Federal Court  Cour fédérale

Date: 20170214

Dockets: IMM-1928-16
IMM-1930-16
IMM-1408-16
IMM-1692-16

Citation: 2017 FC 184

Ottawa, Ontario, February 14, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ALKA PUNIA AND
KRUNAL CHANDRAKANT PATIL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] for a consolidated judicial review of four decisions rendered by immigration officers at the Consulate General of Canada in Bangalore, India [Bangalore Decisions] and

Los Angeles, United States of America [Los Angeles Decisions], dated March 4 and 14, 2016, respectively, in which Alka Punia [Female Applicant] and Krunal Chandrakant Patil [Male Applicant] were denied their applications for temporary resident visas [TRV].

II. BACKGROUND

[2] The Applicants are citizens of India and have resided in Corona City, USA since February 25, 2016. They are a married couple with two Canadian-born children. Since 2006, both Applicants had primarily resided in Canada on multiple study and work permits until their return to India in 2015.

A. *Immigration History from 2006 to 2015*

[3] The Female Applicant arrived in Canada on a two-year study permit issued in September 2006, after her initial application for a study permit was refused the month prior. She completed her studies in April 2007 and remained in Canada on a post-graduate open work permit until June 2009, when she married the Male Applicant, then a student in Canada, and obtained open work permits as his dependent. After acceptance to a graduate program of study, the Female Applicant applied and was issued a two-year study permit with an authorization for employment on May 14, 2015; however, she deferred her studies until September 2016 and worked instead. She subsequently applied for and received a one-year bridging work permit in February 2016.

[4] The Male Applicant arrived in Canada on a one-year study permit issued in November 2006, which was renewed four times until August 2015. He then received an open work permit valid for five months in October 2015.

[5] In addition to their applications for study and work permits, the Applicants have also applied for permanent residence under the Canadian Experience Class [CEC] for the Female Applicant and as a dependent for the Male Applicant. The application for permanent residence was denied in November 2013 on the basis that the Female Applicant did not meet the skilled work experience requirement. The Applicants then filed a second application for permanent residence under the CEC in July 2014, which has not been decided.

B. *Applications for TRV*

[6] In August 2015, the Male Applicant left Canada for India to visit his ill grandmother. The Female Applicant joined him in October 2015, when she visited her ill father. On December 21, 2015, while still in India, both Applicants applied for TRVs to return to Canada. Shortly afterwards, the Applicants received a procedural fairness letter dated December 30, 2015 regarding concerns about the truthfulness as to whether they had ever been refused visas or permits, denied entry, or ordered to leave Canada or any other country. The Female Applicant responded by email dated January 5, 2016 and confirmed that she had been refused a study permit in August 2006. The Male Applicant also responded by email on January 5, 2016 and confirmed that he had never been refused a visa or permit for any country, although he had received an appointment letter regarding his applications twice. Neither response included information regarding the refusal of the application for permanent residence in November 2013.

[7] On February 25, 2016, while awaiting the decisions for their December 2015 TRV applications, the Applicants travelled to Los Angeles, USA to visit the Male Applicant's ill father. The next day, the Applicants submitted applications for TRVs at the Consulate General of Canada in Los Angeles.

III. DECISIONS UNDER REVIEW

A. *Bangalore Decisions*

[8] A decision sent from a Visa Officer at the Bangalore Consulate to the Female Applicant by letter dated March 4, 2016 determined that the Female Applicant did not qualify for a TRV. The Visa Officer was not satisfied that the Female Applicant would leave Canada at the end of her stay as a temporary resident. The Visa Officer also concluded that, under s 40(1)(a) of the Act, the Female Applicant was inadmissible to Canada for five years from the date of the Bangalore Decision on the grounds that the Female Applicant had withheld material facts relating to a relevant matter that could have induced an error in the administration of the Act.

[9] The Global Case Management System [GCMS] notes state that the Female Applicant did not answer questions concerning her past immigration history truthfully. Despite the issuance of a procedural fairness letter, the Female Applicant failed to satisfy the concerns regarding her truthfulness on the application because she did not disclose her refused application for permanent residence in November 2013. Instead, the Female Applicant only confirmed the refusal of a study permit and explained that she failed to check the application that VFS Global [VFS], a company that provides visa and passport application processing services, completed for her. The

GCMS notes appear to question this explanation on the basis that the Female Applicant had been in Canada on various permits since 2006 and had a good understanding of English; additionally, VFS does not complete applications for applicants. The GCMS notes also made reference to the Female Applicant's TRV application to the Los Angeles Consulate and concluded that the Visa Officer was not satisfied the subsequent application was not made to circumvent the decision of the TRV application to the Bangalore Consulate.

[10] A decision sent from a Visa Officer at the Bangalore Consulate to the Male Applicant by letter dated March 4, 2016 determined that the Male Applicant did not qualify for a TRV. The Visa Officer was not satisfied that the Male Applicant would leave Canada at the end of his stay as a temporary resident. The Visa Officer also concluded that, under s 40(1)(a) of the Act, the Male Applicant was inadmissible to Canada for five years from the date of the Bangalore Decision on the grounds that the Male Applicant had withheld material facts relating to a relevant matter that could have induced an error in the administration of the Act.

[11] The GCMS notes state that the Male Applicant did not answer questions concerning his past immigration history truthfully. Despite the issuance of a procedural fairness letter, the Male Applicant failed to satisfy the concerns regarding his truthfulness on the application because he did not disclose his refused application for permanent residence in November 2013. Instead, the Male Applicant confirmed he had never been refused a visa or permit and had never been denied entry or ordered to leave any country. Given the Male Applicant's previous adverse history, the Visa Officer was not satisfied that the Male Applicant would depart Canada at the end of the authorized period. The GCMS notes also made reference to the Male Applicant's TRV

application to the Los Angeles Consulate and concluded that the Visa Officer was not satisfied the subsequent application was not made to circumvent the decision of the TRV application to the Bangalore Consulate.

B. *Los Angeles Decisions*

[12] Decisions sent from a Visa Officer at the Los Angeles Consulate to the Applicants by letter dated March 14, 2016 determined that the Applicants did not qualify for TRVs for several reasons. After considering family ties in Canada and country of residence, length of proposed stay in Canada, purpose of visit, employment prospects in country of residence, current employment situation, and history of contravening the conditions of admission on a previous stay in Canada, the Visa Officer was not satisfied that the Applicants would leave Canada at the end of their stay as temporary residents. The Visa Officer was also not satisfied that the Applicants had answered all questions truthfully in accordance with s 16(1) of the Act by failing to disclose the information regarding previous applications for entry visas to Canada and the refused applications for permanent and temporary resident visas. Additionally, the Visa Officer cited that the Applicants had been deemed inadmissible to Canada on March 3, 2016 and that the Female Applicant had failed to provide documentary evidence on her current school attendance situation to demonstrate compliance with the conditions of a TRV or study permit holder. Finally, the Visa Officer found that under ss 40(1)(a) and 40(2)(a) of the Act, the Applicants remained inadmissible to Canada for misrepresentation as a period of five years had not passed since the prior refusal.

[13] In the GCMS notes, the Visa Officer noted that the Female Applicant had been employed as a daycare director since June 2, 2015 and indicated she had not studied since April 2008 despite remaining in Canada on the basis of a study permit valid from April 28, 2015 to April 30, 2017. Based on this information, the Visa Officer concluded the Female Applicant had failed to comply with s 30 of the Act and Rules 183 and186 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[14] The GCMS notes also state that the Applicants declared they had never been refused entry visas to Canada, despite the Field Operations Support System [FOSS] records indicating otherwise. The GCMS notes also referred to the Bangalore Decisions in which the Applicants were found to be inadmissible for misrepresentation until March 3, 2021. The Visa Officer found the Applicants had failed to provide truthful answers in regards to whether they had ever been refused visas despite the refusal by the Bangalore Consulate for failing to provide truthful answers to the very same question.

[15] The Visa Officer noted the Applicants' requests for urgent processing on the basis of meeting their children's immunization schedule in Canada but questioned why the immunizations could not be performed in India, where they had previously been performed. The GCMS notes concluded that since the Female Applicant had not been truthful about her intentions, was not a genuine student, had failed to comply with the conditions of her study permit, and had lost her temporary resident status, the Visa Officer was not satisfied the Applicants were *bona fide* temporary residents who would leave Canada at the end of their authorized stay. Consequently, he refused the applications.

IV. ISSUES

[16] The Applicants submit that the following are at issue in this application:

(1) Whether the Applicants were denied procedural fairness with respect to:

a. The Bangalore Decisions, whereby the concerns regarding their credibility were not put to them and they were denied an opportunity to respond?

b. The Los Angeles Decisions, whereby the Applicants were not put on notice, granted an interview, nor provided an opportunity to respond despite reliance on a misrepresentation finding as a result of the Bangalore application that was not within the Applicants' knowledge at the time of their applications?

c. The Los Angeles Decisions, whereby implicit credibility findings regarding the Applicants' alleged and factually erroneous immigration violations and misstated intentions upon entering Canada were made without providing an opportunity to respond and clarify material errors in their immigration history and their innocent mistakes in completing the applications?

(2) Whether the Visa Officers erred in their assessment that the Applicants made a material misrepresentation by failing to apply the innocent mistake exception?

[17] The Respondent submits that the following is at issue in this application:

(1) Was the Visa Officer's decision reasonable?

V. STANDARD OF REVIEW

[18] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the

reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[19] As matters of procedural fairness, the issues regarding whether the Applicants were denied an opportunity to respond to the credibility and s 40(1) concerns will be reviewed under the standard of correctness: *Khosa v Canada (Citizenship and Immigration)*, 2009 SCC 12 at para 43 [*Khosa*].

[20] A visa officer's assessment of an application for temporary visa permits, including findings of misrepresentations, involves questions of mixed fact and law and is reviewable under the standard of reasonableness: *Canada (Citizenship and Immigration) v Young*, 2016 FCA 183 at para 7; *Odunsi v Canada (Citizenship and Immigration)*, 2016 FC 208 at para 13.

[21] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[22] The following provisions from the Act are relevant in this proceeding:

Application before entering Canada	**Visa et documents**
11 (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.	11 (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.
…	…
Obligation — answer truthfully	**Obligation du demandeur**
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.	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.
…	…
Work and study in Canada	**Études et emploi**
30 (1) A foreign national may not work or study in Canada unless authorized to do so under this Act.	30 (1) L'étranger ne peut exercer un emploi au Canada ou y étudier que sous le régime de la présente loi.
…	…

Misrepresentation	**Fausses déclarations**
40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation	40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) 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 this Act;	a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;
(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;	b) être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;
…	…
Application	**Application**
(2) The following provisions govern subsection (1):	(2) Les dispositions suivantes s'appliquent au paragraphe (1):
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced;	a) l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;

[23] The following provisions from the Regulations are relevant in this proceeding:

Issuance	**Délivrance**
179 An officer shall issue a temporary resident visa to a foreign national if, following an examination, it is established that the foreign national	179 L'agent délivre un visa de résident temporaire à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) has applied in accordance with these Regulations for a temporary resident visa as a member of the visitor, worker or student class;	a) l'étranger en a fait, conformément au présent règlement, la demande au titre de la catégorie des visiteurs, des travailleurs ou des étudiants;
(b) will leave Canada by the end of the period authorized for their stay under Division 2;	b) il quittera le Canada à la fin de la période de séjour autorisée qui lui est applicable au titre de la section 2;
(c) holds a passport or other document that they may use to enter the country that issued it or another country;	c) il est titulaire d'un passeport ou autre document qui lui permet d'entrer dans le pays qui l'a délivré ou dans un autre pays;
(d) meets the requirements applicable to that class;	d) il se conforme aux exigences applicables à cette catégorie;
(e) is not inadmissible;	e) il n'est pas interdit de territoire;
(f) meets the requirements of subsections 30(2) and (3), if they must submit to a medical examination under paragraph 16(2)(b) of the Act; and	f) s'il est tenu de se soumettre à une visite médicale en application du paragraphe 16(2) de la Loi, il satisfait aux exigences prévues aux paragraphes 30(2) et (3);
(g) is not the subject of a declaration made under subsection 22.1(1) of the Act.	g) il ne fait pas l'objet d'une déclaration visée au paragraphe 22.1(1) de la Loi.

…

General conditions

183 (1) Subject to section 185, the following conditions are imposed on all temporary residents:

(a) to leave Canada by the end of the period authorized for their stay;

(b) to not work, unless authorized by this Part or Part 11;

(b.1) if authorized to work by this Part or Part 11, to not enter into an employment agreement, or extend the term of an employment agreement, with an employer who, on a regular basis, offers striptease, erotic dance, escort services or erotic massages;

(b.2) if authorized to work by this Part or Part 11, to not enter into an employment agreement, or extend the term of an employment agreement, with an employer referred to in any of subparagraphs 200(3)(h)(i) to (iii); and

(c) to not study, unless authorized by the Act, this Part or Part 12.

…

…

Conditions d'application générale

183 (1) Sous réserve de l'article 185, les conditions ci-après sont imposées à tout résident temporaire :

a) il doit quitter le Canada à la fin de la période de séjour autorisée;

b) il ne doit pas travailler, sauf en conformité avec la présente partie ou la partie 11;

b.1) même s'il peut travailler en conformité avec la présente partie ou la partie 11, il ne peut conclure de contrat d'emploi — ni prolonger la durée d'un tel contrat — avec un employeur qui offre, sur une base régulière, des activités de danse nue ou érotique, des services d'escorte ou des massages érotiques;

b.2) même s'il peut travailler en conformité avec la présente partie ou la partie 11, il ne peut conclure de contrat d'emploi — ni prolonger la durée d'un tel contrat — avec un employeur visé à l'un des sous-alinéas 200(3)h)(i) à (iii);

c) il ne doit pas étudier sans y être autorisé par la Loi, la présente partie ou la partie 12.

…

Authorized period ends	**Période de séjour : fin**
(4) The period authorized for a temporary resident's stay ends on the earliest of	(4) La période de séjour autorisée du résident temporaire prend fin au premier en date des événements suivants :
…	…
(b.1) the day on which the second of their permits becomes invalid, in the case of a temporary resident who has been issued a work permit and a study permit;	b.1) dans le cas du titulaire à la fois d'un permis de travail et d'un permis d'études, celui ayant la date d'expiration la plus tardive cesse d'être valide.
…	…
Extension of period authorized for stay	**Prolongation de la période de séjour**
(5) Subject to subsection (5.1), if a temporary resident has applied for an extension of the period authorized for their stay and a decision is not made on the application by the end of the period authorized for their stay, the period is extended until	(5) Sous réserve du paragraphe (5.1), si le résident temporaire demande la prolongation de sa période de séjour et qu'il n'est pas statué sur la demande avant l'expiration de la période, celle-ci est prolongée :
(a) the day on which a decision is made, if the application is refused; or	a) jusqu'au moment de la décision, dans le cas où il est décidé de ne pas la prolonger;
(b) the end of the new period authorized for their stay, if the application is allowed.	b) jusqu'à l'expiration de la période de prolongation accordée.
…	…
No permit required	**Permis non exigé**
186 A foreign national may work in Canada without a work permit	186 L'étranger peut travailler au Canada sans permis de travail :

…

(f) if they are a full-time student, on the campus of the university or college at which they are a full-time student, for the period for which they hold a study permit to study at that university or college;

…

(u) until a decision is made on an application made by them under subsection 201(1), if they have remained in Canada after the expiry of their work permit and they have continued to comply with the conditions set out on the expired work permit, other than the expiry date;

(v) if they are the holder of a study permit and

(i) they are a full-time student enrolled at a designated learning institution as defined in section 211.1,

(ii) the program in which they are enrolled is a post-secondary academic, vocational or professional training program, or a vocational training program at the secondary level offered in Quebec, in each case, of a duration of six months or more that leads to a degree, diploma or certificate, and

(iii) although they are permitted to engage in fulltime work during a regularly

…

f) à titre de personne employée sur le campus du collège ou de l'université où son permis d'études l'autorise à étudier et où il est étudiant à temps plein, pour la période autorisée de son séjour à ce titre;

…

u) s'il a fait une demande en vertu du paragraphe 201(1), s'il est demeuré au Canada après l'expiration de son permis de travail et s'il continue à se conformer aux conditions imposées dans le permis exception faite de la date d'expiration, jusqu'à la décision sur sa demande;

v) s'il est titulaire d'un permis d'études et si, à la fois :

(i) il est un étudiant à temps plein inscrit dans un établissement d'enseignement désigné au sens de l'article 211.1,

(ii) il est inscrit à un programme postsecondaire de formation générale, théorique ou professionnelle ou à un programme de formation professionnelle de niveau secondaire offert dans la province de Québec, chacun d'une durée d'au moins six mois, menant à un diplôme ou à un certificat,

(iii) il travaille au plus vingt heures par semaine au cours d'un semestre régulier de

scheduled break between academic sessions, they work no more than 20 hours per week during a regular academic session; or

cours, bien qu'il puisse travailler à temps plein pendant les congés scolaires prévus au calendrier;

(w) if they are or were the holder of a study permit who has completed their program of study and

w) s'il est ou a été titulaire d'un permis d'études, a terminé son programme d'études et si, à la fois :

(i) they met the requirements set out in paragraph (v), and

(i) il a satisfait aux exigences énoncées à l'alinéa v),

(ii) they applied for a work permit before the expiry of that study permit and a decision has not yet been made in respect of their application.

(ii) il a présenté une demande de permis de travail avant l'expiration de ce permis d'études et une décision à l'égard de cette demande n'a pas encore été rendue.

…

…

Application after entry

Demande après l'entrée au Canada

199 A foreign national may apply for a work permit after entering Canada if they

199 L'étranger peut faire une demande de permis de travail après son entrée au Canada dans les cas suivants :

…

…

(c) hold a study permit;

c) il détient un permis d'études;

…

…

Application for renewal

Demande de renouvellement

201 (1) A foreign national may apply for the renewal of their work permit if

201 (1) L'étranger peut demander le renouvellement de son permis de travail si :

(a) the application is made before their work permit expires; and

a) d'une part, il en fait la demande avant l'expiration de son permis de travail;

(b) they have complied with all conditions imposed on their entry into Canada.	b) d'autre part, il s'est conformé aux conditions qui lui ont été imposées à son entrée au Canada.
…	…
Canadian interests	**Intérêts canadiens**
205 A work permit may be issued under section 200 to a foreign national who intends to perform work that	205 Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes:
…	…
(c) is designated by the Minister as being work that can be performed by a foreign national on the basis of the following criteria, namely,	c) il est désigné par le ministre comme travail pouvant être exercé par des étrangers, sur la base des critères suivants :
…	…
(ii) limited access to the Canadian labour market is necessary for reasons of public policy relating to the competitiveness of Canada's academic institutions or economy; or	(ii) un accès limité au marché du travail au Canada est justifiable pour des raisons d'intérêt public en rapport avec la compétitivité des établissements universitaires ou de l'économie du Canada;
…	…
Application after entry	**Demande après l'entrée au Canada**
215 (1) A foreign national may apply for a study permit after entering Canada if they	215 (1) L'étranger peut faire une demande de permis d'études après son entrée au Canada dans les cas suivants :
…	…

(c) hold a work permit;	c) il est titulaire d'un permis de travail;

VII. ARGUMENTS

A. *Applicants*

(1) Applicable Law

[24] The Applicants contend that, contrary to the Respondent's submission, it does not follow that s 11(1) of the Act renders a foreign national inadmissible if they do not meet the requirements of the Act; rather, whether an applicant meets the requirements of the Act is separate and distinct from establishing admissibility. Thus, if a visa is denied on the basis of inadmissibility, the onus is on the immigration officer to show the grounds for the finding of inadmissibility.

[25] Additionally, the obligation imposed by s 16(1) of the Act is not absolute. The duty of candour applies only to material facts and an exception to a finding of misrepresentation arises where an applicant demonstrates they honestly and reasonably believed they were not withholding material information; such misrepresentations are material if they induce or could induce an error in the administration of the Act: see *Bodine v Canada (Citizenship and Immigration)*, 2008 FC 848 at para 41.

(2) Procedural Fairness

(a) *Bangalore Decisions*

[26] In regards to the Bangalore Decisions, the Applicants submit that the Visa Officer breached the principles of procedural fairness by not putting concerns about credibility to the Applicants.

[27] If there is a concern with credibility, visa officers have the duty to provide applicants with the opportunity to respond to those concerns: see *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at paras 25-28.

[28] In the GCMS notes for the Bangalore Decisions, the Visa Officer stated: "I am not satisfied that the applicant has not made this application in order to circumvent the decision on this application." This finding ignores significant evidence that contradicts the conclusion and is an implicit negative credibility finding that was not put to the Applicants.

[29] Although the Applicants had provided several reasons as to why they submitted a TRV application to the Los Angeles Consulate, their evidence was ignored. The Applicants' reasons included: they had not received a response from the Bangalore Consulate after two months despite following up several times and indicating an urgent need to travel; they were in Los Angeles to visit the Male Applicant's ill father; the Female Applicant had a pending CEC interview to attend on March 1, 2016 in Edmonton; the Applicants sought to visit their family doctor in Canada to maintain their children's immunization schedule; and the Male Applicant's

passport was due to expire on March 16, 2016. Furthermore, the Applicants could not have been attempting to circumvent the Bangalore Decisions because the Bangalore Decisions had not been decided at the time when the TRV applications to the Los Angeles Consulate were submitted. The Applicants contend that these reasons were a reasonable basis for submitting a second application, particularly since there is no prohibition in law to making a second application to another office if there is a change in geographic location or circumstances and an urgent need.

[30] The Applicants also take issue with the Visa Officer's failure to provide a clear rationale to explain how their actions could have induced an error in the administration of the Act, particularly because the information was already known to the Visa Officer. The GCMS notes stated: "Given the applicant's previous adverse history, I am not satisfied that the applicant would depart Canada at the end of the authorized period." This finding ignores the Applicants' lengthy immigration history of compliance with the conditions of their stay. Evidence of previous travel respecting immigration laws should be a positive factor in establishing an applicant's credibility, yet was treated negatively in this situation: see *Obeng v Canada (Citizenship and Immigration)*, 2008 FC 754 at para 13. Since, despite the Applicants' immigration history, the Visa Officer found that their actions could have induced an error in the administration of the Act by giving the "incorrect impression" that the Applicants were genuine temporary visitors who were not inadmissible and met the requirements of the Act, the Applicants submit that the Visa Officer had issues with their credibility which were not put to them.

[31] In summary, it is clear that the Visa Officer found the Applicants not to be credible, which coloured the Bangalore Decisions. The Visa Officer had a clear duty to seek clarification from the Applicants and allow them an opportunity to respond before concluding they had made material misrepresentations. The Applicants argue that the failure to fulfil this duty amounts to a breach of procedural fairness.

(b) *Los Angeles Decisions*

[32] In regards to the Los Angeles Decisions, the Applicants submit the Visa Officer breached the principles of procedural fairness by not putting concerns about credibility to them.

[33] The Visa Officer's conclusions that the Applicants were inadmissible for misrepresentation, would not be *bona fide* temporary residents, and would not leave Canada at the end of their stays are based on factually incorrect information and are essentially credibility findings that were made without providing the Applicants an opportunity to respond. As mentioned previously in the discussion of the Bangalore Decisions, visa officers have a duty to provide applicants with the opportunity to respond to any concerns about credibility.

[34] The Visa Officer's findings that the Applicants continued to be inadmissible to Canada were based on the inadmissibility findings in the Bangalore Decisions; however, the Bangalore Decisions were made subsequent to the Applicants' TRV applications to Los Angeles and, consequently, the Applicants were unaware of their inadmissibility findings. The Visa Officer should have made the Applicants aware of such information prior to making the decision and should have provided them with an opportunity to respond. Additionally, the

Applicants maintain that they provided evidence that supported they would be *bona fide* temporary residents as their immigration histories demonstrated almost a decade of compliance with immigration requirements. The adverse treatment of their immigration histories in conjunction with the fact that the TRV applications were submitted when the Applicants were unaware of the inadmissibility findings from the Bangalore Decisions suggest that the Visa Officer doubted the Applicants' credibility. As mentioned by Justice Mosley in *Adeoye v Canada (Citizenship and Immigration)*, 2012 FC 680, at paragraph 8, "[a]lthough the officer did not make any explicit credibility findings, his scepticism about the applicant's claim and supporting documents is apparent from the decision."

[35] Next, the Visa Officer found that the Female Applicant had failed to comply with s 30 of the Act, essentially determining that she had worked full-time in Canada during a period when she held student status, which was contrary to the conditions of her study permit. However, the Female Applicant had valid temporary worker status pursuant to ss 186(u) and 201(1) of the Act until October 2015, which was separate from the study permit issued in May 2015. Furthermore, the Female Applicant had an open work permit that was valid until August 31, 2015. All of the open work permits issued to the Female Applicant as a dependent of the Male Applicant were issued under s 205(c)(ii) of the Act and were independent of her study permit. An individual can hold status as a worker and student concurrently, as recognized by ss 183(4)(b.1), 199(c), and Rule 215(1)(c) of the Regulations. As such, the Female Applicant was not contravening immigration laws because she was legally entitled to work until she left Canada in October 2015 and the Visa Officer made a factual and legal error.

[36] The Applicants also take issue with the Visa Officer's conclusion that the Female Applicant had not been truthful about her intentions before entering Canada based on the fact that she did not pursue studies while holding a study permit. However, the Female Applicant had actually deferred her studies and only decided afterwards not to pursue them when she applied for a new work permit. The Female Applicant's intentions are evident in the December 2015 TRV application in which she applied to return to Canada on the basis of her newly-issued open work permit rather than as a student.

[37] In light of these credibility findings regarding the Applicants' intentions and the incorrect finding that the Female Applicant had violated her terms and conditions during her previous entry to Canada, the Visa Officer had a duty to seek clarification or provide the Applicants an opportunity to respond. The factual errors coloured the decision and were central to the conclusion that the Applicants were not *bona fide* temporary residents who would not respect the conditions of their visit; as such, this finding cannot stand.

(3) Innocent Mistake and Misrepresentation

[38] In regards to the Bangalore Decisions, the Applicants submit that the Visa Officer erred in finding the Applicants had made a material representation by not disclosing their prior refusals for TRV applications. The innocent mistake exception to misrepresentation should have been applied because the information was already known to the Visa Officer.

[39] The procedural fairness letter was vague and did not clearly identify the concern by mentioning the previous CEC refusal. The Applicants did not mention the CEC refusal because

they honestly believed it did not constitute a visa refusal since the application had been made in Canada and was not relevant to a TRV. While this belief was incorrect, the Applicants did not intend to mislead the Visa Officer or circumvent immigration requirements. The Applicants believed the Visa Officer already knew about the CEC refusal because the response to the procedural fairness letters indicated they had provided all the information to the best of their knowledge and invited a cross-check of their records to confirm their response. The invitation to review their immigration history demonstrates the lack of intention, purpose, or need to misrepresent information about their prior immigration applications.

[40] Consequently, the Applicants argue that the Visa Officer failed to consider all the evidence in a meaningful analysis of the recognized innocent mistake exception to s 40 of the Act. According to Justice Barnes in *Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117 [*Berlin*] at paras 19-20, the innocent mistake exception has considerable jurisprudential support and recognizes the possibility that withholding information which is otherwise available to the Visa Officer, and being forthcoming in disclosing the information when asked, is a basis for excusing what otherwise might appear to be a deliberate misrepresentation. In *Berlin*, the decision was unreasonable because the visa officer failed to acknowledge the potential mitigating evidence provided and failed to include the evidence in a meaningful analysis of the recognized innocent mistake exception. As in *Berlin*, the Applicants' immigration histories and prior refusals were part of their Citizenship and Immigration Canada [CIC] files so they honestly believed they were forthcoming in their responses. Furthermore, the prior refusals had no bearing on subsequent TRV applications, which led the Applicants to believe they did not need to be addressed.

[41] Additionally, as endorsed in *Menon v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1273 at para 15, CIC's manuals recognize that "honest errors and misunderstanding sometimes occur in completing application forms and responding to questions. While in many cases it may be argued that a misrepresentation has technically been made, reasonableness and fairness are to be applied in assessing these situations." The jurisprudence also indicates that misrepresentations contain an element of subjective intent; if applicants have no reason to believe they are misrepresenting a material fact, the finding of inadmissibility for misrepresentation is unreasonable: see *Osisanwo v Canada (Citizenship and Immigration)*, 2011 FC 1126 at paras 9-15 [*Osisanwo*].

[42] The Applicants submit that the jurisprudence cited by the Respondent does not support a finding of inadmissibility for misrepresentation where an applicant innocently failed to disclose information that was otherwise available to an officer; instead, the jurisprudence deals with: failure to disclose family relationships and histories; fraudulent test results; false claims of work experience; and omissions related to previous work and travel. The latter factors are material because they foreclose essential inquiries into an applicant's past but, in the current case, the information was available to the Visa Officer so that inquiries could not have been foreclosed.

B. *Respondents*

(1) Applicable Law

[43] Foreign nationals do not have an unqualified right to enter or remain in Canada: see *Canada (Public Safety and Emergency Preparedness) v JP*, 2013 FCA 262 at paras 13-14.

According to s 11(1) of the Act, the onus is on the foreign national to satisfy the immigration officer, with clear and cogent evidence, that he or she meets the statutory criteria; otherwise, the foreign national is inadmissible to Canada. Additionally, s 16(1) of the Act explicitly imposes a duty of candour, which requires applicants to provide true and correct information, for persons seeking to enter into or remain in Canada. Furthermore, s 40(1) of the Act states that permanent residents or foreign nationals are inadmissible for misrepresentation should they, directly or indirectly, misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of the Act.

(2) Procedural Fairness

(a) *Bangalore Decisions*

[44] The Respondent rejects the assertion that there was a denial of procedural fairness. The Visa Officer issued a letter that clearly identified the concerns regarding the truthfulness of a specific question in the application:

> I have concerns that you have not truthfully answered questions on your application form. Specifically, I am not satisfied that you have truthfully answered question 2b) on page 3 of the application form – Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country.

[45] In their responses, the Applicants were direct, specific, and did not indicate confusion or a misunderstanding of the information sought. The Female Applicant disclosed her refused application for a student permit in 2006, but maintained that "after that I never get refused any visa or permit or denied entry to any country." Similarly, the Male Applicant maintained that he

had “never been refused a visa or permit, denied entry or ordered to leave Canada or any other country.”

(b) *Los Angeles Decisions*

[46] The Respondent takes issue with the Applicants’ submission that the Visa Officer was not entitled to rely on the Bangalore Decisions without obtaining input from the Applicants and that the Visa Officer assessed the Applicants’ credibility without providing an opportunity to respond.

[47] The Respondent submits that the Visa Officer did not make a credibility assessment. In assessing the TRV applications, several factors were examined, including: the Applicants’ family ties in Canada and in their country of residence; the length and purpose of the Applicants’ stay in Canada; the purpose of the Applicants’ visit to Canada; the Applicants’ current employment situation; and the Applicants’ history of contravening the conditions of admission on a previous stay in Canada. In particular, the Visa Officer noted that the Female Applicant had admitted that although she was required pursuant to the conditions of her study permit to be a full-time student in order to work in Canada, she had declared that she had not attended school since April 2008 and had been working in Canada from July 2012 to October 2015. Thus, the Visa Officer did not make a credibility assessment; rather, the Visa Officer relied on the Applicants’ declarations.

[48] Additionally, the Visa Officer did not make findings of misrepresentation that may have entitled the Applicants to procedural fairness letters. Instead, the Visa Officer relied on the Bangalore Decisions, which found the Applicants inadmissible to Canada for misrepresentation.

The Visa Officer was entitled to rely on the Applicants' prior immigration history in determining admissibility to Canada.

[49] The Respondent also submits that there is no statutory right to dialogue between an applicant and a visa officer. If there are concerns arising directly from the requirements of the Act, there is no duty to raise all doubts or concerns; it is the applicant who has the burden of providing sufficient information that is relevant, convincing, and unambiguous: *see Obeta v Canada (Citizenship and Immigration)*, 2012 FC 1542 at paras 21-28.

[50] The Respondent also argues that the Female Applicant's multiple applications for permission to work and study in Canada do not affect the actual and effective purpose for which the Applicant was granted entry to Canada, which was to study from April 28, 2015 to April 30, 2016. The Female Applicant became the holder of a study permit on April 28, 2015, thereby making the purpose of her stay in Canada to study. Thus, the Visa Officer did not err in finding that by working without maintaining her status as a full-time student, the Female Applicant failed to comply with the obligations of s 30 of the Act and ss 182 and 186 of the Regulations. Hence, the Visa Officer did not breach the duty of procedural fairness nor make a factual error in the consideration of the Applicants' TRV applications.

(3) Innocent Mistake and Misrepresentation

(a) *Bangalore Decisions*

[51] Subsection 40(1)(a) of the Act applies in situations where a misrepresentation is adopted, but clarified prior to the decision, such as in *Khan v Canada (Citizenship and Immigration)*, 2008 FC 512 at para 25, or where a misrepresentation is made by another party without the knowledge of the applicant, such as in *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 50 to 53, 55, and 58. And, as emphasized by Justice O'Reilly in *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15 [*Baro*], an innocent failure to provide material information can result in a finding of inadmissibility. Thus, there is no *mens rea*, premeditation, or intent required in finding inadmissibility based on misrepresentation.

[52] The Respondent argues that the jurisprudence cited by the Applicants, namely *Berlin* and *Osisanwo*, both above, are not applicable to this matter. *Berlin* does not apply because in that case the applicant had disclosed the existence of his two dependent children in his application for permanent residence but did not disclose them in the documents accompanying the application. In the current case, the Applicants never disclosed the CEC refusal; in fact, in the procedural fairness letter, they maintain they had never been refused a visa or permit, denied entry or ordered to leave any country, with the exception of the Female Applicant's refusal for a study permit in 2006. Likewise, *Osisanwo* does not apply because in that case the applicant had misidentified her child's biological father and did not find out the truth regarding the child's paternity until DNA testing was performed after the application. However, in the current case,

the Applicants were fully aware that their applications for permanent residence had been refused yet did not disclose the information.

[53] The Respondent contends that the facts in the current case do not give rise to the innocent mistake exceptions. The Visa Officer's decisions were reasonable and fell within the range of possible, acceptable outcomes that are defensible in respect of the facts and law.

(b) *Los Angeles Decisions*

[54] The Respondent disputes that the Applicants' failure to disclose prior refused entries to Canada was an innocent mistake because the Female Applicant admitted in her response to the procedural fairness letter sent by the Bangalore Consulate that she failed to disclose that she had been refused entry in 2006. This response was sent on January 5, 2016, a month before the TRV applications were submitted in Los Angeles on February 26, 2016, where the Applicants declared they had never been denied entry to Canada. Thus, the Respondent submits that the omission was neither a misunderstanding nor an honest error.

VIII. ANALYSIS

A. *The Bangalore Decisions*

[55] As the Bangalore Decision for the Female Applicant makes clear, the "Application refused on A40(a) grounds." The Visa Officer took the view that a misrepresentation under s 40(1) had occurred because "the applicant did not answer the questions concerning his (*sic*) background information truthfully." By this the Visa Officer means that the Female Applicant

did not disclose her previous refused “SP and PR” applications to Canada. The reasoning is presented in the GCMS notes as follows:

> … The applicant has been refused an SP and a PR application to Canada and did not disclose this fact. I note that the applicant rather than wait for the outcome of this application has submitted a new application online indicating her country of residence to be the USA. I am not satisfied that the applicant has not made this application in order to circumvent the decision on this application. The applicant was advised of these concerns in a PF letter. The applicant’s response does not satisfactorily address the concerns raised. The applicant confirms that she was refused a study permit. States that VFS who filed in her application might have put no and she did not check properly. States it was her mistake. The applicant has been in Canada since 2008 on various work permits and study permits. She indicates to have a good understanding of English. VFS do not complete applications for applicants. Applicant has signed the document lo confirm that the information is true or correct. The applicant makes no mention of her CEC PR refusal in 2013. The applicant is full aware or this refusal as she is noted to have approached the deciding office to request reconsideration of the refusal and this was also denied - the applicant’s actions could have induced an error in the administration of the Act by giving the incorrect impression that the applicant was a genuine temporary visitor who was not inadmissible and who met the requirements of the Act. The applicant’s past immigration history is a relevant factor in determining if she is a genuine temporary visitor to Canada. Pursuant to subsection A40(2)(a), a permanent resident or a foreign national determined to be inadmissible for reasons of misrepresentation continues to be inadmissible for a period of five years - Application refused on A40(a) grounds.

[56] The Visa Officer had provided the Female Applicant with a procedural fairness letter in which he expressed his concerns as follows:

> I have concerns that you have not truthfully answered questions on your application form. Specifically, I am not satisfied that you have truthfully answered question 2b) on page 3 of the application form – Have you ever been refused a visa permit, denied entry or ordered to leave Canada or any other country.

[57] In her response, the Female Applicant admitted that her initial application for a student visa had been denied in 2006 but maintained that "after that I never get refused any visa or permit or denied entry to any country."

[58] In addressing this response, the Visa Officer reasons as follows:

> Response to Procedural Fairness letter received. The applicant disclosed her prior SP refusal from 2006 advising that shortly after this refusal, she applied again and then this new SP application was approved. She [illegible] application answered the question incorrectly and that she didn't check all of the information properly, which was her mistake. The applicant's response does not satisfactorily address the concerns raised in the procedural fairness letter. The applicant was not truthful in her response to question 2b) on this application form – Have you ever been refused a visa or permit, denied entry or order (*sic*) to leave Canada or any other country? In response to the procedural fairness letter, the applicant only disclosed the SP refusal of 2006, she did not disclose that her CEC application for PR was refused on in (*sic*) 2013. The applicant is responsible for the information provided on her application form, therefore attributing blame to VFS for inaccurate filing of the application is also not acceptable. In the assessment of an application for a Temporary Resident Visa, the applicant's previous immigration related history is considered in determining whether an application will be a bona fide Temporary Resident and will depart Canada at the end of the authorized period. Given the applicant's previous adverse history, I am not satisfied that the applicant would depart Canada at the end of the authorized period. The applicant's misrepresentation could have induced an error in the administration of the Act by creating the incorrect impressions that she is a genuine Temporary Resident to Canada. To IPM for decision

[59] The Visa Officer states his concerns in the procedural fairness letter but he doesn't specifically mention the study permit refusal of 2006 or the CEC application for permanent residence which was refused in 2013. In other words, the Visa Officer assumes that the Female Applicant will know what he means by "a visa or permit" or "denied entry or ordered to

leave Canada or any other country." Clearly, the Female Applicant did know that the study permit refusal of 2006 was covered by these words because she provided an explanation of sorts for her mistake, which she admitted to. But this doesn't mean that she knew, or ought to have known, that the 2013 CEC permanent residence application also had to be disclosed. She was representing herself throughout, had had extensive satisfactory dealings with Canadian authorities in the past and, fearing she may not have given the Visa Officer what was required, sent a follow-up email on February 5, 2016 suggesting the Visa Officer could check her past record to determine that she was correct in her response to the procedural fairness letter. Her actual words were "To the best of my knowledge everything I have provided and clear (*sic*) in my records which you can cross check." No response to this email was provided and there is no mention of it in the reasons for the Decision.

[60] The Visa Officer knew from the record that the Female Applicant's study permit had been refused in 2006 and her CEC permanent residence application had been refused in 2013, yet he did not state this directly in his letter and left the Female Applicant to determine which, if any, of her past applications were for visas or permits.

[61] As the Female Applicant's email of February 5, 2016 makes clear, she had no intent to deceive on this matter because she invites the Visa Officer to check her record to make sure she hasn't missed something.

[62] For a procedural fairness letter to be fair, it has to allow an applicant to know what the concerns are. There is some specificity in the Visa Officer's letter but it does not specify which

aspects of the Female Applicant's record makes her application inaccurate. It leaves the Female Applicant to figure this out for herself, and the Visa Officer would obviously know that he was dealing directly with the Female Applicant and not with counsel who would know that the 2016 CEC permanent residence refusal had to be disclosed.

[63] In the circumstances of this case, this was procedurally unfair because the record reveals that the Female Applicant honestly attempted to comply and suggested that, if she had missed something "you can cross check." This is not the language of someone who intends to deceive or misrepresent anything. The Visa Officer omits this factor in his reasons. He also omits to consider the misrepresentations in the full context of this case which demonstrates a long history of honest communications from the Applicants on many applications, but which also reveals real confusion by both Applicants that is so obvious that the Visa Officer had to be aware that they did not know how to complete the requisite documentation. For example, the Female Applicant fails to indicate on section 8 of her TRV application any "other countries of residence" when she has obviously lived in Canada, and she ticks the "No" box for the question "Have you previously applied to enter or remain in Canada." She even certifies that she has no children when she has previously listed the names of her two children and has said that she wants to come back to Canada to have her children immunized. The Male Applicant's documents also contain evidence of confusion that is obvious.

[64] In her application before me, the Female Applicant makes it clear that she did not mention the first CEC refusal of her permanent residence application because she did not think it constituted a visa proposal, as it was submitted inside Canada and was not part of a temporary

resident application. This evidence is not challenged and I have no reason to believe that the Female Applicant is not being honest about the reasons for the mistakes she made in her TRV applications.

[65] In my view then, the Bangalore Decision for the Female Applicant is procedurally unfair and unreasonable. It is procedurally unfair because the Visa Officer knew he was dealing with a self-represented applicant who could not complete the forms correctly, who made it clear she was not sure that she had given him what he wanted, and who suggested he check the record. The Visa Officer could not know that the Female Applicant did not understand that the 2016 CEC permanent residence refusal constituted a visa refusal, but he did know that the Female Applicant was confused and was seeking to clarify with him whether the record contained any other refusals that she needed to address. He also knew that the Female Applicant had lived in Canada for a considerable period of time, had made numerous applications for visas and permits that were granted and had been totally honest with Canadian authorities throughout. In this context, procedural fairness required that the Visa Officer ask the Female Applicant specifically to address the 2016 CEC permanent residence refusal before making a decision, and to consider the obviously innocent mature of the Applicants' mistakes.

[66] In argument before me, counsel for the Respondent relied upon the decision of Justice Lemieux in *Ghasemzadeh v Canada (Citizenship and Immigration)*, 2010 FC 716 at paras 12-13:

> [12] In addition to the discrete grounds of inadmissibility such as security (s.34), serious criminality (s.36) or health (s.38), is the broader ground of misrepresentation (IRPA, ss.40(1)(a)). That section can apply to direct misrepresentation (e.g. providing false

> information to an officer) and indirect misrepresentation (e.g. information provided by a person other than that who is rendered inadmissible) or to a withholding of material facts which is the situation in this case. In order to rely on the latter, the Minister must be satisfied that the following elements of withholding are made out:
>
> (1) that there is a withholding, and
>
> (2) that the withholding is of material fact relating to a relevant matter, and
>
> (3) the withholding induces, or could induce an error in the administration of the Act.
>
> (See, *Bellido v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 452, [2005] F.C.J. No. 572, at para. 27 [*Bellido* cited to FC], quoted with approval in *Zhang v.* Canada *(Minister of Citizenship and Immigration)*, 2005 FC 1313, [2005] F.C.J. No. 1594 at para. 17).
>
> [13] In general terms, an applicant for permanent residence has a duty of candour to disclose all material facts during the application process as well as and after a visa is issued (*Baro v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299, [2007] F.C.J. No. 1667 at para. 15 [*Baro*]). To omit material facts may constitute a misrepresentation in the form of a withholding. For example, where an applicant's marital status has changed and the applicant has failed to alert immigration officials to this information, the Court has found an applicant to have withheld material information such that he is now inadmissible because of misrepresentation (*Baro*, at paras. 18-19). However, as the Federal Court affirmed, in *Baro*, above, an exception arises where an applicant can show reasonable belief that he or she was not withholding material information (*Medel v. Canada (Minister of Citizenship and Immigration)*, [1990] 2 F.C. 345 cited by *Baro*, at para. 15). Thus, the duty of candour is not unbounded: "there is no onus on the person to disclose all information that might possibly be relevant" (*Baro*, at para. 17). The facts of each case will illustrate whether the applicant can rely on this exception.

[67] Justice Lemieux specifically refers to *Baro*, above, and the Court's affirmation that the duty of candour is not unbounded and that "an exception arises when an applicant in that case

can show reasonable belief that he or she was not withholding material information." In *Baro* itself, Justice O'Reilly summarized the Court's jurisprudence on innocent misrepresentation as follows:

> [15] Under s. 40(1)(a) of IRPA, a person is inadmissible to Canada if he or she "withholds material facts relating to a relevant matter that induces or could induce an error in the administration" of the Act. In general terms, an applicant for permanent residence has a "duty of candour" which requires disclosure of material facts. This duty extends to variations in his or her personal circumstances, including a change of marital status: *Mohammed v. Canada (Minister of Citizenship and Immigration)*, [1997] 3 F.C. 299 (F.C.T.D.) (QL). Even an innocent failure to provide material information can result in a finding of inadmissibility; for example, an applicant who fails to include all of her children in her application may be inadmissible: *Bickin v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No.1495 (F.C.T.D.) (QL). An exception arises where applicants can show that they honestly and reasonably believed that they were not withholding material information: *Medel v. Canada (Minister of Employment and Immigration)*, [1990] 2 F.C. 345, [1990] F.C.J. No. 318 (F.C.A.) (QL).

[68] The Respondent conceded in argument before me that an innocent misrepresentation exception exists in Canadian law but that, in this case, the Applicants could not honestly or reasonably believe that they were not withholding information. However, the evidence before me is unchallenged that the Applicants did honestly believe that they were not withholding information. However, what is more important is that the Visa Officer did not give the Applicants an opportunity to address this issue because he failed to make it clear that he had a concern about the previous CEC permanent residence application and left the obviously confused Applicants to try and work out what they might have omitted that required a visa or a permit. He acted unreasonably in not addressing the obvious evidence of innocent misrepresentation and whether the Applicants fell within this recognized exception to the duty of candour.

[69] The Bangalore Decisions are also unreasonable because, without any evidence to support it, the Visa Officer refers to the Applicants' new TRV applications submitted in Los Angeles and says he is not "satisfied that the Applicant has not submitted this application in order to circumvent the processing of this current application." This is pure speculation. The evidence is clear that the Los Angeles applications were submitted because of the tardiness of the Bangalore applications and because the Applicants were facing family exigencies which they thought they could deal with better in Los Angeles. The fact that they were wrong in this regard does not give rise to any suspicion regarding their motives or support the Visa Officer's circumvention reasoning.

[70] The Bangalore Decision dealing with the Male Applicant contains similar reviewable errors that I do not need to repeat here. The Visa Officer also states categorically that "knowledge is not required for a finding of misrepresentation" which may be true strictly speaking, but this does not excuse the Visa Officer's failure to consider the innocence exception in this case. The Visa Officer also says that "Given the applicant's previous adverse history, I am not satisfied that the applicant would depart Canada at the end of the authorized period." However, there is no adverse history. Both Applicants have applied for and obtained visas for numerous occasions over a period of approximately ten years and there is no hint of dishonesty or any adverse dealings with Canadian authorities.

B. *The Los Angeles Decisions*

[71] The Los Angeles Decisions are based, in part, upon the misrepresentations found in the Bangalore Decisions and are, on this ground, clearly procedurally unfair and unreasonable.

[72] I agree with the Applicants that, with regard to the Los Angeles Decisions, they were not put on notice of any concerns or given an opportunity to respond, and the Visa Officer relied upon erroneous immigration violations. For example, at the time of the Los Angeles applications, the Applicants were not aware that the Bangalore applications had been refused or the reasons for the refusals, so they had no opportunity to address those refusals in the Los Angeles applications.

[73] There was also no evidence that the Applicants had failed to comply with the conditions of their stay in Canada or that they would not leave Canada at the end of their stay.

[74] Any alternative grounds to support the Los Angeles Decisions also contain reviewable errors. For example, the Visa Officer finds that the Female Applicant had failed to comply with s 30 of the Act and ss 183 and 186 of the Regulations. The conclusion was that the Female Applicant had been working full-time in Canada during periods which she only had student status, and that this was contrary to the conditions of her study permit.

[75] What is left out of account here is that the Female Applicant had been a legitimate full-time temporary worker until she left Canada in October 2015. She was able to do this because, in addition to a study permit, she also held an open work permit that was valid until August 31, 2015 and had applied for a renewal of worker status before the expiry of that permit.

[76] The parties disagree on this issue, but I see nothing in the Act that would prevent the Female Applicant from holding worker and student status at the same time, and the relevant

permits do not suggest any incompatibility in this regard. It seems to me then, that the Visa Officer made both a factual and legal error on this point that he used to support the Los Angeles Decisions.

[77] Subsection 199(c) of the Regulations seems to indicate dual status is permissible because it states: "A foreign national may apply for a work permit after entering Canada if they hold a study permit." Additionally, CIC's website has a question and answer in their Help Centre related to the International Experience Canada program that states:

> Can I have both a study permit and a work permit under International Experience Canada?
>
> Yes. You can have two valid permits at the same time under International Experience Canada (IEC). If you receive an invitation to apply, you can apply for an IEC work permit even if you have a valid study permit. You can also apply for a study permit if you have a valid work permit through IEC.

[78] I can find no jurisprudence that answers this question definitively on the facts before me, but I see nothing in the Act or the Regulations to suggest that dual status was not available to the Female Applicant in this case.

[79] The Visa Officer seems to have concluded that the Female Applicant had not been truthful about her intentions before she entered Canada because she did not pursue studies even though she had applied for and obtained a study permit. When she made her TRV application in December 2015, the Female Applicant indicated that she had deferred her studies because of the family situation and also made it clear that she was not applying to return to Canada as a student, but as a worker under a newly-issued work permit. As the Female Applicant was not prevented

from doing this under the Act and the Regulations, the suggestion of dishonesty had no basis and is unreasonable. The Applicants were given no opportunity to respond to these issues.

IX. Certification

[80] The parties agree that no question for certification arises on review of any of the four decisions before me in this consolidated application and I agree.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The applications on all four decisions are allowed. The decisions are quashed and the matters they dealt with are returned for reconsideration by different officers.
2. There are no questions for certification.
3. A copy of this Judgment and Reasons shall be placed on each file.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS:	IMM-1928-16, IMM-1930-16, IMM-1408-16, IMM-1692-16
STYLE OF CAUSE:	ALKA PUNIA ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 10, 2017
JUDGMENT AND REASONS:	RUSSELL J.
DATED:	FEBRUARY 14, 2017

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