

Federal Court



Cour fédérale

**Date: 20241024**

**Docket: IMM-8029-23**

**Citation: 2024 FC 1693**

**Toronto, Ontario, October 24, 2024**

**PRESENT: The Honourable Madam Justice Blackhawk**

**BETWEEN:**

**GRACE OBRENTRI OKORNOR**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP &  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant seeks to set aside a decision dated April 26, 2023, by an officer (“Officer”) with Immigration, Refugees and Citizenship Canada (“IRCC”) refusing her 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 she 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 because the Decision is unreasonable and procedurally unfair.

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

## II. Background

[4] The Applicant is a 41-year-old citizen of Ghana. She is married and has six children.

[5] On August 16, 2022, the Applicant received a letter of acceptance for admission to the University of Calgary, Faculty of Kinesiology – Master of Science specializing in Sociocultural Aspects of Sport and Physical Activity Program. She submitted an application for a study permit under subsection 216(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 to IRCC on November 1, 2022.

[6] The Applicant received a procedural fairness letter (“PFL”) on December 12, 2022, advising of the Officer’s concerns that the bank statement from Cal Bank included in the application is not genuine. The Applicant was given 15 days to respond to the PFL and explain how she obtained the document and why it was submitted in support of her application. The Officer advised the Applicant of the consequences of a finding of misrepresentation.

[7] The Applicant responded to the PFL on December 17, 2022, stating the bank statement was genuine and given to her by her husband.

[8] The Applicant’s application was refused on April 26, 2023, because the Officer determined that she is inadmissible to Canada 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 *IRPA*. The Officer determined that the Applicant submitted documentation that lacked authenticity, that her financial situation was insufficient to support the stated purpose of travel—to study—without working in Canada pursuant to subsection 220(a) of the *IRPA*.

[9] The Applicant commenced her application for leave of the Decision on June 26, 2023. This Court granted leave on March 24, 2024.

### III. Issues and standard of review

[10] The issues in this judicial review application are:

1. Was there a breach of procedural fairness, and did the Officer provide sufficient information in the PFL?
2. Did the Officer misconstrue the evidence the Applicant provided in response to the PFL?

[11] The standard of review applicable to an 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 a determination of material misrepresentations is reasonableness (*Mhlanga v Canada (Citizenship and Immigration)*, 2021 FC 957 [*Mhlanga*] at para 15; *Vavilov* at para 86).

[12] 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). The starting point for a reasonableness review is judicial restraint and respect for the distinct role of administrative decision makers. Pursuant to the *Vavilov*

framework, 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” (*Vavilov* at para 85).

[13] The Court must find an error in the decision that is central or significant, which renders the decision unreasonable (*Vavilov* at para 100).

[14] The standard of review for procedural fairness issues is correctness, or akin to correctness (*Vavilov* at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). The reviewing court must consider what level of procedural fairness is necessary in the circumstances and whether the “procedure followed by the administrative decision maker respect[s] the standards of fairness and natural justice” (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13). In other words, a court must determine if the process followed by the decision maker achieved the level of fairness required in the circumstances (*Kyere v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 120 at para 23, citing with approval *Mission Institution v Khela*, 2014 SCC 24 at para 79 and *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115).

#### IV. Submissions of the Parties

[15] The Applicant submitted that the Officer’s PFL was insufficient and did not provide her with complete information with respect to the concerns that the Officer had. In particular, the Officer did not provide the Applicant with information concerning what was not “genuine” about the bank statement. In other words, the Officer failed to provide a meaningful PFL to permit the Applicant to fully respond.

[16] The Applicant submitted that because of the extreme consequences that accompany a finding of misrepresentation pursuant to paragraph 40(1)(a) of the *IRPA*, namely that she will be inadmissible to Canada for a period of five years, a high degree of procedural fairness is owed.

[17] The Respondent submits that the Applicant has 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).

[18] The Respondent argued that the PFL provided to the Applicant was sufficiently transparent, as the Applicant was advised which document was of concern and why it was of concern.

## V. Analysis

### A. *Breach of procedural fairness*

[19] This Court has addressed the degree of detail that is required to be disclosed in a PFL. In *Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183, a matter similar to this application, the Court found:

[26] In the present case, the Officer alerted the Applicant to the concern, stating “[s]pecifically, I have concerns that the BOC bank statement that you submitted in support of your financial status is not genuine”. In my view, this was sufficient information to advise the Applicant of the concern. The Applicant was given an opportunity to respond and did so.

...

[36] In the present case, although the documents submitted by the Applicant in response to the procedural fairness letter still raised concerns about the veracity of the bank statements, the concerns remained the same and did not trigger an additional or second duty of procedural fairness. The Officer’s concerns about the genuineness of the information were squarely put to the Applicant.

Applying the principles of the jurisprudence, it is clear that the Applicant bears the onus of supporting her application with sufficient and accurate, genuine information. The evidence referred to as “extrinsic” by the Applicant was the basis of the Officer’s concerns about the genuineness of the Bank statements. These concerns were squarely put to the Applicant and she was given an opportunity to respond. Although the Applicant submits that she was unaware of the particular concern, her own response sought to address the inaccurate codes at the bottom of the statements. The Officer found that the Applicant’s response and the additional documents she submitted did not address his concerns. The Officer was not required to give the Applicant another opportunity to respond to the concerns. There was no breach of procedural fairness.

[20] Similarly, in *Mhlanga* this Court found that where an officer clearly states concerns regarding the authenticity of documentation, and the response does not address those concerns, there is no breach of procedural fairness (at para 36). In addition, the Court distinguished the *Ntasi v Canada (Citizenship and Immigration)*, 2018 CanLII 73079 (FC) case relied upon by the Applicant in this matter, noting that the decision in that application was a “speaking order,” that is accorded less precedential value (*Mhlanga* at para 34).

[21] 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 an 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). This includes an obligation on the part of an applicant to verify the information provided in their application (*Kaur v Canada (Citizenship and Immigration)*, 2023 FC 1454 [*Kaur*] at paras 38, 40). Officers do not have an obligation to

conduct an interview to obtain better information from an applicant (*Mhlanga* at para 31) There is no breach of procedural fairness where an applicant has been given a reasonable opportunity to respond to the concerns (*Mhlanga* at para 31, citing *Suri v Canada (Citizenship and Immigration)*, 2020 FC 86 at para 20).

[22] I find that the PFL provided to the Applicant in this case was reasonable and did not breach the Applicant's right of procedural fairness. The PFL was sufficient for the Applicant to know the concerns that the Officer had. The PFL letter states:

Specifically, I have concerns that the following document that you have submitted in support of this application is not genuine.

- The bank statement issued by Cal Bank

Please explain how you obtained this document and why it was submitted in support of this application[.]

[23] It is clear that the Officer had questions concerning the authenticity of the bank statement. In light of the principles outlined above, the Applicant had a duty to ensure that all the information submitted in support of her application was accurate, including establishing that the bank statement obtained from her husband was authentic.

B. *Did the Officer misconstrue the response to the PFL?*

[24] The Applicant submitted that the Officer did not properly review the information provided, as the Officer made errors in their notes concerning the dates of the Cal Bank statement and reference letter; notably, she argues that the notes indicate that the letter was dated December 12, 2022, when it is actually dated December 16, 2022, and that the statement was dated September 28, 2022, not November 1, 2022.

[25] The Respondent argues that these were inadvertent errors by the Officer and are not indicative of a lack of analysis. Further, the Respondent noted that a similar error with dates was made by the Applicant in her letter of explanation to the PFL dated December 17, 2022. I am satisfied that the error in the dates in this case was inadvertent and did not lead to any genuine confusion as to which document the Officer was referencing in their PFL and reasons, or which they had concern with. Further, a review of the GCMS notes indicates that while the Officer made an error in the date for the Cal Bank reference letter, when referring to the bank statement they reference the date the bank statement was provided, which was November 1, 2022, rather than the date of the statement itself.

#### VI. Conclusion

[26] The Applicant submitted that the consequences in this case are particularly harsh. The Applicant noted that she obtained the financial information that was concerning to the Officer from her husband.

[27] I understand that the consequences for the Applicant are seemingly harsh. However, public confidence in our immigration system requires that applicants provide truthful, accurate information to support their application. This means that all applicants must take steps to ensure that the information they provide in support of their application is genuine (*Mhlanga* at para 40).

[28] The Applicant appears to have relied on information provided to her by her husband. Because of the marital relationship, I understand that it did not occur to her that she should verify the accuracy of this information. Unfortunately, it is that information that the Officer has found to be fraudulent. I acknowledge that making the Applicant fully responsible for her application in this circumstance has harsh consequences for her. However, based on earlier jurisprudence from



this Court and my reading of the *IRPA*, I do not see any alternative. Intent is not required under section 40 of the *IRPA* and an applicant can be deemed inadmissible “even though the misrepresentation was made by another party, such as, for example, the applicant’s spouse as is the case is here” (*Tuiran v Canada (Citizenship and Immigration)*, 2018 FC 324 at para 26, citing *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 at para 15 and *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 345 at paras 50–53, 55, 58). To permit an applicant “to avoid the consequences of fraudulent behavior... would create unacceptable scope for weakening the integrity of [the Canadian immigration] system” (*Kaur* at para 42).

[29] In light of the foregoing, this application for judicial review is dismissed.

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

**JUDGMENT in IMM-8029-23**

**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-8029-23

**STYLE OF CAUSE:** GRACE OBRENTRI OKORNOR v THE  
MINISTER OF CITIZENSHIP &  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 18, 2024

**JUDGMENT AND REASONS:** BLACKHAWK J.

**DATED:** OCTOBER 24, 2024

**APPEARANCES:**

Kapilkumar P. Rathod FOR THE APPLICANT

Michael Butterfield FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Kapilkumar P. Rathod FOR THE APPLICANT  
Barrister and Solicitor  
Caledon East, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario