Federal Court  Cour fédérale

Date: 20120713

Docket: IMM-8232-11

Citation: 2012 FC 885

Ottawa, Ontario, July 13, 2012

PRESENT: The Honourable Mr. Justice Rennie

BETWEEN:

REV. JEEWANANDA THERO DIWALPITIYE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of a decision of Immigration Counsellor B. Hudson (Counsellor Hudson), dated April 5, 2011, which found the applicant inadmissible for misrepresentation pursuant to section 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), and therefore refused his application for permanent residence as a skilled worker. For the reasons that follow the application is dismissed.

Facts

[2] The applicant, Rev. Jeewananda Thero Diwlapitiye, is a citizen of Sri Lanka and a Buddhist priest. He is currently "stationed" at a Buddhist monastery in Toronto where he conducts religious services and provides spiritual and moral guidance to members. He submitted an application for permanent residence in 2009 under the federal skilled worker class as a priest.

[3] On the form IMM0008 (Schedule 1, Background/Declaration), the applicant indicated in Question 9 that he had never applied for, or been refused, immigration status in Canada. However, the applicant had in fact applied for temporary resident visas on several previous occasions and was refused on one occasion. As a result, Officer N. Piyatissa sent the applicant a letter on February 24, 2011, advising him that he may be inadmissible for misrepresentation, and providing him an opportunity to respond.

[4] The applicant responded by letter explaining that he had previously applied for a temporary resident visa, which was refused, but a subsequent application was successful. He admitted his error in completing the application form, explaining that it was merely an oversight and asking that his application be processed.

[5] As indicated in the Computer Assisted Immigration Processing System (CAIPS) notes, Officer Piyatissa reviewed the applicant's response and recommended not finding him inadmissible for misrepresentation. The relevant portion of the CAIPS notes state:

> I DO NOT CONSIDER PA'S ACTIONS /OMISSONS [*sic*] TO BE SUFFICIENT [*sic*] SERIOUS ENOUGH TO WARRANT A REFUSAL UNDER MIS-REP.

[6] However, Counsellor Hudson reviewed the file and determined that the applicant was inadmissible for misrepresentation. In the CAIPS notes he noted that the applicant had strong English skills and was assisted by a consultant in completing the application. He found it implausible for the applicant to have forgotten to mention seferal previous visa applications, and further found that this omission could have induced an error because it was relevant to the applicant's eligibility and admissibility. The officer therefore found the applicant inadmissible and refused his application for permanent residence.

Issue

[7] The issue raised by this application is whether the officer's decision was reasonable.

Analysis

[8] The applicant acknowledges that he erroneously ticked "No" in the question about having made previous applications for visas to Canada; however, he argues that this was not a material misrepresentation and that it was merely an oversight, since there was nothing to be gained by omitting his past applications.

[9] Counsellor Hudson found that this misrepresentation could have induced an error in the administration and the *IRPA*, which is one of the criteria referenced in section 40(1)(a) of the *IRPA*. He reached this conclusion because the application being reviewed was based on work experience in Canada, and thus the omission of his immigration history affected the analysis of both admissibility and eligibility. While the decision tests the limits of reasonableness the applicant has not persuaded the Court that it was unreasonable to find this to be a material misrepresentation.

This decision is consistent with the standard of review governing review of a decision of visa officer.

[10] The applicant had advanced several arguments regarding the existence of an exception to section 40(1)(a) in the case of an innocent mistake. However, in my view it is unnecessary to address those arguments because the CAIPS notes demonstrate that Counsellor Hudson found this not to have been an innocent mistake. He noted that the applicant speaks English well and that he was assisted by a consultant. He also expressed scepticism that the applicant could have forgotten to mention several previous applications. Since there were two separate questions regarding past applications and the applicant gave an untruthful answer to both of them, it was reasonable for Counsellor Hudson to conclude that this was not a mere oversight and therefore find the applicant inadmissible.

[11] The question proposed for certification does not satisfy the criteria set forth in section 74(d) of the *IRPA* and as articulated by the Court of Appeal in *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145, [2010] 1 FCR 129. The proposed question is premised on findings of fact that have not been established; namely that the representation was both innocent and immaterial. An affirmative answer to the question would not, therefore, be dispositive of the case. Secondly, the degree of *mens rea* required under section 40(1)(a) has previously been considered by this Court; *Tan Gatue v Canada (Citizenship and Immigration)*, 2012 FC 730; *Sayedi v Canada (Citizenship and Immigration)*, 2012 FC 420.

[12] I am not satisfied that special circumstances as required by Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules* (SOR/93-22) have been demonstrated to warrant an award of costs.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review be and is hereby dismissed. There is no question for certification.

"Donald J. Rennie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8232-11
STYLE OF CAUSE:	**REV. JEEWANANDA THERO DIWALPITIYE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION**
PLACE OF HEARING:	Toronto
DATE OF HEARING:	July 5, 2012
REASONS FOR JUDGMENT:	RENNIE J.
DATED:	July 13, 2 12

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