Federal Court  Cour fédérale

Date: 20230824

Docket: IMM-8681-22

Citation: 2023 FC 1135

Toronto, Ontario, August 24, 2023

PRESENT: Mr. Justice Diner

BETWEEN:

NAVTEJ SINGH

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision by a visa officer to deny his application for an open work permit under the Temporary Foreign Worker Program and find him inadmissible to Canada for misrepresentation pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. I dismissed the Application from the Bench, explaining the dismissal in broad terms, and promising written reasons to follow. These are my reasons.

I. Background and Decision Under Review

[2] The Applicant, a national of India, applied in May 2020 for a work permit to join his spouse, who is currently working and residing in Canada (under a work permit valid until 2024).

[3] While reviewing the Applicant's work permit application, the visa officer contacted the Punjab National Bank to verify bank documents submitted by the Applicant, including (i) a May 16, 2020 letter from the bank, indicating that "Navtej Singh" is the holder of account No. 344500PU00019085 [Account]; and (ii) a July 29, 2020 confirmation of deposit to the Account. The Branch Head of the Punjab National Bank confirmed that the Account exists but that it belongs to a different individual named "Navtej Singh" with a different date of birth and a different father from the Applicant.

[4] On July 7, 2021, the visa officer issued the Applicant a procedural fairness letter [PFL] outlining concerns with the authenticity of the bank documents, and providing the Applicant with an opportunity to explain how and when he obtained the bank documents, and why they were provided as part of his work permit application.

[5] A letter was provided in response to the PFL [Response Letter]. The Response Letter explained that the Applicant submitted the bank documents to show that he had sufficient funds to support his travel and expected stay in Canada. Updated bank documents were provided with the Response Letter, including (i) a July 20, 2021 letter from the bank, indicating that "Navtej Singh" is the holder of the Account; and (ii) a January 29, 2021 confirmation of deposit to the

Account. The Response Letter also indicated the Applicant filed his work permit application by himself, using information he gathered from social media.

[6] On August 2, 2022, the visa officer determined that the Applicant had failed to respond to the concerns raised in the PFL about the fraudulent bank documents. The visa officer was satisfied that the Applicant had misrepresented his financial ties to his home country to obtain status in Canada, and that constituted a material fact that could have induced errors in the administration of the IRPA. The visa officer refused the Applicant's work permit application, finding him to be inadmissible due to a misrepresentation [Decision].

II. Analysis of Preliminary Issue – Extrinsic Evidence

[7] The Respondent argues that the Applicant is attempting to rely on information that he has not established was submitted to the visa officer, namely the explanation at paragraphs 6-8 of the affidavit of the Applicant's immigration consultant [Affidavit]. The Respondent submits that this evidence is extrinsic and is not subject to any of the limited exceptions outlined by the Federal Court of Appeal in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20 [*Association of Universities*]. The Respondent requests that paragraphs 6-8 of the Affidavit be struck from the Applicant's Record and that the Court disregard any submissions relying on those paragraphs, as they constitute extrinsic evidence.

[8] The Applicant counters that these paragraphs fall within one of the exceptions outlined by the Federal Court of Appeal, namely that this evidence "provides general background in

circumstances where that information might assist it in understanding the issues relevant to the judicial review" (*Association of Universities* at para 20). The Applicant also cited *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 [*Bernard*] to argue that the Affidavit is necessary to bring to the attention of the Court a procedural defect that cannot be found in the record that was before the visa officer, namely evidence of the immigration consultant's incompetence.

[9] I cannot agree with this position. No procedural defect arose. The consultant seeks to explain, in paragraphs 6-8 of the Affidavit, that he received all documentation for the Applicant at the Applicant's email address, and that the Applicant was never aware of the PFL or the Response Letter that he sent in without the Applicant's approval or knowledge. However, nothing in the Applicant's work permit application indicates that the Applicant had a representative. The rules are clear that only authorized and declared representatives may act on behalf of applicants.

[10] The Applicant may have wished he had submitted the new evidence as part of his work permit application or as part of his Response Letter – but he did not. As the Respondent points out, there is no exception for evidence that the Applicant could have put before the visa officer, but failed to so do (*Singh v Canada (Citizenship and Immigration)*, 2009 FC 11 at para 29). Paragraphs 6-8 of the Affidavit are accordingly struck and will not be considered in my analysis, which follows.

III. Analysis

[11] The Applicant argues that the Decision is unreasonable because there has been a breach of procedural fairness as a result of his reliance on the consultant, who he now alleges was incompetent. The Applicant further contends the innocent misrepresentation exception should apply since he honestly and reasonably believed he was not misrepresenting a material fact in his work permit application.

[12] While the standard of review for the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65), questions of procedural fairness are to be reviewed by asking whether the process leading to the Decision was fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54; *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57).

[13] Specifically, the Applicant argues that he never received the PFL because it was sent to his consultant. The Applicant submits the consultant is the one who wrote and sent the Response Letter and that the incompetence of his consultant resulted in a breach of natural justice, relying on *Aluthge v Canada (Citizenship and Immigration)*, 2022 FC 1225 at paras 3-5 [*Aluthge*]. There, this Court found that the applicants' immigration consultant egregiously advised them not to disclose a past deportation in their application for permanent residence, which resulted in a breach of natural justice (*Aluthge* at paras 38 and 44).

[14] I find the Applicant's argument unpersuasive. First, the Applicant did not submit a "Use of Representative Form" in conjunction to his work permit application, nor did he disclose that he used a representative in his application or the Response Letter. In fact, quite to the contrary, the Applicant stated in his Response Letter that he was representing himself, writing, "I want to tell here I applied my visa application on my own and get information from YouTube or near by sources [*sic*]."

[15] Apart from now arguing the opposite position – namely that he had an immigration consultant acting for him – the Applicant submitted nothing before or after the PFL and Response Letter disclosing to the visa officer that he had an immigration consultant to act on his behalf. This Court has held there is no reason to condone the use of unauthorized "ghost" consultants (*Eze v Canada (Citizenship and Immigration)*, 2023 FC 714 at para 17, citing *Lyu v Canada (Citizenship and Immigration)*, 2020 FC 134 at para 32).

[16] Second, the GCMS notes indicate that the PFL was sent to the Applicant's declared personal Yahoo email address, to which all email correspondence had previously been sent. The Applicant argues that he does not have access to that Yahoo email address, and says rather that it is exclusively monitored by the consultant's office.

[17] However, that position runs counter to the evidence in the record, including that: (i) the Affidavit submitted by the consultant indicates the consultant had a completely different email address from that of the Applicant; and (ii) the work permit application and subsequent enquiries

to IRCC about the application – written by the Applicant in the first person – were sent from his personal Yahoo email address.

[18] This case is distinguishable from *Aluthge*, in which the applicants followed the Court's *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings* for allegations against former counsel, and established the three components required to demonstrate a breach of natural justice due to ineffective assistance of the impugned representative. Here, on the other hand, that never occurred. Rather, as explained above, the Applicant attempted to correct the record simply by submitting, as part of this judicial review, an *ex-post facto* Affidavit from the consultant he now argues for the first time, was his ghost representative.

[19] Without a "Use of Representative Form" or any reliable evidence to support the Applicant's argument that the PFL was only sent to the consultant, I find that there was no breach in procedural fairness and, given the very clear contents of the PFL, that the Applicant had the opportunity to address the visa officer's concerns regarding the fraudulent bank statements.

[20] Second, regarding the reasonableness of the Decision, the Applicant relies on *Moon v Canada (Citizenship and Immigration)*, 2019 FC 1575 [*Moon*] to argue that the exception of innocent misrepresentation applies here, as it did in that case. In *Moon*, this Court found that the misrepresentation was beyond Ms. Moon's control since her consultant admitted to filing an electronic travel authorization [eTA] in a hurry, without asking the proper questions, which

resulted in the failure to disclose her criminal record. Ms. Moon had also submitted evidence to the visa officer to show that although she had retained the consultant to assist with a study permit application and a visa application, she had not authorized her consultant to file the eTA.

[21] In the present case, the Applicant argues he also relied on a consultant who submitted his work permit application, including the fraudulent bank documents, and the Response Letter, on his behalf and without his knowledge.

[22] Again, I disagree. The narrow exception of innocent misrepresentation only applies to truly extraordinary circumstances where an applicant honestly and reasonably believed they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond their control (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 17).

[23] Here, the evidence shows knowledge of the misrepresentation was not beyond the Applicant's control, even if the Applicant claims he was unaware of the fraudulent bank documents, the PFL and the Response Letter until he received the Decision. As held by this Court in *Goburdhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971 at para 28 [*Goburdhun*], relying on *Haque v Canada (Citizenship and Immigration)*, 2011 FC 315 at para 16 and *Cao v Canada (Citizenship and Immigration)*, 2010 FC 450 at para 31: "[a]s the applicant is responsible for the content of an application which they sign, the applicant's belief that he or she was not misrepresenting a material fact is not reasonable where they fail to review their application and ensure the completeness and veracity of the document before signing it".

[24] Furthermore, neither the Applicant, nor any consultant that may have been acting on his behalf, provided any explanation to address the visa officer's concerns about the fraudulent nature of the bank documents, when provided clear notice of the issue in the PFL. Instead of remaining silent, clear responses should have been provided to the visa office as to how the Applicant obtained bank documents regarding the account of another individual, and why those unrelated person's documents were included in the Applicant's work permit application.

[25] Ultimately, in this judicial review, it was Applicant's counsel's position that his client had suffered at the hands of an unscrupulous and unlicensed immigration consultant and that he was ignorant of his obligations under the IRPA to disclose his representative. While this may all indeed have been the case, the role of this Court on judicial review is limited in this situation, and if the Applicant decides to re-apply in the future, I expect that he will understand the requirements of the legislation, including the requirement to disclose any representation. For the purposes of the present application, he failed his duty of candour to provide complete, honest and truthful information (*Goburdhun* at para. 28).

IV. Conclusion

[26] The Applicant failed to follow his duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada. It was thus reasonable for the visa officer to conclude that he misrepresented his financial ties to his home country to obtain status in Canada, and that constituted a material fact that could have induced errors in the administration of the IRPA. The process followed was procedurally fair. There were no reviewable errors, and neither party proposes a question for certification, nor does any arise.

JUDGMENT in file IMM-8681-22

THIS COURT'S JUDGMENT is that:

1. The judicial review is denied.

2. No questions for certification were argued and I agree none arise.

3. There is no award as to costs.

"Alan S. Diner"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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