Federal Court  Cour fédérale

Date: 20180323

Docket: IMM-3169-17

Citation: 2018 FC 328

Ottawa, Ontario, March 23, 2018

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

WALID MOH'D WAHEEB JAMAL ALALAMI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of a visa officer [the Officer] with the High Commission of Canada [HCC] in Accra, Ghana, dated June 1, 2017, rejecting the Applicant's application for a temporary residence visa and finding him inadmissible to Canada for 5 years [the Decision].

[2] As explained in greater detail below, this application is dismissed, because the Decision is reasonable and the Applicant was not deprived of procedural fairness in the process leading to the Decision.

II. Background

[3] The Applicant, Walid Moh'd Waheeb Jamal Alalami, is a citizen of Jordan but currently lives in Ghana. He has been employed by a company called Rider Industries and Equipment since 2004. He states that his work requires him to travel extensively, which has included travel to the United States, United Kingdom, Australia, New Zealand, Russia, Romania, Bulgaria, Poland, China, Hong Kong, and the United Arab Emirates.

[4] In late 2016, Mr. Alalami decided he wanted to come to Canada. His stated purposes were to meet with a client and to attend a trade exposition. He submitted an application for a temporary resident visa on January 14, 2017, including a letter of invitation from the client he intended to meet, his return travel itinerary, details of his recent travel history, and copies of all the visas and stamps from his passport.

[5] On March 20, 2017, the HCC sent Mr. Alalami a procedural fairness letter [PFL], advising that, while he indicated on his application form that he had never been refused any kind of visa or admission or been ordered to leave Canada or any other country, there was information in the HCC's records that he had been refused a visa to the United States in 2015. The PFL noted that, if it was found that he had engaged in misrepresentation in submitting his application, he may be found inadmissible to Canada, and provided Mr. Alalami with an opportunity to respond

to this information. Mr. Alalami responded that he had made a mistake, having misread the question on the application form about visa refusals as only applying to Canada, and provided a detailed account of his history with US Citizenship and Immigration Services.

[6] The June 1, 2017 letter communicating the Decision indicated that, based on factors including the purpose of his visit, Mr. Alalami had not satisfied the Officer that he would leave Canada at the end of his stay as a temporary resident. The Officer also stated that Mr. Alalami was inadmissible to Canada under s 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], 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 IRPA.

[7] A March 9, 2017 entry in the Global Case Management System [GCMS] notes for Mr. Alalami's file describes the misrepresentation as follows:

> On the current application form, the client has not declared ever having been refused any kind of visa, admission, or been ordered to leave Canada or any other country, This is contrary to information found in the client's record. As such, it appears that the client has misrepresented material information in this application which could have induced an error in the administration of the Act. As such, the client may be inadmissible as per A40. Client did not declare his 2015 US visa refusal. Referred to PAU for PFL.

[8] The Officer's further analysis, following receipt of Mr. Alalami's response to the PFL, is contained in the following GCMS entry dated June 1, 2017:

> File reviewed along with the procedural fairness letter to which the applicant responded by stating that it was a misunderstanding or oversight not to include information regarding previous visa

> refusals. I note that the applicant signed the application declaring the submitted information is truthful. By not providing truthful background information the applicant withheld a material fact related to a relevant matter that could have induced an error in the administration of the IRPA, I quote Justice Shore in Navaratnam: An applicant who trifles with the truth in legal proceedings cannot expect to be successful: thus, a Court may discredit even true statements, not knowing where the truth begins and ends, and a climate of uncertainty then prevails. Specifically: - the applicant is applying for a visa to visit Canada. By not providing truthful background information I am not satisfied as to the true purpose of this visit and further cannot be satisfied the applicant is a genuine visitor who would leave Canada before the end of the period authorized for his stay. The applicant is inadmissible under A40(1) of the IRPA. Refused on bonafides and for misrepresentation. 5 year ban applies.

III. Issues and Standard of Review

[9] The Applicant raises the following issues for the Court's consideration:

A. Was the Applicant deprived of procedural fairness?

B. Did the Officer fail to consider or apply the innocent error exception applicable to findings of misrepresentation under s 40(1) of IRPA?

C. Did the Officer err in assessing the materiality of the misrepresentation, particularly given the information otherwise available to the Officer?

[10] The parties agree, and I concur, that the first issue, being one of procedural fairness, is reviewable on a standard of correctness, and that the second and third issues are reviewable on a standard of reasonableness.

IV. Analysis

A. *Was the Applicant deprived of procedural fairness?*

[11] Mr. Alalami argues that he was deprived of procedural fairness because the Officer based the Decision on a negative credibility determination without affording him an opportunity to respond to the Officer's credibility concerns.

[12] I note that the parties agree that the Decision should be read as demonstrating that the Officer did not believe Mr. Alalami's explanation that he had misread the question on the application form about visa refusals as only applying to Canada. Rather, the Officer concluded that Mr. Alalami had intentionally failed to disclose the fact that he had been refused a US visa. I agree with the parties' interpretation of the Decision.

[13] However, I disagree with Mr. Alalami's position that the Officer was obliged to advise him that he disbelieved the explanation provided and to give him a further opportunity to comment. I accept that the principles of procedural fairness must be applied before findings of misrepresentation are made. However, after what appeared to be a misrepresentation in Mr. Alalami's application form was identified, he was sent the PFL, which explained the issue and afforded him an opportunity to respond. Mr. Alalami then provided his explanation. I do not consider the principles of procedural fairness to require the Officer to have advised Mr. Alalami that he did not accept the explanation and to have afforded him a further opportunity to comment before arriving at the Decision. The PFL was sufficient to put Mr. Alalami on notice of the issue, including the possibility that the resulting explanation would not be accepted.

[14] Applying the standard of correctness, I find no error in the procedure followed in arriving at the Decision.

B. *Did the Officer fail to consider or apply the innocent error exception applicable to findings of misrepresentation under s 40(1) of IRPA?*

[15] Mr. Alalami submits that the innocent error exception, which can apply to preclude findings of inadmissibility under s 40(1) of IRPA, should have been applied or at least considered by the Officer before making the finding of inadmissibility. While even an innocent failure to provide material information can result in a finding of inadmissibility, the jurisprudence does recognize an exception where an applicant can show an honest and reasonable belief that he or she was not withholding material information (see, e.g., *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15). Mr. Alalami submits that this exception has been applied in circumstances where an applicant failed to disclose information of which he or she was aware (see, e.g., *Punia v Canada (Citizenship and Immigration)*, 2017 FC 184). He also argues that it can be a reviewable error for a visa officer to fail to conduct a meaningful analysis of the innocent error exception where there is evidence supportive of its application (see *Berlin v Canada (Citizenship and Immigration)*, 2011 FC 1117 [*Berlin*]).

[16] I accept all these propositions as a matter of law. The difficulty facing Mr. Alalami in advancing his position arises from the fact that the Officer did not accept his explanation that the omission of the US visa refusal was an unintentional oversight. If this explanation had been accepted, it may have been incumbent upon the Officer to consider the innocent error exception, to assess whether Mr. Alalami's belief that he was not withholding material information was not

only honest but also reasonable, in light of the wording of the relevant question in the application form. However, the exception has no potential application in the absence of a conclusion that the error was indeed innocent. I cannot find that the Officer erred in failing to expressly consider the application of the exception when he or she concluded that Mr. Alalami had intentionally failed to disclose the US visa refusal.

[17] I recognize that Mr. Alalami also argues that the Officer failed to consider evidence that is supportive of a conclusion that the misrepresentation was an innocent one. He notes that he is a well-established business person, employed with the same company since 2004, with an extensive positive travel history, including having been issued a multiple entry visa to the United States between 2008 and 2013. While this is evidence that could support a conclusion that the misrepresentation was innocent, it is trite law that decision-makers are not obliged to refer to every single piece of relevant evidence in the record; they are presumed to have considered all of the evidence before them in reaching their decision (*Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at para 47).

[18] I also appreciate that, in a case where evidence which is contrary to the decision-maker's finding hasn't been referenced, the more important the contradictory evidence, the easier it may be to rebut the presumption all the evidence has been considered and infer that the evidence upon which has been overlooked (see *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), 157 FTR 35 (FCTD), at paras 16-17). However, I cannot conclude that evidence to which Mr. Alalami refers is sufficiently compelling that it was an error, undermining the reasonableness of the Decision, for the Officer to have failed to refer to it. In this respect, the

present case is distinguishable from *Berlin*, where the evidence that Justice Barnes held the officer had erred in failing to consider was the fact that the applicant in that case, while omitting his dependents from his application form, had included references to them in other material submitted with his application.

[19] Similarly, I find little support for the Applicant's position in his reliance on the statement in *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 [*Lamsen*] at para 23, to the effect that a visa application must be considered in its totality. I agree with this statement of principle. However, like *Berlin*, the decision in *Lamsen* (and the decision in *Koo v Canada (Citizenship and Immigration)*, 2008 FC 931 on which it relies) involved circumstances where the misrepresented information was correctly provided by the applicant elsewhere in the application documentation. Here, in contrast, the misrepresented information was not included elsewhere in Mr. Alalami's application but rather appears to have come to the attention of the Canadian authorities through information sharing with their American counterparts. This is discussed more below in relation to the materiality of the misrepresentation.

[20] To conclude on this issue, the Decision recognizes Mr. Alalami's assertion that it was a misunderstanding or oversight which led him not to declare the US visa refusal. However, it is clear that the Officer did not accept this explanation and, applying the standard of reasonableness, I cannot conclude that this aspect of the Decision is outside the range of possible, acceptable outcomes.

C. *Did the Officer err in assessing the materiality of the misrepresentation, particularly given the information otherwise available to the Officer?*

[21] Mr. Alalami correctly submits that a finding of inadmissibility under s 40(1)(a) of IRPA requires that the misrepresentation made by an applicant be material. However, I do not accept his position that the materiality of the misrepresentation in the present case is undermined by the fact that, regardless of his omission, the Officer had access to the withheld information through other means. As explained in *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at para 26, the fact that a misrepresentation is caught before the assessment of the application does not assist an applicant in the materiality analysis. Such a result would be contrary to the purpose of s 40(1)(a) of IRPA.

[22] Mr. Alalami submits that the Officer likely obtained the information on his US visa refusal through an information sharing agreement between Canada and the United States. He argues that this means that the withheld information would have been discovered regardless of what was disclosed in the application. Therefore, he says, his failure to disclose it was not material. This argument was considered by Justice Russell in *Singh v Canada (Citizenship and Immigration)*, 2015 FC 377 [*Singh*] in same information sharing context and, at para 48, was rejected in reliance on Justice Strickland's decision in *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971:

> [43] I also cannot accept the Applicant's submission made when appearing before me that, because CIC has access to the whole of his immigration history, an incorrect answer in his application is not material. His submission was that the incorrect answer did not affect the process because it was caught by CIC before a decision was rendered. This reasoning is contrary to the object, intent and

> provisions of the IRPA which require applicants for temporary residency visas to answer all questions truthfully. The penalty for failing to do so is that an applicant may be found to be inadmissible to Canada if the misrepresentation induces or could induce an error in the administration of the Act. It matters not that CIC may have the ability to catch, or catches, the misrepresentation. What matters is whether the misrepresentation induced or could have induced such an error. Accordingly, applicants who take the risk of making a misrepresentation in their application in the hope that they will not be caught but, if they are, that they can escape penalty on the premise of materiality, do so at their peril.

[23] Mr. Alalami attempts to distinguish *Singh* on the bases that the misrepresentation in that case was more significant, the applicant in that case deliberately chose not to disclose certain information, the principles in *Berlin* were not argued, and the consequence of the misrepresentation in that case was admissibility for two years rather than five. I find none of these arguments assist Mr. Alalami. They do not detract from the application of the principle that the materiality of a misrepresentation is unaffected by the fact that immigration officials may be able to identify the correct information through other means independent of the applicant.

[24] Finally, Mr. Alalami submits that the Decision does not demonstrate how the Officer considered the misrepresentation induced or could induce an error in the administration of IRPA. I find little merit to this submission. As previously noted, the parties agree that the Officer's conclusion was that Mr. Alalami had deliberately withheld the information about the US visa refusal. This was a visa comparable to the visa that Mr. Alalami was seeking for entry to Canada. The GCMS notes demonstrate that the Officer considered the lack of candour on this matter to undermine the Officer's ability to rely on the other information provided by Mr. Alalami. The Officer was therefore not prepared to rely on Mr. Alalami's statement of the purpose of his visit

in order to conclude that he would leave Canada at the end of the period authorized for the stay. The line of reasoning is intelligible from the Decision and, applying a standard of reasonableness, there is no basis for the Court to intervene.

V. Conclusion

[25] Having considered the Applicant's arguments and having found no reviewable error, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-3169-17

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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