Federal Court  Cour fédérale

Date: 20200218

Docket: IMM-2037-19

Citation: 2020 FC 262

Ottawa, Ontario, February 18, 2020

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

YANGMING WANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicant seeks judicial review of a decision made on March 16, 2019 by a Visa Officer refusing the Applicant's application for an extension of his study permit and finding him inadmissible for misrepresentation under s. 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, the application is granted.

II. **Facts**

[3] The Applicant is a citizen of China in Canada on a study permit. From September 2015 to April 2018 he studied at the Humber College Institute of Technology. In April 2018, the Applicant retained the services of an educational consultant (CVP) to apply to three Canadian universities for admission on his behalf. According to his uncontradicted affidavit evidence he provided CVP with his high school transcript from a Canadian secondary school, his Humber College transcript, his passport and a copy of his study permit.

[4] In May 2018, the Applicant received a non-final acceptance letter from York University through CVP. Before applying for an extension of his study permit, the Applicant logged into his student account with the University and downloaded a copy of the acceptance letter. In July 2018, the Applicant submitted an application for the extension through the Immigration, Refugees, and Citizenship Canada (IRCC) online portal. As the letter received in May was not final, the application was not considered to be complete. The Applicant was required to resubmit his application, including a request for restoration of status, which he did on September 13, 2018 through the online portal with the final acceptance letter dated July 18, 2018.

[5] The Applicant received a request for additional documents on October 27, 2018 – including his high school transcripts from Canada which he duly provided. On November 1, 2018, the Applicant was informed that the Officer had found a discrepancy between the high school transcripts submitted to IRCC and those on file with York University, presumably

submitted by CVP, which indicated that he had attended Everest International School from the fall of 2015 to the winter of 2018.

[6] In response, the Applicant submitted his sworn affidavit and supporting documents. He maintained that the documents he submitted to IRCC were genuine and that he had no knowledge of any incorrect documents that may have been submitted to York by CVP.

III. **Decision under review**

[7] The decision letter dated March 16, 2019 stated that the Applicant had been found inadmissible pursuant to s. 40(1)(a) of the 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 the IRPA."

[8] In the Global Case Management System (GCMS) notes that serve as the reasons for the decision, the Officer provided the following explanation:

> Transcripts submitted to IRCC show client was attending Humber College Institute of Technology and Advanced Learning from fall 2015 the winter 2018, while transcripts received from York University show client was attending secondary school at "Everest International school" June 2016 to April 2018. Client retained a secondary party (CVP) to apply for registration at universities on his behalf and therefore is ultimately responsible for the actions of the secondary party who misrepresented material facts relating to a relevant matter thereby inducing an error in the administration of IRPA. Request for an extension of status as a student is refused.

IV. **Issues**

[9] The sole issue in this matter is whether the fact that no false documents were submitted directly to IRCC should constitute an exception to the general principle that applicants are responsible for misrepresentation by third parties.

V. **Relevant Legislation**

[10] Subsection 40(1)(a) of the *IRPA* is the key provision in this application.

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.

[11] Also relevant in this matter is subsection 216(1)(e) of the *Immigration and Refugee Protection Regulations*, SOR 2002-227:

Study permits	**Permis d'études**
216 (1) Subject to subsections (2) and (3), an officer shall	**216 (1)** Sous réserve des paragraphes (2) et (3), l'agent

issue a study permit to a foreign national if, following an examination, it is established that the foreign national	délivre un permis d'études à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(e) has been accepted to undertake a program of study at a designated learning institution.	**(e)** il a été admis à un programme d'études par un établissement d'enseignement désigné.

VI. **Analysis**

[12] The parties are in agreement that the standard of review of the Visa Officer's decision is reasonableness.

[13] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 15 held that "[i]n conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified". The Court elaborated at para 86 that "it is not enough for the outcome of a decision to be *justifiable* … [,] … the decision must also be *justified* …" [emphasis in original].

[14] The general consequence of a finding of misrepresentation is very severe; a five year ban on admission to Canada.

[15] The jurisprudence is settled that the duty of candour is an overriding principle of the IRPA and underlies s 40(1)(a): *Sidhu v Canada (Citizenship and Immigration)* 2019 FCA 169 at para 19. The principles of interpretation of the section by this Court were summarized by Justice

Strickland in *Goburdhun v Canada (Minister of Citizenship and Immigration)* 2013 FC 971 at para 28:

- Section 40 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 para 25 [*Khan*]);

- Section 40 is broadly worded to encompasses misrepresentations even if made by another party, including an immigration consultant, without the knowledge of the applicant (*Jiang v Canada (Minister of Citizenship and Immigration)*, 2011 FC 942 at para 35 [*Jiang*]; *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at paras 55-56 [*Wang*]);

- The exception to this rule is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control (*Medel*, above);

- The objective of section 40 is to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the applicant to ensure the completeness and accuracy of their application (*Jiang*, above, at para 35;*Wang*, above, at paras 55-56);

- An applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada (*Bodine v Canada (Minister of Citizenship and Immigration)*, 2008 FC 848 at para 41*; Baro v Canada (Minister of Citizenship and Immigration*), 2007 FC 1299 at para 15);

- As the applicant is responsible for the content of an application which they sign, the applicant's belief that he or she was not misrepresenting a material fact is not reasonable where they fail to review their application and ensure the completeness and veracity of the document before signing it (*Haque*, above, at para 16; *Cao v Canada (Minister of Citizenship and Immigration)*, 2010 FC 450 at para 31 [*Cao*]*);*

- In determining whether a misrepresentation is material, regard must be had for the wording of the provision and its underlying purpose (*Oloumi*, above, at para 22);

- A misrepresentation need not be decisive or determinative. It is material if it is important enough to affect the process (*Oloumi*, above, at para 25);

- 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. The materiality analysis is not limited to a particular point in time in the processing of the application. (*Haque*, above, at paras 12 and 17; *Khan*, above, at paras 25, 27 and 29; *Shahin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 423 at para 29 [*Shahin*]);

[16] In this instance, the Applicant argues that no misrepresentation was made to IRCC by the Applicant or the consultant he retained to submit his application to York University, direct or indirect. There are no authorities directly on point. In every case of misrepresentation by a third party brought to my attention, the misrepresentation was on a form or in information submitted to the Minister on behalf of the applicant.

[17] The record does not indicate how the Visa Officer came to be aware of the false transcript submitted to York University. Nor is there any indication that the transcript was a factor, significant or otherwise, in the decision by York to grant the applicant admission. In fact, it is not at all clear why the consultant CVP submitted the transcript in addition to or substitution for the Applicant's valid records. What is clear, however, is that the documents submitted to the IRCC did not include the false transcript. No one, therefore, made a misrepresentation directly or indirectly to the IRCC on behalf of the Applicant that induced or could induce an error in the administration of the Act.

[18] It was within the Visa Officer's discretion to refuse the study permit application if he or she was not satisfied as to the Applicant's enrollment at York University. But, in my view, the Officer's application of the misrepresentation provisions cannot reasonably be sustained by the statutory scheme.

[19] This application will therefore be granted. The Applicant has requested that rather than remit the matter for reconsideration, the appropriate remedy would simply be to quash the misrepresentation decision and I agree. On the information before the Officer there was no basis upon which to find that the application fell within s. 40(1)(a). In light of my conclusions, another officer could not make that finding on the same information.

[20] The parties have not proposed serious questions of general application for certification and none will be certified as this matter turns on its unique facts.

JUDGMENT IN IMM-2037-19

THIS COURT'S JUDGMENT is that the application is granted and the finding of misrepresentation under s. 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 is quashed.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2037-19
STYLE OF CAUSE:	YANGMING WANG V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 12, 2020
JUDGMENT AND REASONS:	MOSLEY J.
DATED:	FEBRUARY 18, 2020

APPEARANCES:

Chantal Desloges	FOR THE APPLICANT
Monmi Goswami	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Desloges Law Group Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT