Federal Court  Cour fédérale

Date: 20240917

Docket: IMM-10457-23

Citation: 2024 FC 1458

Ottawa, Ontario, September 17, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

MAHMOUDREZA FALSAFI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Mahmoudreza Falsafi [Mr. Falsafi or Applicant] seeks judicial review of a decision by an immigration officer [Officer] with Immigration, Refugees and Citizenship Canada finding him inadmissible under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for misrepresentation [Decision]. The application contained a fraudulent Labour Market Impact Assessment [LMIA]. The Applicant challenges the Decision on the basis

that the Officer failed to consider whether the innocent mistake exception applied to his situation.

[2] For the reasons that follow, the application for judicial review is dismissed. The Applicant has not demonstrated that the Decision is unreasonable, based on the record that was before the Officer.

II. Background and Decision Under Review

[3] The Applicant is an Iranian national who resides in the city of Tehran. On May 22, 2022, Immigration, Refugees and Citizenship Canada received Mr. Falsafi's application for a work permit under the Temporary Foreign Worker Program. The application contained a LMIA.

[4] On February 22, 2023, the Officer sent the Applicant a Procedural Fairness Letter [PFL] informing him about the Officer's concerns that the LMIA provided in support of the application is fraudulent. The PFL outlined that if the Applicant was found to have engaged in misrepresentation, he may be found inadmissible under section 40(2)(a) of the IRPA rendering him inadmissible to Canada for a period of five years. The Applicant was given thirty days from the date of the letter to make any representations in this regard.

[5] The Applicant responded to the Officer's PFL in an undated letter. The parties agreed that the letter was mostly likely submitted within the thirty days as prescribed in the PFL (i.e., by March 22, 2023). The response to the PFL consisted of a one page typed letter from the Applicant with documentation attached.

[6] In his response to the PFL, the Applicant explained that on August 16, 2020, he concluded an agreement with Mr. Mahdi Shavandifar, CEO of a consultancy firm in Iran. The Applicant described, “I was informed about 7 months ago through a number of clients that this institution in Tehran has been closed and its CEO left Iran.” Mr. Falsafi stated that he “noticed about two weeks ago, that letters were sent to your profile for some clients stating that the LMIA was fake and I also realized that my LMIA was also fake.”

[7] The Applicant then declared that in accordance with the deadline to respond, he is submitting the documents attached to his contract with the consultancy institution and his intention to send a complaint against them. Mr. Falsafi stated he paid $ 5,000 US to the consultant, never meant to do any illegal work, and was the victim of fraud. The Applicant expressed he wished to come to Canada to work and described the difficult conditions in Iran for himself and his family.

[8] Finally, the Applicant provided a copy of a document entitled “Canada Work Visa Contract” dated August 16, 2020, and a copy of a document entitled “Judicial Correspondence” dated March 9, 2023. The Judicial Correspondence document lists a complaint by the Applicant against the consultant and other individuals in “an action based on forgery, use of forged document, usurpation of title, fraud and acquisition of property through illegal means which is being processed” [Judicial Correspondence].

[9] On June 8, 2023, the Officer refused the work visa application. The refusal was based on a finding that Mr. Falsafi was inadmissible to Canada under paragraph 40(1)(a) of the IRPA 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. Additionally, the Applicant remains inadmissible to Canada for a five-year period.

[10] The Global Case Management System notes of the Officer, that form part of the Decision, explained that the Officer reviewed the application and the explanation by the Applicant to the PFL. The Officer noted that Mr. Falsafi explained he was a victim of fraud, and unknowingly purchased a fraudulent LMIA. However, the Officer stated that the Applicant is responsible for the information submitted, including due diligence in ensuring everything submitted is authentic prior to the submission of the application. On a balance of probabilities, the Officer was satisfied that the Applicant was inadmissible based on misrepresentation.

III. Issues and Standard of Review

[11] The Applicant challenges the Decision on the basis that Officer's Decision was unreasonable.

[12] The parties agree that the applicable standard of review on the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration)* v *Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25). I agree that reasonableness is the appropriate standard of review in this case.

[13] On judicial review, the Court must assess whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99). A reasonable

decision will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision-maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

IV. Analysis

A. *Preliminary Issue: Is the new evidence in the Applicant's affidavit admissible?*

[14] The Respondent objected to four paragraphs in the Applicant's affidavit (paragraphs 10, 11, 12 and 14), included in the Applicant's Record. The Respondent states these paragraphs contain additional and new explanations that were not included in the Applicant's reply to the PFL and supporting documentation. At the outset of the hearing, the Respondent withdrew the objection to three paragraphs (paragraphs 11, 12 and 14) but maintained the objection to paragraph 10 and on the same basis.

[15] In the impugned paragraph 10, the Applicant stated that the consultant he retained, Mr. Shavandifar, prepared the application, its submitted documentation, and forms. The Applicant stated that he did not get the chance to sign them himself nor review them before they were submitted.

[16] The Respondent states that the statements in paragraph 10 of the Applicant's affidavit were not in the record before the Officer. The Applicant's response to the PFL contains nothing

close to this, and there is no indication in the file that the Officer was made aware of these statements. The Respondent argues that the Applicant is seeking to improve his response to the PFL through this affidavit.

[17] The Applicant states that the information found in paragraph 10 was in the record before the Officer and directed me to two documents. The first is a set of forms comprising the Applicant's visa application with one page containing an electronic signature on the main form. The typed out signature on this page is the Applicant's name. There are no signatures on two other places in the remaining forms. The second is the Judicial Correspondence dated March 9, 2023 that was included with the Applicant's response to the PFL. As described above, this document lists a complaint by the Applicant against the consultant and other individuals in "an action based on forgery, use of forged document, usurpation of title, fraud and acquisition of property through illegal means which is being processed."

[18] The Applicant admitted that there was "no direct causal link" or any direct mention of the impugned statements in paragraph 10 of the Applicant's affidavit in the response to the PFL. However, taken together, these documents should have demonstrated to the Officer that the Applicant had no control over his visa application.

[19] It is well established that the evidentiary record on judicial review is generally restricted to the record that was before the decision-maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20 [*Access Copyright*] and *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13-28).

[20] Upon reviewing the documents in the record, I agree with the Respondent's arguments that there is no mention in the record before the Officer that the Applicant had never seen the application before it was sent in. The Applicant's response to the PFL focused on the fraudulent LMIA, the consultant's office closing, the CEO disappearing and his having been victims of fraud.

[21] I also cannot agree with the Applicant's argument that the Officer could have clearly made the proposed inference based on the two documents described. As Applicant's counsel appropriately identified, there is no direct mention of the statements in paragraph 10 of the Applicant's affidavit in the record and in particular in the response to the PFL.

[22] Given this, I cannot find that the new explanations in the Applicant's affidavit were before the decision-maker. The statements in the impugned paragraph also do not fall within one of the three recognized exceptions to the rule, set out in *Access Copyright*. These exceptions include: (i) evidence that provides background information is not going to the merits of the decision; (ii) evidence that displays an unsupported finding of fact; and (iii) evidence relevant to an issue of natural justice, procedural fairness, improper purpose or fraud that could not have been placed before the decision-maker (*Access Copyright* at para 20).

[23] Accordingly, the statements in paragraph 10 of the Applicant's affidavit are not admissible. I cannot consider them in the context of this application for judicial review and the assessment of the reasonableness of the merits of the Decision.

B. *Was the Decision unreasonable?*

[24] Subsection 40(1)(a) of the IRPA sets out the criteria of inadmissibility for misrepresentation. There must be direct or indirect misrepresentation and, the misrepresentation must be material in that it could have induced an error in the administration of the IRPA.

[25] Both parties have referred to Justice Strickland's summary of the treatment of section 40 of the IRPA in *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at para 28 [*Goburdhun*]:

> [28] In *Oloumi*, above, Justice Tremblay-Lamer describes general principles arising from this Court's treatment of section 40 of the IRPA which are summarized below together with other such principles arising from the jurisprudence:
>
> - Section 40 is to be given a broad interpretation in order to promote its underlying purpose (*Khan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 512 at para 25 [*Khan*]);
>
> - Section 40 is broadly worded to encompasses misrepresentations even if made by another party, including an immigration consultant, without the knowledge of the applicant (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 942 at para 35 [*Jiang*]; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 55-56 [*Wang*]);
>
> - 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 (*Medel*, above);
>
> - 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 (*Jiang*, above, at para 35; *Wang*, above, at paras 55-56);

> - An applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada (*Bodine v Canada (Minister of Citizenship and Immigration)*, 2008 FC 848 at para 41*; Baro v Canada (Minister of Citizenship and Immigration*), 2007 FC 1299 at para 15);
>
> - 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 (*Haque*, above, at para 16; *Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 450 at para 31 [*Cao*]*);*
>
> - In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose (*Oloumi*, above, at para 22);
>
> - A misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process (*Oloumi*, above, at para 25);
>
> - 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. (*Haque*, above, at paras 12 and 17; *Khan*, above, at paras 25, 27 and 29; *Shahin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 423 at para 29 [*Shahin*]);

[26] It is not contested that the LMIA was fraudulent and that an LMIA is relied upon in a work permit application like in Mr. Falsafi's case. This would constitute a misrepresentation, as it is material in that it could have induced an error in the administration of the IRPA.

[27] However, the Applicant argues the Officer did not engage with the material before them in a manner that demonstrates an appropriate level of justification, intelligibility and transparency. More specifically, the innocent mistake exception is applicable to this case and the Officer should have considered this issue in the Decision.

[28] The Applicant relies on *Singh v Canada (Citizenship and Immigration)*, 2023 FC 747 at paragraph 36 for the proposition that there are two universally recognized requirements for an innocent misrepresentation to be deemed as such: (i) an honest subjective belief that the applicant is not misrepresenting or withholding and that (ii) it was reasonable from an objective point of view for the applicant to hold that belief.

[29] The Respondent takes the position that the innocent mistake exception does not apply in the Applicant's case. The jurisprudence is clear that the Applicant is responsible for conducting due diligence to ensure that the information submitted in his application was authentic. Having not done so, he cannot rely on an innocent mistake to preclude a finding of inadmissibility after the fact. In this circumstance, the Officer was not required to address this exception.

[30] Based on the factors as described in *Goburdhun*, the Applicant's case is captured in the analysis of a misrepresentation. First, he is responsible under paragraph 40(1)(a) for representations and misrepresentations he makes himself ("directly") and those made on his behalf by others ("indirectly"), such as immigration consultants or agents. This applies for misrepresentations that were deliberate, negligent, intentional, unintentional or without the Applicant's knowledge.

[31] Applicants must review their application and ensure the completeness and veracity of the document (*Haque v Canada (Citizenship and Immigration)*, 2011 FC 315 [*Haque*] at para. 15-16) before signing it. It is not sufficient to not exercise diligence and then plead ignorance after

the misrepresentation is discovered (*Hosseini Sedeh v Canada (Citizenship and Immigration)*, 2012 FC 424, at para 47).

[32] I agree with the Respondent's argument that having concluded that the Applicant failed to exercise due diligence, the Officer did not need to address the innocent mistake exception explicitly. This is consistent with the Court's jurisprudence.

[33] The innocent mistake exception only applies in "truly exceptional" circumstances. Additionally, the exception has no potential application in the absence of a conclusion that the error was indeed innocent (*Alalami v Canada (Citizenship and Immigration)*, 2018 FC 328 at para 16 [*Alami*]).

[34] As such, the innocent mistake expectation can only be considered when the Applicant reviewed diligently the application and acted in accordance with his duty of candour but a mistake was still found in the application. The Court has held that only where an error has been deemed unintentional must the decision-maker consider whether or not the error was not only honest but reasonable in order to determine if the innocent error exception applies (*Ahmed v Canada (Citizenship and Immigration)* 2020 FC 107, at para 25 citing *Alalami* at para 16; *Takhar v Canada (Citizenship and Immigration)*, 2022 FC 420 at para 21).

[35] Finally, in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 1135, Justice Diner did not accept the argument that the Applicant had used a ghost consultant as a defence to misrepresentation, and found that the narrow exception of innocent misrepresentation did not

apply. At paragraph 23 of this decision, the Court found that the applicant's belief that they were not misrepresenting a material fact was not reasonable where they fail to review their application and ensure the completeness and veracity of the document before signing it.

[36] I also found that the Applicant's reliance of cases such as *Moon v Canada (Citizenship and Immigration)*, 2019 FC 1575 [*Moon*] to be distinguishable to the facts of this case. In *Moon,* the applicant demonstrated that the consultant acted beyond their mandate and that they were not authorized to file the materials on her behalf. In the Applicant's case, there was no evidence that the consultant acted without his authorization.

[37] In this case, the evidence before the Officer was that Mr. Falsafi asserted being the victim of fraud and a fraudulent LMIA had been included with his application. There was no evidence that the Applicant acted reasonably or reviewed the application to ensure its accuracy before the application was submitted.

[38] Under the particular circumstances of this case, having found that the Applicant did not exercise due diligence in respect of his application and given the conclusion of the submission of a fraudulent LMIA, the Officer was not required to consider whether the innocent error exception applied. This finding was within the Officer's discretion. Regrettably, the Applicant was unable to demonstrate that the Decision was unreasonable in light of the factual and legal constraints that bear upon it. As such, I must dismiss this application for judicial review.

[39] Neither party presented a question for certification. I agree none arise in this case.

JUDGMENT in IMM-10457-23

THIS COURT'S JUDGMENT is that

1. For the foregoing reasons, this application for judicial review is dismissed.

2. There are no questions for certification.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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