Federal Court  Cour fédérale

Date: 20171214

Docket: IMM-4872-16

Citation: 2017 FC 1151

Ottawa, Ontario, December 14, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

HONG YAN LI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

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 the Minister's delegate [Delegate] in the Canada Border Services Agency [CBSA], dated February 24, 2016 [Decision], which referred the Applicant to the Immigration Division of the Immigration and Refugee Board of

Canada [ID] for an admissibility hearing on the basis that the Applicant had committed a misrepresentation in her application to sponsor her parents for permanent resident status.

II. BACKGROUND

[2] The Applicant is a citizen of the People's Republic of China. She became a permanent resident of Canada on December 27, 2008.

[3] In 2009, the Applicant applied to Citizenship and Immigration Canada [CIC] to sponsor her parents' immigration to Canada as permanent residents. The sponsorship was successful, and the Applicant's parents became permanent residents. As part of that application, the Applicant represented that she was employed, in Vancouver, by a company called Oxford College.

[4] Oxford College came to the attention of the CBSA's Criminal Investigations Section as part of an investigation into the activities of New Can Consultants (Canada) Ltd. [New Can] and Xun "Sunny" Wang. Mr. Wang engaged in a scheme that provided phony employment records to clients. This helped Mr. Wang's clients achieve and maintain Canadian permanent residence or citizenship. The CBSA alleges that Oxford College was a shell corporation used as part of Mr. Wang's scheme. The CBSA obtained documents during its investigation that listed the Applicant as one of Mr. Wang's clients.

[5] In the financial evaluation portion of her sponsorship application, the Applicant listed Oxford College as her employer for the period from January 1, 2009 to March 24, 2009. The application states that she had a weekly income of $375. This allowed her to meet the financial

requirements for sponsorship eligibility. To substantiate her income she provided pay stubs for this period and letters from Oxford College confirming her employment. The CBSA considered these deliberate misrepresentations because in the Applicant's 2012 citizenship application she declared that she visited her parents in China from January 4, 2009 to March 11, 2009. She was also in China for most of April and from May 14, 2009 to July 17, 2009 yet paystubs from Oxford College exist for this entire period.

[6] When the Applicant returned to Canada in 2014, the CBSA initiated proceedings to refer her to the ID for an admissibility hearing. An enforcement officer [Officer] in the CBSA prepared a report under s 44(1) of the Act [Report] outlining the information that he believed established that the Applicant was inadmissible under s 40(1)(a) of the Act. The Report concludes that the Applicant had "directly or indirectly misrepresented [a] material fact that could induce an error in the administration of the [Act]." The Officer forwarded the Report to the Delegate.

[7] To date, the CBSA has not contacted the Applicant's parents to allege that they are inadmissible on grounds of misrepresentation.

III. DECISION UNDER REVIEW

[8] The Subsection 44(1) and 55 Highlights report addressed to the Delegate describes the CBSA's investigation into Mr. Wang's operation and the allegation that he used misrepresentations to help his clients gain permanent residence status. It states that the Criminal Investigations Section of the CBSA believes that the majority of Mr. Wang's clients were aware

of these misrepresentations and paid Mr. Wang for his services. The report explains that the Applicant came to the attention of the CBSA as part of its investigation and that her client file with New Can indicated that she used New Can's services as part of her sponsorship application. The report alleges that the Applicant feigned employment at Oxford College as part of the application.

[9] The Delegate states that she reviewed the Report and decides to refer the Applicant to the ID for an admissibility hearing to determine whether the Applicant is inadmissible for misrepresentation under s 40(1)(a) of the Act.

[10] The Delegate finds that the Applicant lacks significant ties to Canada that would warrant non-referral. Similarly, the Decision states that documents submitted by the Applicant establish "generosity," but provide insufficient evidence of establishment in Canada to qualify on humanitarian or compassionate grounds for relief from alleged inadmissibility.

IV. ISSUES

[11] The Applicant raises the following issue in this application:

1. Can the Respondent refer the Applicant to the ID for an admissibility hearing regarding a misrepresentation unrelated to the Applicant's own acquisition of status in Canada?

V. STANDARD OF REVIEW

[12] 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.

[13] The Applicant submits that the standard of review applicable to the Decision is correctness. The Applicant acknowledges that the Act is the Delegate's home statute, but argues that the issues of statutory interpretation in this application are general in nature, questions of law that are of central importance to the legal system as a whole, and outside the Delegate's expertise, to which the correctness standard applies: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 30; *Dunsmuir*, above, at para 60. The Applicant frames these questions as "the scope and exceptions to standard principles of statutory interpretation."

[14] The Respondent submits that the standard of review of the Decision is reasonableness.

[15] I agree with the Respondent. Decisions by a Minister's delegate to refer a permanent resident to the ID under s 44(2) of the Act are questions of mixed fact and law to which a reasonableness standard applies. See *Canada (Public Safety and Emergency Preparedness) v Tran*, 2015 FCA 237 at paras 3, 22, 31, rev'd on other grounds 2017 SCC 50. Similarly,

determination of misrepresentation under s 40(1)(a) is also a question of mixed fact and law to which a reasonableness standard applies. See *Ge v Canada (Citizenship and Immigration)*, 2017 FC 594 at para 14. Most exercises of statutory power granted to an administrative decision-maker engage issues of statutory interpretation. To accept the Applicant's argument that this case engages questions of statutory interpretation that are questions of law of central importance to the legal system would result in virtually every exercise of administrative power being reviewed on a correctness standard. A narrow interpretation of what constitutes questions of central importance to the legal system accords with the approach taken by the Supreme Court of Canada. See *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 28-33. Therefore, the Decision will be reviewed on a standard of reasonableness. However, even if I apply a standard of correctness in this case I come to the same conclusion.

[16] 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

[17] The following provisions of the Act are applicable in this proceeding:

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;
(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection; or	c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou de protection;
(d) on ceasing to be a citizen under	d) la perte de la citoyenneté :
(i) paragraph 10(1)(a) of the Citizenship Act, as it read immediately before the coming into force of section 8 of the *Strengthening Canadian Citizenship Act*, in the circumstances set out in subsection 10(2) of the *Citizenship Act*, as it read immediately before that	(i) soit au titre de l'alinéa 10(1)a) de la *Loi sur la citoyenneté*, dans sa version antérieure à l'entrée en vigueur de l'article 8 de la *Loi renforçant la citoyenneté canadienne*, dans le cas visé au paragraphe 10(2) de la *Loi sur la citoyenneté*, dans sa version antérieure à cette entrée en

coming into force,

(ii) subsection 10(1) of the *Citizenship Act*, in the circumstances set out in section 10.2 of that Act, or

(iii) subsection 10.1(3) of the *Citizenship Act*, in the circumstances set out in section 10.2 of that Act.

Application

(2) The following provisions govern subsection (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; and

(b) paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility.

…

Preparation of report

44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be

vigueur,

(ii) soit au titre du paragraphe 10(1) de la *Loi sur la citoyenneté*, dans le cas visé à l'article 10.2 de cette loi,

(iii) soit au titre du paragraphe 10.1(3) de la *Loi sur la citoyenneté*, dans le cas visé à l'article 10.2 de cette loi.

Application

(2) Les dispositions suivantes s'appliquent au paragraphe (1):

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;

b) l'alinéa (1)b) ne s'applique que si le ministre est convaincu que les faits en cause justifient l'interdiction.

…

Rapport d'interdiction de territoire

44 (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.

transmitted to the Minister.

Referral or removal order	**Suivi**
(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.	(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi.

VII. ARGUMENT

A. *Applicant*

[18] The Applicant contends that the Officer's Report under s 44(1) of the Act and the Delegate's referral under s 44(2) of the Act are legally defective because s 40(1)(a) does not contemplate the possibility of inadmissibility for misrepresentations unrelated to an applicant's own acquisition of permanent residence status.

[19] The Applicant argues that the Delegate ignores the phrase "relating to a relevant matter" in s 40(1)(a) of the Act. It is a standard principle of statutory interpretation to treat all the words of an Act as necessary: *R v Kelly*, [1992] 2 SCR 170 at 188; *R v DLW*, 2016 SCC 22 at para 143. Therefore, there must be some misrepresentations of material facts that could induce an error in

the administration of the Act which do not relate to a relevant matter. The Report and the Subsection 44(1) and 55 Highlights report signed by the Delegate both omit reference to the requirement that the misrepresentation must relate to a relevant matter. The Applicant argues that this treats the requirement as surplus and fails to consider the possibility that a material misrepresentation may relate to an irrelevant matter. The Applicant says that since the Decision does not allege that the Applicant's misrepresentation is related to a relevant matter, the referral is defective and should be set aside.

[20] The Applicant also argues that the presumption of consistent expression does not support interpreting "relating to a relevant matter" in s 40(1)(a) of the Act as encompassing misrepresentations that relate to applications for status by another person. The presumption of consistent expression holds that, unless a contrary intention is clearly indicated by context, a word, or words used in a distinctive pattern, should be given the same interpretation whenever appearing in an Act: *Bozzer v Canada*, 2010 FC 139 at paras 32-33 [*Bozzer*], rev'd 2011 FCA 186. The phrase "relevant matter" appears in ss 104(1)(c), 109(1), and 114(3) of the Act. The Applicant reads each use as limiting the relevant matter to the application under consideration, which is consistent with her preferred interpretation of s 40(1)(a) of the Act. Where the phrase is used in ss 126 and 127 of the Act, which create offences related to misrepresentation, the Applicant says "relevant matter" refers back to what was relevant in the earlier provisions where the Act employed the phrase. Thus, where the Act uses "relevant matter," it consistently serves to exclude misrepresentations related to applications not under consideration.

[21] The Applicant also argues that the doctrine of *ejusdem generis* supports an interpretation of "related to a relevant matter" that narrows the range of relevant misrepresentations. The Applicant says that the other paragraphs of s 40(1) of the Act also limit loss of status to misrepresentations related to the applicant's status, not the status of another person. *Ejusdem generis* means "of the same kind." The doctrine "holds that general words used in an enumeration with specific words should be construed in a manner consistent with the specific words": *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at 736 [*Ward*], quoting *Matter of Acosta*, Interim Decision 2986, 1985 WL 56042 (US BIA). The Applicant interprets each of ss 40(1)(b), 40(1)(c), and 40(1)(d) of the Act as only referring to a loss of status for misrepresentations related to the acquisition of the permanent resident or foreign national's status. The Applicant argues that to construe s 40(1)(b) as rendering a permanent resident or foreign national inadmissible for misrepresentation for being sponsored by a person determined to be inadmissible for misrepresentation, in cases where the misrepresentation does not relate to the person being sponsored's status, would be nonsensical. The Applicant argues that similar logic must be applied to s 40(1)(a) and that the Respondent's argument that a plain reading of s 40(1)(a) is possible, and that the other paragraphs need not be referred to, would require reading into s 40 the words "a sponsorship application" for "a relevant matter."

[22] The Applicant argues that the Respondent's interpretation of s 40(1)(a) results in an absurd interpretation of s 40(2) of the Act. Under the Respondent's interpretation, the Respondent could report the Applicant's parents as inadmissible and refer them to the ID under s 44(2) of the Act because their sponsorship by the Applicant, a person determined to be inadmissible, renders them inadmissible under s 40(1)(b). Paragraph 40(2)(b) of the Act states

that “paragraph (1)(b) does not apply unless the Minister is satisfied that the facts of the case justify the inadmissibility.” The Applicant argues that it is absurd to require an extra procedural step, thereby making it harder for the Applicant’s parents to be determined inadmissible, when the alleged misrepresentation directly relates to the parents’ acquisition of permanent residence. This extra procedural step works contrary to the integrity of the system. Relying upon authorities dealing with sentencing under the *Criminal Code*, RSC 1985, c C-46, the Applicant says that when interpreting legislation, the Supreme Court of Canada has endorsed “avoid[ing] absurd results by searching for internal coherence and consistency in the statute”: *R v Wust*, 2000 SCC 18 at para 34, quoted in *R v Fice*, 2005 SCC 32 at para 52. The Applicant argues that the absurdity resulting from the Respondent’s interpretation means that the Applicant’s interpretation should be preferred. The Applicant’s interpretation would still result in consequences for misrepresentation: the denial of admission or removal after admission of the person who entered Canada by reason of the misrepresentation.

[23] The Applicant argues that the absurdity she points to - making it more difficult to remove the sponsored individuals than the sponsor - is contrary to the principle of family unity. In *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at para 9, Justice O’Keefe quoted extensively from the reasons of the Immigration Appeal Division [IAD] in that case. The IAD reasoned that “indirectly” in s 40(1)(a) of the Act must refer to misrepresentations by a person other than the applicant. To construe s 40(1)(a) otherwise would allow a principal applicant to make misrepresentations on behalf of dependents, which would result in the principal applicant’s inadmissibility, but not render the dependents inadmissible to Canada. Such

a result could lead to an unacceptable division of families. The Applicant submits that similar logic should apply in this case.

[24] Without citing any legislative history, the Applicant argues that nothing in the legislative history of the Act suggests that Parliament intended s 40(1) to encompass situations of misrepresentation unrelated to the granting of status to a person to whom the misrepresentation relates.

[25] The Applicant further argues that the Decision is inconsistent with the intent of the policy expressed in CIC's manual, "Evaluating Inadmissibility", ENF 2/OP 18 (24 May 2006) at 27 [Manual]. The Manual states that "[t]he purpose of the misrepresentation provisions is to ensure that applicants provide complete, honest and truthful information in every manner when applying for entry into Canada." The Applicant argues that, as she had already entered Canada as a permanent resident when the alleged misrepresentation took place, applying the misrepresentation provisions to her is contrary to the Respondent's view of the intent of the legislation expressed in the Manual. The Applicant accepts that the Manual is not dispositive of Parliament's intent, but argues that it is relevant and persuasive to understanding that intent: see *Nguyen v Canada (Minister of Employment and Immigration)*, [1994] 1 FCR 232 at 244-46 (CA).

[26] The Applicant notes that the IAD has previously interpreted s 40(1) of the Act in circumstances of a misrepresentation by a sponsor, but submits that the IAD's interpretation is unpersuasive. The IAD found that Parliament's intention was clear, and that the

misrepresentation provisions of the Act are intended to show "low tolerance for abuse of the immigration system through misrepresentations": *Niaz v Canada (Citizenship and Immigration)*, 2009 CanLII 72218 at para 40, VA8-03228 (IRB) [*Niaz*]. The IAD therefore held that the sponsor was inadmissible under s 40(1)(a) of the Act, for a misrepresentation he made as part of his sponsorship of a different person: *Niaz*, above, at paras 3, 10-14, 43. The Applicant argues that, while a low tolerance for abuse may have been Parliament's intention, the principles of statutory interpretation she has pointed to are more persuasive than the IAD's reasoning.

[27] For these reasons, the Applicant requests that the Decision to refer the Applicant to the ID for an admissibility hearing be set aside.

B. *Respondent*

[28] The Respondent submits that the Decision is reasonable since it falls within the range of acceptable outcomes and is justified, transparent, and intelligible.

[29] The Respondent notes that this Court has previously interpreted s 40(1)(a) of the Act and held that the purpose of the provision "is to ensure that applicants provide 'complete, honest and truthful information and to deter misrepresentation' and that 'full disclosure is fundamental to the proper and fair administration of the immigration scheme'": *Duquitan v Canada (Citizenship and Immigration)*, 2015 FC 769 at para 10, quoting *Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327 at para 25. Deterring misrepresentation is intended to maintain the integrity of the immigration process: *Inocentes v Canada (Citizenship and Immigration)*, 2015 FC 1187 at para 17 [*Inocentes*], citing *Sayedi v Canada (Citizenship and Immigration)*, 2012 FC

420 at paras 23-24. Consequently, a broad interpretation of s 40(1)(a) is justified, and "a risk of an error in the administration of the [Act] is sufficient" for finding inadmissibility on grounds of misrepresentation: *Inocentes*, above, at para 18, quoting *Kobrosli v Canada (Citizenship and Immigration)*, 2012 FC 757 at para 48.

[30] In *Brar v Canada (Citizenship and Immigration)*, 2016 FC 542 at paras 10, 12 [citations omitted], the principles applicable to s 40(1)(a) were summarized as follows:

> To find an applicant inadmissible under paragraph 40(1)(a) an Officer must be satisfied that (1) a direct or indirect misrepresentation has occurred by the applicant(s) and (2) that the misrepresentation could induce an error in the administration of the [Act]…
>
> […]
>
> The key principles that are of particular relevance in the context of this application include: (1) the broad nature of the provision; (2) that any exception to the rule is narrow and applies only to truly extraordinary circumstances; (3) an applicant has a duty of candour to provide complete, honest and truthful information when applying for entry into Canada; (4) a misrepresentation need not be decisive or determinative; and (5) an applicant may not take advantage of the fact that the misrepresentation is caught by the immigration authorities before the final assessment of the application.

[31] The Respondent argues that the Applicant's obligation to provide complete, honest, and truthful information extends to all interactions with CIC. To ensure the proper and fair administration of the immigration system, this includes information provided as part of sponsoring her parents' application.

[32] The Respondent notes that s 40(1)(b) of the Act provides for a situation where a misrepresentation by a sponsor can render an applicant inadmissible. The Act does not state that the sponsor's misrepresentation must relate to the sponsorship. Thus, the Respondent argues that the Act contemplates inadmissibility on the basis of a misrepresentation not related to the acquisition of one's own status.

[33] The Respondent argues that the application of s 40(1) to misrepresentations not related to the applicant's own acquisition of status is not an absurd result, as the integrity of the immigration system relies on individuals providing truthful and honest information. To limit the application of s 40 of the Act to situations where the misrepresentation relates to the acquisition of status by the misrepresenting individual would undermine the integrity of the system. The Respondent says that such an interpretation would be inconsistent with the purpose of s 40 as articulated by the courts.

[34] The Respondent argues that the principle of *ejusdem generis* does not assist the Applicant because a plain reading of s 40 of the Act suggests that it should apply to the Applicant. As there is no ambiguity, there is no need to compare the language of the section with other provisions of the Act.

[35] The Respondent therefore requests that the application for judicial review be dismissed.

VIII. ANALYSIS

[36] This application seeks a review of the Decision of the Delegate made under s 44(2) of the Act to refer a Report made pursuant to s 44(1)(a) to the ID for an admissibility hearing.

[37] The Applicant is a permanent resident of Canada who sponsored her parents to Canada. The parents are now permanent residents of Canada but the s 44(1) Report found that the Applicant, in sponsoring her parents, had directly or indirectly misrepresented a material fact that could induce an error in the administration of the Act. The Report found that the Applicant had provided fraudulent information regarding her employment history in Canada.

[38] The Applicant says that, in referring the Report to the ID under s 44(1)(a) of the Act, the Delegate made a legal error because the alleged misrepresentation does not fall within the purview of that section in that the Respondent cannot seek a removal order for a misrepresentation that is not relevant to the Applicant's own acquisition of permanent resident status in Canada.

[39] By and large, then, this application involves a narrow issue of statutory interpretation: can the Respondent seek a removal order under s 40(1)(a) of the Act for a misrepresentation that was not relevant to the Applicant's own acquisition of permanent residence status in Canada? The Applicant provides several grounds as to why this question must be answered in the negative.

A. *Relevant Matter*

[40] The Applicant argues that the Report and the referral are legally defective because the Report does not address or refer to the "relevant matter" required under s 40(1)(a). The Applicant argues as follows:

> 16. At the very least, the respondent must allege, in order to justify the report and referral, not only a misrepresentation of a material fact that could induce an error in the administration of the Immigration and Refugee Protection Act, but also that the misrepresentation relates to a relevant matter. What does the respondent consider to be a misrepresentation of a material fact that could induce an error in the administration of the Immigration and Refugee Protection Act but that does not relate to a relevant matter?
>
> …
>
> 18. The referral is defective on its face because it fails to address a constituent element of the statutory ground for inadmissibility. It is not sufficient, for a person to be inadmissible, that some components of Act section 40(1)(a) are met. They all have to be met. When the respondent does not even allege that they are all met, the referral has to be defective.

[41] Under s 44(1), an officer need only form an "opinion that a permanent resident or a foreign national who is in Canada is inadmissible" and, having formed such an opinion "may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister."

[42] Under s 44(2), "If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing…."

[43] Contrary to the Applicant's assertion, the Report does, in fact, refer to the "relevant matter" requirement. The Officer reports that the Applicant is a permanent resident who, in his opinion, is inadmissible pursuant to:

> Paragraph 40(1)(a) in that, on a balance of probabilities, there are grounds to believe is a permanent resident or a foreign national who is 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.

[44] The Officer then goes on to state the facts as required by s 44(1) and notes that the Applicant:

> Is not a Canadian Citizen
>
> Became a Permanent Resident of Canada on December 27th, 2008 at Vancouver International Airport
>
> Submitted application to sponsor family to Canada and provided employment history, salary and other documents which belong to a shell company "Oxford College"
>
> Client submitted application to sponsor family to Canada and provided fraudulent information and indicated she was employed at Oxford College
>
> Client directly or indirectly misrepresented material fact that could induce an error in the administration of the IRPA (Immigration and Refugee Protection Act)

[45] When read as a whole, it is clear that:

(a) The misrepresentation is the fraudulent information about the Applicant's employment with Oxford College;

(b) The "relevant matter" is that the Applicant's employment history is material to her ability to act as a sponsor; and

(c) This could induce, and has induced, an error in the administration of the Act because the Applicant's employment status is relevant to her obligations to support the people she sponsors.

[46] I see no reviewable error with regards to this issue.

B. *Presumption of Consistent Expression*

[47] The Applicant's primary legal argument is that "a misrepresentation relating to the acquisition of status under the Act by another person is not a matter relevant to the admissibility of the applicant." In other words, the "misrepresentation of the applicant, if made, is not relevant to her own acquisition of status in Canada, since she acquired status before the alleged misrepresentation was made." There is nothing in the wording of s 40(1)(a) which limits the scope of the provision in this way. In order to circumvent a plain reading of s 40(1)(a) and to introduce a specific requirement that the misrepresentation must relate to the Applicant's own application, the Applicant refers the Court to various other provisions in the Act where the phrase "a relevant matter" occur, *i.e.*, ss 104(1), 109(1), 114(3), 126, and 127. The Applicant then cites *Bozzer*, above, for the following:

> [32] The presumption of consistent expression was aptly stated by the Supreme Court of Canada in the case of *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385, 89 D.L.R. (4th) 218 where it was held that "[u]nless the contrary is clearly indicated by the context, a word should be given the same interpretation or meaning whenever it appears in an Act" (*Thomson*, at p. 243).
>
> [33] Sullivan and Driedger state the presumption not only applies to single words, but that "[t]he presumption [of consistent expression] is also strong where the repeated words are unusual or distinctive or contribute to a noticeable pattern" (Sullivan and Driedger at p. 166).

[48] The Applicant's point is that:

> 29. Everywhere else in the Act, the phrase "relating to a relevant matter" refers to the status acquired to which the misrepresentation relates. It does not relate to some other status. The presumption of consistent expression means that in Act section 40(1) also the phrase "relating to a relevant matter" refers to the status acquired to which the misrepresentation relates and not some other status.

[49] The Applicant provides no legal authority to support her interpretation of the provisions cited. She simply makes general assertions about the way each provision should be interpreted. Without legal authority for the Applicant's interpretations, the Court cannot say that the comparisons are meaningful or persuasive. In addition, the "relevant matter" requirement has to be read in the context of each provision and its purpose. They are not all the same. The Supreme Court of Canada continues to remind us that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21. This Court has stated on numerous occasions that the general purpose of s 40 is to deal with misrepresentations and fraudulent statements that undermine and thwart the integrity of our immigration system. See *Inocentes*, above, at para 17. The Applicant's misrepresentation certainly induced a threat to the system in that it allowed her parents to qualify for permanent resident status when they would not have done so without the misrepresentation. The Applicant's misrepresentation fits within the clear wording and recognized purpose of s 40(1)(a).

[50] It seems to me that the provisions cited by the Applicant give rise to an inference entirely opposite to the one which the Applicant asks the Court to draw. If Parliament had specifically

limited the scope of "relevant matter" in other provisions, then the inference must be that Parliament did not intend to impose the same limitation in a statutory provision that does not specifically impose such a limitation. And a plain reading of s 40(1)(a) suggests that no such limitation was intended or required.

C. *Ejusdem Generis*

[51] The Applicant evokes the doctrine of *ejusdem generis* to support her case and refers the Court to the Supreme Court of Canada decision in *Ward*, where the Supreme Court quoted with approval and applied the following from *Matter of Acosta*, Interim Decision 2986, 1985 WL 56042 (US BIA):

> We find the well-established doctrine of ejusdem generis, meaning literally, "of the same kind" to be most helpful in construing the phrase "membership in a particular social group." That doctrine holds that general words used in an enumeration with specific words should be construed in a manner consistent with the specific words.

[52] The Applicant then attempts to support the application of the principle in the present application by offering interpretations of various provisions of the Act and the *Citizenship Act*, RSC 1985, c C-29. Once again, these interpretations are not supported by legal authority and the Court cannot simply accept counsel's own views as authoritative. Where the provisions cited make specific reference to the status that is affected by the misrepresentation or fraud, then Parliament's intent is clear. However, that does not mean that Parliament intended to exclude from the impact of a misrepresentation under s 40(1)(a) of the Act the status of the person making the misrepresentation. The clear and plain wording of s 40(1)(a) suggests no such limitation. The Applicant is asking the Court to read in a significant limitation that is not

consistent with maintaining the integrity of the sponsorship system, a limitation that could well encourage sponsors not to be honest in their dealings with Canadian immigration. The fact that other criminal provisions of the Act are available to deal with such people in appropriate cases does not mean that Parliament intended to excuse them from undergoing an admissibility hearing.

[53] The doctrine of *ejusdem generis* applies to a general term used at the end of a list of specific words. See *National Bank of Greece (Canada) v Katsikonouris*, [1990] 2 SCR 1029 at 1040 [*Katsikonouris*]. This is obscured in the quote from *Ward* provided by the Applicant by use of the synonym "enumeration" instead of list. But the reason for the rule's application can be seen from the context of *Ward* where the Court is interpreting the meaning of "membership in a particular social group" in the phrase "race, religion, nationality, membership in a particular social group or political opinion." See *Ward* at 726. The Applicant seeks to apply the doctrine to construction of the phrase "relevant matter" in the first paragraph of the s 40(1), rather than a list, subject to her own interpretation of each subsequent paragraph. This extends the doctrine beyond its intended application.

[54] Further, the Applicant's suggested interpretation of s 40(1)(b) relies on her preferred interpretation of s 40(1)(a). The Applicant says that "the misrepresentation in [s 40(1)(b)] must be relevant to [the] status of the person to whom the misrepresentation relates, the sponsor. Any other interpretation would be nonsensical." As the Respondent points out, however, this is not apparent on a plain reading of the provision. For instance, in the circumstances of this case, the Applicant acknowledges that her parents could be rendered inadmissible under s 40(1)(b) if their

sponsor, the Applicant, is herself rendered inadmissible under s 40(1)(a) despite the Applicant's misrepresentation not relating to gaining her own status as a permanent resident.

[55] That such a result is possible under s 40(1)(b) accords with the requirement in s 40(2)(b) that the Minister consider whether a referral for inadmissibility under s 40(1)(b) is justified by the facts of the case. One can imagine circumstances where a sponsor makes a misrepresentation related to a different sponsorship, long after the first sponsored person's application for permanent residence is successful. While the "innocent" sponsored permanent resident would not be subject to inadmissibility under s 40(1)(a) since they neither directly nor indirectly misrepresented anything in their application, they could still be inadmissible under s 40(1)(b) if their sponsor is subsequently found inadmissible under s 40(1)(a). In such circumstances, s 40(2)(b) would allow the Minister to find that the facts do not justify inadmissibility of the innocent sponsored person under the otherwise broadly worded s 40(1)(b).

[56] And the structure of s 40(1) does not meet the essential precondition for application of *ejusdem generis* because the more specific sections follow rather than precede the general provision. In *Katsikonouris*, above, at 1040, Justice La Forest explains the following:

> Whatever the particular document one is construing, when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it. But it would be illogical to proceed in the same manner when a general term precedes an enumeration of specific examples. In this situation, it is logical to infer that the purpose of providing specific examples from within a broad general category is to remove any ambiguity as to whether those examples are in fact included in the category.

[57] Here, the phrase in question is contained in the first paragraph of s 40(1) and followed by the paragraphs that the Applicant says are specific. Thus, even if s 40(1) considered an "enumeration with specific words" and the Applicant's interpretation of s 40(1)(b) is accepted, the structure of the provision also suggests that the application of *ejusdem generis* is inappropriate.

D. *Avoiding Absurdity*

[58] The Applicant further argues that:

> 43. ... If the interpretation of the respondent of Act section 40(1)(a) is correct and the respondent obtains a determination that the applicant is inadmissible for misrepresentation, then the parents could no longer be reported as inadmissible and referred to the Immigration Division of the Immigration and Refugee Board unless there was a determination by the Minister that he is satisfied that the facts of the case justify the inadmissibility of the parents.

[59] The Applicant says that:

> 44. This is an absurd result. It is absurd that it should be more difficult to deport the parents for misrepresentation relating to their acquisition of status after a determination that there was such a misrepresentation than before such a determination.

[60] This is simply the Applicant's personal opinion which I do not find persuasive.

E. *Legislative History*

[61] The Applicant points to the differences between the misinterpretation provisions in the Act and s 27(1) of the former *Immigration Act*, RSC 1985, c I-2, and asserts as follows:

> 49. The reason for the change of language between the former and present Act was then three fold. One was to update the change of terminology from landing to permanent residence. The second was to expand the misrepresentation provision from permanent residents to visitors. The third was to allow the misrepresentation provision to encompass applications for status not yet decided.
>
> 50. There is no indication in the legislative history that the change was intended to encompass the interpretation on which the respondent now relies. Legislative discussions on the new law were substantial at the time the law was enacted in 2001. There is no statement by government officials which the applicant has been able to identify which indicates that the government intended a change which delinks inadmissibility for misrepresentation from status acquired.
>
> 51. There is no need to accept an interpretation of the Act which delinks inadmissibility for misrepresentation from status acquired in order to give meaning to the change in the relevant legislative provision from the old Act to the present Act. The change has substantive content independently of a delinking interpretation of the Act.

[62] The Applicant provides no evidence or authority for these assertions. The Court is expected to simply accept the Applicant's – or perhaps counsel's – opinion about legislative history and legislative discussions that took place before the new law was enacted. The onus is on the Applicant to provide the Court with the evidentiary basis that supports her position. Opinion is not evidence. Counsel's opinion evidence is not admissible.

F. *Immigration Manual*

[63] The Applicant refers to the Manual at s 9.1 "Policy Intent" which reads as follows:

> The purpose of the misrepresentation provisions is to ensure that applicants provide complete, honest and truthful information in every manner when applying for entry into Canada.

[64] The Applicant says that the referral in this case does not comply with this policy because she was not applying for entry into Canada when the alleged misrepresentation took place.

[65] The Applicant asserts that "while the intent, as expressed in the Manual, is not dispositive of what Parliament intended, it is surely relevant and indeed persuasive." I agree that it is relevant, but I do not find it persuasive when all other factors are taken into account.

G. *Legal Authority*

[66] The Applicant's submissions originally cited the ID decision in *Niaz v Canada (Citizenship and Immigration)*, 2008 CanLII 46296, A8-00270 (IRB), to support her interpretation. However, the IAD overturned the ID decision in *Niaz* and rendered an interpretation that supports the Respondent's position in this case. However, the Applicant relies upon the reasoning of the ID and submits that it is persuasive.

[67] In the only Court decision that I could find on point, Justice Hansen came out strongly against the Applicant's position in *Reyes v Canada (Citizenship and Immigration)*, 2013 CanLII 104205, IMM-3859-11 (FC) [*Reyes*]:

> In *Niaz* above, the ID observed that under the former *Immigration Act*, a permanent resident was inadmissible for misrepresentation only if the misrepresentation at issue related to their own application for admission to Canada. The ID found that although subsection 40(1) of the Act is not cast in the same language as its predecessor, the changes were insufficient to upset the well-entrenched principle that permanent residents could not be removed from Canada for misrepresenting facts in sponsorship applications. The ID also noted the undesirable consequences that could result if permanent residents could be removed for misrepresentation in sponsorship applications.

> This decision was subsequently overturned by the same IAD Member whose decision is at issue in this proceeding. In the decision at issue, on the question of the interpretation of paragraph 40(1)(a), the Member essentially incorporates his earlier reasoning in the *Minister of Citizenship and Immigration v Niaz*, 2009 CanLII 72218. His conclusion that paragraph 40(1)(a) applies to the Applicant is based on a key finding, namely, that:
>
> > . . .subsection 40(1) of the Act refers to inadmissibility for misrepresentation, regardless of the misrepresentation was made by or on behalf of permanent residents and foreign nationals with respect to their own applications for status in Canada, unless the special circumstance described in paragraph 40(1)(b) applies.
>
> The language of the provision is clear and unambiguous. The provision deals with misrepresentations made by both permanent residents and foreign nationals. It provides that both permanent residents and foreign nationals are inadmissible for misrepresentation. Further, it does not in any way distinguish the nature of the matter in relation to which the misrepresentation occurs between permanent residents and foreign nationals. Indeed, it is broadly framed as a misrepresentation in relation to "a relevant matter" that "could induce an error in the administration" of the Act. The applicant's interpretation would in effect replace "relating to a relevant matter" with "in an application for permanent residence". This restrictive and narrow interpretation is at odds with the very broad language adopted by Parliament and its clear intention.

[68] The Applicant argues that Justice Hansen's decision in *Reyes*, above, has no precedential value and I am not bound to follow it as a matter of judicial comity.

[69] The Applicant reminds me of the Court's practice directive, Notice to the Parties and the Profession: Publication of Decisions of Precedential Value (June 19, 2015) and that "the absence of a neutral citation number and the fact that it is not published are indicative of the presiding judicial officer's view that the decision has no precedential value." The Applicant says I should

follow the Chief Justice's Directive and disregard *Reyes* as having no precedential value and as imposing no comity restrictions on me.

[70] The words from the Directive cited by the Applicant omit the subsequent sentence: "However, this does not preclude a party from taking a different position regarding its precedential value."

[71] If these additional words are to have any meaning, they must mean that, in the Chief Justice's view (and as part of the Directive), an order may have precedential value notwithstanding that it is not published and does not have a neutral citation number.

[72] So, in accordance with the Directive, the Respondent has argued that *Reyes* should have precedential value. And I agree that it should have this value for several reasons:

(a) The order in *Reyes* is obviously not a simple endorsement. Justice Hansen discusses in some detail the interpretation of s 40(1)(a) of the Act including the factual basis for her order and the legislative history of s 40. Her reasoning is as clear and fulsome as any published judgment;

(b) The fundamental issue in *Reyes* is exactly the issue before me in this application;

(c) There is a significant similarity in the factual situation; and

(d) Justice Hansen consults legal authority in reaching her decision.

[73] Even if Justice Hansen issued her decision in *Reyes* as an order, the care that she took in considering this important matter of statutory interpretation suggests to me that she intended that her approach to this matter should be fully understood and that she wanted to provide an

interpretation that would be persuasive and would stand up to scrutiny. Not to treat *Reyes* as having precedential value would be to favour form (an unpublished order) over content.

[74] In my view, then, *Reyes*, must be afforded a precedential value, because if I decide this case otherwise, we will have conflicting decisions in the Court on the central issue in this application.

[75] Even if I am not bound by the Rules of Judicial Comity to apply and follow *Reyes*, it has to be regarded as highly persuasive. And, even without *Reyes*, my conclusions would be the same as Justice Hansen's in that case.

[76] The Respondent's position on the central issue in this case is encompassed in the following written submissions:

> 26. Ms. Li had an obligation to provide complete, honest and truthful information to IRCC in respect to her application to sponsor her parents. This obligation is not restricted to Ms. Li's acquiring status in Canada, but to all her interactions with IRCC. This obligation extends to all types of applications submitted to IRCC, including a sponsorship application, to ensure the proper and fair administration of the immigration system.
>
> 27. Contrary to Ms. Li's assertion that the misrepresentation can only be in respect of her own application for acquiring an immigration status in Canada, section 40(1)(b) of the *IRPA* provides for a situation wherein a person sponsoring the individual concerned, who makes a misrepresentation, can render the sponsored individual inadmissible. The *IRPA* contemplates that a misrepresentation need not be for the acquisition of one's own status, rather any misrepresentation made in any application, the relevant matter, can render any party to that particular immigration application inadmissible. This provision does not state that the sponsor's inadmissibility for misrepresentation [must] be in relation to the sponsorship.

> 28. This is not an absurd result. The integrity of the immigration system relies on individuals providing information and evidence to IRCC do so in a truthful and honest matter. To restrict the provision in section 40 of the *IRPA* to certain situations, such as only the acquisition of a status by the person concerned, would not achieve the goal of maintaining the integrity of the immigration system. In fact, Ms. Li's position would result in individuals being able to attempt to undermine the integrity of the immigration system by providing false, fraudulent, or misleading information to IRCC with no consequences for such actions. This is contrary to what the courts have stated in the cases considering section 40.

[77] In short, I agree with the Respondent's position for the reasons given above.

[78] What the Applicant is advocating in this application is that she be rendered exempt from a consequence of trying to cheat the system. She has offered no excuse for her conduct and it would appear that her misrepresentation was quite deliberate. Having attempted to mislead Canada on a matter of crucial importance and relevance to the sponsorship programme (*i.e.* her own qualifications as a sponsor) she now says that the immigration consequences of her conduct can only be visited upon her parents, who may be totally innocent in this matter, and not upon her. This would allow the Applicant, and other dishonest sponsors, to avoid the moral and legal obligations that sponsorship requires of them and, in my view, would result in a serious threat to the integrity of the system. The plain wording of s 40(1)(a) suggests to me that Parliament did not intend to allow sponsors to avoid their moral and legal obligations to Canada by excusing them from the purview of this provision.

IX. Certification

[79] The Applicant has submitted the following question for certification:

> Can the Respondent, under the Immigration and Refugee Protection Act section 40(1)(a), seek a removal order for a misrepresentation not relevant to the applicant's acquisition of status in Canada?

[80] In post-hearing submissions, the Applicant also proposed two further variants:

> 45. A question equivalent to the question posed in the *Wang* case, related to the facts of this case, would be this:
>
> > "Is a permanent resident inadmissible for indirectly misrepresenting a material fact if the person is granted permanent residence as a sponsored applicant where the sponsor misrepresented material facts in the sponsorship application?"
>
> 46. A generic question, which would cover both situations, and is the question the applicant proposes in addition to the one the applicant originally proposed, would be this:
>
> > "Does Section 40(1)(a) encompass misrepresentations made by another person without the knowledge of the applicant for permanent residence[?]"

[81] In post-hearing submissions, the Respondent says:

> 24. Section 74(d) of the *Immigration and Refugee Protection Act,* and Rule 18 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* deal with the issue of certified questions. Section 74(d) states that an appeal is only available where a "judge certifies that a serious question of general importance is involved". Rule 18 reflects that language.
>
> 25. The Federal Court of Appeal set out the principles governing certification of a question pursuant to s. 74(d) of the *Immigration and Refugee Protection Act:*

> (i) The question must be one that transcends the interests of the parties to the litigation and contemplates issues of broad significance or general application.
>
> (ii) The question must be dispositive of the appeal. The certification process is not to be used as a tool to obtain from the Court of Appeal declaratory judgments on fine questions which need not be decided in order to dispose of the case.
>
> (iii) The certification process is not to be equated with the reference process established by the *Federal Courts Act*.
>
> *Liyanagamage v Canada (MCI)* (1994), 176 NR 4, paras 4-6; *Zazai v Canada (MCI)*, 2004 FCA 89, 318 N.R. 365, paras 11-12; *Varela v Canada (MCI)*, 2009 FCA 145, paras 22-29.

[82] The Respondent says that the interpretation of s 40(1)(a) has been dealt with by the Court in a number of cases, including *Reyes*. The Respondent also says that the interpretation of s 40(1)(a) has been well considered by the Court and the application of the Applicant's factual matrix to the statutory provision does not result in a serious question of general importance because the dispositive issue in this matter is relevant only to the Applicant and her interest in the outcome of this judicial review application.

[83] I agree with the Respondent that the Court has considered s 40(1)(a) in several cases that suggest it be given a broad interpretation, but the crucial issue in the present application (*i.e.* can sponsors be removed for misrepresentation under s 40(1)(a)) has only been addressed directly by Justice Hansen in *Reyes*, and by me in the present application. This is also, in my view, a serious matter of general importance for all sponsors which has implications far beyond the particular Applicant in this case, and it will also be dispositive. Consequently, I am prepared to certify the following question:

Can a permanent resident be inadmissible for misrepresentation under s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 where that permanent resident is the sponsor of another person or other persons and the misrepresentation is made in the sponsorship of another person or other persons?

JUDGMENT IN IMM-4872-16

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. The following question is certified:

> Can a permanent resident be inadmissible for misrepresentation under s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 where that permanent resident is the sponsor of another person or other persons and the misrepresentation is made in the sponsorship of another person or other persons?

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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