Federal Court Cour fédérale

Date: 20211116

Docket: IMM-1509-21

Citation: 2021 FC 1243

Ottawa, Ontario, November 16, 2021

PRESENT: Madam Justice Pallotta

BETWEEN:

MALKIAT SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Mr. Malkiat Singh applies for judicial review of a migration program manager's (Officer) decision that refused his application for a work permit and determined that he is inadmissible to Canada for a period of five years due to misrepresentation, pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The Officer found Mr. Singh to be inadmissible based on a finding that he failed to disclose that he previously worked without authorization in Canada, and this constituted a material misrepresentation that could have induced an error in the administration of the *IRPA*.

[3] While Mr. Singh does not admit that he worked without authorization, he acknowledges that, based on the information that was before the Officer, it was open for the Officer to find that Mr. Singh made a misstatement on his work permit application by answering “no” to the question, “Have you ever…worked without authorization in Canada?” As a result, it would have been open to the Officer to refuse his work permit application on the basis of a failure to answer truthfully all questions put to him, pursuant to subsection 16(1) of the *IRPA*. However, Mr. Singh submits the Officer unreasonably concluded that the misstatement amounted to a material misrepresentation under paragraph 40(1)(a) of the *IRPA*, with a consequence that he is now banned from entering Canada for five years and from filing an application for permanent residence during that time. Furthermore, Mr. Singh submits that the Officer failed to justify the misrepresentation determination with adequate reasons.

[4] For the reasons below, Mr. Singh has not established that the Officer’s decision is unreasonable. Accordingly, the application for judicial review is dismissed.

II. **Standard of Review**

[5] Whether the Officer’s decision is reasonable is determined according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The reasonableness standard of review is a deferential but robust form of review: *Vavilov* at paras 12-

13, 75 and 85. The reviewing court does not ask what decision it would have made, attempt to ascertain the range of possible conclusions, conduct a new analysis, or seek to determine the correct solution to the problem: *Vavilov* at para 83. Instead, the reviewing court must focus on the decision actually made, and consider whether the decision as a whole is transparent, intelligible, and justified: *Vavilov* at paras 15 and 83. In this regard, it is not enough for the outcome of a decision to be justifiable; the decision must be justified by the decision maker, by way of the reasons: *Vavilov* at para 86. A reasonable decision is based on an internally coherent and rational chain of analysis and it is justified in relation to the facts and law that constrain the decision maker: *Vavilov* at para 85.

III. **Analysis**

A. *Was the Officer's determination of a material misrepresentation under paragraph 40(1)(a) of the* IRPA *unreasonable?*

[6] In the work permit application, Mr. Singh provided the following answers:

> Have you ever remained beyond the validity of your status, attended school without authorization or worked without authorization in Canada? No
>
> Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory? Yes
>
> Have you previously applied to enter or remain in Canada? Yes
>
> If you answered "yes" to question 2a), 2b), or 2c) please provide details: WORK PERMIT APPLICATION WAS REFUSED

[7] Mr. Singh submits that the Officer's finding of misrepresentation under paragraph 40(1)(a) of the *IRPA* was unreasonable in his case.

[8] First, the work permit application disclosed that he had been refused a work permit previously, and according to Mr. Singh, this disclosure is linked to the unauthorized work because his previous work permit was refused for having worked without authorization. Viewing his application holistically, there may have been a misstatement, but there was no misrepresentation. The Officer effectively based the misrepresentation determination on a failure to provide sufficient details about the reason why the prior work permit was refused.

[9] Second, Mr. Singh argues that the alleged misrepresentation did not impact the work permit approval process, and thus it could not have induced an error in the administration of the *IRPA*. According to Mr. Singh, the failure to disclose a previous refusal may not constitute misrepresentation if the officer has readily available access to the reasons for the previous refusal: *Karunaratna v Canada (Minister of Citizenship and Immigration)*, 2014 FC 421 at para 16 [*Karunaratna*]. Furthermore, he alleges the information that was disclosed was connected to the information that was omitted, and the omission did not foreclose or avert further inquiries by the Officer: *Alves v Canada (Minister of Citizenship and Immigration)*, 2021 FC 716 at para 21 [*Alves*]. Mr. Singh argues that the circumstances of his application are analogous to these cases. He submits his disclosure of the refused work permit prompted all the appropriate inquiries, and led directly to the reason for it, namely the unauthorized work.

[10] The respondent submits that a foreign national 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 *IRPA* or the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]: paragraph 40(1)(a) and subsection 2(2)

of the *IRPA*. Mr. Singh concealed his history of prior unauthorized work. Disclosing a prior work permit refusal without detail is not the equivalent, and it does not serve to neutralize the omission. The respondent argues the omission was clearly material in view of the close nexus between the relevance of the omitted information and the work permit Mr. Singh was seeking. Regardless of whether it is caught, a lie could induce an error because of its potential to preclude relevant inquiries—for example, by inducing an error in the Officer's consideration of whether Mr. Singh would comply with the conditions of a work permit in view of previous non-compliance. Allowing an applicant to take advantage of the fact that a lie is caught would shift an applicant's onus to provide a truthful application and would invite abuse: *Kazzi v Canada (Minister of Citizenship and Immigration)*, 2017 FC 153 at paras 38-39, 42 [*Kazzi*].

[11] Turning first to Mr. Singh's argument that his omission amounted to no more than a failure to provide sufficient details about a refused work permit, which had been disclosed, I am not persuaded by this argument. As the respondent points out, there are important facts about Mr. Singh's immigration history that must be considered.

[12] Mr. Singh had been in Canada on work and visitor visas since 2016. After his last work visa expired in January 2020, Mr. Singh was granted a visitor visa with a condition that he not work without authorization. In February 2020, while attempting to enter Canada as a visitor, Mr. Singh was interviewed at a port of entry (POE) in Surrey, British Columbia. He denied having worked without authorization and was subjected to a media device search. A Canada Border Services Agency (CBSA) officer found text conversations and photographs on Mr. Singh's mobile phone to indicate he was working in January and February 2020, during the time when he

had been permitted to enter Canada as a visitor and was not authorized to work. When the CBSA officer questioned Mr. Singh again, he continued to deny that he had worked without authorization until confronted with the text conversations and photographs on his phone. Then Mr. Singh admitted that he had delivered two loads to Victoria for a transport company, and moved trailers in the yard for another company.

[13] Mr. Singh was offered an "allowed to leave" without being rendered inadmissible. He was told not to apply for a work permit for six months. Mr. Singh departed Canada on February 25, 2020.

[14] According to the Global Case Management System (GCMS) notes, the immigration officer who first reviewed the work permit application at issue in this proceeding had concerns that "[applicant] has not been truthful in regards to his employment and immigration history in Canada." The officer sent a procedural fairness letter (PFL) informing Mr. Singh that he may be inadmissible on grounds of misrepresentation under paragraph 40(1)(a) of the *IRPA* for: (1) failing to declare that he worked without authorization in Canada in January and February 2020, and (2) failing to declare he was given an allowed to leave on February 8, 2020, based on the CBSA officer's concerns that he had worked without authorization in Canada.

[15] In response, Mr. Singh stated that he answered "no" to the question about working without authorization because he was not employed with the transport company in January and February 2020, and he had only been paid a referral bonus for referring a candidate driver to the company. He stated that when the CBSA officer interviewed him at the border, he got anxious

and was not able to explain the relationship with the transport company and "the officer made the opinion that I was employed with the company without authorization".

[16] Mr. Singh's response to the PFL was fully considered. The GCMS notes state:

> PA [applicant] responded to PFL. Explanation is that he got nervous when he was interviewed at the POE and insist now that he has never worked illegally in Canada. Notes from interview of POE are clear. PA readily admitted having driven a truck for Geyer on two occasions. [Said] it was only two times. I don't think PA can walk bakc [*sic*] on that admission now. He says that he did respond Yes to the section about previsous [*sic*] history in Canada or other country but had not given any details. He is not being truthful. …

[17] I agree with the respondent that *Karunaratna* is distinguishable from Mr. Singh's case. The applicants in *Karunaratna* omitted mention of a 2008 temporary resident visa (TRV) refusal in their 2009 application for permanent residence, but they had referred to it in their 2009 TRV application. The Court held that the applicants clearly were not trying to hide the information: *Karunaratna* at paras 16-17. Mr. Singh intentionally checked "no" on his application and he denied having worked illegally in Canada. The Officer reasonably rejected Mr. Singh's explanation on the basis that it was inconsistent with the CBSA interview record.

[18] In *Alves*, the Court found that it was unclear how the officer in that case came to the conclusion that a misrepresentation was material, and the evidentiary record did not justify the finding. Ms. Alves had disclosed the substance of her negative immigration history. She answered "yes" to a question asking if she had been refused a visa or permit, denied entry, or ordered to leave Canada or any other country or territory, but in providing further details she disclosed a 2018 visa refusal in the United States without referring to a 2015 order to leave the

United States. In her response to a PFL, Ms. Alves explained how the events were related. Also, she thought she would have an opportunity to elaborate in an interview. This is not at all similar to the position Mr. Singh took in response to his PFL, which was to deny that he worked in Canada without authorization. In my view, the evidentiary record in this case justifies the Officer's finding.

[19] Turning to Mr. Singh's second argument, I am not persuaded that the alleged misrepresentation could not have induced an error in the administration of the *IRPA* because it did not impact the work permit approval process.

[20] A foreign national seeking to enter Canada has a "duty of candour" that requires disclosure of all material facts during the application process and after a visa is issued. An applicant bears the burden of presenting correct information in an application for status in Canada: *Alkhaldi v Canada (Minister of Citizenship and Immigration)*, 2019 FC 584 at para 18; *Cao v Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FC 260 at para 17.

[21] This Court's decision in *Kazzi* summarizes ten guiding principles on paragraph 40(1)(a) of the *IRPA*. The last five are particularly relevant to this case: (6) a misrepresentation is material if it is important enough to affect the immigration process; (7) a misrepresentation need not be decisive or determinative to be material; (8) 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; (9) the materiality analysis is not limited to a particular point in

time in the processing of the application; and (10) the assessment of whether a misrepresentation could induce an error in the administration of the *IRPA* is to be made at the time the false statement was made: *Kazzi* at para 38.

[22] Whether an applicant has worked without authorization is a direct question on a work permit application, and a relevant factor for an officer's consideration. Indeed, if a foreign national has engaged in unauthorized work in Canada or failed to comply with a condition of a previous permit or authorization, paragraph 200(3)(e) of the *IRPR* prohibits an officer from issuing a work permit to that foreign national for at least six months.

[23] As the respondent points out, the duty of candour is not minimized in situations where the misrepresentation is caught by immigration officials before the final decision is made. This would be contrary to the intent, objectives and provisions of the *IRPA*: *Li v Canada (Minister of Citizenship and Immigration)*, 2018 FC 87 at para 17; see also *Kazzi* at para 38 (point 8, above).

[24] Mr. Singh's argument, in essence, is that the omission is immaterial because with or without his own disclosure of the unauthorized work, an officer would have uncovered this fact by investigating the work permit refusal that he disclosed. In my view, the argument fails for a number of reasons. First, Mr. Singh's work permit application provided no detail whatsoever about the work permit refusal—no date, country, or reason is provided. Based on the record before me, it is not even clear how the work permit refusal is connected to the POE interview, as Mr. Singh was trying to enter Canada with a visitor's visa at the time. As the respondent puts it, it was not sufficient for Mr. Singh to provide a breadcrumb that might lead to the relevant

information, and then rely on the fact that it did. Second, despite being caught in a lie at the POE interview, and granted leniency and an opportunity to submit a work permit application in six months, Mr. Singh was not at all forthcoming in that application. In addition to answering "no" to the question, "Have you ever…worked without authorization in Canada?", in another part of his work permit application Mr. Singh indicated that he was in Cloverdale, British Columbia as a visitor from January to February 2020, and in the box for indicating his employer entered "N/A". Third, in response to the PFL, Mr. Singh maintained that there was no unauthorized work, asserting that his statements to POE officials were misinterpreted. Mr. Singh's argument is contrary to the principle that the applicant has the onus and a continuing duty of candour to provide complete, accurate, honest, and truthful information when applying for entry into Canada: *Kazzi* at para 38.

[25] In summary, Mr. Singh has not established that a finding of misrepresentation under paragraph 40(1)(a) of the *IRPA* was unreasonable in his case.

B. *Did the Officer fail to justify the determination with adequate reasons?*

[26] Mr. Singh argues the Officer's reasons consist of boilerplate language that simply states, "File reviewed. PA withhold material facts that could have induced in error the visa officer, which could have [led] to approving this [work permit] application. Refused A40." Mr. Singh argues that the Officer did not provide any rationale for how the statements in his application, when read holistically, could have resulted in him "being approved for a work permit that he was not eligible for".

[27] Mr. Singh submits the Officer did not explain how the omission of details would have impacted the process. When making a misrepresentation finding, an officer's decision will lack justification if the officer does not explain how an omission would have resulted in particular procedures not being following in the processing of the application: *Ali v Canada (Minister of Citizenship and Immigration)*, 2021 FC 579 at paras 18, 20 [*Ali*].

[28] The respondent submits that it is possible to trace the Officer's reasoning and understand how they arrived at the conclusion: *Vavilov* at para 102. When read in light of the record, which included the work permit application, GCMS notes, the PFL, and Mr. Singh's response to the PFL, the Officer's conclusion was reasonable. I agree.

[29] The reasons are not limited to the alleged "boilerplate" language, which must be understood in context. Although the GCMS notes include entries by different officers, these other entries form part of the context for the decision: *Rahman v Canada (Minister of Citizenship and Immigration)*, 2016 FC 793 at para 19 [*Rahman*]; *Thedchanamoorthy v Canada (Minister of Citizenship and Immigration)*, 2018 FC 690 at para 17; *Rabbani v Canada (Minister of Citizenship and Immigration)*, 2020 FC 257 at para 35. The Officer who made the misrepresentation determination under paragraph 40(1)(a) of the *IRPA* reviewed the file. The file includes, among other things, the GCMS entry reproduced above regarding Mr. Singh's PFL response insisting he did not work illegally in Canada, which was found to be untruthful.

[30] In my view, the *Ali* decision does not assist Mr. Singh. In *Ali*, the applicant had truthfully answered the questions of "Have you ever been refused a visa or permit, denied entry, or ordered

to leave Canada or any other country or territory?" and "Have you ever been arrested for, been charged with or convicted of any criminal offences in any country or territory?", and he had submitted a legal opinion that addressed the second question: *Ali* at paras 3-4. Mr. Ali provided further information in response to a PFL. The Court agreed with Mr. Ali that the visa officer was in possession of the information necessary to conduct a full inquiry into his immigration history. Specifically, Mr. Ali had disclosed his criminal and immigration history, which turned on the same facts as the U.S. visa waiver refusals that were not disclosed. It was in this context that the Court found it unclear what steps or procedures the officer would have followed if they had known about the additional details, and the officer provided no explanation. The decision lacked intelligibility, and was therefore unreasonable: *Ali* at para 26.

[31] I agree with the respondent that *Ali* is distinguishable because Mr. Singh did not disclose the substance of his immigration history. Mr. Singh's omissions were not peripheral details, nor were they directly related to what he disclosed. As stated above, it is unclear how Mr. Singh's disclosed work permit refusal is connected to POE interview and the unauthorized work in January and February 2020.

[32] The Officer's reasons are succinct, but they convey the justification for the decision. Reasons must be read with due sensitivity to the administrative setting in which they were given, and in light of the history and context of the proceedings: *Vavilov* at paras 91 and 94. When read in light of the history and context of these proceedings as set out in the GCMS notes, POE interview, PFL, and response to PFL, the Officer's decision is intelligible, transparent, and justified.

IV. **Conclusion**

[33] The Officer's decision is reasonable, and accordingly, this application for judicial review is dismissed.

[34] Neither party proposes question for certification. I find there is no question to certify.

JUDGMENT in IMM-1509-21

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question for certification.

"Christine M. Pallotta"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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