Federal Court  Cour fédérale

Date: 20240617

Docket: IMM-12327-22

Citation: 2024 FC 931

Ottawa, Ontario, June 17, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

FAIZA SADIQA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Faiza Sadiqa, seeks judicial review of a decision of an officer (the "Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") dated November 30, 2022, finding her inadmissible to Canada due to misrepresentation pursuant to subsection 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*") and thereby refusing her application for a temporary resident visa ("TRV"). The Officer found that the

Applicant had admitted to failing to disclose several refusals of visa applications to the United States.

[2] The Applicant submits that the Officer's decision is unreasonable for failing to consider the honest and reasonable mistakes or misunderstandings exception and erring in law for finding that the undisclosed visa refusals were material to her claim.

[3] For the following reasons, I find that the Officer's decision is unreasonable. This application for judicial review is granted.

II. **Analysis**

A. *Background*

[4] The Applicant is a 43-year-old citizen of Pakistan. In 2019, her visitor visa application to Canada was received by IRCC.

[5] On her visa application form, the Applicant was asked, "[h]ave you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?" She responded "Yes," and provided that she had been refused a visitor visa to Canada in 2008.

[6] In a letter dated March 9, 2020, the Applicant received a procedural fairness letter from the Immigration Section of the Embassy of Canada to Abu Dhabi (the "PFL"). This letter raised

concerns that the Applicant had not truthfully answered questions regarding her previous visa refusals to Canada or other countries.

[7] In a response dated April 15, 2020, the Applicant submitted that she had omitted that on three separate occasions she had previously been refused visas to the United States. The Applicant maintained, however, that she misunderstood the question on the application form and thought she had to disclose only her previous refusals to Canada.

[8] In a thorough set of submissions, the Applicant maintained that her case was one where the "innocent mispresentation" exception applied, and that in any event, the misrepresentation was not material to her application such that it could have induced an error under the *IRPA.* The Applicant provided a sworn declaration in support of these submissions.

[9] In a decision dated November 30, 2022, the Officer found that the Applicant was inadmissible to Canada pursuant to section 40(1)(a) of the *IRPA* for misrepresentation.

[10] The decision is largely contained in the Global Case Management System ("GCMS") notes, which form part of the reasons for the decision, and which state:

> Review PFL response from PA's representative. Despite lengthy answer, PA has admitted omitting US visa refusals from her application. Misrep supported.

B. *Issue and standard of review*

[11] This application raises the sole issue of whether the Officer's decision is reasonable.

[12] 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.

[13] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). 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 decision that is reasonable as a whole 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).

[14] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (*Vavilov* at para 100).

C. *The decision is unreasonable*

[15] The Applicant submits that the Officer erred by failing to address the "innocent mistake" exception and whether the omission of these visa refusals was material to the misrepresentation finding.

[16] The Respondent submits that the Officer acknowledged that the Applicant had omitted her visa refusals, there being no ambiguity in the question on the visa application, and that the honest mistake exception under subsection 40(1)(a) of the *IRPA* is narrow and inapplicable to the Applicant's circumstances.

[17] I agree with the Applicant.

[18] The Officer's conclusion is reasonable, being similar to my ruling in *Kaur v Canada (Citizenship and Immigration)*, 2023 FC 644 ("*Kaur*"). There, I held that the officer reasonably found that the applicant's omission of refusals to enter Canada and the United States did not justify an innocent misrepresentation finding, and that subsection 40(1)(a) of the *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'" (*Kaur* at paras 20-21, citing *Duquitan v Canada (Citizenship and Immigration)*, 2015 FC 769 at para 10, in turn citing *Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327 at paras 18, 25, 26). The Officer's conclusion in this matter aligns with the decision in *Kaur*.

[19] But reasonableness review demands more. Reviewing courts do not stop at a conclusion. They must examine "both the rationale for the decision and the outcome to which it led" (*Vavilov* at para 83 [emphasis added]). Decisions must be responsive to both the parties' submissions and the consequences the decision has to bear (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 ("*Mason*") at paras 74, 76, citing *Vavilov* at paras 127-128, 133-135).

[20] This is where the Officer's decision falters and where this matter is distinguishable from my ruling in *Kaur*.

[21] When provided with an opportunity to respond to concerns about her visa application, the Applicant provided detailed submissions as to why the omission of her refused visas was an "honest mistake" that was immaterial to her application under section 40(1)(a) of the *IRPA*, relying upon numerous decisions from this Court and a statutory declaration.

[22] Provided with these submissions, the Officer's decision was that "despite lengthy answer, [the Applicant] has admitted omitting US visa refusals from her application. Misrep supported."

[23] This is a paltry decision in light of what was submitted to the Officer. In my view, the decision does not respond whatsoever to the Applicant's submissions, nor did it demonstrate that it considered the consequences of a misrepresentation under section 40(1)(a) of the *IRPA*, including that the Applicant would be inadmissible to Canada for at least five years. I note here that it is now approaching almost two years into this five-year ban.

[24] This five-year ban is a "harsh" consequence for the Applicant (*Vavilov* at paras 133-134, cited in *Mason* at para 76; see also *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 27, albeit in the context of procedural fairness). I cannot discern whether the Officer's reasons demonstrate that the Officer "actually *listened*" to the Applicant (*Vavilov* at para 127 [emphasis in original], cited in *Mason* at para 74), unlike the officer in *Kaur* (at para 11). Thus, the Officer's decision in this matter is insufficiently responsive to stand (*Mason* at paras 74, 76).

III. **Conclusion**

[25] This application for judicial review is granted. The decision is quashed and the matter remitted to a different officer for redetermination. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-12327-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The underlying decision is quashed and the matter is remitted to a different officer for redetermination.

2. No question is certified.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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