Federal Court  Cour fédérale

Date: 20161208

Docket: IMM-5751-15

Citation: 2016 FC 1349

Ottawa, Ontario, December 8, 2016

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ROMAN GORDASHEVSKIY

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 the decision of an immigration officer in the Canadian Embassy in Warsaw [Visa Officer], dated October 22, 2015 [Decision], which denied the Applicant's application for permanent residence as a member of the provincial nominee class.

II. BACKGROUND

[2] The Applicant is a 60-year-old citizen of Russia and Israel. He worked as the General Manager/Owner of a business in Russia from 1996 to 2010, when he liquidated the company. Shortly after the liquidation, the Applicant and his wife moved to Israel and obtained Israeli citizenship in October 2010.

[3] On August 9, 2007, the Applicant filed an application for permanent residence in Canada under the provincial nominee class based on his status as an Investor in the Province of Prince Edward Island. He subsequently filed an application for permanent residence in Canada under the family class, sponsored by his daughter.

[4] In June 2010, the Applicant and his wife traveled to Canada as temporary visitors. The following month, the Russian authorities commenced a criminal investigation, which resulted in an indictment filed *in absentia* against the Applicant in May 2011. The indictment was subsequently withdrawn in June 2014.

III. DECISION UNDER REVIEW

[5] A Decision sent from the Visa Officer to the Applicant by letter dated October 22, 2016 determined that the Applicant did not qualify for immigration to Canada in the provincial nominee class.

[6] The Visa Officer concluded that the Applicant did not meet the requirements of s 87(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] as the Visa Officer was not satisfied that the Applicant intended to reside in Prince Edward Island. The Global Case Management System [GCMS] notes state that the Applicant had commenced an application for permanent residence in Canada under the family class and indicated that his intended destination in Canada was Toronto, where his sponsor lives.

[7] The Visa Officer also concluded that, under ss 40(1)(a) and 40(2)(a) of the Act, the Applicant was inadmissible to Canada for five years from the date of the Decision on the grounds that the Applicant had withheld material facts relating to his admissibility to Canada, which could have induced an error in the administration of the Act. The Visa Officer stated that the Applicant became aware of criminal charges against him in Russia in 2012, but did not inform the Canadian Embassy despite earlier correspondence concerning money-laundering and a request for a Russian police clearance certificate.

[8] The Visa Officer further concluded that the Applicant was a member of the inadmissible class of persons described in s 37(1)(b) of the Act.

IV. ISSUES

[9] The Applicant submits that the following are at issue in this application:

(1) Did the Visa Officer err in law by reaching a baseless conclusion regarding s 37 of the Act? This point has been conceded by the Respondent.

(2) In failing to provide the Applicant an interview, did the Visa Officer err by breaching the duty of fairness owed to the Applicant?

(3) Did the Visa Officer have reasonable grounds for the misrepresentation finding under s 40(1) of the Act?

(4) Did the Visa Officer err in law in failing to provide the Applicant with an opportunity to respond to the s 40(1) concerns?

V. STANDARD OF REVIEW

[1] 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.

[2] The first and third issues raised by the Applicant are concerned with the Visa Officer's findings of inadmissibility on the grounds of s 37(1)(b) and misrepresentation, respectively. A visa officer's assessment of an application for permanent residence 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.

[3] As matters of procedural fairness, the second and fourth issues regarding whether the Visa Officer should have granted the Applicant an interview as well as an opportunity to respond to the 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*].

[4] 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

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

Organized criminality	**Activités de criminalité organisée**
37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for:	37 (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :
…	…
(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of	b) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des

money or other proceeds of crime.	produits de la criminalité.
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;
…	…
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;

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

Class	**Catégorie**
87 (1) For the purposes of subsection 12(2) of the Act,	87 (1) Pour l'application du paragraphe 12(2) de la Loi, la

the provincial nominee class is hereby prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada.	catégorie des candidats des provinces est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada.
Member of the class	**Qualité**
(2) A foreign national is a member of the provincial nominee class if	(2) Fait partie de la catégorie des candidats des provinces l'étranger qui satisfait aux critères suivants :
(a) subject to subsection (5), they are named in a nomination certificate issued by the government of a province under a provincial nomination agreement between that province and the Minister; and	a) sous réserve du paragraphe (5), il est visé par un certificat de désignation délivré par le gouvernement provincial concerné conformément à l'accord concernant les candidats des provinces que la province en cause a conclu avec le ministre;
(b) they intend to reside in the province that has nominated them.	b) il cherche à s'établir dans la province qui a délivré le certificat de désignation.

VII. ARGUMENTS

A. *Applicant*

(1) Inadmissibility Under s 37 of the Act

[7] The Applicant submits that the Visa Officer erred in law by speculating that the Applicant was a member of the inadmissible class of persons described in s 37(1)(b) of the Act without a reasonable basis. The Visa Officer's conclusion was based on nine financial transactions that occurred between October 3, 2007 and October 12, 2007, which the Applicant

says were legitimate and resulted from a legal transaction to sell real estate and shares in the Applicant's liquidated company. The GCMS notes state that in July 2011, a reviewing officer was satisfied with the Applicant's explanation for the financial transactions and did not find reasonable grounds for an inadmissibility finding under s 37. Yet in the Decision, the Visa Officer found reasonable grounds for an inadmissibility finding based on the financial transactions without providing any evidence that linked the transactions with criminal activity.

[8] Based on s 462.31(1) of the *Criminal Code*, RSC 1985, c C-46, a finding of money laundering requires three elements: an intention to conceal the funds in the financial transactions; the funds transferred were obtained illegally; and the Applicant knew or believed that the funds transferred had been obtained illegally. In the present case, there is no logical basis for concluding that any of the elements were present. The Applicant was forthcoming and provided all documentation associated with the transactions. Additionally, the Visa Officer's suggestion that the Applicant's history of criminal charges indicates the funds were the proceeds of crime is unreasonable, especially since the indictments were filed *in absentia* and ultimately withdrawn. Consequently, there is also no basis to conclude that the Applicant knew or believed the funds had been obtained illegally.

(2) Failure to Provide an Interview to Address s 37 of the Act

[9] The Applicant submits that he should have been afforded the opportunity to address the s 37(1)(b) allegations as per s 10.1 of *the CIC Processing Manual ENF 2/OP 18: Evaluating Inadmissibility*, which states: "When an officer has information concerning possible organized crime involvement or is planning to refuse into Canada under the provisions of A37(1), the

applicant should be convoked for an interview and provided with an opportunity to address the allegation." The Applicant also notes that when he entered Canada in September 2015 as a visitor, he was asked to attend an in-person examination at the airport and found to be admissible by a Canadian Border Services Agency [CBSA] officer. Furthermore, a finding under s 37 is serious as it negatively affects the Applicant and his family in the long-term by permanently barring him from entering Canada to visit his family.

(3) Misrepresentation Under s 40(1)

[10] The Applicant submits that the Visa Officer was unreasonable to find that he misrepresented a material fact relating to his inadmissibility. The allegation of misrepresentation is based on the fact that the Applicant did not disclose the May 26, 2011 criminal indictment filed against him in Russia on October 25, 2011 when he responded to the request for an updated Schedule "A" form, police certificate of clearance [Certificate], and medical examination. The Applicant submits that the two elements required for a finding of inadmissibility for misrepresentation are not present.

[11] As regards the failure to include the 2011 indictment on his Schedule "A" form, the Applicant says he provided consistent evidence that, due to his relocation to Israel in September 2010, he only obtained knowledge of the indictment after the form was submitted. Despite the evidence provided, however, the Visa Officer did not accept the Applicant's explanation, particularly in regards to the purpose for the relocation to Israel. Instead, the Visa Officer speculated that the move was related to the criminal investigation that had commenced in Russia, despite the fact that the investigation did not identify the Applicant until a

year later when the indictment was filed. Furthermore, the Visa Officer drew a negative inference from the Applicant's obtaining Israeli citizenship a month after relocation despite this being customary Israeli law.

[12] The Applicant submits that the Visa Officer's speculation is unreasonable because sworn testimony is presumed truthful unless the facts indicate otherwise and, in the present case, there is no evidentiary basis to refute the Applicant's testimony: see *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA). The Applicant contends that the failure to address the Applicant's testimony is also a reviewable error: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at paras 27-28.

[13] Similarly, the finding that the Applicant withheld the police clearance Certificate is also based on speculation. In the Decision, the Visa Officer lists two instances where the Applicant failed to respond to requests for the certificate. Contrary to this statement, the Applicant responded to both requests. At the first request, the Applicant replied with a request for an extension of time, which was not answered. At the second request, the Applicant wrote to inform that he was in the process of obtaining the Certificate but was awaiting the withdrawal of the indictment charges.

[14] According to the Act, misrepresentation requires two elements: a misrepresentation must occur and it must be material in that it induces or could induce an error in the administration of the Act. A misrepresentation becomes material when it is both relevant and affects the process undertaken or the final decision: *Koo v Canada (Citizenship and Immigration)*, 2008 FC 931 at

paras 19-20. In the present case, the Applicant contends that he reasonably responded to each request for a Certificate and that a delay in compliance with the request does not constitute misrepresentation. Furthermore, even if a misrepresentation is found, it is not material because the criminal charges have been withdrawn. The Applicant contends that he should not be punished for being unjustly charged with an illegal indictment, especially since the indictment was withdrawn and therefore would not have induced an error in the administration of the Act.

[15] In the Decision, the Visa Officer falsely presumes that the Applicant misrepresented on the Schedule "A" form and should have disclosed the indictment before being requested to do so in 2014. These conclusions directly contradict the evidence and are based on pure speculation; as such, they should be set aside as unreasonable: see *Muhenda v Canada (Citizenship and Immigration)*, 2015 FC 854 at para 34. Furthermore, the conclusions are unreasonable because the GCMS notes do not reference the CBSA's cancelled inadmissibility report in September 2014 despite the Applicant's explicit request for its consideration.

(4) Failure to Provide an Opportunity to Respond to s 40(1) Concerns

[16] An applicant must be afforded an opportunity to respond to concerns related to credibility that are significant to the overall decision: see *Freeman v Canada (Citizenship and Immigration)*, 2013 FC 1065 at para 55 and *Fang v Canada (Citizenship and Immigration)*, 2014 FC 196 at para 19. In the present case, the Visa Officer did not provide the Applicant with an opportunity to respond to the concern that the Certificate was intentionally withheld. A letter sent to the Applicant on April 10, 2014 only outlined the concerns regarding the misrepresentation; there was no request to explain why the Applicant's Certificate had not been provided. Instead, the

Visa Officer inferred the Applicant's knowledge about the indictment from his failure to provide the Certificate. The Applicant submits that this adverse inference was material and led to the finding of inadmissibility, which makes the failure to communicate the inference unreasonable.

[17] Applicants must also be given a reasonable opportunity to respond to extrinsic evidence relied upon by the decision-maker: see *Rukmangathan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 284 at para 22 and *Khwaja v Canada (Minister of Citizenship and Immigration)*, 2006 FC 522 at para 17. This duty of fairness arises when the evidence is "an instrument of advocacy" that could "have such a degree of influence on the decision-maker that advance disclosure is required to 'level the playing field.'" See *Suleyman v Canada (Citizenship and Immigration)*, 2008 FC 780 at paras 46-49.

[18] The GMCS notes indicate reliance on extrinsic, unspecified evidence to determine the Applicant knew about the indictment while in Israel. A letter dated March 9, 2015 to the Applicant states that the criminal charges were substantial and in the media, and resulted in the Applicant's inclusion on an international wanted list. The Applicant submits that this contributed to the finding of misrepresentation and is a breach of the duty of fairness. Although the letter invited the Applicant to provide further information regarding the charges, this does not constitute a true opportunity to respond because the extrinsic sources were not disclosed.

B. *Respondent*

[19] The Respondent concedes that the s 37(1) finding was made in error and should be quashed.

(1) Misrepresentation Under s 40(1)

[20] Foreign nationals seeking entry into Canada have a positive duty of candour to provide complete, honest, and truthful information in every manner: *Brar v Canada (Citizenship and Immigration)*, 2016 FC 542 [*Brar*] at para 11. This duty requires an applicant to ensure the completeness and accuracy of his application by disclosing relevant information in a timely manner throughout the whole application process, as outlined in the application form.

[21] The Respondent submits that the Applicant failed to discharge the duty of candour by withholding material information pertaining to pending criminal charges for approximately two years. Not only did the Applicant fail to correct the earlier information submitted on the Schedule "A" form when he became aware of the indictment in Russia, but he did not provide an explanation as to why an extension of time was necessary in his request and did not submit the Certificate until he knew the indictment was withdrawn.

[22] As regards the materiality of the information, a materiality analysis is not limited to a particular time in the processing of an application and a correction before the final assessment does not make the withholding immaterial such that there is no misrepresentation: see *Brar*, above, at para 11. The Applicant focuses on a letter regarding concerns about the coincidental timing of the Applicant's departure from Russia with the commencement of the criminal investigation. This is a point in time observation, to which the Applicant was provided an opportunity to respond, but is not the central basis for the Decision.

(2) Failure to Provide an Opportunity to Respond to s 40(1) Concerns

[23] Procedural fairness is variable and relief can be withheld when the procedural error is purely technical and occasions no substantial wrong or miscarriage of justice: see *Khosa*, above, at para 43.

[24] In the present case, the Respondent submits that the Applicant was given adequate notice of the concerns with his application. The Visa Officer's only obligation was to inform the Applicant of a potential misrepresentation issue, not make further inquiries if the response was deficient. The Visa Officer discharged this duty with a reference to the failure to disclose pending criminal charges on the Schedule "A" form.

[25] As regards to the Applicant's submissions on extrinsic evidence, the Decision was not based on unknown evidence. The GCMS notes concerning the charges in the media and the Applicant's placement on an international wanted list are derived from a document submitted by the Applicant on August 1, 2014. In addition to stating that the Russian criminal investigation had been transferred due to increased publicity and complexity, the document also references the issuance of an international APB warrant and the Applicant's inclusion on the international APB list. Furthermore, the GCMS notes do not form the basis for the Decision as they were not made by the final decision-maker and are not even referenced in the Decision.

[26] Alternatively, the Respondent submits that any breach of fairness was immaterial. In 2009, the Applicant was informed of concerns regarding criminal inadmissibility. He became

aware of pending criminal charges in 2012, but kept silent until the issue was raised again in 2014. The alleged breach is therefore immaterial because the misrepresentation is based on the fact that the Applicant knew about the serious charges yet did not disclose them for nearly two years, which is not in dispute.

VIII. ANALYSIS

[27] The Applicant has not challenged that aspect of the Decision that denied him permanent residence because, in accordance with s 87(2)(b) of the Act, he did not establish that he intended to reside in Prince Edward Island.

[28] The Applicant does challenge the aspect of the Decision that found, in accordance with s 37(1)(b) of the Act, he was inadmissible for organized criminality. However, the Respondent agrees that this aspect of the Decision was made in error and should be quashed.

[29] This means that I am left to deal with the dispute between the parties concerning the misrepresentation finding under s 40(1) of the Act and related procedural fairness issues.

A. *Misrepresentation – Subsection 40(1) of the Act*

[30] The essence of the misrepresentation case against the Applicant is that he did not discharge the duty of candour because he withheld material information pertaining to pending criminal charges against him in Russia.

[31] In his initial application for permanent residence, the Applicant provided the usual undertaking that:

> I will immediately inform the Canadian visa office where I submitted my application if any of the information or the answers provided in my application form change.

[32] It is also clear from the case law that an applicant must ensure the completeness and accuracy of his or her application. In *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428, the Court had the following to say on point:

> [23] Section 40(1)(a) is to be given a broad interpretation in order to promote its underlying purpose: *Khan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 512 at paragraph 25. The objective of this provision is to deter misrepresentation and maintain the integrity of the immigration process— to accomplish this objective, the onus is placed on the applicant to ensure the completeness and accuracy of his or her application. Section 40(1)(a) is broadly worded to encompass misrepresentations even if made by another party, without the knowledge of the applicant: *Jiang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 942, at paragraph 35; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paragraphs 55-56. The applicant cannot misrepresent or withhold any material facts that could induce an error in the administration of the Act.
>
> …
>
> [34] The passage of *Singh* referred to by Justice Hughes contains an oft-cited portion of Justice O'Reilly's judgment in *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299:
>
> > [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).

[33] In October 2011, the Applicant provided an updated Schedule "A" form to Citizenship and Immigration Canada [CIC] in which he swore that he was not the subject of any criminal proceedings or outstanding charges. He did not provide police clearances at this time and requested an indeterminate extension to do so.

[34] The Respondent alleges that the Applicant already knew about the outstanding charges in Russia, which was why he asked for an indeterminate extension to provide police clearances. However, the Applicant's own evidence is that he became aware of the outstanding charges in the summer of 2012. He did not at that time inform CIC of the charges, and this appears to be the basis for the Visa Officer's misrepresentation finding:

> You withheld the following material facts: - your history of criminal charges in Russia. I reached this determination because during the summer of 2012, you state that you became aware of criminal charges against you in Russia. Previously, on 2009/11/16 and 2010/11/30, you were sent letters outlining our concerns regarding money-laundering and on 2011/07/28 you were requested to provide a Russian police clearance certificate. Despite these earlier requests, you did not inform us of the criminal charges against you when you became aware of them.

(GCMS entry dated October 22, 2015, Certified Tribunal Record, Volume 1, pp. 5-6)

[35] It is clear from the record that this is an accurate assessment of the evidence. In April 2014, CIC wrote a procedural fairness letter to the Applicant which noted the 2011 indictment and pointed out to the Applicant that he could be inadmissible for misrepresentation under s 40(1) of the Act. In his August 2014 reply, the Applicant claimed that he had learned about the indictment in the summer of 2012, but he said it had been cancelled. He also said that he would provide updated police clearances once the indictment's cancellation had been recorded in police records. And this is what he did in the following month.

[36] So even if the Applicant's own evidence is accepted that he did not know about the indictment until the summer of 2012, it is clear that he failed to inform CIC of its existence when he knew about it. He withheld information that he knew he was obliged to disclose to CIC, and which he knew was material to CIC's consideration of his permanent residence application.

[37] He says that he did not breach s 40(1) of the Act for two reasons.

[38] First of all, he says he knew the indictment to be false and was dealing with having it removed from police records, and that any misrepresentation was not material because the indictment was eventually expunged and so could not, in accordance with s 40(1)(a), have induced an error in the administration of the Act.

[39] So the issue before me is whether withholding information that would have been material and error-inducing if it were true, is not a misrepresentation and error-inducing if it ceases to be true before a final decision is made on the application for permanent residence.

[40] It seems to me that the Applicant could easily have explained the situation to CIC when he was asked for clearance certificates and, at the very latest, in the summer of 2012 when he says he became aware of the situation in Russia. He could have requested that a final decision on his application be postponed until he had cleared the indictment off his record and could provide clean police certificates. Instead, he chose to conceal the indictment from CIC until such time as he was in a position to have his record cleared. Having chosen this approach, it seems to me that the Applicant chose to conceal information that was highly material to his permanent residence application and that could have induced an error in the administration of the Act. But is this the case if it later turns out that the facts behind the misrepresentation (in this case, the indictment in Russia) are removed? In my view, misrepresentation made at a particular time remains a misrepresentation even if the facts behind it change, and the duty of candour must be upheld because it is up to CIC to decide what to do in the face of an indictment that an applicant alleges to be false. In other words, the materiality analysis is not limited to a particular point in time in the processing of the application. See *Haque v Canada (Citizenship and Immigration)*, 2011 FC 315 at paras 12 and 17; *Khan v Canada (Citizenship and Immigration)*, 2008 FC 512 at paras 25, 27 and 29; and *Shahin v Canada (Citizenship and Immigration)*, 2012 FC 423 at para 29. By withholding this information, the Applicant was manipulating the administration of the Act to his own advantage. It is for CIC to decide what to do in the face of an indictment (true or false), not the Applicant.

[41] Secondly, the Applicant says that CIC knew about the indictment before he became aware of it in the summer of 2012. He relies upon a letter to the Canadian Embassy from the Investigation Department of Rostov Region in Rostov-on-Don, Russia, which cites the criminal proceedings in progress against the Applicant and asks whether the Applicant has been issued a Canadian entry visa and whether he has applied for Canadian citizenship. The letter is dated February 22, 2012 (Certified Tribunal Record, p 270).

[42] This inquiry was followed by a request from the Canadian Embassy in Moscow on March 27, 2012 for a copy of the indictment. This request was followed by a letter from the Investigation Department of the Rostov Region saying that:

> Copies of service documents from cases with criminal proceedings against individuals whose citizenship is not supported by official documentation are not provided to foreign missions.

[43] The Applicant's point is that his failure to disclose the indictment in the summer of 2012 could not have induced an error under s 40(1)(a) of the Act because CIC already knew about the indictment. The Embassy in Moscow knew about the indictment but did not bring it up.

[44] However, it is clear that the Applicant did not know about the letter to the Canadian Embassy in Moscow and was not relying upon it to provide CIC with the information about the indictment of which he was aware in 2012. A failure by the officers dealing with the Applicant's permanent residence application, or a failure by the Embassy in Moscow to pass that inquiry letter along to the officers dealing with his application does not mean that the misrepresentation could not have induced an error in the administration of the Act. The Applicant is not excused because CIC failed to understand that information on this matter may

have existed in the Embassy in Moscow. The duty of candour required the Applicant to be candid in his application form and in his dealings with CIC officers. This duty is not discharged by pointing to other sources of information.

[45] In the end, the Applicant decided not to share a material change in his circumstances with CIC that could have induced an error because it prevented CIC from investigating the indictment in any way it thought appropriate. If the Applicant had disclosed the indictment, he would have been asked to produce the police certificate and, perhaps, other documentation that would have allowed CIC to pursue further inquiries. CIC would decide admissibility on the "reasonable grounds to believe" standard, so that the eventual withdrawal of the indictment doesn't mean that it ceased to be material. The Applicant chose not to reveal the indictment that he knew could be an impediment to his obtaining permanent residence. I am satisfied that it amounted both to the making of a false representation and to a knowing concealment of material circumstances on his part.

[46] On the facts of this case, I am satisfied that there was a reasonable basis upon which the Visa Officer could conclude that the Applicant had failed to provide complete, honest and truthful information in accordance with the duty of candour. I am also satisfied that it was reasonable for the Visa Officer to conclude that the misrepresentation was material and could have induced an error in the administration of the Act.

B. *Procedural Fairness*

[47] The Applicant says that the Visa Officer should have asked the Applicant why he had not provided the updated police clearances. However, the Applicant was specifically told that he had failed to disclose pending criminal charges so that the Applicant was made fully aware of the problem he had to address. The Applicant is a sophisticated businessman and was represented by legal counsel. He could have been in no doubt that he had failed to disclose the indictment.

[48] Nor do I think the Decision was based upon extrinsic evidence that the Applicant should have been allowed to address. The reasons for the Decision on misrepresentation do not reference media or publicity documents. The basis of the Decision was that the Applicant failed to disclose a criminal indictment of which, by his own evidence, he was fully aware by at least the summer of 2012.

C. *Certification*

[49] Counsel agree that no question for certification arises on these facts and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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