Federal Court  Cour fédérale

Date: 20241029

Docket: IMM-7898-23

Citation: 2024 FC 1718

Toronto, Ontario, October 29, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

MAJID MANSOORYAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Mansooryan [Applicant] is seeking to judicially review a decision made by a visa officer [Officer] from Immigration, Refugees and Citizenship Canada [IRCC] in the Ankara, Türkiye Visa Office. The Officer denied the Applicant's work permit application and found the Applicant inadmissible pursuant to section 40 of the *Immigration and Refugee Protection Act*,

S.C. 2001, c. 27 [IRPA] for having misrepresented material facts. The application contained a fraudulent Labour Market Impact Assessment [LMIA].

[2] The Applicant is a citizen of Iran. He alleges that he was defrauded by a Tehran based immigration consultant who did not give him access to his IRCC account when the consultant submitted a fake LMIA on his behalf. The Applicant seeks to enter evidence at judicial review, not before the Officer, regarding the immigration consultant and a letter where he attempted to withdraw his application. Similar situations faced by other applicants in relation to the same Tehran based consultant are the subject of recent decisions of this Court: *Mohammadizadeh v Canada (Citizenship and Immigration),* 2024 FC 1276 [*Mohammadizadeh*]; *Falsafi v Canada (Citizenship and Immigration),* 2024 FC 1458.

[3] For the reasons that follow, the application for judicial review is dismissed. The Applicant has not demonstrated that based on the record that was before the Officer, the decision to refuse the work permit and to find him inadmissible for misreprestnation was unreasonable or procedurally unfair.

II. Background to the Misrepresentation Finding

A. *The Alleged Fraud*

[4] In affidavit evidence filed at Judicial review, the Applicant provided evidence as to how he found himself a victim of fraud. However, none of this information was before the Officer. The following is a summary of the relevant evidence he seeks to admit [New Evidence]:

a. In 2018, the Applicant began his search for companies in Iran that assist with his immigration to Canada. He ultimately entered into a contract with "Rahgozar Sazan Ati Company" also known as "Visanew". The Applicant met with the manager, Mahdi Shavandifar [Consultant], and provided his supporting documents. The Consultant informed the Applicant that he required a job offer to obtain a Labour Market Impact Assessment [LMIA] and to use it for his work permit application.

b. The contract with the Consultant provided details of the job offer title, name, location of the employer and annual income. The Consultant quoted the Applicant $9,500 USD to assist the Applicant with securing a LMIA supported job offer and help with his work permit application.

c. In February of 2022, the Consultant submitted an employer-specific work permit to IRCC on the Applicant's behalf. The Applicant did not review or sign the forms. For online filing and access, the Consultant created a GCkey for the Applicant and did not provide the Applicant access to his account. When IRCC sent the Applicant, through the Consultant, the procedural fairness letter [PFL] to respond to their concerns about the fraudulent LMIA, the Consultant did not provide it to him.

d. In December of 2022, after hearing of several complaints in Tehran against the Consultant, the Applicant enlisted the services of a lawyer in Vancouver. The Applicant requested his GCMS notes through the Vancouver lawyer on December 17, 2022, but did not receive them until three to four months later. Shortly after receiving the GCMS notes, the Applicant was able to obtain his GCKey details from some of the other "victims" of the Consultant's scheme. The Applicant then hired a Montreal-based lawyer [Montreal Lawyer] for assistance in handling the situation.

e. On April 16, 2023, the Montreal Lawyer attempted to send a letter to the Migration Section of the Embassy of Canada to Türkiye. The letter explained that the Applicant, along with several other candidates, used a firm in Iran called ‘Visanew’, and that the Applicant had lost trust in this firm. The letter stated “Mr. Mansooryan has lost trust of these lawyers and wants to withdraw his application for a temporary work permit to try to find honest people who this time can help him find a real employer.”

f. On April 24, 2023, the Applicant launched a formal complaint against the Consultant with the Majesty of General & Revolution Justice Office in Iran. The Applicant explains that the documents submitted on his behalf to IRCC were fraudulent, and that Consultant never actually had a licence to conduct business in immigration. Furthermore, that the Consultant lied about the foreign companies in the documents. The Applicant provided evidence of the actions taken by the Iranian justice system against the Consultant and how many more visa applicants had found themselves in a similar situation.

g. The parties dispute whether the letter the Montreal Lawyer attempted to file with IRCC was properly submitted online. The Respondent does not dispute that if the letter was filed, the Officer had a duty to take it into account. However, they are submitting that the letter never made it into the electronic filing system. There is a discrepancy or typo in the file number listed on the letter. However, more importantly, the Respondent filed evidence from IRCC officials on the type of automatic electronic paper trail a properly submitted document produces. This includes an automatic reply to the sender, in addition to other materials on the IRCC system. None of these are present on the file. By contrast, the only evidence the

Applicant has submitted about the letter is an email from the Montreal Lawyer to the office of the current counsel, confirming that documents in the attachment (which included the letter) were sent. The Applicant points to what they consider are other irregularities in the GCMS notes to suggest that the GCMS notes are not reliable and complete, including the absence of a notation about the PFL, which clearly exists on file. They argue that the absence of a notation about the letter should not be interpreted as absence of that evidence before the Officer. However, the Applicant did not explain how his letter, if properly filed, did not generate the automatic reply or any other trace in the IRCC system, and nor did he file an affidavit from the Montreal Lawyer on the steps he took to file the letter.

[5] To summarize, on February 23, 2023, through the Consultant, IRCC sent the Applicant a PFL indicating that the Officer had concerns the LMIA number was fraudulent and gave him an opportunity to reply. By the time the Officer made a final decision after the deadline imposed in the PFL, they had not received any reply from the Applicant or his newly appointed counsel, the Montreal Lawyer. As a result, the Officer made a decision based on the materials before them and refused the application. They also found that the Applicant was inadmissible for misrepresentation pursuant to section 40(1)(a) of IRPA because he had relied on a fraudulent LMIA.

B. *Decision Under Review*

[6] The PFL, dated February 22, 2023, provided the Applicant had 30 days to respond to the Officer's concern, which was: "Specifically, I have concerns that the Labour Market Impact

Assessment (LMIA) number, which you have provided in support of your application, is fraudulent." The Officer also stated that the Applicant's failure to respond would likely result in a refusal based on the information before the Officer. The Officer outlined the consequences of engaging in misrepresentation, including inadmissibility to Canada for five years.

[7] On April 28, 2023, well after the thirty-day deadline to respond to the PFL had passed, the Officer rejected the Applicant's work permit application and found the Applicant inadmissible to Canada for five years in accordance with section 40(1)(a) of the IRPA. The Officer did not receive any information from the Applicant to support his claim that the Applicant was a victim of fraud or did not receive the PFL.

[8] The GCMS notes, which constitute part of the reasons, read:

> The applicant has not responded to the PFL. As a result, the concerns on file remain unaddressed. After reviewing the information on file as well as all the applicant's submissions, I'm satisfied that in the course of this application the applicant has misrepresented or witheld material facts related to a relevant matter that could have induced an error in the administration of IRPA. As a result, I am satisfied they are inadmissible to Canada under A40.Application Refused. I am not satisfied that the applicant meets the requirements of R200 in order to be issued a work permit. Application refused.

III. Issues and Standard of Review

[9] The Applicant challenges the Decision on the basis that it was unreasonable and the Applicant suffered a breach of procedural fairness due to the actions of the Consultant in Iran.

[10] The standard of review applicable to visa decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; S*hah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). 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 that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

[11] The issue of procedural fairness is to be reviewed on the correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific Railway Company*] at paras 37-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35). The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paras 21-28 (*Canadian Pacific Railway Company* at para 54).

[12] Regarding questions of procedural fairness, Justice Régimbald recently wrote in *(Nguyen v Canada (Citizenship and Immigration)*, 2023 FC 1617 at para 11:

> the reviewing court must be satisfied of the fairness of the procedure with regard to the circumstances (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 215 at para 6; *Do v Canada (Citizenship and Immigration)*, 2022 FC 927 at para

> 4; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]). In *Canadian Pacific Railway*, the Federal Court of Appeal noted that trying to "shoehorn the question of procedural fairness into a standard of review analysis is… an unprofitable exercise" (at para 55). Instead, the Court must ask itself whether the party was given a right to be heard and the opportunity to know the case against them, and that "[p]rocedural fairness is not sacrificed on the altar of deference" (*Canadian Pacific Railway* at para 56).
>
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IV. Legal Framework:

A. *Misrepresentation:*

[13] The test for misrepresentation is two part, and both factors must be present: 40(1)(a) misrepresentation occurs if: 1) a misrepresentation was made by the Applicant, and 2) that misrepresentation is material to the point of inducing an error in the administration of the IRPA. It is not required that the Applicant's misrepresentations were intentional, deliberate or negligent before a section 40(1)(a) finding can be made (*Bellido v Canada (MCI)*, 2005 FC 452 at paras 27-28).

[14] The exception to section 40 is narrow and applies to truly extraordinary circumstances where the applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 17 [*Wang*]. The exception also applies when the applicant was subjectively unaware that they were withholding information (*Wang*).

[15] The parties do not dispute that the integrity of LMIA is material in the context of a work permit application.The Applicant argues that in light of the history of this case, the misrepresentation was innocent. However, there was no evidence before the Officer to reasonably suggest this.

B. *New Evidence*

[16] Generally, the evidenciary record at judicial review is restricted to what was before the decision-maker, unless exceptional circumstances exists (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency* (Access Copyright), 2012 FCA 22 at para 19 [*Access Copyright*]).

[17] In *Access Copyright* the Federal Court of Appeal recognized three (3) exceptions to this general rule: (1) the new evidence contains general contextual information; (2) the new evidence responds to questions of procedural fairness; or (3) the new evidence highlights the complete absence of evidence before the administrative decision-maker (*Access Copyright* at paras 19 and 20).

C. *Relevant Provisions*

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]

Misrepresentation **40 (1)** A permanent resident or a foreign national is inadmissible for misrepresentation **(a)** for directly or indirectly misrepresenting or withholding material facts relating to a relevant	**Fausses déclarations** **40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants : **a)** directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait,

matter that induces or could induce an error in the administration of this Act;
(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;
(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection; or
(d) on ceasing to be a citizen under
(i) paragraph 10(1)(a) of the Citizenship Act, as it read immediately before the coming into force of section 8 of the Strengthening Canadian Citizenship Act, in the circumstances set out in subsection 10(2) of the Citizenship Act, as it read immediately before that coming into force,
(ii) subsection 10(1) of the Citizenship Act, in the circumstances set out in section 10.2 of that Act, or
(iii) subsection 10.1(3) of the Citizenship Act, in the circumstances set out in section 10.2 of thatAct.

ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
b) être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;
c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou de protection;
d) la perte de la citoyenneté :
(i) soit au titre de l'alinéa 10(1)a) de la Loi sur la citoyenneté, dans sa version antérieure à l'entrée en vigueur de l'article 8 de la Loi renforçant la citoyenneté canadienne, dans le cas visé au paragraphe 10(2) de la Loi sur la citoyenneté, dans sa version antérieure à cette entrée en vigueur,
(ii) soit au titre du paragraphe 10(1) de la Loi sur la citoyenneté, dans le cas visé à l'article 10.2 de cette loi,
(iii) soit au titre du paragraphe 10.1(3) de la Loi sur la citoyenneté, dans le cas visé à l'article 10.2 de cette loi.

Obligation — answer truthfully
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 reasonably requires

Obligation du demandeur
16. (1) L'auteur d'une demande au titre de la présente loi doit répondre véridiquement aux questions qui lui sont posées lors du contrôle, donner les renseignements et tous éléments de preuve pertinents et présenter les visa et documents requis.

V. Analysis

A. *New Evidence*

[18] All information pertaining to the Consultant's fraud is new evidence not before the Officer that the Applicant seeks to enter at the judicial review stage.

[19] As stated, *Access Copyright* has recognized three exceptions for admitting new evidence. These exceptions are meant to advance the role of the Court on judicial review without substituting the Court for the role of the administrative decision maker. I, therefore, must answer whether the three exceptions apply to the facts of this case:

A. **General Contextual Information**: An affidavit that provides general background in circumstances where that information might assist understanding the issues relevant to judicial review. The affidavit should not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the administrative decision maker.

B. **Response to Concerns about Procedural Fairness**: Affidavits that are necessary to bring to the attention of the judicial review court procedural defects that are not found in the evidentiary record of the administrative decision-maker, so the decision maker can fulfil its role of reviewing for procedural fairness.

C. **Complete Absence of Evidence:** An affidavit received on judicial review in order to highlight the complete absence of evidence before the administrative decision-maker when it made a particular finding (*Access Copyright* at para 20;

see also *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 23-26 [*Bernard*]).

[20] The New Evidence submitted by the Applicant about the Consultant's fraud and legal battles in Iran is not general context and does not fit the exception to new evidence because it relates to the Consultant and engages substantively with the merits of the decision. Nor does the New Evidence demonstrate how the Consultant got into the way of the Montreal based lawyer and their timely submissions.

[21] The letter from the Montreal Lawyer, stating that the Applicant wished to withdraw his application, is a direct response to the PFL and goes to the question of procedural fairness. However, it should only be accepted as evidence if it was properly sent. The relevance of that letter and related affidavit evidence is that it would show a procedural defect, that the IRCC ought to have considered it in its reasons but did not. This depends on a finding of fact as to whether the Montreal Lawyer's letter was properly before the Officer but not taken into account.

[22] I do not find that the letter was before the Officer. On one hand, the Respondent has provided detailed information on the electronic trail generated when documents are submitted. On the other hand, not only did the Montreal Lawyer's withdrawal letter not generate the electronic paper trail, the Applicant's own evidence on its submission is scant at best. It does not include evidence of a system-generated email response, and nor has the Applicant filed an affidavit from the Montreal Lawyer explaining the steps he took to submit. The Applicant only provides evidence of an email from the Montreal Lawyer to the office of his current lawyer where the Montreal Lawyer had attached the PDF format documents that he thought he had filed,

which included the letter. This was filed in the form the a letter from the Montreal Lawyer to current counsel and a screenshot of the letter (in PDF) located in the Montreal Lawyer's file. This information only confirms that the Montreal Lawyer wrote the letter and intended to send it. He might have sent the letter to somewhere in good faith, and believed that it was to the IRCC.

[23] The Applicant further submits that the irregularities with the GCMS notes, including how it states that certain entries were "[p]romoted manually due to automation error" should be viewed as a system-wide deficiency, which should explain why the Montreal Lawyer's letter was not entered into GCMS. In light of this, they submit the Court should accept the statement of the Montreal Lawyer, a lawyer in good standing with Bareau de Quebec and an officer of the Court. However, the issue is not limited to the deficiency in GCMS. The letter left no electronic trail, and the Montreal Lawyer did not provide any evidence, such as an affidavit, to shed light into how he submitted the letter. Therefore, there is insufficient reliable evidence before the Court to conclude that on the balance of probabilities, the letter was properly filed with the IRCC. The Montreal Lawyer's potentially good intentions or beliefs are irrelevant to my fact finding exercise here. The Applicant provided the letter and a screenshot of the letter located in the Montreal Lawyer' file. This is insufficient to conclude that the IRCC received it. By the time the Officer had to evaluate a response to his PFL, there was no response to evaluate. The Officer made their decision based on everything that was before them, and after they had provided the Applicant with an opportunity to be heard. The reasons reflect this in a clear chain of analysis.

[24] In *Mei v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1040 [*Mei*], Justice Montigny, as he then was, wrote that an Applicant bears the burden of ensuring a letter is

properly sent and received by IRCC. *Mei* centers on a finding of inadmissibility and misrepresentation in an application for permanent residence. The applicant did not respond to a PFL from the Officer and was given three months before the decision was made. In *Mei*, Justice Montigny held that the applicant could not assume the document was received by IRCC (the applicant could have relied on rules such as *Immigration Division Rules,* SOR/2002-229, Rule 31 deeming a mailed document received in seven days, but did not (*Mei* at para 23). Since I do not find the letter was properly sent, and the Applicant bears the onus of proving that it was sent, I do not accept the letter as new evidence that was not before the Officer.

[25] In *Mohammadizadeh*, Justice Sadrehashemi reviewed a similar fact scenario where the same Consultant had also prejediced Mr. Mohammadizadeh. Visanew (the company the Consultant runs) also submitted a fake LMIA for Mr. Mohammadizadeh. However, five months after filing the application, Mr. Mohammadizadeh attempted to withdraw his work permit application. There was no question that the letter was received by the IRCC but the Officer devalued it and stated the applicant "is responsible for the information submitted, including due diligence in ensuring everything submitted is authentic prior to the submission of the application" (*Mohammadizadeh* at at para 9). The Court held that, "the determinative issue [on judicial review] is the consideration of Mr. Mohammadizadeh's withdrawal request that was filed months prior to receiving IRCC's procedural fairness letter that set out the basis for the misrepresentation concern" (*Mohammadizadeh* at para 11). This is not the case in this situation, as the Applicant's letter was never before the Officer.

[26] In *Bernard*, the FCA held that new evidence may be admitted where evidence relates to an issue of natural justice, procedural fairness, improper purpose or fraud that could not have

been placed before the administrative decision-maker (*Bernard* at para 25). However, in this case, the evidence could have been placed before the IRCC, but despite the Applicant's belief, it was not before the Officer.

[27] I do not find that the new evidence is admissible on judicial review. The evidence was not before the Officer at the time they made their decision, and they could not have reasonably known about it. The evidence does not fit within the exceptions for admission of new evidence (*Access Copyright* at para 20*).*

B. *Reasonableness and Fairness of the Decision*

[28] The Applicant submits that the Officer's decision is unreasonable as they failed to consider whether the Applicant's circumstances fell under the innocent misrepresentation.

[29] A finding of misrepresentation under section 40 of the IRPA is a serious matter, which should not be made in the absence of clear and convincing evidence. The visa officer must make a decision that is supported by the evidence before them (*Xu v Canada (Citizenship and Immigration)*, 2011 FC 784 at para 16).

[30] Generally, visa applications attract procedural fairness requirements on the low end of the spectrum (*Abdool v Canada (Citizenship and Immigration)*, 2024 FC 1172 at para 22; *Asanova v Canada (Citizenship and Immigration)*, 2020 FC 1173 [*Asanova*]. A concern about misrepresentation triggers a higher level of procedural fairness compared to that of which is

engaged in general visa applications (*Asanova* at para 30*; Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at para 27).

[31] In the Applicant's situation, the Respondent sent a procedural fairness letter and provided time for the Applicant to respond. Unfortunately, the Applicant was unable to access his account. However, the duty to be diligent cannot be shifted from the Applicant to mean that there is a further obligation on IRCC to track down an Applicant to receive a meaningful answer to a PFL. The Officer clearly stated that their concern was with whether the provided LMIA number was fraudulent. The Decision, which occurred after the deadline to respond passed, was reached in a in a procedurally fair manner.

[32] Having found that the new evidence is not admissible, the Officer's decision was also reasonable. The Officer was left with evidence of a fraudulent LMIA, no evidence to the contrary, and no explanation. They provided reasons that are justifiable, intelligible and transparent based on the evidence before them.

[33] The Applicant relies on the case of *Moon v Canada (MCI)*, where Ms. Moon applied for an electronic travel authorization through an immigration consultant (*Moon v Canada (Citizenship and Immigration)*, 2019 FC 1575 [*Moon*]). The case is factually distinguishable from the Applicant's case. In *Moon*, Ms. Moon's immigration consultant incorrectly assumed she did not have a criminal record and failed to disclose it. When Ms. Moon later rectified the error and disclosed her criminal record, her ETA was denied and the officer found misrepresentation under section 40(1) of the IRPA. Ms. Moon submitted evidence to IRCC explaining that the omission of her traffic violation in the first ETA application was innocent

because the consultant submitted it without her knowledge. This information was before the officer but they failed to acknowledge her letters to this effect (*Moon* at para 20).

[34] In *Moon*, the applicant provided the officer with an explanation for the misrepresentation before a decision was rendered and the Officer failed to acknowledge the explanation (*Moon* at paras 35-37). In the Applicant's case, no information about the alleged fraud or misrepresentation came before the Officer. The Officer's reasons are reasonable.

VI. Conclusion

[35] The Application for judicial review is dismissed. The Decision was reached in a procedurally fair manner and is reasonable based on the information before the Officer.

JUDGMENT IN IMM-7898-23

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.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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