

Federal Court



Cour fédérale

Date: 20150428

Docket: IMM-7210-13

Citation: 2015 FC 547

Ottawa, Ontario, April 28, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

**THEVACHSANTHIRAN MURUGAN
SIVARANI THEVACHANDRAN**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

(Delivered Orally from the Bench in Toronto, Ontario on March 25, 2015)

[1] Thevachsanthiran Murugan [the Principal Applicant], and his daughter Sivarani Thevachandran [collectively, the Applicants] have applied for judicial review of a Decision dated September 26, 2013 of Visa Officer [the Officer], wherein the Officer refused their application for permanent residence [the Decision] on the basis that they are inadmissible to Canada for misrepresentation pursuant to s. 40(1)(a) of the *Immigration and Refugee Protection*

Act, SC 2001, c 27 [the IRPA]. The application is made pursuant to subsection 72(1) of the IRPA.

I. Background

[2] The Principal Applicant is a 65 year-old citizen of Sri Lanka. In 2007, he applied for permanent residence in Canada, along with his now deceased wife, in the family class [the Permanent Residence Application]. Their application was sponsored by their son who resides in Toronto, and included their then dependant daughter, who is now twenty-eight years-old.

[3] In 2010, the Principal Applicant and his daughter applied for a visitor's visa [the Visa]. The application was refused [the Refusal] for three reasons: the Principal Applicant had no previous travel, had a low income, and had strong ties to Canada because his son lives here. As a result, the Officer was not satisfied that the Principal Applicant would return to Sri Lanka.

[4] In 2011, Citizenship and Immigration Canada [CIC] sent the Applicant's son further documents for the Applicants to complete for the Permanent Residence Application. He forwarded the forms to his father and sister in Sri Lanka, and they completed them with the assistance of a friend because they have a limited understanding of English.

[5] Included in the package was a form labelled "Schedule A". Question 6 on Schedule A asked applicants to answer "yes" or "no" to questions about whether the Applicant, or any family members listed in the Permanent Residence Application, had ever been refused a visitor visa [the Question].

[6] In response to the Question, both Applicants incorrectly answered “no” [the Misrepresentation]. In his affidavit, the Applicant’s son says that he retrieved the completed forms from his father when he went to visit his family in Sri Lanka in 2011. He then submitted the forms to CIC without realizing that his father and sister had incorrectly answered the Question.

II. The Decision

[7] The Officer refused the Application for Permanent Residence and found the Applicants to be inadmissible to Canada for a period of two years (pursuant to s 40(2)(a) of the IRPA) saying that since the Refusal had not been declared, an error could have occurred in the administration of the IRPA. This was because the Refusal “launches the necessary examination of the circumstances and reasons for the refusal which in turn have a direct bearing on both eligibility and admissibility.”

III. Issues

[8] The only issue is:

- Did the Officer reasonably conclude that the Applicants made a material misrepresentation?

[9] Section 40(1) of the IRPA reads as follows:

40. (1) A permanent resident
or a foreign national is
inadmissible for

40. (1) Empovent interdiction
de territoire pour fausses
déclarations les faits suivants :

misrepresentation

(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;

[...]

[10] In my view, the material fact that was misrepresented or withheld was the answer “yes” and the relevant matter was the Refusal.

[11] In this case, the issue is whether the Misrepresentation – the answer “no” could have induced an error in the administration of the IRPA.

[12] When considered at a “macro” level, or put another way, at a level that does not factor in the reasons for the Refusal, there is no doubt that if an applicant fails to disclose a refusal, the reasons for the refusal may not be investigated and a wrong decision on an application for permanent residence could be made.

[13] However, the Applicant says that this approach is unreasonable because Enforcement Manual 2 at section 10.10 states that when assessing misrepresentation, all the relevant information and the circumstances should be carefully considered. He says that this consideration must include facts which are personal to him including the reasons for the Refusal. He says, and counsel for the Respondent agrees, that the fact that his Visa was refused because

he might have stayed in Canada could not have had any impact on the decision reached on his application for permanent residence. In other words, it could not have caused the Officer to reach an erroneous decision, and therefore could not have induced an error in the administration of the Act.

IV. Conclusion

[14] I am persuaded by the Applicants' submission. In my view, a consideration of the circumstances includes consideration of whether, on the facts of each case, the misrepresentation could have induced an error in the administration of the Act. Accordingly, the application will be allowed.

[15] No question was posed for certification for appeal under section 74(d) of the IRPA.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is allowed;
2. The issue of whether the Applicant is inadmissible for misrepresentation is to be reconsidered by a different officer in accordance with these Reasons.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7210-13

STYLE OF CAUSE: THEVACHSANTHIRAN MURUGAN, SIVARANI
THEVACHANDRAN v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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