Federal Court  Cour fédérale

Date: 20230724

Docket: IMM-5368-22

Citation: 2023 FC 973

Ottawa, Ontario, July 24, 2023

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

YIFEI SHAO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] Yifei Shao [Applicant] seeks judicial review of a May 16, 2022 decision [Decision] of an Immigration, Refugees and Citizenship Canada [IRCC] officer [Officer] refusing the Applicant's study permit application and finding her inadmissible for misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] The application for judicial review is allowed. The Decision was unreasonable.

II. Background

[3] The Applicant is an 18-year-old citizen of China. On May 14, 2021, after being accepted to White Oaks Secondary School in Oakville, Ontario to complete Grade 12, the Applicant applied for a study permit. She was 16 years old at the time. In her application, the Applicant disclosed a prior Canadian study permit refusal. She did not disclose a previous United States [US] visa refusal.

[4] On July 13, 2021, an IRCC officer sent the Applicant a Procedural Fairness Letter [PFL] outlining concerns that she failed to disclose the previous US visa refusal.

[5] In a letter dated August 3, 2021, an immigration consultant retained by the Applicant's mother responded to the PFL on the Applicant's behalf. The consultant explained that the Applicant's mother hired an agent [Agent] to prepare the application, who failed to record the US visa refusal despite the Applicant's mother's repeated disclosure of the same. The immigration consultant attached two documents to the letter—WeChat screenshots and a survey form—illustrating the mother's disclosure and the Agent's response that the Applicant was only required to disclose Canadian refusals.

[6] On August 13, 2021, the same officer who sent the PFL recommended that the application be refused for misrepresentation.

III. The Decision

[7] In refusing the Applicant's study permit application, the Officer was not satisfied that the Applicant truthfully answered all questions in support of her application as required by subsection 16(1) of *IRPA*. As a result, under paragraph 40(1)(a) of *IRPA*, the Applicant was deemed inadmissible to Canada for a period of five years.

[8] The Officer's Global Case Management System [GCMS] notes, which form part of the reasons for the Decision, are reproduced in their entirety below:

> Officer had concerns that the applicant's history and background information on file was fraudulent.
>
> PFL was sent to applicant and reasonable time provided to answer our concerns. The response provided does not disabuse me of my concerns. It is the applicant's responsibility to ensure that the info and supporting docs on file are complete and accurate.
>
> Upon review of this file, I am satisfied that the applicant provided intentionally misleading and untruthful information regarding their visa application history. The applicant's background info is a material fact that could have induced an error in the administration of the Act as it would lead an officer to believe that the client is a bona fide temporary resident and would leave Canada at the end of the period of authorized stay.
>
> Application refused on A40 for misrepresentation.

IV. Issue and Standard of Review

[9] The sole issue is whether the Decision was reasonable.

[10] I agree with the parties that the applicable standard of review of the merits of an administrative decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v*

Vavilov, 2019 SCC 65 [*Vavilov*]). This case does not engage one of the exceptions set out in *Vavilov* (at paras 16-17). Therefore, the presumption of reasonableness is not rebutted.

[11] A reasonableness review is a robust form of review that requires the Court to consider both the outcome of the decision and the underlying rationale to assess whether the decision, as a whole, "bears the hallmarks of reasonableness—justification, transparency, and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (Vavilov at paras 13, 15, 99). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (Vavilov at para 100). The onus is on the Applicant to demonstrate the unreasonableness of the decision (Vavilov at para 100).

V. Analysis

A. *Applicant's Position*

[12] Overall, the Officer failed to provide adequate reasons and erred by failing to consider that the Applicant was a minor or whether the innocent mistake exception applied in the circumstances.

[13] Generally, an Officer is not required to provide extensive reasons. However, the same cannot be said in the case of a finding of misrepresentation given its consequences, being a five-year period of inadmissibility from Canada (*Gill v Canada (Citizenship and Immigration)*, 2021

FC 1441 at para 7 [*Gill*]; *Jain v Canada (Citizenship and Immigration)*, 2022 FC 562 at para 14). Here, the Officer simply presented their conclusion absent any analysis.

[14] Further, the Officer failed to consider whether the innocent mistake exception applied. While the general rule is that misrepresentation can occur without an applicant's knowledge, there is an exception where an applicant honestly and reasonably believed that they were not misrepresenting a material fact (*Pandher v Canada (Citizenship and Immigration)*, 2022 FC 687 at para 27). This exception entails both a subjective aspect, requiring consideration of whether the applicant honestly believed they were not making a representation, and an objective aspect, requiring consideration of whether that belief was reasonable (*Canada (Citizenship and Immigration) v Robinsion*, 2018 FC 159 at paras 6-7). Where an explanation offered in response to a PFL raises the possibility of an innocent mistake, it is an error for the Officer to fail to consider it (*Agapi v Canada (Citizenship and Immigration)*, 2018 FC 923 at paragraphs 16-17).

[15] Lastly, the Officer ought to have considered the Applicant's status as a minor at the time of the application. The Applicant is unaware of any jurisprudence considering the application of the innocent mistake exception to minor applicants. However, consideration of an applicant's status as a minor is the norm in immigration law. Similarly, IRCC's internal directive entitled Complex Case Unit: Officer Procedures advises that where there is a misrepresentation in an application, the Officer ought to consider whether an applicant is under the age of 18. The document states: "Is the applicant under the age of 18? We do not A40 children."

B. *Respondent's Position*

[16] The Decision is reasonable in light of the full history set out in the GCMS notes and the PFL. The Applicant failed to discharge her duty of candour when she neglected to disclose that she engaged the Agent's services and that she was refused the US visa.

[17] The innocent mistake exception is narrow and only applies where knowledge of the misrepresentation was beyond an applicant's control. There was no evidence to support the possible application of the innocent mistake exception. As such, it was not an error for the Officer to fail to consider the exception.

C. *Conclusion*

[18] Subsection 16(1) of *IRPA* places an obligation on applicants to answer questions truthfully and provide required evidence. Where a foreign national directly or indirectly misrepresents or withholds material facts relating to a relevant matter that induces or could induce an error in the administration of *IRPA*, they are inadmissible to Canada under paragraph 40(1)(a) of *IRPA.* Section 40 of *IRPA* is intentionally worded broadly and encompasses misrepresentations made by another party.

[19] Justice McHaffie recently summarized jurisprudence of this Court regarding innocent misrepresentations as an exception to inadmissibility under paragraph 40(1)(a) of *IRPA*, noting two apparent strains of case law. One strain provides only for a subjective requirement and an objective requirement, as summarized by the Applicant, above. The other strain suggests an

additional requirement, narrowing the availability of the exception to where “knowledge of the misrepresentation was beyond the applicant’s control” (*Gill* at paras 18-19).

[20] *Gill* is particularly relevant to the present circumstances. In *Gill*, an officer found that the applicant made a misrepresentation by failing to disclose a US visa refusal despite his explanation that he did not know he had to declare visa applications for other countries (at para 11). The Court found that by making no findings as to whether the applicant’s misrepresentation was the result of his misunderstanding, the officer failed to provide adequate justification for the decision (*Gill* at para 21). The present circumstances similarly raise the possibility of an innocent mistake, however, like in *Gill*, this is not the basis upon which I am allowing this application for judicial review. Rather, in what follows, this application for judicial review is allowed due to the Officer’s insufficient reasons.

[21] A finding of misrepresentation requires the decision-maker’s reasons to reflect the stakes for the affected individual (*Gill* at para 7). In the present matter, the Officer states that the Applicant’s response to the PFL did not disabuse them of their concerns and that that “[i]t is the applicant's responsibility to ensure that the info and supporting docs on file are complete and accurate.” The Officer concluded that they are “satisfied that the applicant provided intentionally misleading and untruthful information regarding their visa application history.”

[22] The Officer’s failure to engage with the evidence and explain why the information submitted by the Applicant was insufficient renders the Decision unintelligible.

[23] The Court has two final comments. First, the GCMS notes also state that the Applicant's initial failure to disclose her use of the Agent "in itself may lead to a misrepresentation finding". However, contrary to the Respondent's submissions, this was not the basis of the Officer's misrepresentation finding and accordingly cannot bolster the reasonableness of the Decision.

[24] Second, regarding the Applicant's status as a minor at the time of the application, the Applicant acknowledges that she was unable to provide case law considering the application of the innocent mistake exception to minor applicants. I take the Respondent's point that the Applicant, a minor at the time, nonetheless bears the consequences of the non-disclosure of the US visa refusal because she signed the application form below the declaration that she answered all questions fully and truthfully. I also note that the form requires the signature of a parent if the applicant is under the age of 18 years. In any event, the GCMS notes do not sufficiently engage with the circumstances in which the application form was completed.

[25] When read as a whole, the Decision is unintelligible.

VI. Conclusion

[26] The Applicant has established a reviewable error and the application for judicial review is allowed.

[27] The parties have not proposed a question for certification and I agree none arises.

JUDGMENT in IMM-5368-22

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.

2. There is no question for certification.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Steven Meurrens	FOR THE APPLICANT
Brett Nash	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Larlee Rosenberg Vancouver, British Columbia	FOR THE APPLICANT
Attorney General of Canada Department of Justice Vancouver, British Columbia	FOR THE RESPONDENT