) on her education due to her learning deficiency," and that she was diagnosed with Attention Deficit Hyperactivity Disorder. They stated that, at 23-years-old, she had never worked to support herself. They further attested that she was incapable of taking care of herself and required daily help and supervision from her family. Their statements were accompanied by medical documents, none of them recent.

[8] On July 8, 2016, an immigration officer observed that Ms. Zinat had applied for a study permit to study at a college in Toronto, which had been refused. Around the same time, Ms. Zinat married a university lecturer in Bangladesh, who left the country in 2018 to pursue PhD studies at the University of Waterloo in Canada. Mr. Sikder paid his first year tuition.

[9] On March 20, 2018, the Sikder Family received another letter from the Canadian immigration authorities requesting updated documents and family information. No requests were made with respect to proving Ms. Zinat's status as a dependent child. In the application, Ms. Zinat again declared that she did not have a "serious disease or physical or mental disorder" and that she had never been refused a temporary resident visa to Canada.

[10] In June 2020, an officer reviewed the Sikder Family's file, and identified concerns that required an interview, including that they may have been trying to render Ms. Zinat eligible as a dependent child despite not meeting the criteria set out in the IRPR for a dependent child.

[11] In 2021, Ms. Zinat applied for an open work permit to accompany her husband to Canada while he completed his PhD. Again, she did not declare having any serious disease or mental

disorder. She obtained her work permit and arrived in Canada in September 2021. She later applied for an extension to her work permit, supported by a job offer to work at Walmart.

[12] On February 22, 2022, the Sikder Family were sent an invitation for an interview, to be held on March 14, 2022. They were advised that the onus was on them to satisfy the Officer that they met all eligibility requirements. On March 14, 2022, at the end of their interview, the Officer expressed concerns about Ms. Zinat meeting the definition of a dependent child based on her medical history. Among other things, the Officer did not find it credible that Mr. Sikder would allow her to travel to Canada alone for her studies if she was dependent on her family due to her medical condition, and noted that inconsistent answers were given relating to the state of Ms. Zinat's marriage.

[13] On March 22, 2022, the Officer issued a detailed procedural fairness letter notifying Mr. Sikder that he may be inadmissible to Canada under paragraph 40(1)(a) of the IRPA for the misrepresentation of Ms. Zinat's status as a dependent. The letter listed concerns with the following facts:

1. That Ms. Zinat's family would send her, despite the fact she was allegedly fully dependent on her parents, to Canada to study for three years;
2. That Ms. Zinat, in her open work permit application to join her spouse, had presented herself as being in a good relationship; and
3. That Ms. Zinat had presented a job offer to work at Walmart in her work permit extension application.

[14] On June 23, 2022, Mr. Sikder responded to the procedural fairness letter, which included a solemn declaration signed by Ms. Zinat. The response stated that, after arriving in Canada, Ms.

Zinat lodged with her maternal aunt before going to live with her husband in the Waterloo area. The response also noted that in her study permit application, the employment offer from her father following the successful completion of her studies would have been "sheltered employment," which they attested "is a kind often provided to children of business-owners who would have difficulty to find suitable work elsewhere." Ms. Zinat's declaration further explained that she was unable to maintain employment due to her difficulties in sustaining concentration and resisting impulses, and that her husband was unable to support her due to his full-time studies. However, in response to the procedural fairness letter, the Sikder Family did not provide new medical evidence concerning Ms. Zinat's condition.

B. *The Officer's Decision*

[15] On August 24, 2022, the Officer found Mr. Sikder, and by extension his family, inadmissible to Canada under paragraph 40(1)(a) of the IRPA. The Officer considered the family's response to the procedural fairness letter and all the information available, and determined that they had "failed to overcome or offset the concern that [they] misrepresented material facts." The Officer noted that under subsection 11(1) of the IRPA, a foreign national is only issued a visa if they are found not inadmissible, and that the inadmissibility finding will stand for a period of five years.

[16] The Officer's notes further demonstrate that, in their view, while Ms. Zinat likely does suffer—or had suffered—from a medical condition dating from her childhood, she was not condemned to a situation of dependency on her parents. The Officer determined that her actions—namely, applying for a study permit and a work permit, submitting a job offer from

Walmart, and marrying someone with income-earning potential—support that she is able to live independently from her parents.

C. *The standard of review*

[17] It is well recognized that misrepresentation involves questions of mixed facts and law and that the standard of review applicable in such cases is reasonableness (*Wang v Canada (Citizenship and Immigration)*, 2023 FC 62 at para 13 [*Wang*]; *Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 at para 17 [*Kazzi*]). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in all judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 114 [*Mason*]).

[18] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[19] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach and begin its inquiry by examining the reasons provided with "respectful attention" seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[20] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

III. Analysis

[21] For the reasons that follow, I am satisfied that the Officer's reasons are sufficient, engaged appropriately with the evidence, and bear all the hallmarks of a reasonable decision.

[22] As stated by the respondent, the Minister of Citizenship and Immigration [Minister], the wording of paragraph 40(1)(a) of the IRPA is very broad. Misrepresentation can be direct or indirect, can result from actual statements or omissions, and must be material insofar as it could have induced an error in administering the IRPA. As is the case for any applicant seeking permanent residence in Canada, the Sikder Family had a duty of candour, but they failed to disclose in their application that Ms. Zinat had previously applied for a study permit and work permit. Furthermore, the evidence showing that Ms. Zinat had previously sought to study and

work in Canada, and had come to Canada without her parents and worked in Canada is certainly compelling and relevant to the issue of her dependency. The omission to mention these facts in the Sikder Family's application are important enough to affect the process before the Canadian immigration authorities, and it was open to the Officer to conclude that this amounted to misrepresentation of material facts.

A. *The Officer's Decision is transparent and intelligible*

[23] The Sikder Family first submits that the Officer's Decision is unreasonable because it lacks transparency and intelligibility. In particular, they take issue with the Officer's lack of analysis regarding Ms. Zinat's employment history, notably, that she has been unable to hold employment long-term, and that while in Canada, she has been under the care and supervision of close family members, such as her maternal aunt and her husband. They further contend that due to the negative consequences attached to an inadmissibility finding, an officer must base any findings of misrepresentation on clear and convincing reasons—which they assert was not the case here. The Sikder Family also claims that whether Ms. Zinat is a dependent child is not an issue of "material facts" but rather one of law, and that misrepresentation must be made in relation to a material fact under paragraph 27(1)(e) of the IRPA. They finally assert that none of the evidence on the record supports that Ms. Zinat has ever been financially independent from her parents, and that her employment history demonstrates that her ability to earn an income is hindered by her medical condition.

[24] Despite the able submissions made by counsel for the Sikder Family, I am not persuaded by their arguments. In my view, a fair reading of the Decision shows that the Officer was very much alive to the situation of Ms. Zinat and of the relevant statutory framework surrounding

misrepresentation, and it was open to the Officer to conclude as they did. I accept that the consequences of a misrepresentation finding are harsh for the Sikder Family, but they cannot blame the Officer for this outcome. The Sikder Family was given the opportunity to provide the necessary evidence, but failed to alleviate the Officer's concerns.

[25] In *Afe v Canada (Citizenship and Immigration)*, 2023 FC 105 [*Afe*] and *Kazzi*, the Court summarized as follows the legal principles regarding misrepresentation under the IRPA:

> 1. Section 40 is to be given a broad interpretation in order to promote its underlying purpose;
>
> 2. Section 40 is broadly worded to encompasses misrepresentations even if made by another party, including an immigration consultant, without the knowledge of the applicant;
>
> 3. The exception to this rule is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control;
>
> 4. The objective of section 40 is to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the applicant to ensure the completeness and accuracy of their application;
>
> 5. An applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada;
>
> 6. As the applicant is responsible for the content of an application which they sign, the applicant's belief that he or she was not misrepresenting a material fact is not reasonable where they fail to review their application and ensure the completeness and veracity of the document before signing it;
>
> 7. In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose;

> 8. A misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process;
>
> 9. An applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application. The materiality analysis is not limited to a particular point in time in the processing of the application;
>
> [Numeration added; citations omitted.]
>
> *Afe* at para 9, citing *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28 [*Goburdhun*].

[26] It is well established in Canadian immigration law that a duty of candour exists, requiring applicants of immigration proceedings to disclose all material facts relevant to their entry or admission, even absent a specific request from immigration authorities for particular information (*Canada (Employment and Immigration) v Gudino*, [1982] 2 FC 40 (CA); *Goburdhun* at para 28). It was therefore open to the Officer to find that the Sikder Family misrepresented material elements of their application by failing to disclose in any of the documents joined to their application that Ms. Zinat had previously applied for a study permit that had been refused, or for a work permit.

[27] I further disagree with the Sikder Family that the Officer lacked "clear and compelling evidence" to make his determination of misrepresentation. As the Minister notes in his submissions, evidence showing that a person has previously sought to study and work in Canada and comes to Canada without her parents, and then actually works in Canada is quite compelling and relevant to the issue of her dependency—or lack thereof. These facts are absolutely material to the assessment of Ms. Zinat's dependency. Indeed, contrary to the Sikder Family's argument, the issue is not about having insufficient evidence to qualify Ms. Zinat as a dependent child. It is rather that material facts, such as her request for a study permit and obtaining a work permit were

important enough to affect the immigration process and the determination of misrepresentation (*Goburdhun* at para 28).

[28] Here, Mr. Sikder's subjective belief that his daughter is dependent could not be reasonably perceived as true, and is indicative of his lack of candour. Indeed, the onus was on the Sikder Family to establish, on a balance of probabilities, that Ms. Zinat depended substantially on the financial support of her parents and was unable to financially self-support herself due to a physical or mental condition. Instead of providing clear medical evidence to that effect, the Sikder Family withheld material facts to be able to characterize her as financially dependent due to a medical condition. The objective of section 40 of the IRPA is to deter misrepresentation and maintain integrity in the immigration process (*Sun v Canada (Citizenship and Immigration)*, 2019 FC 824 at para 21). With this in mind, the Officer reasonably concluded that the Sikder Family materially misrepresented the circumstances of Ms. Zinat.

[29] There are two possibilities in the present matter: either Ms. Zinat misrepresented her medical condition when she applied to work and study in Canada, and deliberately withheld mentioning those applications in the context of the current application in order to mislead the Canadian immigration authorities. Or, Mr. Sikder is misrepresenting his daughter's medical condition to be able to include her as part of his permanent residency application. In either situation, the Sikder Family has failed to appreciate the importance of candour in immigration proceedings. Applicants in the Canadian immigration context "are under a duty of candor to tell the truth and not to conceal relevant facts. If an officer suspects that the duty of candour is not being met, then he or she must put the matter to the applicant and provide a reasonable opportunity – either in writing or in person – for the applicant to address the officer's concerns.

Where misrepresentation or breach of the duty of candor is the issue, then an application is usually refused on the basis of misrepresentation and s. 40 of the Act" (*Bajwa v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 202 at para 64 [*Bajwa*]). In *Bajwa*, Justice Russell continued on, stating that "applicants also have an obligation – over and above the duty of candor – to support their applications with documentation that confirms their positions. Documentation is required by the legislation in all applications and a failure to provide adequate documentation can result in a refusal that is not based upon credibility" (*Bajwa* at para 65).

[30] Here, the Decision leaves no doubt that the Officer brought his concerns to the Sikder Family in the procedural fairness letter, and provided them the opportunity to address these concerns. The Sikder Family failed to do so and thus, failed to meet their onus of proof. It was subsequently open to the Officer to conclude they made material misrepresentations in their application. I find nothing unreasonable in that analysis.

B. *The finding of misrepresentation is reasonable*

[31] As a second main argument, the Sikder Family contends that the Officer confused insufficiency of evidence with misrepresentation and that, given the seriousness of a misrepresentation finding, failed to make a conclusion based on clear and convincing evidence. They maintain that the evidence provided by Mr. Sikder should have given the Officer reasonable grounds to doubt that Ms. Zinat was able to live independently without support from her parents.

[32] With respect, I do not agree.

[33] In the Decision, the Officer explicitly stated their concerns of misrepresentation and specifically provided the Sikder Family with the opportunity to provide submissions with respect to these concerns.

[34] Moreover, the Officer's reasons are more than sufficient. As recently stated by this Court, sufficiency of reasons is dependent on the context, and in the visa context, the obligation for reasons is minimal (*Wang* at para 40). Here, the reasons were far from minimal. The Officer reviewed all available material and information, and considered the responses provided by the Sikder Family to the procedural fairness letter. Based on this information, the Officer assessed Ms. Zinat's personal history and determined that she would be able to live independently and be self-supporting, notwithstanding any medical condition she may still live with. Her actions and situation, in applying for a study permit and a work permit, in submitting a job offer from Walmart, and in marrying someone who appears to have income-earning potential, all supported the position that she is able to live independently from her parents. Based on this, the Officer reasonably concluded that the Sikder Family had misrepresented Ms. Zinat's circumstances.

[35] The Officer also considered the non-disclosure of Ms. Zinat's previous visas, and the Sikder Family's specific submissions on these points in their response to the procedural fairness letter. Given the ample information before the Officer, he determined that in light of the whole reasoning put forward by the Sikder Family, they did not overcome the misrepresentation concern.

[36] The Sikder Family reiterate explanations provided to the Officer with respect to Ms. Zinat's alleged difficulty to retain a job, the fact that she had not lived with her husband for the first six years of their marriage, and the fact that she would have been under care and supervision

of a close family member had she obtained a study permit in 2016. Again, the Officer did consider those explanations but determined that none of them was sufficient to demonstrate that Ms. Zinat was unable to live independently and be self-supporting due to a medical condition. In the end, the Sikder Family's arguments simply amount to a disagreement with the weight given by the Officer to the explanations offered. It is trite law that, on judicial review, it is not the role of the Court to reweigh the evidence analyzed by a decision maker (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 1715 at para 66, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55). The Sikder Family's mere disagreement with the Officer's conclusions and weighing of evidence are not grounds justifying the intervention of the Court.

[37] Finally, I underscore that the question before the Court is not whether the alternative interpretation proposed by the Sikder Family could be sustainable or reasonable. What the Court has to determine is whether the Officer's interpretation and finding of misrepresentation was justified, transparent, and intelligible. The fact that there could perhaps be other reasonable interpretations of the facts surrounding the Sikder Family's situation does not mean or imply that the decision-maker's interpretation was unreasonable.

IV. Conclusion

[38] For all of these reasons, this application for judicial review is dismissed, as the Sikder Family has not demonstrated that the Officer's Decision was unreasonable.

[39] There are no questions of general importance to be certified.

JUDGMENT in IMM-10362-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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