Federal Court  Cour fédérale

Date: 20210819

Docket: IMM-278-21

Citation: 2021 FC 854

Vancouver, British Columbia, August 19, 2021

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

LI FENG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Li Feng, seeks judicial review of a decision of an Immigration Officer [Officer] dated January 5, 2021 denying her request for a work permit under the Temporary Foreign Worker Program. She claims that the Officer's findings ignored the evidence she provided in response to the Officer's specific questions, and she objects strongly to the Officer's references to fraud and the misrepresentation finding.

[2] I am not persuaded that the Officer's decision is unreasonable, in light of the inconsistencies and gaps in the information the Applicant provided in support of her application for a work permit.

[3] The Applicant is a citizen of China, who holds a number of degrees, diplomas and certificates in the area of engineering and construction. There is no doubt she is highly qualified and experienced. Her son came to Canada as a student in 2014, and she has been with him in this country at various times since then. While she was in Canada, the Applicant says she has worked for her employer in China, the China Petroleum Pipeline Engineering Corporation [CPPE], and she worked for a time for Aujla Orchards, a Canadian company.

[4] In July 2020, the Applicant filed her work permit application, seeking to work as a Site Superintendent for a potential Canadian employer pursuant to its Labour Market Impact Assessment. On August 10, 2020, the Officer sent her a Procedural Fairness Letter raising three issues about her work permit application: (i) her employment with Aujla Orchards as a farm worker from September 2016 until April 2018; (ii) how she could have re-started her full-time employment with CPPE in April 2018 when she did not return to China until August 2018; and (iii) how she could have been employed as a full-time project manager since 2018 while she spent less than six months in China during that period.

[5] The Applicant provided her response to the fairness letter, addressing the second and third questions, but providing no information about the first issue raised by the Officer. In addition, she provided a further letter from CPPE, dated August 21, 2020, setting out her employment history.

[6] On January 5, 2021, the Officer refused the Applicant's work permit application and found her inadmissible for five years on account of misrepresentation. The crux of the Officer's reasoning is set out in the Global Case Management System [GCMS] notes, which explain that the inconsistencies in the information provided by the Applicant led the officer to conclude that she had submitted fraudulent documentation that could have induced an error in the administration of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [*IRPA*].

[7] The determinative issue is whether the Officer's analysis of the information about the Applicant's work history is unreasonable. The standard of review that applies is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraphs 17 and 69; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 691 at para 4).

[8] In addition, one preliminary issue was raised. The Respondent objected to the affidavit filed by the Applicant before the Court, because it contained new information that had not been before the decision-maker; certain paragraphs are argumentative and therefore inappropriate; and it lacked a proper jurat. The Applicant submitted that the new information should be accepted by the Court under the exceptions recognized in *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 19-25), because it shows that the Officer's finding of fraud is unwarranted. The Applicant says that the conclusion that she committed fraud is completely baseless and the further information proves this. The Applicant also asks the Court to exercise its discretion to excuse the lack of a proper jurat, since the Applicant was in China when she swore her affidavit and it was not possible to obtain a proper version of it within the filing deadline.

[9] I agree with the Respondent that the new information in the affidavit is not admissible. It does not fall under any of the recognized exceptions, and there is no principled basis to admit it. The information should have been placed before the decision-maker, and admitting it before the Court would tend to "turn the Court's attention away from the decision under review and towards a de novo consideration of the merits." (*Henri v Canada (Attorney General)*, 2016 FCA 38 at para 41). I will not consider the challenged paragraphs of the Applicant's affidavit, or the information set out in Exhibit B.

[10] Turning to the substance of the Applicant's argument, I am not persuaded that the Officer's decision is unreasonable. The Applicant submits that she provided truthful and responsive answers to the questions raised in the Procedural Fairness Letter about her employment with CPPE. She says the Officer mistakenly assumed that she had to be in China to work for the company, but her explanation and that of the company make clear that she was able to work remotely.

[11] The problem with the Applicant's submissions is that her location while working was not the principal concern of the Officer nor the reason for denying her application and finding misrepresentation. Rather, the Officer's focus was on the inconsistencies in the information she provided about her work history. In her work permit application, and the personal resume she provided with it, the Applicant set out the following facts regarding the relevant parts of her work history:

- March 2003 – July 2014 Project Manager, CPPE (China)
- September 2016 – April 2018 Farm Worker, Aujla Orchards (Canada)
- April 2018 – present Project Manager, CPPE (China)

[12] This is consistent with the Applicant's narrative that she had come to Canada in 2014 to be with her son, who was studying here as an international student. It is also consistent with the letter she provided from CPPE, dated July 23, 2020, which described her work history with the company.

[13] As noted earlier, the Officer had certain questions about the Applicant's work history that were set out in the Procedural Fairness Letter. The Applicant's response to that letter provided further information about her remote work, and this is the focus of the Applicant's submission. However, the Applicant's response, and the further letter she provided from CPPE dated August 21, 2020, also contained information that contradicted her earlier work history. In particular, the Applicant stated that she worked for CPPE from September 2016 until April 2018 on a "piecework" basis and she was paid for each project she completed. The CPPE letter says the same thing.

[14] The Officer concluded that the Applicant had provided fraudulent information, noting the inconsistencies and contradictions regarding her work history with CPPE, and her failure to provide any information to confirm her employment with Aujla Orchards.

[15] The Applicant submits that the Officer's conclusion is unreasonable, because the concerns about her work for CPPE between 2016 and 2018 were not mentioned in the Procedural Fairness Letter. I disagree. The letter raised certain concerns, and the Applicant provided information in an effort to answer the specific questions. However, her response gave rise to other concerns, for obvious reasons. The Fairness Letter did not raise a question about her work for CPPE during this period because that issue only emerged in her response to the letter.

[16] There is no unfairness in this, because the Applicant was aware of the contents of the new information she provided and of her obligation to provide accurate and complete information in response to the procedural fairness letter. Although she may not have fully appreciated its significance, it was not unreasonable for the Officer to take the new information into account in assessing her application; indeed, the Officer was required to do so.

[17] The Officer's reasoning is amply supported by the evidence in the record submitted by the Applicant, and the decision notes show that the reasoning applied the elements of the legal framework for considering work permit applications. Both parties acknowledge the clear and logical analysis of the record conducted by the Officer. I agree with their assessment.

[18] Under the *Vavilov* framework for judicial review on a standard of reasonableness, a reviewing court "is to review the reasons given by the administrative decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints" (*Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 2 [*Canada Post*]). The burden is on the Applicant to satisfy the Court "that any shortcomings or flaws relied on… are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100, cited with approval in *Canada Post* at para 33).

[19] In my view, the Officer's decision must be considered reasonable under this framework, and the Applicant has failed to demonstrate any flaws that are sufficiently central or significant to make the decision unreasonable. The Officer's finding that the inconsistencies in the

Applicant's information about her work history justified a conclusion of misrepresentation is supported by the record, and explained in the decision.

[20] The Officer's misrepresentation finding is also consistent with the jurisprudence on the nature and scope of the concept of misrepresentation under subsection 40(1) of IRPA. In summary, this case-law has found that misrepresentation under this provision can include innocent as well as deliberate mis-statements (*Chen v Canada (Citizenship and Immigration)*, 2005 FC 678 at para 10), that any risk of an error in the administration of the statute is sufficient to ground a finding of misrepresentation (*Innocentes v Canada (Citizenship and Immigration)*, 2015 FC 1187 at paras 17 and 18) and that the burden is on the Applicant to present correct information in an application for status in Canada (*Cao v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FC 260 at para 17).

[21] In light of this, the Officer's reference to fraud does not give rise to a more serious legal consequence for the Applicant, although it is evident that she finds it objectionable. There is no basis to disturb this finding, despite the Applicant's vehement disagreement with it. The glaring inconsistencies in the information she provided to the Officer provide ample support for the finding of misrepresentation.

[22] For these reasons, the application for judicial review is dismissed.

[23] Neither party proposed a question of general importance for certification, and none arises in this case.

JUDGMENT in IMM-278-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question of general importance for certification.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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