Federal Court  Cour fédérale

**Date: 20241023**

**Docket: IMM-10055-23**

**Citation: 2024 FC 1674**

**Toronto, Ontario, October 23, 2024**

**PRESENT: The Honourable Madam Justice Blackhawk**

**BETWEEN:**

**ABDOLRASOUL DARYOUSH KARIMI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant seeks to set aside a decision dated July 18, 2023, by a visa officer ("Officer") of Immigration, Refugees and Citizenship Canada ("IRCC") refusing his application for a Canadian work permit under the International Mobility Program pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] on the basis that he made a misrepresentation ("Decision").

[2] The Applicant asks this Court to set the Decision aside and send the matter back to the IRCC for redetermination by a different officer.

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

## II. Background

[4] The Applicant is an Iranian citizen. In January 2017, he applied for permanent residence status as a member of the self-employed persons class. That application was refused in October 2018 because the officer was not satisfied he Applicant had the intention and ability to become self-employed in Canada. He was granted judicial review on procedural fairness grounds (*Tafreshi v Canada (Citizenship and Immigration)*, 2022 FC 1089 at paras 148–153).

[5] On June 16, 2020, the Applicant submitted an application for a work permit under the International Mobility Program – LMIA Exempt program pursuant to subsection 205(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[6] The Applicant incorporated a business, Atlas Pars Inc., in Winnipeg, Manitoba on January 31, 2020. This business specializes in fish farming with a focus on ornamental fish. The Applicant is listed as the director and a 60% shareholder.

[7] The Applicant received a procedural fairness letter ("PFL") on December 1, 2020, advising of the Officer's concerns that the bank statements provided in support of the application were fraudulent. The Applicant was given 30 days to respond to the PFL to submit additional information. The Officer advised the Applicant of the consequences of a finding of misrepresentation.

[8] The Applicant responded to the PFL on December 21, 2020, stating that "while trying to convert the Iranian calendar to the Gregorian date, the bank clerk made a mistake and put the incorrect date on their statement." He also provided his notarized statement, a letter of support of the account balance on May 9, 2020, and the bank activities on May 8th and 9th, 2020.

[9] On July 18, 2023, the Applicant's application was refused because the Officer determined he was inadmissible to Canada pursuant to 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*.

[10] The Applicant commenced an application for leave and judicial review of the Decision on June 26, 2023. This Court granted leave for judicial review on June 24, 2024.

## III. Issues and Standard of Review

[11] The issues in this judicial review application are:

1. Was the Decision reasonable?
2. Was the Decision in breach of the principles of procedural fairness or natural justice?

[12] The standard of review applicable to the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23). The standard of review applicable to material misrepresentations is also reasonableness (*Mhlanga v Canada (Citizenship and Immigration)*, 2021 FC 957 [*Mhlanga*] at para 15; *Vavilov* at para 86).

[13] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is judicial restraint

and respect for the distinct role of administrative decision makers. Pursuant to the *Vavilov* framework, a reasonable decision 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" (*Vavilov* at para 85).

[14] The Court must find an error in the decision that is central or significant, which renders the decision unreasonable (*Vavilov* at para 100).

[15] The standard of review for procedural fairness issues is correctness, or akin to correctness (*Vavilov* at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). The reviewing court must consider what level of procedural fairness is necessary in the circumstances and whether the "procedure followed by the administrative decision maker respect[s] the standards of fairness and natural justice" (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13). In other words, a court must determine if the process followed by the decision maker achieves the level of fairness required in the circumstances (*Kyere v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 120 at para 23, citing with approval *Mission Institution v Khela*, 2014 SCC 24 at para 79 and *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115).

## IV. Submissions of the Parties

[16] The Applicant submitted that the PFL was not sufficient to highlight the nature of the Officer's concerns with respect to the financial information provided. Further, the Applicant submitted that the Officer unreasonably found that the information provided in response to the PFL was insufficient.

[17] The Respondent argued that the Applicant had the onus and a continuing duty of candour to provide complete, accurate, honest, and truthful information when applying for entry into Canada (*Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 [Kazzi] at para 38).

[18] The Respondent submitted that the PFL provided to the Applicant was sufficiently transparent, as the Applicant was advised which document was of concern and why it was of concern.

## V. Analysis

[19] This Court has addressed the degree of detail that is required to be disclosed in a PFL. In *Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183, a matter similar to this application, the Court found:

> [26] In the present case, the Officer alerted the Applicant to the concern, stating "[s]pecifically, I have concerns that the BOC bank statement that you submitted in support of your financial status is not genuine". In my view, this was sufficient information to advise the Applicant of the concern. The Applicant was given an opportunity to respond and did so.
>
> …
>
> [36] In the present case, although the documents submitted by the Applicant in response to the procedural fairness letter still raised concerns about the veracity of the bank statements, the concerns remained the same and did not trigger an additional or second duty of procedural fairness. The Officer's concerns about the genuineness of the information were squarely put to the Applicant. Applying the principles of the jurisprudence, it is clear that the Applicant bears the onus of supporting her application with sufficient and accurate, genuine information. The evidence referred to as "extrinsic" by the Applicant was the basis of the Officer's concerns about the genuineness of the Bank statements. These concerns were squarely put to the Applicant and she was given an opportunity to respond. Although the Applicant submits that she was unaware of the particular concern, her own response sought to address the inaccurate codes at the bottom of the statements. The

> Officer found that the Applicant's response and the additional documents she submitted did not address his concerns. The Officer was not required to give the Applicant another opportunity to respond to the concerns. There was no breach of procedural fairness.

[20] Similarly, in *Mhlanga* this Court found that where an officer clearly states concerns regarding the authenticity of documentation, and the response does not address those concerns, there is no breach of procedural fairness (at para 36). In addition, the Court distinguished the *Ntaisi v Citizenship and Immigration*, 2018 CanLII 73079 (FC) case relied upon by the Applicant in this matter, noting that the decision in that application was a "speaking order," that is accorded less precedential value (*Mhlanga* at para 34).

[21] A finding of misrepresentation "must be made on the basis of clear and convincing evidence" (*Baniya v Canada (Citizenship and Immigration)*, 2022 FC 18 at para 19). Where an officer makes a finding of misrepresentation, "more extensive reasons" are required (*Vargas Villanueva v Canada (Citizenship and Immigration)*, 2023 FC 66 at para 18). However, this does not detract from the onus on an applicant to provide complete, accurate, honest, and truthful information on their application (*Kazzi* at para 38; see also *Vahora v Canada (Citizenship and Immigration)*, 2022 FC 778 at paras 26–31). This includes an obligation on the part of an applicant to verify the information provided in their application (*Kaur v Canada (Citizenship and Immigration)*, 2023 FC 1454 at paras 38, 40). Officers do not have an obligation to conduct an interview to obtain better information from an applicant (*Mhlanga* at para 31). There is no breach of procedural fairness where an applicant has been given a reasonable opportunity to respond to the concerns (*Mhlanga* at para 31, citing *Suri v Canada (Citizenship and Immigration)*, 2020 FC 86 at para 20; see also *El Rifai v Canada (Citizenship and Immigration)*, 2024 FC 524 [*El Rifai*] at para 3).

[22] Officers are not under a duty to accept each explanation provided in response to a PFL when assessing allegations of misrepresentation (*Sinnachamy v Canada (Citizenship and Immigration)*, 2012 FC 1092 at para 17). Officers may exercise discretion to determine if misrepresentations or omissions are material and relevant to a matter that "induces or could induce an error in the administration of the IRPA" (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 27). Finally, as noted in *El Rifai*, officers are not required to provide information on the specific methods used to conclude that a document is fraudulent (at para 3).

[23] The December 1, 2020 PFL letter states:

> … I have concerns that you have not fulfilled the requirement put upon you by subsection 16(1) of the IRPA which states:
>
> 16(1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonable [*sic*] requires.
>
> **Specifically, I have concerns that the Bank statements which you have provided in support of your application are fraudulent.**
>
> Please note that if it is found that you have engaged in misrepresentation in submitting your application, you may be found to be inadmissible under section 40(1)(a) of the Immigration and Refugee Protection Act. A finding of such inadmissibility would render you inadmissible to Canada for a period of five years according to section 40(2)(a)[.]
>
> [Emphasis in original.]

[24] It is clear that the Officer had a concern that the bank statements provided in support of the Applicant's application may have been fraudulent.

[25] The Applicant has submitted that the PFL was deficient as the letter did not enumerate the specific concerns the Officer had with the bank statements, but rather just sets out that the Officer had "concerns that the Bank statements which you have provided in support of your application are fraudulent." The Applicant submitted that this is unfair.

[26] In my view, and consistent with the jurisprudence noted above, the PFL provided to the Applicant was reasonable and sufficiently clear, and it did not breach the Applicant's right to procedural fairness.

[27] It is clear from the PFL that the Officer was concerned generally with the veracity of the information contained in the bank statements provided in support of the Applicant's application.

[28] Further, in view of the principles noted above, the Applicant had a duty to ensure that all the information submitted in support of his application was accurate. In other words, he had a duty to ensure that all information, including the bank account balances, were correctly set out in the supporting documentation (*Mhlanga* at para 40).

[29] The Applicant also argued that he was denied natural justice because the Officer failed to respond to the requests for clarification or set out specific concerns. For the reasons noted above, I do not agree.

[30] The Applicant also argued that the Officer did not indicate how the alleged fraudulent information was material to his application. With respect, I do not agree. The jurisprudence is clear that "bank statements are material and relevant to a consideration" (*Zolfagharian v Canada (Citizenship and Immigration)*, 2021 FC 1455 at para 19). Further, as noted by the Respondent, the Ankara visa office provides a checklist for applicants, which highlights that applicants are to

provide copies of bank statements or bank books covering the past six months. (Temporary Resident Visa – Ankara Visa Office Instructions (IMM 5816 E)).

## VI. Conclusion

[31] In light of the foregoing, this application for judicial review is dismissed.

[32] The parties did not pose any questions for certification, and I agree that there are none.

**JUDGMENT in IMM-10055-23**

**THIS COURT'S JUDGMENT is that**:

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-10055-23 |
| **STYLE OF CAUSE:** | ABDOLRASOUL DARYOUSH KARIMI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | SEPTEMBER 19, 2024 |
| **JUDGMENT AND REASONS:** | BLACKHAWK J. |
| **DATED:** | OCTOBER 23, 2024 |

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| Kareena Wilding | FOR THE RESPONDENT |

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