

Federal Court



Cour fédérale

Date: 20241009

Docket: IMM-6453-23

Citation: 2024 FC 1598

Toronto, Ontario, October 9, 2024

PRESENT: Madam Justice Go

BETWEEN:

KHYATI JIGAR PUROHIT

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Khyati Jigar Purohit [Applicant] is a citizen of India who applied for a work permit to work in Canada as a cook, based on a positive Labour Market Impact Assessment issued for her job offer.

[2] An officer with the Migration Section of the High Commission of Canada in New Delhi [Officer] issued a procedural fairness letter dated March 2, 2023 [PFL] to the Applicant indicating concerns about the Applicant's documents regarding her current employment at a restaurant called William John's Pizza. The Officer had made two separate telephone calls to the Applicant and the manager of the restaurant to confirm the Applicant's stated work experience. Based on the information gleaned from these telephone inquiries, the Officer found, on a balance of probabilities, that the Applicant's employment documents are not genuine and that she has not worked at the stated place of employment in the stated occupation.

[3] On April 5, 2023, the Applicant provided a written response to the PFL letter including supporting documents to address the Officer's concerns.

[4] By a decision dated April 29, 2023, the Officer refused the Applicant's work permit application, finding the Applicant inadmissible under subparagraph 40(1)(a) of the *Immigration and Refugee Protection Act, SC 2001, c. 27 [IRPA]* due to misrepresentation [Decision]. A finding of misrepresentation would result in the Applicant being inadmissible to Canada for a period of five years under subparagraph 40(2)(a) of the *IRPA*.

[5] The Applicant seeks judicial review the Decision. I grant the application as I find the Decision unreasonable.

II. Analysis

[6] The Applicant argues that the Officer's findings regarding the Applicant's misrepresentation were unreasonable because the Officer failed to consider the totality of the evidence and there was no clear or convincing evidence of misrepresentation. The Applicant also submits that the Officer breached procedural fairness.

[7] The determinative issue is the reasonableness of the Decision, for which the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. The Court should assess whether the decision bears the requisite hallmarks of justification, transparency and intelligibility: *Vavilov* at para 99. The Applicant bears the onus of demonstrating that the decision was unreasonable: *Vavilov* at para 100.

[8] According to the Global Case Management System [GCMS] notes, before issuing the PFL, the Officer found several inconsistencies arising from the telephone calls. During one telephone call, the manager of William John's Pizza advised that the restaurant only serves Italian food, that the head chef is Arun, and that the Applicant makes pizza base, chops and assists the head cook. By contrast, the Applicant said during her telephone call that she is the head chef, that on weekends the restaurant also serves Indian food, and that her duties include making "pizza bake" and preparing hot and cold salads. The GCMS notes also cite inconsistencies between the names the Applicant and the manager provided for the kitchen staff.

[9] As part of her response to the PFL, the Applicant submitted an affidavit from herself and one from the restaurant's manager. The manager clarified in his affidavit that the restaurant is an Italian restaurant that also serves Indian food. The manager stated that he had mentioned during the telephone call that the Applicant can make pizza as well as Indian items such as pevbhaji and rice.

[10] In her affidavit, the Applicant stated she told the Officer that the restaurant serves Italian food, but also noted the Indian items they offer, such as pevbhaji Manchurian pasta, paneer, and tandoori pizzas. Along with the PFL response, the Applicant included a copy of the menu and photographs of the food items to demonstrate that the restaurant primarily serves Italian food along with diverse Indian offerings. The Applicant also submitted Google links to customer photographs of restaurant meals comprising of both Italian and Indian food items. The Applicant provided pay slips, bank statements showing deposits matching the amount of salary indicated on the pay slips, as well as the restaurant's registration certificates. Finally, the Applicant submitted medical documents in support of her claim that at the time of her telephone call with the Officer, the Applicant was at the hospital with her husband for his follow-up appointment after his surgery the week before.

[11] While the Officer noted the "voluminous submission" from the Applicant, the Officer decided to give "significant weight" to the telephone verification and concluded that the Applicant had committed misrepresentation pursuant to subparagraph 40(1)(a) of the *IRPA*.

[12] I find the Officer's findings unreasonable for the following reasons.

[13] Instead of engaging with the Applicant's PFL response, the Officer impugned her explanations and placed singular focus on the verification calls to the exclusion of almost all the evidence including the two sworn statements, evidence of the Applicant's employment, and evidence about the kind of food the restaurant serves.

[14] As reflected in the GCMS notes, the Officer noted that the Applicant provided a "voluminous submission," yet made no mention of nor engaged with the bulk of the documents.

[15] I note, for instance, the Officer did not mention the menu nor the photographs in the Google links. Nor did the Officer explain why these documents could not overcome their concerns about whether the restaurant serves only Italian food, as the manager indicated during his telephone call, or both Italian and Indian food, as the Applicant insisted throughout and the manager clarified in his affidavit. I disagree with the Respondent that the Officer's reference to the photographs of the Applicant at work also referred to the photographs of the menu and the food items from the Google links. The Officer's comment about the Applicant's photographs was that they were "most likely taken on the same day by the underclothing worn by the [A]pplicant visible in all of the photographs," which clearly does not apply to photographs of the menu and food.

[16] The Officer also did not explain why the medical documents about the surgery were not enough to make up for the Applicant's failure to mention the medical appointment during her telephone call.

[17] The Applicant cites *Lin v Canada (Citizenship and Immigration)*, 2019 FC 1284 [*Lin*] at para 35, where the Court found that an officer's concerns about the veracity of an applicant's employment was unreasonable because the applicant provided additional documents in support of his employment history that were disregarded while other evidence was given more weight, without any rationale provided for this preferential weighing.

[18] The Applicant also relies on *Rong v Canada (Citizenship and Immigration)*, 2013 FC 364 [*Rong*], where the Court found the officer failed to adequately explain why she preferred a telephone conversation with the employer's receptionist over the information provided by the applicant and her employer in response to the fairness letter. The officer in *Rong* also did not explain why the documents were rejected while she focused on minor inconsistencies peripheral to the core issue.

[19] The Applicant argues that if the Officer could simply rely on the initial telephone calls, to the exclusion of the documents submitted by the Applicant in response to the PFL, then there was no reason to provide the PFL.

[20] I agree.

[21] As in *Lin*, the Officer in this case provided no rationale for their preferential weighing of the telephone calls over the documents included in the Applicant's PFL response. While I may not agree that all the inconsistencies the Officer identified were "minor," as in the case of *Rong*, I agree that the Officer failed to justify why they rejected the documents and the Applicant's explanations for the inconsistencies through the documents.

[22] As the Applicant emphasizes, and I agree, a finding of misrepresentation carries significant consequences and should not be made in a perfunctory way. Rather, a finding of misrepresentation must be made on the strength of clear, compelling, and convincing evidence and by considering the totality of the evidence on a balance of probabilities: *Lamsen v Canada (Citizenship and Immigration)*, 2016 FC 815 at para 24; and *Seraj v Canada (Citizenship and Immigration)*, 2016 FC 38 at para 1.

[23] In this case, the Officer failed to explain why the totality of the evidence that the Applicant provided in response to the PFL did not address their concerns. Instead, the Officer only provided scant analysis of the “voluminous” evidence provided by the Applicant. Considering the serious consequences of a finding of misrepresentation, the Officer’s reasons lacked the requisite intelligibility, transparency, and justification.

III. Conclusion

[24] The application for judicial review is granted.

[25] There is no question for certification.

JUDGMENT in IMM-6453-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and the matter sent back for redetermination by a different officer.
2. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6453-23

STYLE OF CAUSE: KHYATI JIGAR PUROHIT v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

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