Federal Court Cour fédérale

Date: 20160906

Docket: IMM-374-16

Citation: 2016 FC 1006

Ottawa, Ontario, September 6, 2016

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

MAHMOUD HOSEINNEJAD ASL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Mr. Mahmoud Hoseinnejad Asl is seeking judicial review of a visa officer's decision refusing his application for permanent residence under the Skilled Worker category, on the basis that he is inadmissible pursuant to paragraphs 40(1)(*a*) and 40(2)(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicant was found to have made a

material misrepresentation by providing the visa officer with a letter of reference that was not genuine and that was not from his employer.

II. Background

[2] The Applicant is a citizen of Iran. In May 2013, he submitted an application for permanent residence in Canada under the Skilled Worker class. He included his wife in his application. The Applicant intended to work as a civil engineer in Canada. He has a Master's Degree in Architectural Engineering from the Iran University of Science and Technology in Tehran and, since July 2008, he has worked as a construction engineer at the Endowments and Charity Affairs Organization [AWQAF]. Previously, he worked as a construction engineer for Khesht o Naghsh Markazi Co, from March 2004 to December 2005, and from August 2007 to July 2008.

[3] In his application for permanent residence, the Applicant submitted documentation to describe his job and duties at AWQAF, including a reference letter from the employer detailing the duties performed, as well as documentation regarding other related work experience. On April 16, 2014, the Canadian Embassy in Warsaw, Poland requested a medical examination and additional documents from the Applicant. He replied on May 21, 2014, with additional supporting documents including an updated Job Certificate from AWQAF, dated April 27, 2014, once again outlining his occupational duties.

[4] Sometime before January 4, 2015, the visa officer contacted the personnel department at AWQAF to follow up on a document verification request which had been faxed to AWQAF

earlier. The visa officer was advised that although the Applicant worked at AWQAF, the reference letter was not genuine and was not issued by AWQAF. An excerpt of the visa officer's subsequent Global Case Management System [GCMS] entry states: "Was advised that although [the Applicant] is working there, work reference letter submitted by him is not genuine and was not issued by this organization."

[5] The Applicant became aware of the previous fax inquiry from the visa officer and sent him an email advising that: "[AWQAF] is a public organization governed by hardliners and unfortunately in such public organizations a proclamation was strictly issued prohibiting any kind of communication with foreign countries without embassy in Iran. Therefore, the international affairs or human resource managers are not allowed to respond to your fax inquiry."

[6] It is not clear whether the Applicant was aware of the officer's conversation with a representative of AWQAF at this time. In the email, the Applicant offered to facilitate the visa officer's connection with his direct manager, in charge of the "Engineering Department", and also asked whether he could assist by providing further documentation. He indicated that he had not advised AWQAF of his intention to immigrate to Canada, because this would put his job at risk. He explained that his "work reference" had therefore been addressed to a local company in Iran.

[7] On January 27, 2015, the visa officer sent the Applicant a procedural fairness letter. Here is the relevant excerpt of the letter:

> In an attempt to verify the authenticity of your work reference letter, I contacted [AWQAF] in Iran and I was advised that the

> work reference letter which was submitted by you was not genuine and was not issued by this organization. Therefore, it is my belief that you have deliberately tried to mislead me in a relevant matter which could induce an error in the administration of the Immigration and Refugee Protection Act and I am considering recommending to my supervisor that you be found inadmissible to Canada for misrepresentation pursuant to subsection 40(1)(a) of the Act. […] You have 30 days from the date of this letter to respond in writing to my concerns as noted above.

[8] The Applicant responded to the procedural fairness letter and forwarded additional documentation to address the visa officer's concerns. He thereby stated that the human resources manager at AWQAF had told him that "we are not allowed to verify your work reference in response and furthermore your job certificate was issued to a local company and you were not permitted to send it to Canadian embassy". According to the Applicant, this was the reason that the visa officer had been told the reference letter was not genuine.

[9] The Applicant further explained that his work reference had originally been addressed to Canpars, the local company to which the Applicant had referred to in his previous email. However, he had subsequently deleted Canpars as the addressee in order to submit the reference letter for immigration purposes, without the knowledge of his employer. The attached translated letter from Canpars confirmed that the company had received the Applicant's Job Certificate addressed to it, dated April 27, 2014. The only difference from the same certificate previously submitted by the Applicant is that it says: "To: Canpars Company" in the heading. Furthermore, the attached letter from Pendar Official Translation Bureau stated that:

> According to strict rules come into force in most of Iranian public organizations, issuance of personnel's job certificate to foreign countries without embassy in Iran is forbidden, so these letters are usually issued addressing a local company. Also for immigration purposes, the content of the letter it [sic] more important than the

> receiver then it is common that official translation bureau usually delete the receivers of letters.
>
> Considering all this point, Mahmoud Hosinnejad [sic] Asl requested the translation office for necessary modifications and the newly formatted letter bearing the addressed company (Canpars Company) that is attached.

[10] Other additional AWQAF documentation provided by the Applicant were: a social insurance document; an employee contract; salary slips; an affidavit of three of the Applicant's colleagues, swearing they work with him; customers' letters from the Department General of Technical Supervision verifying the Applicant's position; the Applicant's personnel card and those of three of his colleagues; a job title table of people working at the Department General and the position of the Applicant himself; and an organization chart.

[11] On September 22, 2015, the Applicant sent another letter to the officer, reiterating his position. He also attached a job certificate issued by a new human resources manager at AWQAF whom he described as not being as much of a hardliner as the previous manager. The Applicant suggested that the officer verify his work reference through either the Italian or Norwegian Embassy in Tehran, given the government proclamation prohibiting companies like AWQAF from providing any response to communications from a country without an embassy in Iran.

III. Impugned Decision

[12] The visa officer found that the Applicant was "inadmissible for misrepresentation 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", pursuant to paragraph

40(1)(*a*) of the IRPA. The visa officer stated that he reached this determination on the basis that AWQAF had been unable to confirm the genuineness of the Applicant's employment references; thus, the Applicant had provided an inaccurate account of his employment experience history. He would accordingly be inadmissible for five years following this determination, by virtue of paragraph 40(2)(*a*) of the IRPA.

[13] The GCMS notes form part of the visa officer's decision. The visa officer's entry for April 24, 2015, states that after reviewing the Applicant's submissions responding to the procedural fairness letter:

> […] information provided failed to disabuse me of my concerns regarding this application. The fact is that the [Applicant's] employer did not confirm the genuineness of the work references submitted by [him]. Although [he] might be working for this employer, in light of submission of references which are not genuine, it is not certain in what capacity he is working and whether his work experience meets the minimum requirements and Ministerial Instructions. […]
>
> This office has conducted numerous verifications in Iran, including with state institutions such as judiciary institutions, universities, etc. and none of the issues raised by the [A]pplicant were noted. […]

[14] The GCMS entry for December 3, 2015 is similar. In it, the officer notes that he has considered the documentation and information provided by the Applicant, as well as his response; however, "[t]he response from the client has not disabused me of the concerns raised. In my opinion, on a balance of probabilities, I find it reasonable to conclude that the applicant does not have the stated employment experience as claimed."

IV. Issues and Standard of Review

[15] This application for judicial review raises the following issues:

A. *Did the officer err in finding that the Applicant misrepresented his employment experience?*

B. *Did the officer err by not disclosing extrinsic evidence to the Applicant and/or by not providing him with an opportunity to address that extrinsic evidence?*

[16] The first question is a question of mixed fact and law, and is reviewable on the standard of reasonableness (*Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38 at para 11; *Singh v Canada*, 2015 FC 377 at para 12; *Karami v Canada (Citizenship and Immigration)*, 2009 FC 788 at para 14).

[17] As to the second question, issues relating to extrinsic evidence and its disclosure are questions of procedural fairness, and are reviewable on the standard of correctness (*Qureshi v Canada (Citizenship and Immigration)*, 2009 FC 1081 at para 14; *Dios v Canada (Citizenship and Immigration)*, 2008 FC 1322 at para 23).

V. Analysis

A. *Did the officer err in finding that the Applicant misrepresented his employment experience?*

[18] I do not agree with the Applicant that the officer ignored multiple pieces of evidence. As acknowledged by the parties, decision-makers are not required to refer to every piece of evidence

(*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 at para 16). In *Herrera Andrade v Canada (Citizenship and Immigration)*, 2012 FC 1490 at paragraph 11, Justice Gleason held that "the starting point for the inquiry in respect of an argument regarding the impact of failure to mention key evidence is that the reviewing court must presume that the tribunal considered the entire record", and thus the Applicant "bear[s] a high burden of persuasion". Second, in assessing reasonableness, the Court must assess both the outcome and the reasons of the tribunal, as per *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paragraph 14. Third, the Court must give deference to the tribunal's findings, especially where such findings are at the core of the tribunal's expertise.

[19] Moreover, *Andrade*, above at paragraph 9, holds that *Cepeda-Gutierrez* "does not stand for the proposition that failure to analyze evidence that runs contrary to a tribunal's conclusion necessarily renders a decision unreasonable". Instead, a decision will only be overturned in circumstances "where the non-mentioned evidence is critical, contradicts the tribunal's conclusion and the reviewing court determines that its omission means that the tribunal did not have regard to the material before it". Thus, the bar for finding that the decision is unreasonable is high.

[20] The Applicant has not convinced me that this bar is reached in this case. The officer considered the supporting documents submitted by the Applicant, as well as the job certificate, and found that these documents had not disabused him of his original concerns, i.e. that a representative from AWQAF stated that the Applicant's reference letter was not genuine and was

not issued by AWQAF. The subsequent documentation provided by the Applicant simply did not change the officer's mind that the original reference letter was fraudulent. Moreover, I agree with the Respondent that the Applicant did not provide evidence that he was targeted by hardliners. Such evidence could have helped substantiate his claim that the AWQAF representative told the officer his letter was not genuine because of the purported government proclamation. The Applicant did provide the letter from the Pendar Official Translation Bureau stating that such a proclamation was in effect, but it did not state that AWQAF was subject to it. In any event, the officer was able to successfully contact AWQAF and the person contacted did confirm that the Applicant worked there.

[21] I acknowledge that a finding of inadmissibility due to misrepresentation is a serious one, and that it must be made with "clear and convincing" evidence (*Chughtai v Canada (Citizenship and Immigration)*, 2016 FC 416 at para 29; *Xu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 784 at para 16). I find that the statement from the AWQAF representative to the officer was clear and convincing to the effect that the reference letter was neither genuine, nor issued by AWQAF. The Applicant did not discharge his burden of proving otherwise.

B. *Did the officer err by not disclosing extrinsic evidence to the Applicant or by not providing him with an opportunity to address that extrinsic evidence?*

[22] When dealing with a question of extrinsic evidence, this Court has held that it is not necessary to discuss the standard of review, but that it should evaluate whether the rules of procedural fairness have been adhered to (*Qureshi* above at para 14; *Dios* above at para 23). For

other questions of procedural fairness, the standard of review is correctness (*Sharma v Canada (Citizenship and Immigration)*, 2015 FC 1253 at para 26; *Singh* above at para 12). In light of this, and for the reasons below, I find that the officer did not breach procedural fairness.

[23] First of all, I would note that the procedural fairness owed by visa officers is on the low end of the spectrum (*Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at para 23). Of course, the duty of fairness in this context still "require[s] visa officers to inform applicants of their concerns so that an applicant may have an opportunity to disabuse an officer of such concerns." (*Talpur v Canada (Citizenship and Immigration)*, 2012 FC 25 at para 21).

[24] The officer provided the Applicant with a procedural fairness letter on January 27, 2015, after sending a fax inquiry and speaking with a representative of AWQAF. In the letter, the officer states that the representative advised him that the reference letter was not genuine and not issued by AWQAF, and thus that the officer believed that the Applicant had attempted to mislead him. The letter made it clear that this was the concern that the Applicant had to address, therefore the onus was on the Applicant to demonstrate that no misrepresentation occurred (*Bhamra v Canada (Citizenship and Immigration)*, 2014 FC 239 at para 43).

[25] The question of whether Iranian companies respond to foreign authorities did not form part of the officer's concerns, since he was able to successfully communicate with the AWQAF representative. It does not matter whether the Applicant knew of this communication when he sent his email on January 4, 2015, because he was advised of it in the procedural fairness letter a few weeks later, and had an opportunity to fully address it then. For instance, if the Applicant

was convinced that the fact that the AWQAF representative had spoken to the officer meant he was being targeted by hardliners, he could have provided evidence to that effect, and/or more general evidence that Iranian companies, including AWQAF, cannot communicate with foreign authorities. He did not do so.

[26] The officer's statement in the GCMS notes that the Canadian Embassy has successfully contacted other Iranian companies in the past only corroborated his own successful verification attempt with AWQAF. I am not convinced that this constitutes extrinsic evidence, as the Applicant asserts. Rather, it is simply general knowledge which forms part of the officer's expertise. Indeed, as this Court held in *Bahr v Canada (Citizenship and Immigration)*, 2012 FC 527 at paragraph 42:

> [42] So it seems to me that what applicants should expect is that the onus is upon them to make a convincing case and that, in assessing their applications, visa officers will use their general experience and knowledge of local conditions to draw inferences and reach conclusions on the basis of the information and documents provided by the applicant without necessarily putting any concerns that may arise to the applicant. The onus is upon the applicant to ensure that the application is comprehensive and contains all that is needed to make a convincing case.

[27] While the Applicant was not aware of the officer's general knowledge, the Applicant did know about the officer's communication with AWQAF. As I mentioned above, if the Applicant was of the view that the communication between the officer and the AWQAF representative was abnormal, he could have addressed this with evidence to support it in his reply to the procedural fairness letter. He was given a reasonable opportunity to present his case (see e.g. *Atahi v Canada (Citizenship and Immigration)*, 2012 FC 753 at para 31).

[28] In any event, even if the Applicant is correct in asserting that the knowledge of the Canadian Embassy’s prior successful communications constitutes extrinsic evidence, I note that officers are not required to disclose extrinsic evidence where the applicant could reasonably anticipate that it would be consulted (*Qin v Canada (Citizenship and Immigration)*, 2013 FC 147 at para 38). In this case, it was reasonable to anticipate that the officer would refer to his general knowledge and that this would include knowledge of past interactions or communications between the Canadian Embassy and Iranian companies.

[29] To go a step further, even if the officer breached procedural fairness by not disclosing extrinsic evidence to the Applicant, I find that the officer’s decision could be upheld, because the breach would not have changed the outcome of the decision on the merits (*Renaud v Canada (Attorney General)*, 2013 FCA 266 at paras 4-6). Since the officer successfully contacted AWQAF, and obtained the information about the fraudulent letter from that phone call, he could have reached his decision without the knowledge of the Canadian Embassy’s previous contacts with Iranian companies.

[30] As for the Applicant’s argument that the officer also breached procedural fairness by not disclosing that AWQAF had confirmed that he worked there, I cannot agree. As indicated above, the officer clearly expressed the issue in the procedural fairness letter: he was concerned that the reference letter was fraudulent. Even if the officer believed that the Applicant worked at AWQAF, this did not change the fact that the Applicant could provide a fraudulent reference letter from that employer.

[31] The Applicant had the opportunity to respond to the officer's concerns, and failed to discharge his burden of proving otherwise. For instance, he could have provided sworn evidence from the author of the reference letter attesting that it was truthful. He did not do so.

VI. Conclusion

[32] This application for judicial review is dismissed. The parties have proposed no question of general importance to be certified and none arises from this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed;

2. No question of general importance is certified; and

3. No costs are granted.

"Jocelyne Gagné"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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