Federal Court  Cour fédérale

Date: 20240626

Docket: IMM-5595-23

Citation: 2024 FC 998

Toronto, Ontario, June 26, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

GURINDER SINGH RAI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant seeks judicial review of a visa officer's decision to deny him a work permit. The work permit was refused because the Applicant had previously been found inadmissible to Canada on a matter arising from a separate visa application refusal. Under paragraph 40(2)(a) of the *Immigration and Refugee Protection Act* [IRPA], the Applicant

remained inadmissible for a period of five years from the date of his previous refusal and, on this basis, his work permit application was denied.

[2] The Applicant alleges that the underlying inadmissibility finding (and corresponding five year period of inadmissibility) was erroneously attributed to him and that the visa officer [the Officer] who denied his work permit unreasonably failed to consider this fact in rejecting his application.

[3] I have concluded that this application for judicial review must be dismissed. Irrespective of whether the underlying inadmissibility finding was proper, it had been made in respect of the Applicant and, as such, the Officer did not err in applying the statutorily mandated period of inadmissibility.

II. BACKGROUND

A. *Facts*

[4] As the facts of this case are (at least on some key issues) disputed, I set them out in some detail below, indicating where the differences lie between the parties.

[5] The Applicant, Mr. Gurinder Singh Rai, 29, is a citizen of India. He is married to Simranjot Kaur, who is currently in Canada on a post-graduate open work permit.

[6] According to the Respondent, in November 2017, the Applicant applied for an electronic travel authorization (eTA), which was issued. This application bore file number V315933657. The Applicant maintains that he never submitted this application.

[7] It is common between the parties that in 2018, the Applicant filed a request for a temporary resident visa to visit his wife in Canada. This application was refused in July 2018.

[8] The parties agree that in March 2020, the Applicant submitted an application for a dependent spouse open work permit: W304617745 [Work Permit 1].

[9] The parties also agree that in August 2020, the Applicant received a procedural fairness letter in respect of the eTA V315933657 that had, according to the Respondent, already been issued to him almost three years previously. The letter contained an allegation that the Applicant had fraudulently obtained a US permanent resident number, which was used to obtain the eTA in 2017. The Applicant responded to the procedural fairness letter, indicating that he had not submitted the eTA application V315933657, had not applied for a visa to the US, and had not fraudulently obtained an eTA in 2017.

[10] According to the Respondent, in November 2020, the eTA application was reopened and refused, and the Applicant was found inadmissible for misrepresentation. This decision was sent to the email address that the Respondent had on file at the time. The Applicant says that this email address is not his, and that he never received this decision.

[11] The Respondent further states that Work Permit 1 was refused in December 2020, on the basis of the eTA inadmissibility finding. This decision was sent by mail to the Applicant's mailing address. Once again, the Applicant states that he did not receive this decision. In the same month, the Applicant obtained the Global Case Management System [GCMS] notes to ascertain the status of his case. Upon his review of the notes, he learned that Work Permit 1 had been refused on the grounds that he was found inadmissible to Canada for misrepresentation, as a result of the decision made on file number V315933657.

[12] The Applicant did not seek judicial review of either the eTA refusal, or the Work Permit 1 refusal. He similarly did not seek to reopen either decision, on the grounds that they had been based on a case of mistaken identity. Rather, almost two and a half years later, in March 2023, the Applicant filed a second work permit application, which was assigned file number W308486967 [Work Permit 2].

[13] In support of the Work Permit 2 application, the Applicant attached a copy of his full immigration history, and provided detailed submissions setting out his position that:

- he had not submitted the application – V315933657 – that resulted in his initial inadmissibility finding;
- he had not received a refusal on his previous work permit application, and only found out about it through the GCMS notes;
- he had never applied for nor obtained a U.S. permanent resident number; and
- the email address that the Respondent had used to transmit the decision on the eTA did not belong to the Applicant, and was not known to him.

[14] Of some note, the Applicant did not request relief on humanitarian and compassionate [H&C] grounds from the previous inadmissibility finding, and similarly did not request that the inadmissibility finding be reopened; the Applicant's immigration history was simply outlined together with other submissions as to why the Applicant met the requirements to be issued a work permit. Despite the Applicant's submissions, the Applicant's Work Permit 2 application was refused in April 2023, on the grounds that he had been previously found inadmissible to Canada for misrepresentation and, pursuant to subsection 40(2)(a) of the IRPA, remained inadmissible for a period of five years from the previous refusal. It is this decision for which the Applicant now seeks judicial review.

III. ISSUES

[15] The Applicant raises essentially a single issue on judicial review, namely whether the decision under review is unreasonable because the Officer failed to have adequate regard to the information submitted in support of the Application.

IV. RELEVANT PROVISIONS

[16] IRPA

Misrepresentation	**Fausses déclarations**
40(1) A permanent resident or a foreign national is inadmissible for misrepresentation	**40 (1)** Emportent interdiction de territoire pour fausses déclarations les faits suivants :
(a) for directly or indirectly misrepresenting or withholding material	**a)** directement ou indirectement, faire une présentation erronée sur un fait important

facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi;

(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;

b) être ou avoir été parrainé par un répondant dont il a été statué qu'il est interdit de territoire pour fausses déclarations;

(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection; or

c) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou de protection;

(d) on ceasing to be a citizen under

d) la perte de la citoyenneté :

(i) paragraph 10(1)(a) of the *Citizenship Act*, as it read immediately before the coming into force of section 8 of the *Strengthening Canadian Citizenship Act*, in the circumstances set out in subsection 10(2) of the *Citizenship Act*, as it read immediately before that coming into force,

(i) soit au titre de l'alinéa 10(1)a) de la *Loi sur la citoyenneté*, dans sa version antérieure à l'entrée en vigueur de l'article 8 de la *Loi renforçant la citoyenneté canadienne*, dans le cas visé au paragraphe 10(2) de la *Loi sur la citoyenneté*, dans sa version antérieure à cette entrée en vigueur,

(ii) subsection 10(1) of the *Citizenship Act*, in the circumstances set out in section 10.2 of that Act, or

(ii) soit au titre du paragraphe 10(1) de la *Loi sur la citoyenneté*, dans le cas visé à

	l'article 10.2 de cette loi,
(iii) subsection 10.1(3) of the *Citizenship Act*, in the circumstances set out in section 10.2 of that Act.	**(iii)** soit au titre du paragraphe 10.1(3) de la *Loi sur la citoyenneté*, dans le cas visé à l'article 10.2 de cette loi.
Application	**Application**
(2) The following provisions govern subsection (1):	**(2)** Les dispositions suivantes s'appliquent au paragraphe (1) :
(a) the permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of five years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection (1) or, in the case of a determination in Canada, the date the removal order is enforced;	**a)** l'interdiction de territoire court pour les cinq ans suivant la décision la constatant en dernier ressort, si le résident permanent ou l'étranger n'est pas au pays, ou suivant l'exécution de la mesure de renvoi;

V. STANDARD OF REVIEW

[17] The Applicant has not raised allegations of procedural unfairness in the denial of his work permit application. As such, the parties do not dispute that the standard of review in this case is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23. In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that

the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

VI. ANALYSIS

[18] At the outset of my analysis, I note that the Respondent's dealings with the Applicant prior to the Work Permit 2 application contained several irregularities. It was unusual, for example, for Immigration, Refugees and Citizenship Canada [IRCC] to unilaterally reopen and refuse an eTA application that had been granted three years prior. This is all the more unusual, given that it appears from the GCMS notes that the eTA had already been revoked two years earlier, in 2018.

[19] It was unusual and an error for IRCC to indicate in its December 2020 eTA refusal that the Applicant had not responded to the procedural fairness letter. As indicated above, the Applicant had responded to this letter, indicating that he had not submitted the eTA application in the first place. That the Applicant had responded to the letter is not in dispute, as the affiant for the Respondent makes reference to this response in his affidavit.

[20] Finally, it was unhelpful for the Respondent to send out a procedural fairness letter to one email address, which apparently belonged to the Applicant's representative in respect of the Work Permit 1 application, but then to send the decision on the eTA application (which the Applicant maintains he did not receive) to a different email address – one that the Applicant maintains is not his. I note as well that in the GCMS notes, the travel document number

associated with the eTA application is not the same number as the passport number associated with the Applicant's subsequent visa applications.

[21] These details raise serious concerns as to the validity of the Respondent's initial inadmissibility finding in respect of the V315933657 file. It is unclear to me that this decision was made in a procedurally fair manner, as it appears to have been rendered without considering the Applicant's response to the procedural fairness letter. It would also be procedurally unfair, of course, if the inadmissibility decision had been based on a clerical error and a mistaken identity. As noted above, it is the V315933657 matter that gave rise to the misrepresentation finding and subsequent five year period of inadmissibility.

[22] The problem, however, is that by his own admission, the Applicant was aware of the V315933657 decision, as of December 2020 when he received the GCMS notes. While I accept that he did, on at least a couple of occasions, seek to clarify the situation with IRCC, the Applicant did not directly challenge the V315933657 decision. He did not request that IRCC reopen and reconsider the matter. He did not bring an application for leave and judicial review before this Court — which, as the Respondent points out, would have triggered the requirement for IRCC to disclose the full reasons for its decision.

[23] Rather, the Applicant took no formal action for over two years, until March 2023, when he submitted the Work Permit 2 application. As noted above, in support of his application, the Applicant submitted that the initial inadmissibility decision was wrong, and requested that the new (Work Permit 2) application be considered on this basis.

[24] The Respondent argues that this is essentially a collateral attack on the original inadmissibility determination, and that the proper approach would have been to seek a remedy on that matter instead. The Respondent further contends that the Officer who considered the Work Permit 2 application could not ignore the fact of the Applicant's inadmissibility. To require an officer, in the context of a new application, to reconsider the lawfulness of an earlier decision would, the Respondent argues, functionally create a new appeal mechanism not contemplated in the legislation.

[25] A strikingly similar situation was recently considered by my colleague Justice McHaffie in *Singh v Canada (Citizenship and Immigration)*, 2023 FC 677 [*Singh*]. In *Singh*, the applicant's work permit application was denied on the basis that he had previously been found inadmissible for misrepresentation. This determination was based on a finding that the applicant had applied for an eTA, supported by an invalid assertion that he was a permanent resident of the United States. As in the present case, the applicant in *Singh* claimed that he had never filed the application for which he was found inadmissible. Unlike the Applicant in this case, the applicant in *Singh* claimed to have no prior knowledge that he had been found inadmissible.

[26] Justice McHaffie found that the Applicant failed to meet his burden to demonstrate that the refusal of his work permit was unreasonable. Rather, the evidence in the record on the previous eTA application and the misrepresentation finding was documented in the GCMS and was associated with Mr. Singh's Unique Client Identifier [UCI]. These facts were "indicia of reliability" (*Singh* at para 21) in respect of the misrepresentation finding, and the applicant's assertion that they were erroneous was insufficient to render the work permit decision unreasonable.

[27] The Court in *Singh* also found that the duty of fairness in that case did not require the officer to notify the applicant of the prior inadmissibility finding, because the fact of that previous finding dictated the result of the work permit application. This earlier determination, the Court found, "meant that Mr. Singh's work permit application had to be refused as the automatic consequence of paragraphs 40(1)(a) and 40(2)(a) of the IRPA" (Singh at para 24).

[28] While this statement was made in relation to procedural fairness arguments, it has some application to the substantive reasonableness of the decision as well. If it is the case that the Applicant's prior inadmissibility finding left the Officer with no choice but to dismiss the Work Permit 2 application, it cannot be said that the Officer's brief decision was unreasonable. Officers need not provide lengthy reasons for applying the statutorily mandated consequences of previous findings that have gone unchallenged. As in this matter, the Court in *Singh* noted that the application for judicial review had not been brought in respect of the initial inadmissibility finding, but the subsequent work permit decision.

[29] There are a few points of distinction between *Singh* and the present case. The first is that, unlike in *Singh*, the Applicant in this case learned of the inadmissibility decision shortly after it had been made against him. This is an important difference as it suggests that the Applicant in this case had the knowledge and the opportunity to challenge the underlying inadmissibility determination. The second distinction, however, mitigates in favour of the Applicant. In contrast to *Singh*, the record before the Court in this case raises serious concerns as to the reliability of the underlying inadmissibility determination.

[30] Ultimately, however, I find that the Officer's decision was reasonable because paragraph 40(2)(a) of the IRPA does not provide discretion to Officers to simply disregard previous inadmissibility findings. The provision is unlike, for example, subsections 44(1) and 44(2) of the IRPA which states that officers may prepare and refer reports setting out inadmissibility allegations [emphasis added]. No such discretionary language is found in paragraph 40(2)(a), which simply indicates that a person previously found inadmissible for misrepresentation continues to be inadmissible for a period of five years. Given this fact, and in light of the submissions that were made to the Officer, I conclude that it was reasonable for the Officer to have provided minimal reasons as to the basis of the refusal.

[31] It may be that a request for H&C relief may overcome such inadmissibility findings in some cases, and trigger a greater requirement on Officers to provide more detailed reasons, but I reiterate here that the Applicant in this case did not request such relief from the Officer.

[32] As a result, I find that once it was confirmed that the Applicant had previously been found inadmissible to Canada for misrepresentation, the Officer had little authority to peel back the layers of that earlier uncontested finding to assess its soundness. This being the case, the lack of reasons responding to the Applicant's submissions on the misrepresentation issue is not a reviewable error.

[33] I recognize that this outcome will be unsatisfying for the Applicant, given the procedural and substantive concerns I have noted with the underlying inadmissibility determination. I note, however, that the Applicant may have other options. Without delving into legal advice, the Applicant could, for example, do precisely what was discussed above — namely, bring

applications to reopen or judicially review the inadmissibility findings before relevant bodies, together with requests for an extension of time. Alternatively, the Applicant's five year bar will expire in the near term, which would allow him to reapply. I would expect that if the Applicant were to bring such an application, serious consideration would be provided to the concerns that I have discussed above.

VII. CONCLUSION

[34] For all of these reasons, the application for judicial review is dismissed.

[35] No question of general purpose for certification was proposed and I agree none exists.

JUDGMENT in IMM-5595-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. No question is certified for appeal.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5595-23
STYLE OF CAUSE:	GURINDER SINGH RAI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 10, 2024
JUDGMENT AND REASONS:	GRANT J.
DATED:	JUNE 26, 2024

APPEARANCES:

Veena G. Gupta	FOR THE APPLICANT
Janice Azimi	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nanda & Associate Lawyers Professional Corporation Mississauga, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT