

Federal Court



Cour fédérale

Date: 20240813

Docket: IMM-2098-23

Citation: 2024 FC 1256

Ottawa, Ontario, August 13, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

DIMPLE KUMARI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of India, applied for and was granted a study permit in 2017. It was later alleged that the Applicant had relied on a fraudulent acceptance letter from Fanshawe College in her study permit application.

[2] The matter was referred to the Immigration Division [ID] for an admissibility hearing and, in a decision dated January 30, 2023, the ID concluded that the misrepresentation allegation was well founded. The Applicant seeks judicial review of that decision under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] For the reasons that follow, the Application is dismissed.

II. Background

[4] In applying for the study permit, the Applicant retained a representative. The representative advised the Applicant that she had received an offer of admission from Fanshawe College. The Applicant reports that the representative was responsible for obtaining the offer of admission and preparing the study permit application, which the Applicant then signed.

[5] The application was approved, and the Applicant entered Canada in December 2017. The Applicant reports that after arriving in Canada the representative informed her parents that, because of a strike at Fanshawe College, the representative had withdrawn the Applicant's fees and enrolled her in Evergreen College. The Applicant did not question the change of institution and reports she never suspected that the acceptance letter from Fanshawe College was fraudulent. The Applicant states she did not contact Fanshawe College on her own and did not know that she was required to inform Immigration, Refugees and Citizenship Canada [IRCC] of the change, believing the representative would do so on her behalf.

[6] The Applicant completed her diploma at Evergreen College and then continued her studies at St. Lawrence College. After completing her studies in December 2020, the Applicant applied for and was granted a work permit. In May 2021, the Applicant applied for permanent resident status.

[7] In March 2021, a section 44(1) report was prepared expressing the opinion that the Applicant was inadmissible for having misrepresented herself on her study permit application by submitting a fraudulent acceptance letter. In June 2022, the matter was referred to the ID for an admissibility hearing.

III. Decision under Review

[8] In accordance with the ID's rules, the parties submitted disclosure packages in advance of the admissibility hearing. In considering the content of the Applicant's package, the ID excluded a number of pages. The ID found certain pages had not been translated (Pages 4 and 6), another was not readable (page 22), others were not relevant to the issue before the ID (pages 34 and 35), and others were held not to be properly notarized (pages 36 and 37). The parties also agreed that certain pages of the Applicant's disclosure package were to be removed (pages 38 – 41).

[9] The ID concluded the Applicant had obtained a study permit with a fraudulent acceptance letter and that the misrepresentation was material and direct – the acceptance letter being an important piece of information that was considered and which directly impacted the decision to grant the permit.

[10] The ID noted the Applicant's explanation that she believed the acceptance letter to be authentic and that her representative had misled her. The ID acknowledged that, in exceptional circumstances, an applicant may be found not to have misrepresented where the misrepresentation was beyond the applicant's control. However, citing the Applicant's duty of candour, the failure to review the documents she had signed, her failure to make any effort to contact Fanshawe College during the application process or after her arrival in Canada, and her failure to update IRCC, the ID found that the exceptional circumstances necessary to hold that the misrepresentation arose in circumstances beyond the applicant's control were not established.

[11] The ID concluded the inadmissibility report was well founded and that the Applicant directly misrepresented a material fact that induced an error in the administration of the IRPA. An exclusion order was issued.

IV. Issues and Standard of Review

[12] The Application raises two issues:

- A. Did the ID breach procedural fairness by excluding the Applicant's evidence?
- B. Is the ID's decision unreasonable?

[13] Questions of procedural fairness are reviewable on a standard akin to correctness. In effect, the Court is required to ask whether the process was fair with regard to all the circumstances (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 77 [*Vavilov*], *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54, *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1135 at para 12).

[14] The ID's decision itself is reviewable on the standard of reasonableness. A decision is reasonable where the reviewing court is able to trace the decision-maker's reasoning without encountering fatal flaws in its overarching logic. The reviewing court must be satisfied that the decision and reasons are "transparent, intelligible and justified"; there must be a line of analysis within that reasonably leads the ID from the evidence before it to the conclusions reached (*Vavilov* at paras 15 and 102).

V. Analysis

A. *No breach of procedural fairness*

[15] Before the ID, the fraudulent nature of the Fanshawe College acceptance letter was not in dispute. Instead, the Applicant sought to advance a defence of innocent misrepresentation. In establishing this defence, the Applicant sought to enter into evidence a letter from a Member of Parliament [MP] responding to the Applicant's request for assistance in responding to a procedural fairness letter [PFL], and a declaration purportedly provided by the Applicant's representative in India stating why the Applicant did not attend Fanshawe College. The ID excluded both the letter and the declaration.

[16] The Applicant argues that the exclusion of the MP's letter and the representative's declaration was capricious, and undertaken with the intent of preventing her from advancing an innocent misrepresentation defence. Coupled with the ID's refusal to allow counsel to question the Applicant on the documents, the Applicant further submits that the exclusion decision unfairly undermined her ability to establish that the misrepresentation was innocent. I disagree.

[17] The ID explained its reasons for excluding documents from the Applicant's disclosure package. The ID noted the MP's letter did not provide any new information; it simply restated what the Applicant had told the MP's office, and referred to a PFL that was not in evidence. With respect to the representative's declaration, the ID was concerned that the signature could not be read but more significantly the ID noted that it "[could not] even read the name that [was] typed" at the end of document.

[18] The Applicant's assertion that the decision to exclude the documents was capricious or made to prevent an innocent misrepresentation defence is baseless and not supported by the record. The exclusion decision was considered and explained.

[19] Although the Applicant asserts the documents were necessary to demonstrate the misrepresentation was innocent, the Applicant does not explain how this is so. Nor is it evident upon review of the documents how the Applicant might have been prejudiced by their exclusion:

- A. The MP's letter merely confirms the Applicant had contacted the MP's office, as well as reports follow-up with IRCC to request clarification of the PFL and that there had been regular follow-up on the status of the PR application. The Applicant was well positioned to report this information to the ID, and she did so in her *viva voce* evidence; and
- B. The representative's declaration simply states facts not in dispute: (1) the Applicant was represented; (2) the representative oversaw the filing process for the study permit application; (3) the study permit application was approved for the Applicant to attend Fanshawe College; (4) that the representative advised the

Applicant's parents of a labour strike at Fanshawe College; and (5) that the Applicant was then enrolled in Evergreen College.

[20] Finally, the decision demonstrates that the ID considered and addressed the Applicant's innocent misrepresentation arguments. While the Applicant disagrees with the ID's decision to exclude certain documents, the Applicant has not demonstrated a breach of procedural fairness.

B. *The ID's decision is reasonable.*

[21] To find an applicant inadmissible under paragraph 40(1)(a) of the IRPA, an Officer must be satisfied that (1) a direct or indirect misrepresentation has occurred by the applicant, and (2) that the misrepresentation could induce an error in the administration of the IRPA (*Brar v Canada (Citizenship and Immigration)*, 2016 FC 542 at para 10).

[22] As was stated in *Bains v Canada (Citizenship and Immigration)*, 2020 FC 57, "[t]here is no requirement that the misrepresentation be intentional, deliberate or negligent" (at para 63). Additionally, paragraph 40(1)(a) of the IRPA encompasses misrepresentations made by another party on behalf of an applicant (*Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327 at para 19 [*Paashazadeh*]; *Moon v Canada (Citizenship and Immigration)*, 2019 FC 1575 at para 34). The onus is on an applicant to ensure the completeness and accuracy of their application (*Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 23). As noted in *Duquitan v Canada (Citizenship and Immigration)*, 2015 FC 769, "a misrepresentation need not be decisive or determinative to be material; it must only be important enough to affect the process" (at para 10, citing *Paashazadeh* at paras 18, 25 and 26).

[23] The Applicant does not dispute the misrepresentation but argues that, in rendering their decision, the Officer failed to consider the evidentiary record and the factual matrix. There is little merit to this argument.

[24] The Officer addressed the Applicant's circumstances, but concluded that the actions of her chosen representative did not satisfy the narrow circumstances in which the innocent misrepresentation exception is available. This conclusion is consistent with jurisprudence and was reasonably available to the ID.

[25] The Applicant also argues that the decision is unreasonable because the misrepresentation was not one that was material or that induced or could have induced an error in the administration of the IRPA. The Applicant submits that her place of study was immaterial to the issuance of her study permit. Again, there is little merit to this submission.

[26] Misrepresentation was alleged because the letter of acceptance submitted to obtain the study permit was fraudulent, not because the Applicant chose to study at a different designated learning institution. It was not unreasonable for the ID to conclude that the Applicant's reliance on fraudulent documents, particularly a document that was central to the decision to be made, was material and could have induced an error in the administration of the IRPA.

VI. Conclusion

[27] The Application for Judicial Review is dismissed. The Parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-2098-23

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2098-23

STYLE OF CAUSE: DIMPLE KUMARI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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