Federal Court Cour fédérale

Date: 20230802

Docket: IMM-9681-22

Citation: 2023 FC 1063

Vancouver, British Columbia, August 2, 2023

PRESENT: Madam Justice Pallotta

BETWEEN:

NGOC HAI MAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

<u>JUDGMENT AND REASONS</u>

[1] Ngoc Hai Mai applies for judicial review of a decision that refused his work permit application and found him inadmissible to Canada for a period of five years, in accordance with paragraphs 40(1)(a) and 40(2)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that could induce an error in the administration of the *IRPA*.

[2] Mr. Mai had answered "no" to a question on his work permit application form that asked, "Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?" When the assessing officer learned that Mr. Mai's Australian study visa issued in November 2013 was cancelled in February 2016 for breaching the condition that required him to be enrolled in a registered course of study, and that he had remained in Australia unlawfully until March 2020, the officer sent a procedural fairness letter (PFL) to Mr. Mai, setting out the officer's concerns.

[3] In response, Mr. Mai explained that he was aware he had overstayed in Australia after discontinuing his studies; however, he did not hide this information. Mr. Mai read the application form carefully and there was no question asking whether he had overstayed in a country other than Canada. With respect to the question the officer referred to, Mr. Mai explained that he selected "no" because he did not think the question applied to his case. Mr. Mai stated he never received an order to leave Australia, and was surprised to learn from the PFL that his Australian visa was cancelled in 2016. He had used an agent to apply for the visa, the agent did not tell him, and Mr. Mai did not have an account to check.

[4] The assessing officer's notes recorded in the Global Case Management System (GCMS) indicate that after receiving Mr. Mai's response, a further inquiry with Australian immigration authorities revealed that Mr. Mai had been informed (i) in 2015 that his visa was under review for revocation, and (ii) in 2016 that his visa was revoked and he was required to leave the country. The assessing officer was concerned that Mr. Mai had attempted to withhold

information about his immigration history, and transferred Mr. Mai's application to a delegated authority for a review under section 40 of the *IRPA*.

[5] The delegated officer gave little weight to Mr. Mai's explanation, found that Mr. Mai had misrepresented a material fact related to the requirements of his application that could have induced an error in the administration of the *IRPA*, and issued the decision that refused Mr. Mai's work permit application and found him inadmissible to Canada.

[6] Mr. Mai contends the decision is both procedurally unfair and unreasonable.

[7] The parties agree that the standard of review applicable to questions of procedural fairness is akin to correctness. Whether the decision is unreasonable is determined according to the guidance set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. 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.

[8] Mr. Mai submits the decision is procedurally unfair because the assessing officer developed further concerns after sending the PFL, based on the additional information received from Australian immigration authorities, and did not disclose those concerns and provide an opportunity to respond. It is open to an officer to disbelieve an applicant, but only after giving the applicant a fair chance to respond to concerns arising from extrinsic sources: *Qureshi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1081 at paras 30-31. In his case,

Mr. Mai states the assessing officer was obliged to send him another PFL, disclosing the further concerns about whether he was aware his Australian visa had been revoked.

[9] The respondent submits there was no obligation to send a second PFL and invite further submissions because the misrepresentation finding was not based on a new ground: *Bayramov v Canada (Minister of Citizenship and Immigration)*, 2019 FC 256 at para 16 [*Bayramov*]. The PFL that was sent to Mr. Mai had already explained the officer's concern—that Mr. Mai failed to disclose the cancellation of his student visa in Australia in 2016—and he was given sufficient opportunity to respond. Also, the delegated officer did not rely on extrinsic evidence, but rather, the explanation Mr. Mai gave in response to the PFL, and information that related to Mr. Mai's own immigration history that was within his control: *Kita v Canada (Citizenship and Immigration)*, 2020 FC 1084 at para 38.

[10] The respondent submits that where an officer is not satisfied that their concerns have been fully addressed, there is no duty to provide a second PFL unless the officer intends to rely on an entirely new ground of misrepresentation: *Bayramov* at para 16. Mr. Mai simply failed to provide a fulsome response to the PFL that would alleviate the officer's concern. Whether Mr. Mai was notified about the cancellation of his Australian study visa did not raise a new ground of misrepresentation.

[11] Mr. Mai counters that a PFL must contain enough detail to enable an applicant to know the case to meet: *Bayramov* at para 15. Mr. Mai states the delegated officer found him to be inadmissible based on a negative credibility finding about whether he received notice of the

Australian visa cancellation, which arose as a result of new information received from the Australian authorities. The PFL letter did not disclose the new information or inform Mr. Mai of credibility concerns, and so a second PFL should have been sent. Mr. Mai states a finding of inadmissibility requires a high degree of procedural fairness—particularly since the officers relied on new concerns, namely credibility concerns that arose from his PFL response: *Ge v Canada (Citizenship and Immigration)*, 2017 FC 594 at paras 28-29 [*Ge*]; *Thedchanamoorthy v Canada (Citizenship and Immigration)*, 2018 FC 690 at para 27 [*Thedchanamoorthy*].

[12] I agree with the respondent that the officers did not raise a new ground of misrepresentation, and a second PFL was not required. *Ge* and *Thedchanamoorthy* are distinguishable. In *Ge*, the PFL responses were the sole source of the applicants' alleged misrepresentations, and the officer's misrepresentation finding was only sustainable on the basis that the applicants had not been transparent in their PFL responses: *Ge* at paras 23-27. In *Thedchanamoorthy*, the Officer went beyond not accepting the applicant's explanation, and relied on a further concern based on the applicant's answer to a different question on the application form: *Thedchanamoorthy* at para 27. In contrast to the circumstances of *Ge* and *Thedchanamoorthy*, the basis for the misrepresentation finding against Mr. Mai was precisely the same concern that had been raised in the PFL.

[13] Mr. Mai's response to the PFL was that he did not know his visa was cancelled, because his agent did not tell him and he did not have an account to check. Mr. Mai's response did not provide any further details or include supporting evidence.

[14] Mr. Mai's response was considered, and as discussed below, in my view it was open to the delegated officer to "give little weight to [Mr. Mai's] reason" and to conclude, on balance, that Mr. Mai misrepresented a material fact that could have induced an error in the administration of the *IRPA*.

[15] Mr. Mai correctly states that a PFL must contain enough detail to enable an applicant to know the case to meet, and an officer must then carefully consider any information provided in response to the PFL: *Bayramov* at para 15. However, those requirements were met in Mr. Mai's case, and the officers did not breach the duty of procedural fairness that was owed to him. The PFL was clear about the assessing officer's concerns that Mr. Mai had failed to disclose that immigration authorities cancelled his Australian study visa in 2016, and he remained in that country unlawfully until 2020. Mr. Mai had the opportunity to respond to the concerns, the officers considered the response he provided, and the response did not alleviate the concerns.

[16] Mr. Mai contends the decision is also unreasonable, because the designated officer imposed non-statutory requirements. Mr. Mai submits he did not make a misrepresentation because he was not required to disclose his overstay in Australia—there was no question on the application form that asked him to disclose whether he had overstayed in a country other than Canada. Mr. Mai argues the officers either imported an additional disclosure requirement that was not on the form, or they attached an unreasonable, subjective interpretation to the question that was asked on the form. Also, Mr. Mai states the delegated officer provided insufficient and inadequate reasons to support the decision.

[17] Mr. Mai has not established that the decision is unreasonable. The officers' interpretation of the question as one that required Mr. Mai to disclose the revoked visa is supported by jurisprudence from this Court: see for example *Quach v Canada (Citizenship and Immigration)*, 2021 FC 855, and *Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324. Having interpreted the question as one that required Mr. Mai to disclose the revoked Australian study visa, and after considering and giving little weight to Mr. Mai's reasons for answering the question in the negative, the designated officer reasonably found Mr. Mai had made a misrepresentation in his application that could induce an error in the administration of the *IRPA*.

[18] There is no merit to Mr. Mai's allegation that the reasons are inadequate. The decision and the supporting GCMS notes provide an intelligible analysis that justifies the conclusion.

[19] For the foregoing reasons, this application for judicial review is dismissed.

[20] Neither party proposed a question for certification. I find there is no question to certify.

JUDGMENT in IMM-9681-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no question to certify.

"Christine M. Pallotta"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	NGOC HAI MAI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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