

Federal Court



Cour fédérale

Date: 20240628

Docket: IMM-2071-23

Citation: 2024 FC 1026

Ottawa, Ontario, June 28, 2024

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

DAMANPREET SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision dated December 12, 2022, of a visa officer (Officer) with Immigration, Refugees and Citizenship Canada (IRCC) denying the Applicant's application for a study permit pursuant to paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] on the basis that he made a misrepresentation (Decision).

[2] The Applicant asks this Court to set the Decision aside and send the matter back for redetermination by a different officer.

[3] For the reasons that follow, this application is dismissed.

II. Background

[4] The Applicant, Damanpreet Singh, is a 23-year-old citizen of India. He is single and has no children.

[5] On May 3, 2022, the Applicant received a letter of acceptance for admission to Red Deer Polytechnic (RDP) for their Diploma in Justice Studies program (Program). The Applicant submitted an application for a study permit under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR 2002/227 [IRPR] to IRCC on June 14, 2022.

[6] In support of his application, the Applicant took the International English Language Testing System (IELTS) test on March 12, 2022, through IDP India and submitted his results (IELTS Results) for consideration with his application.

[7] The Officer was concerned the IELTS Results might be fraudulent, as the picture on the IELTS Results report did not match the Applicant's biometric immigration photo or passport photo included with his application.

[8] The Applicant received a procedural fairness letter (PFL) on November 2, 2022, advising of the Officer's concerns. The Applicant was given 10 days to respond to the PFL.

[9] In an undated response, the Applicant provided a letter of explanation and his IELTS test date, doctors' notes, medical forms, and an additional photo of himself.

[10] The Applicant's application was refused on December 12, 2022, because the Officer determined that the Applicant was inadmissible pursuant to paragraph 40(1)(a) of the *IRPA* for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the *IRPA*.

[11] The Applicant commenced their application for leave of the Decision on February 10, 2023. This Court granted leave on March 24, 2024.

III. Issues and Standard of Review

[12] The sole issue in this judicial review application is whether the Officer's Decision to refuse the Applicant's study permit application for misrepresentation is reasonable?

[13] The standard of review applicable to the Officer's Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23). The standard of review applicable to material misrepresentations is reasonableness (*Mhlanga v Canada (Citizenship and Immigration)*, 2021 FC 957 at para 15; *Vavilov* at para 86).

[14] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). Reasons will satisfy these criteria if the Court is able to understand why the decision was made (*Vavilov* at paras 85–86).

[15] The Court must be satisfied that any shortcomings in the decision are sufficiently central or significant to intervene and render the decision unreasonable (*Vavilov* at para 100).

IV. Analysis

[16] The Applicant argued that the Officer's Decision was not reasonable because the Officer did not verify the Applicant's IELTS Results with IDP India and the reasons do not explain how the Officer verified their Decision—other than through a visual comparison. The Applicant noted that the consequence of inadmissibility to Canada for a five-year period obliges reviewing officers to perform further verifications to support a finding of misrepresentation.

[17] The Respondent argues that the Applicant's response to the PFL did not adequately address the Officer's concerns related to the authenticity of the IELTS test taker, nor did the Applicant adequately explain the differences between the photos included in the application for the IELTS Results, his biometric identification, and his passport. The Applicant does not dispute that the photos do not match. Rather, he attributes the differences to weight gain.

[18] The Respondent submits that the Applicant bears the onus and a continuing duty to candour to provide complete, accurate, honest, and truthful information when applying for entry into Canada (*Kazzi v Canada (Citizenship and Immigration)*, 2017 FC 153 [*Kazzi*] at para 38).

[19] A finding of misrepresentation “must be made on the basis of clear and convincing evidence” (*Baniya v Canada (Citizenship and Immigration)*, 2022 FC 18 at para 19). Where an officer makes a finding of misrepresentation, “more extensive reasons” are required (*Vargas Villanueva v Canada (Citizenship and Immigration)*, 2023 FC 66 at para 18). However, this does not detract from the onus on the Applicant to provide complete, accurate, honest, and truthful information on their application (*Kazzi* at para 38. See also *Vahora v Canada (Citizenship and Immigration)*, 2022 FC 778 at paras 26–31).

[20] I also note that visa officers are not under a duty to accept each explanation provided in response to a PFL letter when assessing allegations of misrepresentation (*Sinnachamy v Canada (Citizenship and Immigration)*, 2012 FC 1092 at para 17). Officers may exercise discretion to determine if misrepresentations or omissions are material and relevant to a matter that “induces or could induce an error in the administration of the *IRPA*” (*Wang v Canada (Citizenship and Immigration)*, 2018 FC 368 at para 27).

[21] The Officer’s Global Case Management System (GCMS) notes, which form a part of their reasons (*Sedoh v Canada (Citizenship and Immigration)*, 2021 FC 1431) state as follows:

****Review by Delegated Decision-Maker**** Based on the notes of the reviewing officer and available information, on a balance of probabilities, I am satisfied that subject has made a misrepresentation in the application, which would have induced an error in the administration of the Act, as explained by the reviewing officer. Subject was advised of our concerns and has failed to credibly disabuse them. As such, based on all available information. I am satisfied that the applicant is inadmissible for misrepresentation under subsection 40(1)(a) of the Act.

PA submitted IELTS language test results in order to substantiate their ability and intention to pursue studies in Canada. The IELTS test results were verified and confirmed fraudulent/non-genuine. A Procedural Fairness Letter (PFL) was sent to the PA advising of our misrepresentation concerns. The PA was given 10 days to provide us with a response regarding these concerns. Client provided an explanation letter, IELTS test date, Doctors notes and medical test forms and picture of client. Explanation taken into consideration however, this does not satisfactorily explain the differences between the clients [sic] photos and the photo on the IELTS form. The information provided does not overcome the initial verification. As indicated in the PFL, I am concerned that the PA may be inadmissible for misrepresentation for directly misrepresenting a material fact that could have induced an error in the administration of the Act. Had the IELTS test results been assessed as genuine, it could have led the officer to be satisfied that the applicant demonstrated language proficiency and is a genuine study likely to comply with the terms of a study permit in Canada. The PA could have been granted a study permit without satisfying

the requirements of the Act. File forwarded for A40 review by delegated decision maker.

Verification reviewed. Based on the information gathered through fact-finding verifications, I have grounds to believe that the IELTS document provided is fraudulent. Match was found for the Test Report Form (TRF) number which was entered on the IELTS website <https://ielts.ucles.org.uk/ielts-trf/trfQuery.html> TRF # 21IN801284SIND855A[.] The picture of the individual on the online report does not match client's biometric IMM Photo, or passport photo. I am not satisfied that the person in the IELTS photo is NOT the same person in the IMM and Passport photo. Therefore, I am satisfied the IELTS document provided with the application is fraudulent. PFL to be sent to BF 10 days.

[Emphasis added.]

[22] The PFL dated November 2, 2022, states:

I have concerns that you have not fulfilled the requirement put upon you by section 16(1) of the Immigration and Refugee Protection Act, which states:

16(1) A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

Specifically, I have concerns that the IELTS scores with the number 21IN801284SIND855A that you have submitted in support of your application was verified. The visual comparison of the test taker was performed against the documentation that you provided with your application and it was confirmed that the individual of this and yourself are not the same person. I have concerns that you have misrepresented your English language proficiency score for your education in Canada and your qualifications.

Please note that if it is found that you have engaged in misrepresentation in submitting your application for a temporary resident visa, you may be found to be inadmissible under section 40(1)(a) of the Immigration and Refugee Protection Act. A finding of such inadmissibility would render you inadmissible to Canada for a period of five years according to section 40(2)(a).

[Emphasis added.]

[23] With respect, the Officer's reasons are clear as to what their concerns were, how the Officer verified the information, and what the consequences could be for the Applicant. In my opinion, the Officer's finding that there was a misrepresentation is reasonable.

[24] As this Court has found in other matters, manual human comparison of photographs submitted in support of an application is properly part of the fact finding exercise (*Ali v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 466 at paras 58–63; *Osoble v Canada (Citizenship and Immigration)*, 2023 FC 1584 at para 30).

[25] The Applicant disagrees with the Officer's assessment of the evidence. The Applicant did not demonstrate that the Officer disregarded the evidence or exercised their discretion in an unreasonable manner. A review of the Officer's Decision illustrates that the Officer considered the evidence included in the application and the response provided to the PFL. The Officer did not find the Applicant's information adequately responded to the concern raised—that another individual took the IELTS for the Applicant—and therefore the IELTS Results submitted are a misrepresentation.

V. Conclusion

[26] In my opinion, the Officer's Decision is justified, transparent, and intelligible, and there is no reviewable error to justify the Court's intervention. The Officer's finding that there was a misrepresentation is reasonable.

[27] The parties did not pose any questions for certification and I agree that there are none.

JUDGMENT in IMM-2071-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2071-23

STYLE OF CAUSE: DAMANPREET SINGH v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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