Federal Court  Cour fédérale

Date: 20231211

Docket: IMM-298-23

Citation: 2023 FC 1668

Ottawa, Ontario, December 11, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

KARANVIR SINGH GILL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugees Protection Act* (LC 2001, c 27) [IRPA] of a decision of a visa officer [Officer], dated November 10, 2022, refusing the Applicant Karanvir Singh Gill's [Applicant] application for a Canadian work permit. The Officer refused the Applicant's request on the ground that the

Applicant was inadmissible to Canada for misrepresentation, pursuant to paragraph 40(1)(a) of the IRPA.

[2] The Applicant, a citizen of India, applied for a Canadian open work permit under the International Mobility Program on the basis that his spouse was a full-time international student in Canada on a study permit.

[3] The Officer refused the request because the Applicant did not provide fulsome details of his arrest at the Bangkok International Airport in his Application Form. While the Applicant did state that he had been refused a previous visa application and had also been detained at the Bangkok International Airport, he failed to disclose that he had been arrested, charged and detained because he was in the possession of a counterfeit Canadian temporary resident visa [TRV], which is an offence under section 386(1) of the *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*] and potentially gives rise to inadmissibility grounds under paragraph 36(1)(c) of the IRPA.

[4] Having considered the record before the Court, including the parties' written and oral submissions, as well as the applicable law, the Applicant has not discharged his burden to demonstrate that the Officer's decision is unreasonable. For the reasons that follow, this application for judicial review is dismissed.

II. Facts

[5] On or about July 20, 2022, the Applicant applied for a Canadian open work permit under the International Mobility Program to be with his spouse who is a full-time international student in Canada on a study permit. In the Application Form, under section 2 of the Background Information, the Applicant answered "Yes" to the following question: "Have you ever been refused a visa or permit, denied entry or ordered to leave Canada or any other country or territory?" The Application Form requires applicants who answered "Yes" to the question to provide details. In response, the Applicant wrote, "Canada visitor visa refused once in 2016. And detained at Thailand Airport in June 2019." The Applicant also answered "No" to the following question in the Application Form: "Have you ever committed, been arrested for, been charged with or convicted of any criminal offence in any country or territory?"

[6] On June 21, 2019, the Applicant was intercepted at the Bangkok International Airport in Thailand for attempting to travel to Toronto via Manila from Bangkok using a forged Canadian TRV. He was subsequently arrested, charged and detained in Thailand.

[7] The Applicant claims that he was unaware that the TRV was fraudulent and that he and his father were duped by two travel agents in India. The Applicant's father had agreed to pay 2,000,000 INR (roughly $33,000 CAD) to facilitate the Applicant's TRV to Canada; he paid 500,000 INR (roughly $8,000 CAD) upfront with the rest payable after his arrival in Canada. The Applicant was ultimately released and returned to India after an unspecified period of time.

[8] Beyond stating that he was detained in Thailand, the Applicant did not provide the above details related to his detention in the Application Form.

[9] On September 13, 2022, the Migration Section of the High Commission of Canada in New Delhi, India, sent the Applicant a procedural fairness letter [PFL] noting its concerns that the Applicant did not meet his obligation to answer truthfully under subsection 16(1) of the IRPA and may be inadmissible for misrepresentation under subsection 40(1). The PFL referred to the Applicant's detention in Thailand, noting:

> Specifically, I have concerns that you were intercepted at Bangkok International Airport on June 21, 2019, in possession of a counterfeit Canadian TRV.
>
> – You were arrested in Bangkok, detained and faced charges.
>
> – You have not provided any documentation regarding this incident, including Police Certificates and/or court dispositions, etc.

[10] The PFL provided the Applicant with the "opportunity to respond," giving him 15 days to submit "evidence and documentation" to address the concerns. In response, the Applicant submitted three documents:

> (i) A Certification of Final Judgment from the Samut Prakan Province Court in Thailand dated May 17, 2021, deeming the cases against the Applicant as final because the deadline for appeal had expired. The underlying judgment and its reasons were not provided.
> (ii) A news article from the Tribune News Service in Jalandhar, Punjab titled "Duped, youth lands in Thai police custody." The article outlines the Applicant's narrative that he and his father were duped by Delhi-based travel agents who gave the Applicant fake Canadian visa documents in Thailand. The article is dated October 14, but does not include its year of publication.
> (iii) A First Information Report from the Jalandhar police dated June 6, 2020, recording a complaint from the Applicant's father against the two travel agents for allegedly duping him and the Applicant. The complaint matches the narrative in the news

> article (but the news article is dated October 14), providing further details on the various payments the Applicant's father made to the travel agents to secure the Applicant a TRV.

[11] Notably, the Applicant did not provide a letter of explanation to supplement the submitted documents.

A. *The Officer's Decision*

[12] On November 10, 2022, the Officer refused the Applicant's request for a work permit under paragraph 40(1)(a) of the IRPA, on the basis of misrepresentation, and found the Applicant inadmissible to Canada for five years pursuant to paragraph 40(2)(a).

[13] The Global Case Management System [GCMS] notes state that while the Applicant did answer "yes" and declare having been refused a TRV as well as having been detained at Thailand Airport, the Applicant failed to indicate that he was arrested and charged while attempting to travel to Canada with a counterfeit Canadian TRV.

[14] The Officer also wrote that the response to the PFL consisted in legal documents but that there was no explanation provided. The documents and information provided indicate that the Applicant was duped by travel agents, but also that the Applicant's father had agreed to pay a price for the Applicant's visa that "far exceeded the Canadian TRV application fees and the average fees for an immigration consultant." There was also no indication that the Applicant submitted "any sort of the application"; he only received the fraudulent TRV once arriving in Thailand. In considering all of the information, the Officer found that these observations "are consistent with human smuggling operations" and that there were "reasonable grounds to believe that the [Applicant] and his father engaged the services of human smugglers." The Officer

rejected the narrative put forward by the newspaper article and the police report that the Applicant and his father believed the travel agents were legitimate - the steps they took to secure the Applicant's TRV were "not consistent with the behaviour of any country's bona fide visa processes. Canadian visa process is widely available open source."

[15] Given these findings, the Officer expressed concerns that the Applicant was inadmissible to Canada for serious criminality under paragraph 36(1)(c) of the IRPA. As the Officer notes, the Applicant possessed and attempted to use a counterfeit Canadian TRV - an offence that, if committed in Canada at that time, could be punishable for 10 years' imprisonment in Canada pursuant to subsection 368(1) of the *Criminal Code.* Possessing a forged document is also a criminal offence in Thailand.

[16] The Officer found that the Applicant's failure to disclose that he had been arrested, charged and detained because he was in possession of a counterfeit TRV could constitute misrepresentation through omission, as an officer may be misled to overlook potential admissibility and criminality concerns which are crucial components to all visa applications, inducing an error in the administration of the IRPA.

III. Issues and standard of review

[17] The Applicant raises two issues relating to the Officer's decision to refuse his work permit and find him inadmissible to Canada under subsection 40(2) of the IRPA: 1) the Officer breached the Applicant's right to procedural fairness as the PFL did not correctly outline the Officer's concerns that there was potential misrepresentation through omission of sufficient details in the Application Form; and 2) the Officer's decision is not reasonable, as it was not

based on an internally coherent and rational chain of analysis and was not justified in light of the relevant factual and legal constraints applicable to the decision maker, including the documents submitted in response to the PFL.

[18] On the procedural fairness issue, the standard of review applicable on that issue is subject to a "reviewing exercise… 'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Aboudlal v Canada (Citizenship and Immigration)*, 2023 FC 689 at para 32 citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*CPRC*] at para 54; *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57). As recently stated in *Caron v Canada (Attorney General)*, 2022 FCA 196 at paragraph 5: "[w]hen engaging in a procedural fairness analysis, [the] Court must assess the procedures and safeguards required, and, if they have not been met, the Court must intervene" (see also *Mission Institution v Khela*, 2014 SCC 24 at para 79). The role of the reviewing court on procedural fairness issues is simply to determine whether the procedure that was followed was fair, having regard to the particular circumstances of the case: "The ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond" (As reiterated in *CPRC* at para 56).

[19] The standard of review applicable to the merits of the Officer's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 [*Mason*] at paras 7, 39-44). A reasonable decision "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; *Mason* at para 8); and that is justified, transparent and intelligible (*Vavilov* at para 99; *Mason* at para 59). A reasonableness review is not a "rubber-stamping" exercise; it is a robust form of review (*Vavilov* at para 13; *Mason* at para 63). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126; *Mason* at para 73).The onus of demonstrating that a decision is unreasonable lies with the Applicant (*Vavilov* at para 100).

IV. Analysis

A. *The Officer did not breach the Applicant's right to procedural fairness*

[20] The Applicant's primary argument is that the Officer did not outline in the PFL that the issue was about an omission of sufficient details included in the Application Form. Instead, the Applicant submits that the PFL "was clearly seeking further documentation and evidence with respect to the declared arrest." In response, the Applicant submitted documents, namely the police report and news article, which he argues were "self-evident" and that it is unclear what other additional written explanation was required to satisfy the Officer. In the end, by not making it clear in the PFL that the Officer was concerned by potential misrepresentation through omission, the Applicant argues that he did not have a meaningful opportunity to respond, breaching his right to procedural fairness (relying on *Zaib v Canada (Citizenship and Immigration)*, 2010 FC 769).

[21] In my view, the PFL and the Officer's procedure did not breach the Applicant's right to procedural fairness. The PFL sufficiently emphasized the Officer's concerns under paragraph 40(1)(a) of the IRPA relating to the Applicant's detention at Bangkok International Airport. The

PFL also made clear that the Officer was concerned that there was a potential misrepresentation through the omission of providing a fulsome answer in the Application Form, in relation to the Applicant being in "possession of a counterfeit Canadian TRV" and having been "arrested in Bangkok, detained and faced charges."

[22] The PFL explicitly stated that the Officer was concerned with whether the Applicant "engaged in misrepresentation in submitting your application, [and] you would be inadmissible to Canada for a period of five years according to subsection 40(2)(a)," and gave the Applicant the opportunity to "respond" along with submitting "evidence and documentation."

[23] The PFL therefore properly exposed the Officer's concerns and gave adequate notice to the Applicant of the case to meet. Accordingly, there was no breach of procedural fairness.

B. *The Officer's decision is reasonable*

[24] The Applicant submits that the Officer's reasons fail to reveal an internally coherent and rational chain of analysis, because the Officer's primary concern, as noted in the GCMS notes, was that "in the original application, the [Applicant] did not submit any of the information concerning this information. Applicant simply stated that he was detained in Thailand without providing any details."

[25] However, the Applicant argues that he did declare his detention in the Application Form and provided "all responsive documentation as requested" by the PFL, including the police report and court document. By declaring his detention in the Application Form, the Applicant submits that he invited further inquiry and scrutiny with respect to potential criminal

inadmissibility, which he duly responded to in his response to the PFL, and therefore he avoided inducing an error in the administration of the IRPA.

[26] The Applicant also submits that it was unreasonable for the Officer not to have considered the documents he submitted in response to the PFL, as evidence against a misrepresentation finding. In *Shareef v Canada (Citizenship and Immigration)*, 2023 FC 1376 at paragraph 37, the Court held that "an officer must consider the totality of a visa application in determining whether there has been a misrepresentation for the purpose of inadmissibility under paragraph 40(1)(a) of the IRPA … [w]here an applicant discloses the correct information in another part of their application form, this may militate against a misrepresentation finding." By responding to the PFL's concern for a lack of "documentation regarding [the detention], including Police Certificates and/or court dispositions", the Applicant claims that he did not misrepresent or withhold facts that would interfere with the administration of the IRPA.

[27] The Respondent submits that the Applicant omitted to provide details relating to his detention, including that he was in possession of a counterfeit Canadian TRV, but that he also answered "no" to the question: "Have you ever committed, been arrested for, been charged with or convicted of any criminal offence in any country or territory?" Indeed, the Applicant had been arrested and charged but failed to answer accordingly. The Respondent argues that these were material misrepresentations that could have caused an error in the administration of the IRPA (*Mohammed v Canada (Minister of Citizenship and Immigration) (TD)*, 1997 CanLII 16384).

[28] I agree with the Respondent.

[29] As I stated in *Wang v Canada (Citizenship and Immigration)*, 2023 FC 62 [*Wang* 2023] at paragraph 64, it is of the utmost importance that an officer can rely on the most accurate information presented by an applicant. The administration of the IRPA relies upon an applicant's onus to ensure the completeness and accuracy of their application. A finding of inadmissibility for misrepresentation under paragraph 40(1)(a) of the IRPA requires that an applicant misrepresents or withholds facts in their application that induces or could induce an error in the administration of the IRPA.

[30] The purpose of section 40 is to ensure that applicants provide complete, honest, and truthful information in every manner when applying for entry to Canada; to preserve the integrity of the Canadian immigration process; to deter misrepresentation; and to curb abuse. An applicant seeking a TRV has therefore a continuing duty of candour, and this duty of candour is an overriding principle of the IRPA (*Zolfagharian v Canada (Citizenship and Immigration)*, 2021 FC 1455 at paras 21, 27 [*Zolfagharian*]; *Vahora v Canada (Citizenship and Immigration)*, 2022 FC 778 at para 27 [*Vahora*]; *Sbayti v Canada (MCI)*, 2019 FC 1296 at paras 24, 25 [*Sbayti*]; *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004 at para 10 [*Malik*]; *Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 [*Wang* 2018] at para 16; *Sidhu v Canada (MCI)*, 2019 FCA 169 at para 17; *Jiang v Canada (Citizenship and Immigration)*, 2011 FC 942 at paras 27, 35-36).

[31] A misrepresentation need not be decisive or determinative to be material; it only must be important enough to affect the process and could have induced an error in the application of the IRPA (*Wang* 2023 at para 61; *Wang v Canada (Citizenship and Immigration)*, 2020 FC 262 at para 15; *Oloumi v Canada (MCI)*, 2012 FC 428 at para 25; *Vahora* at para 44; *Goburdhun v*

Canada (Citizenship and Immigration), 2013 FC 971 at paras 28, 37; *Haque v Canada (Citizenship and Immigration)*, 2011 FC 315 at para 14).

[32] The misrepresentation also does not need to be intended, as the term "knowingly" is not found in section 40 of the IRPA (*Sun v Canada (Citizenship and Immigration)*, 2019 FC 824 at para 23 citing *Singh v Canada (Citizenship and Immigration)*, 2010 FC 378 at para 16; *Malik* at para 27). Moreover, silence may constitute a misrepresentation (*Sbayti* at para 26).

[33] The fact that the details an applicant failed to provide could have been ascertained through further investigation does not negate their burden to provide complete, honest, and truthful information in the Application Form (*Avram v Canada (Citizenship and Immigration)*, 2022 FC 168 at para 23). It is quite the opposite; the burden is always on an applicant. A visa officer does not have to seek out additional information through an inquisitorial function, before denying an application (*Zolfagharian* at para 31).

[34] The correction of an earlier omission in a response to a procedural fairness letter or the fact that immigration officials were able to have access to the omitted documents by other means also does not render a misrepresentation immaterial (*Vahora* at para 44; *Goburdhun v Canada (MCI)*, 2013 FC 971 at para 44; *Wang* 2018 at para 19; *Sbayti* at para 43; *Hasham v Canada (Citizenship and Immigration)*, 2021 FC 881 at paras 37-38).

[35] Finally, as held by the Court in *A.A. v Canada (Citizenship and Immigration)*, 2017 FC 1066 at paragraph 39, the discretion to determine whether a misrepresentation or omission does or does not constitute material facts relating to a relevant matter that induces or could induce an

error in the administration of the IRPA rests with the officer. It is not open to an applicant to decide what is or is not material (see also *Wang* 2018 at para 27).

[36] In my view, the PFL in this case properly exposed the concerns of the Officer that the Applicant had been intercepted at Bangkok International Airport in possession of a counterfeit Canadian TRV, that the Applicant had been arrested and charged, and that the Applicant had not provided any information or explanation regarding the incident in the Application Form.

[37] While the Applicant did declare in the Application Form that he had been detained at Bangkok International Airport and had had a visa application refused in 2016, he failed to disclose what is likely much more important for the Canadian authorities' purposes : that he was arrested, charged and detained because he was in possession of a counterfeit Canadian TRV. That is specifically what the Officer was concerned about, and on which the Officer specifically requested more information from the Applicant in the PFL. Had the response satisfied the Officer, for example that the Officer was mistaken and that the arrest was in relation to something completely unrelated, and that the Applicant was never in possession of a counterfeit Canadian TRV, perhaps the Officer would have been satisfied that the information omitted was not of the nature that could potentially induce an error.

[38] However, in this case, the Applicant submitted some documents in response to the PFL, but no explanation of the events leading to his arrest. The Officer's GCMS notes confirm that they were not satisfied with the Applicant's response that could have explained, or perhaps justified, how and why he was in possession of a counterfeit Canadian TRV. The Officer noted that their concerns were not addressed or alleviated by the documents submitted, in the absence

of any written explanation from the Applicant. Rather, the information submitted by the Applicant lead the Officer to conclude that the Applicant and his father failed to avail themselves of Canada's *bona fide* visa process, which is available easily and open source.

[39] The Officer's notes are therefore transparent and intelligible and constitute an internally coherent and rational chain of analysis. On the evidence presented, it was reasonable for the Officer to find that the documents submitted by the Applicant did not address his main concern that the Applicant had been arrested, charged and detained in possession of a counterfeit Canadian TRV. It was also open for the Officer not to be satisfied with the explanation of the Applicant (through the submission of documents only and no specific response by way of letter) and to find that there was a misrepresentation that could have induced an error, and that the Applicant was disqualified from admissibility to Canada for five years on the basis of misrepresentation.

[40] Therefore, the Officer reasonably found the Applicant to be inadmissible under paragraph 40(1)(a) of the IRPA for directly or indirectly misrepresenting or withholding material facts relating to a matter that induces or could induce an error in the administration of the IRPA.

[41] The Applicant's request is essentially that the Court performs an examination of the evidence *de novo* and re-weighs the Refugee Appeal Division's evidentiary assessment. Unfortunately, this is not the Court's role on judicial review (*Zhang v Canada (Citizenship and Immigration)*, 2023 FC 1308 at para 36; *Vavilov* at paras 124-125).

V. Conclusion

[42] This application for judicial review is dismissed.

[43] The parties have not proposed a question for certification and I agree that none arise in this case.

JUDGMENT in IMM-298-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question for certification arise.

"Guy Régimbald"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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