

Federal Court



Cour fédérale

Date: 20230503

Docket: IMM-2878-22

Citation: 2023 FC 644

Ottawa, Ontario, May 3, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JASBIR KAUR

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jasbir Kaur, seeks judicial review of a decision of an immigration officer (the “Officer”) of Immigration, Refugees and Citizenship Canada (“IRCC”), dated January 28, 2022, finding her inadmissible to Canada due to misrepresentation pursuant to subsection 40(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”) and thereby refusing her application for a temporary resident visa (“TRV”).

[2] The Officer found that the Applicant had failed to disclose several refusals to enter the United States (“US”) and Canada, and found that this information is material to the proper assessment of the Applicant’s genuineness as a temporary resident.

[3] The Applicant submits that the omissions in her TRV application fall within the exception for honest and reasonable mistakes or misunderstandings, and the Officer’s misrepresentation finding is therefore unreasonable.

[4] For the reasons that follow, I find the Officer’s decision is reasonable. This application for judicial review is dismissed.

II. Facts

A. *The Applicant*

[5] The Applicant is a 52-year-old citizen of India. She is married to Daljit Singh (Mr. “Singh”). Their daughter, Kuldeep Kaur Khasria, has been a permanent resident of Canada since 2012 and currently resides in Edmonton, Alberta.

[6] On October 14, 2021, the Applicant submitted an application for a TRV, in order to visit her daughter and her family in Canada.

[7] In the “Travel history” section of the TRV application form, the Applicant was asked whether she had ever been refused a visa or permit, denied entry to, or ordered to leave any

country or territory, to which she responded “Yes”. The following entry asked the Applicant to provide as many details as possible about when that happened and why, to which she stated:

Visitor Visa to Canada refusals - Mar 10 2015- V305432763, Mar 21 2014 - V303910757, Oct 21 2011 -V300888758

[8] The Applicant received a procedural fairness letter from the High Commission of Canada, Migration Section in New Delhi, India on January 10, 2022, advising her of a possible misrepresentation in her TRV application, pursuant to subsection 40(1) of *IRPA* and providing her the opportunity to respond within 15 days, by January 25, 2022. The letter specified that the Applicant failed to disclose the true number of previous refusals to enter Canada, as well as prior applications to visit the US.

[9] In a letter dated January 23, 2022, the Applicant’s immigration consultant submitted a response to the procedural fairness letter on the Applicant’s behalf. The Applicant alleged that there was only one withheld refusal to the US, and that she only has records for three refusals for visas to Canada, as disclosed in her application.

B. *Decision Under Review*

[10] The decision is largely contained in the Global Case Management System (“GCMS”) notes, which form part of the reasons for the decision.

[11] The GCMS notes state:

Application reviewed. The client was sent a PFL to address concerns of undisclosed material information in the statutory questions section of this application. Specifically, information available to IRCC indicates that the client was the subject of several refusals that were not disclosed (4), even though others were. In particular, no USA refusals at all were disclosed, and the number of Canadian refusals disclosed was fewer than occurred. The client has responded, alleging that there was only one withheld USA refusal, and that they only have records of the three Canadian refusals they already disclosed. Based on the information before me, I am not satisfied that the client has provided complete and truthful information on this matter. This information was material to the proper assessment of the client's genuineness as a temporary resident, and may have been relevant to the client's admissibility to Canada depending on the specific reasons for the undisclosed refusal. As such, the omission of this information was liable to have induced an error in the administration of the Act. The client was given an opportunity to address this concern and has failed to provide additional information sufficient to overcome said concern. Therefore, based on all information before me at this time, I am satisfied on a balance of probabilities that the client has misrepresented material fact in the submission of this application and find that the client is inadmissible to Canada under A40(1). The client will remain inadmissible for a period of five years from this date. Refused.

III. Issue and Standard of Review

[12] The sole issue in this application is whether the Officer's decision is reasonable.

[13] The standard of review is not disputed. The parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25) (“*Vavilov*”). I agree. This is consistent with the Federal Court's review of decisions on TRV applications: *Chuvashov v Canada (Citizenship and Immigration)*,

2022 FC 1730 at paragraph 5; *Azizulla v Canada (Citizenship and Immigration)*, 2021 FC 1226; *Zhang v Canada (Citizenship and Immigration)*, 2016 FC 964 at paragraph 8.

[14] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13; 75; 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[15] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a “minor misstep” (*Vavilov* at para 100; *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 36).

IV. Analysis

[16] The Applicant submits that honest and reasonable mistakes and misunderstandings can fall outside the scope of a misrepresentation finding pursuant to subsection 40(1) of *IRPA*, citing

this Court's decision in *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 ("*Baro*" at paragraph 15). The Applicant submits that with her limited knowledge of English, she disclosed all the information she could and was available to her. She contends that the omitted refusals occurred over ten years ago and she does not have access to documentation regarding these refusals, therefore qualifying her under the innocent misrepresentation exception.

[17] The Applicant submits that the Officer had access to information regarding all of the Applicant's previous refusals and there was therefore no reason for her to conceal this information. She submits that the Officer failed to consider this in the assessment of whether a misrepresentation occurred, or the gravity of the consequences for the Applicant, thereby rendering the misrepresentation finding unreasonable.

[18] The Respondent maintains that the Officer's decision is reasonable and that there is no basis for a finding that the Applicant qualifies for an innocent misrepresentation exception. The Respondent submits that the exception for innocent errors or omissions is narrow and has been found only to apply to cases where inaccurate facts were presented by applicants who believed these factors to be true. The Respondent notes that when confronted with the possible misrepresentation through the procedural fairness letter, the Applicant conceded that she failed to disclose a previous refusal to visit the US, and therefore had knowledge and control of this information. The Respondent also emphasizes the well-established principle that an applicant is ultimately responsible for submitting a complete and accurate application, citing *Abolupe v Canada (Citizenship and Immigration)*, 2020 FC 90 at paragraph 35.

[19] I agree with the Respondent. While the Applicant cites this Court's decision in *Baro* for the proposition that exceptions exist for those who honestly and reasonably believe that they were not withholding material information, the same paragraph in *Baro* also states that even innocent failures to provide material information can result in a finding of inadmissibility (at para 15).

[20] This Court has held that subsection 40(1)(a) of *IRPA* "encompasses innocent failures to disclose material information" and that this does not require that the information be "decisive or determinative," only that it be "important enough to affect the process" (*Duquitan v Canada (Citizenship and Immigration)*, 2015 FC 769 at para 10, citing *Paashazadeh v Canada (Citizenship and Immigration)*, 2015 FC 327 at paras 18, 25, 26). In light of this jurisprudence, the Officer reasonably found that the Applicant failed to disclose material information relating to her previous refusals of entry into Canada and the US.

[21] On the facts of the Applicant's case, the Applicant's omissions in her TRV application do not provide a basis for an innocent misrepresentation finding. There is no evidence proffered by the Applicant to demonstrate that she did not have knowledge or control of the information regarding all previous refusals to enter either the US or Canada. There is nothing in the Applicant's record upon which the narrow exception of innocent misrepresentation could stand. The Officer's decision is reasonable on the basis of the evidence.

V. Conclusion

[22] The application for judicial review is dismissed. The Officer's refusal of the Applicant's TRV application due to a finding of misrepresentation is reasonable on the basis of the evidence. No questions for certification were raised, and I agree that none arise.

JUDGMENT in IMM-2878-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. There is no question to certify.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2878-22

STYLE OF CAUSE: JASBIR KAUR v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 13, 2023

JUDGMENT AND REASONS: AHMED J.

DATED: MAY 3, 2023

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