

Federal Court



Cour fédérale

**Date: 20160722**

**Docket: IMM-5723-15**

**Citation: 2016 FC 863**

**Ottawa, Ontario, July 22, 2016**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**SIMMI NARANG**

**Applicant**

**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 judicial review of a decision of a visa officer [Officer] dated November 20, 2015 [Decision], which denied the Applicant's application for permanent resident status under the Federal Skilled Worker [FSW] category.

## II. BACKGROUND

[2] The Applicant is a citizen of India. She holds several degrees and certifications, including a Masters of Computer Science and a Masters of Business Administration. From 2002 to 2009, the Applicant worked as a deputy senior manager at Bajaj Capital. In February 2004, she submitted an application for permanent residence under the FSW class.

[3] From October 2009 to January 2015, the Applicant began working for V Client Wealth Management [VCWM], a start-up which was formed in 2009. The Applicant worked at VCWM as a consultant investment advisor, managing client insurance coverage and calculating premiums for individuals and groups. Following the birth of her second child, VCWM allowed her to work remotely from home, granting her more time to care for her children. Once the Applicant began this arrangement, her interactions with VCWM became limited to communications with Pramod Sharma, her supervisor and the company director, to whom she would electronically send completed work.

[4] In March 2014, as a result of the Government of Canada's elimination of the backlog of FSW applications, the Applicant's application was terminated and she received a refund of her application fee. The Applicant applied for permanent residence again in May 2014.

[5] In January 2015, a visa officer called VCWM. The employee who answered, Ramesh Pandey, said that the Applicant did not work there. However, once Mr. Sharma picked up the phone, her employment and at-home work arrangement were confirmed. That same day, the

Applicant spoke with a visa officer who asked her various questions about her work for VCWM. She answered the visa officer's questions about her working arrangement and indicated that she was not up-to-date regarding the responsibilities of the new employees in the company.

[6] On May 21, 2015, the Applicant received a letter from the High Commission of Canada, informing her that she might be inadmissible to Canada for misrepresentation [Fairness Letter]. The Applicant responded on June 9, 2015 with supporting documentation addressing these concerns. She affirmed details regarding the length of her time of employment at VCWM, the nature and duties of her role, her at-home work arrangement and her salary. She explained that VCWM was undergoing important structural changes and this is why her employer could not provide definitive details about its framework, leave entitlements and salary increments. She explained that the initial person with whom the visa officer had spoken at VCWM must have been caught off-guard, and that with regards to her own phone call, any perceived nervousness or distraction could be attributed to the fact that she was visiting her sister at the time.

[7] In January 2015, the Applicant informed the High Commission of Canada that she had quit her job at VCWM and had begun working for Alankrit Capitale [Alankrit]. She did not disclose to Alankrit that she had applied to immigrate to Canada for a second time in May 2014, as she knew that, as a start-up, they required a full-time and indefinite commitment. She was afraid she would not get their support.

[8] In July 2015, the Applicant left her position at Alankrit. On November 6, 2015, the Applicant received two phone calls from a visa officer, inquiring about her employment with

Alankrit. She told the visa officer that she had not been employed since July 24, 2015, and gave the name of her former manager. The Applicant explained that she did not contact Citizenship and Immigration Canada [CIC] about her change in employment, and had not begun looking for another job, because she had been advised by a consultant to wait for CIC's response to her FSW application. Thirty minutes later, she received a second call from the visa officer who stated that Alankrit had said that she was still employed there and that she had been at work on the previous day, was on leave today, and would be back on the following day. The Applicant reiterated that she had not had any contact with the company since her last day of work in July 2015, and she did not know why information to the contrary was provided by Alankrit. Apart from these phone conversations, the Applicant says she was not provided with any written letter expressing CIC's concerns with her employment, so she assumed that her explanations had been accepted.

### III. DECISION UNDER REVIEW

[9] The Decision under review consists of a letter dated November 20, 2015 and its accompanying Global Case Management System [GCMS] notes. The Officer concluded that the Applicant did not qualify for the issuance of a permanent residence visa because she is inadmissible to Canada pursuant to s 40(1)(a) of the Act for misrepresenting material facts.

### IV. ISSUES

[10] The Applicant raises the following issues in this application:

1. Did the Officer breach the principles of procedural fairness by failing to raise his concerns with the Applicant in a way that enabled her to properly respond?
2. Is the Officer's Decision unreasonable?

## V. STANDARD OF REVIEW

[11] 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.

[12] The first issue addresses matters of procedural fairness and as such will be assessed using the standard of correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79. An immigration officer's assessment of whether an applicant committed a misrepresentation is a determination of fact. Therefore, the second issue will be reviewed using the reasonableness standard of review: *Khan v Canada (Citizenship and Immigration)*, 2009 FC 302 at paras 9-10; *Malik v Canada (Citizenship and Immigration)*, 2009 FC 1283 at para 22.

[13] 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 *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 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

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

### **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 matter that induces or could induce an error in the administration of this Act;

### **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, ce qui entraîne ou risque d’entraîner une erreur dans l’application de la présente loi;

## VII. ARGUMENTS

### A. *New Evidence*

[15] The Respondent submits that the affidavit evidence of Mr. Ankur Gautum, the Applicant’s former employer at Alankrit filed with this application, should be struck as it was not before the Officer and cannot now be used to impugn the Decision.

[16] The Applicant says that the affidavit is new evidence that is properly before the Court as it does not go to the merits of the case, but rather forms part of the Applicant's procedural fairness argument: *Molnar v Canada (Citizenship and Immigration)*, 2012 FC 530 at para 39. She says the contents of the affidavit were submitted in order to demonstrate that she could have obtained supporting evidence from her former employer that addressed the Officer's concerns had she been given the chance.

[17] The Respondent argues that there is no exceptional basis for the inclusion of the new evidence and that the Applicant should be able to demonstrate a breach of procedural fairness by simply arguing that she was deprived of an opportunity to introduce rebuttal evidence to clarify the Officer's concerns.

B. *Applicant*

[18] The Applicant says she was taken aback when she received the Decision as there were no reasons for her to lie on her application about her employment with VCWM or Alankrit. She submits that the Officer made adverse credibility findings founded on extrinsic evidence. While the Fairness Letter was sent to the Applicant, it did not communicate all of the Officer's concerns, nor did it give the Applicant an opportunity to respond to them: *Ali v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 468; *Vandi v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 515.

[19] Calling the Applicant on November 6, 2015 to ask about the Alankrit employee's statement, which indicated that the Applicant continued to work there, was not sufficient to meet

the Officer's duty of fairness. No indication was given to the Applicant that the Officer suspected that information had been misrepresented, or that the call would affect the Applicant's application for permanent residency. The Officer seemed content with the Applicant's response; had she known that the issue remained a concern, she could have obtained a statutory declaration from her former employer to clarify the matter. The Applicant submits that an in-person interview should have been called, or a subsequent fairness letter or follow up call outlining the concerns should have been provided: *Arshi v Canada (Minister of Citizenship and Immigration)*, [2003] FCJ No 490 at para 5; *Amin v Canada (Citizenship and Immigration)*, 2013 FC 206 at paras 29, 32.

[20] Even if read together with the accompanying GCMS notes, the Decision fails to explain the misrepresentation findings, simply stating that the Applicant misrepresented her "work experience as consultant insurance/financial investments." While the notes set out concerns relating to the Officer's call to VCWM, they do not specify whether the call to Alankrit also played a role in the determination. Reasons can be brief, but must inform the Applicant of the underlying analysis of the Decision. Here, they do not perform this function and the Applicant is left without an ability to understand why the Decision was made and, more specifically, if the Officer believed that she misrepresented information as a result of the call with her most recent employer: *Canada (Citizenship and Immigration) v Jeizan*, 2010 FC 323; *VIA Rail Canada Inc v Canada (National Transportation Agency)*, [2000] FCJ No 1685 at paras 21-22.

[21] The Applicant is well educated, has held various employment positions in the financial and insurance sector and meets all of the language requirements, and yet has been waiting over



12 years to have her FSW application considered. She says that, as a result of factors beyond her control, careless or incorrect information was provided to the visa officer by previous employers. She responded to the concerns of the Officer that were brought to her attention in the Fairness Letter, but was not given the opportunity to address others that were relied on in the negative determination. The Decision should be set aside.

C. *Respondent*

[22] The Respondent makes several submissions on the nature of the procedural fairness that is owed to the Applicant in this case. Procedural fairness does not require notice of an Officer's concerns where they arise directly from the Act. Furthermore, the Applicant in this case, as a visa applicant, should only expect procedural fairness at the low end of the spectrum, as there are no substantive rights at issue. As a result, it was not incumbent on the Officer to point out specific concerns with the Applicant's evidence or to make further enquiries: *Parmar v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 1532 at para 36; *Dash v Canada (Citizenship and Immigration)*, 2010 FC 1255 at para 27.

[23] The Respondent submits that, when the Officer was attempting to verify the Applicant's employment, many contradictions emerged from the phone conversations with the Applicant, Mr. Sharma of VCWM and employees at Alankrit. The Applicant was contacted by the Officer by telephone and by way of the Fairness Letter, providing her with the opportunity to respond to the contradictions. The Applicant's responses were weak and not satisfactory. It was open to the Officer to refuse her application under the FSW category, finding that she had misrepresented

facts relating to her employment history, particularly given that the information provided by Mr. Sharma and the employee at Alankrit was not ambiguous in any way.

[24] Contradictions emerged from the phone calls with VCWM related to company organization, salaries, paygrades and the amount of leave that the Applicant had taken between her start and end dates. With respect to the Applicant's employment at Alankrit, the Applicant's employer had indicated that she was at work the previous day and was expected on the next day. The Applicant had told the Officer at this point that she was unemployed. Her only explanation for the discrepancy was that she did not know what the Alankrit employee wanted to prove by saying that she still worked there, and that maybe he was busy doing something else or with clients at the time of the call. The Respondent says that the Applicant was not owed a second procedural fairness letter as she was already provided with an opportunity over the phone to respond to the contradiction.

[25] The Respondent argues that the Decision and reasons are not inadequate. The GCMS notes detail all of the contradictions that emerged from the various phone conversations held by the Officer. Furthermore, the Officer clearly states that the Applicant has been found to have misrepresented information pursuant to s 40(1) of the Act as a result of an assessment of all of the information that the Applicant provided. This clearly indicates that the misrepresentation finding – and ultimately, the denial of the Applicant's application – resulted from all of the information obtained through the Officer's verification efforts.

VIII. ANALYSIS

[26] The affidavit of Mr. Ankur Gautum is not admissible. The affidavit is submitted to demonstrate that the Applicant could have obtained supporting evidence from her former employer that addressed the Officer's concerns had she been given a meaningful opportunity to do so. Such evidence is not required to demonstrate procedural fairness. The issue is whether the Applicant was given a reasonable opportunity to address the Officer's concerns, not what she could have said or done had she been given the opportunity. See *Madadi v Canada (Citizenship and Immigration)*, 2013 FC 716 at paras 6-7; *Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 21.

[27] The principal issue in this case is whether the Applicant was given a meaningful and fair opportunity to respond to the credibility issues identified by the Officer from his conversations with employers of the Applicant who provided information about her that contradicted, or was at odds with, the information the Applicant had herself provided.

[28] The Applicant's position is that the Fairness Letter which she received did not cover the concerns that arose out of the Officer's phone call with the Applicant's former employer at Alankrit, and the phone call which the Officer made to the Applicant on November 6, 2015 was not sufficient to meet the Officer's duty of fairness.

[29] On May 21, 2015, the Applicant was sent a Fairness Letter informing her of the concerns the Officer had following his conflicting conversations with Ramesh Pandy at VCWM and the Applicant responded on June 9, 2015.

[30] As the Decision and the GMCS notes make clear, the Officer provided adequate and reasonable reasons for not accepting the Applicant's explanations and for finding that she was not credible:

The applicant has sent the following documents:

- Letter from applicant
- Prints of our emails in reply to status queries by applicant
- Job relieving letter
- New appointment letter

Applicant states that the person who answered our call was "among thick of things" so could not answer our questions with concentration. I do not give weight to this because he clearly stated, more than once, that no one by applicant's name works there. He did not state [*sic*] that he will not be able to provide reliable information.

I found that the applicant's explanation as to why the information presented by the director of the company was incorrect to be not credible. The director is in a position to provide authoritative information [regarding] his business and employees. No indication was given by him at the time of the verification that records might be inaccessible, incomplete or incorrect or he will not be able to provide reliable information.

Applicant now states that the company is going through a transition phase and roles and responsibilities of staff is not fixed [*sic*] and that there is commotion regarding things like leave entitlements, salary payments and increments. I do not [give] weight to these explanations because the director did not state that at the time of the verification.

She now states that she was on maternity leave. At the time of the verification, however, she had stated that she had never been on long leave.

She further states that when she got our call her attention was diverted as her son was sick and she got nervous. I do not [give] weight to this because she did not mention that at the time of the verification.

Applicant has possibly misrepresented her work experience by submitting an inauthentic employment letter.

This could have led to an error in the administration of the Act because it could have led an officer to be satisfied that the applicant met the requirements of the Act with respect to work experience.

Our procedural fairness letter explained the provisions of A40.

[31] The Applicant does not take issue with this aspect of the Decision as far as procedural fairness is concerned. Hence, provided this aspect is reasonable, it is sufficient for a finding of misrepresentation quite apart from the Officer's alleged handling of his discussions with Alankrit.

[32] The Applicant's main point on procedural fairness is that the Officer's phone call to the Applicant on November 6, 2015, in which the Applicant was questioned about the statements made by Mr. Ankur Gautum at Alankrit, was not sufficient to meet the duty of fairness. The Applicant's argument on this issue is as follows:

28) The officer's phone call to the Applicant on November 6, 2015, whereby she questioned her about the employee's statement that she continued to work at Alankrit Capitale was not sufficient to meet the officer's duty of fairness. While the officer set out what had happened with her call to the employer on her call with [the] Applicant, she did not indicate to the Applicant that she was concerned that the Applicant had misrepresented the information, (as opposed to it simply bringing the information to her attention) or that this call would in anyway [sic] affect the Applicant's application for permanent residency. As per the GCMS notes, all the officer stated to the Applicant after she told her what had transpired in the call was "Do you wish to say something on this?"

29) As also noted in the GCMS notes, the Applicant told the officer that she did not know why the employee would have said that she was still working at the company given that she had terminated her employment with the company several months previously. As stated in the Applicant's affidavit, the officer seemed content with this response. As further noted in her affidavit, had the Applicant understood this to be a concern of the officer's going forward she could have obtained a statutory declaration (similar to the one included with this application) which had the employer clarify what had occurred so as to alleviate the officer's concerns.

30) As such the officer's call to the Applicant about this issue was not sufficient to meet the duty of fairness as the officer did not effectively present her concerns in a manor [*sic*] that allowed the Applicant to effectively respond to them. Given the nature of the officer's concerns, it is submitted that an interview should have been called and the Applicant questioned in person. At the very least, a subsequent fairness letter or follow up call outlining the officer's concerns should have been provided. As neither occurred in this case, the officer breached the principles of fairness.

[footnotes omitted]

[33] The GCMS notes on this point reveal the following:

Date of Call : 06 November 2015

File: E000180582

Verification: Subject's employment to be verified at Aankrit Capitale [*sic*]

Called the landline number of company and call answered by a man who identified himself as Ankur Gautam, owner of company. Can I speak with Ms. Simmi Narang – She is not in today

Was she in yesterday – yes

Will she be in tomorrow – off course [*sic*] yes if you have something urgent I can give you her mobile number

No thank you and ended the call

Call to pa on her mobile

Call answered by pa – Identity confirmed – introduced myself

Where are you currently working mam – well to be honest I have left job with Alankrit Capitale on 24 July 2015 and I informed my agent about this and surely he must have informed your office about it.

What was your designation there – Branch Coordinator

Why did you leave – The company was in big losses and the own told me to resign and you know he is my ex colleague also. But I want to tell you that we have been awaiting for this for almost 12 years now and why is it taking too long. I was interviewed in January this year and was very nervous and could not respond confidently to the visa officer. My family is in Canada, my in laws, my brother in law and we are only here

But Mam all applications are processed separately and all statutory requirements have to be completed. However, if anytime you feel like knowing the status you can always write to us at Delhi Immigration and we will respond.

Thanked and ended my call

...

Date of Call : 06 November 2015

File: E000180582

As advised called applicant again – When did you last spoke to your employer, Mr. Gautam – on 31 July 2015

You left job on – 24 July 2015

Mam I spoke to your employer this morning and he told me that you are off today but you were in office yesterday and will be in office tomorrow also whereas you told me that you left the job in July 2015. Do you wish to say something on this?

Don't know what Mr Gautam wants to prove by saying so and why he told you that I was in office yesterday and will be in office tomorrow but I left my job in July 2015. May be he was busy doing something else or was with his clients.

Thanked and ended my call.

...

A40 ASSESSMENT : I have evaluated all of the facts of this case including any response and accompanying supporting materials which may have been received from the applicant in response to procedural fairness efforts made. On the basis of a balance of probabilities, the applicant has in my assessment, directly or indirectly misrepresented facts or withheld material facts relating to employment history. The misrepresentation is of a relevant matter that has induced or could have induced an error in the administration of IRPA by misleading an assessing officer to be satisfied the applicant had experience in the occupation(s) stated in the application and therefore would lead the officer to conclude the applicant met the requirements of the Act.

I am therefore of the opinion that the applicant is inadmissible to Canada under Section 40 of the Act. This application is refused.

[errors in original]

[34] The notes make very clear that the Applicant was asked to comment upon the discrepancy between her own account that she had left her job at Alankrit in July 2015 and Mr. Gautum's account that she was in the office yesterday and would be in tomorrow, with the clear implication that the Applicant was still with the company.

[35] The Applicant argues that the Officer did not indicate that he was concerned with this discrepancy as a misrepresentation, as opposed to "simply bringing the information to her attention" because all that the Officer asked was "Do you wish to say something on this?"

[36] The Officer did not need to advise the Applicant that he was considering a misrepresentation. There is no requirement to give the Applicant a running score. See *Khan v Canada (Citizenship and Immigration)*, 2008 FC 121 at para 14. Furthermore, the Officer makes it abundantly clear that there is a discrepancy between what the Applicant had said and what Mr. Gautum had told him. The Applicant is a highly intelligent and educated woman and the



answer she gave makes clear that she knew the Officer was seeking an explanation for the discrepancy. The Applicant was given full notice of the issue and every opportunity to provide an explanation. In fact, she did provide an explanation. She now argues that she could have provided a better one if she had fully understood the concern. It is obvious from the GCMS notes that she fully understood the concern and that she could have offered to clarify the situation in any way she chose. There was no procedural unfairness here.

[37] The Applicant also says that the Decision was unreasonable because the reasons are inadequate and the employers provided incorrect information to the Officer, while she provided reasonable responses.

[38] Inadequate reasons are not a stand-alone ground for review. See *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 21-22. None of the Applicant's grounds are borne out by the Decision itself.

[39] The refusal letter clearly tells the Applicant that she misrepresented her work experience as a consultant insurance/financial investment and that this conclusion is based upon

...all the information provided by you, the information obtained through the verification conducted by this office and your response to our letter dated 21 May 2015...

[40] The GCMS notes then provide a full account of how discrepancies were identified and how the Applicant was given a fair opportunity to clarify the situation but failed to do so to the Officer's satisfaction. I don't think the reasons could have been clearer.

[41] Counsel concur that there is no question for certification and the Court agrees.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application is dismissed.
2. There is no question for certification.

“James Russell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5723-15

**STYLE OF CAUSE:** SIMMI NARANG v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 30, 2016

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**DATED:** JULY 22, 2016

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