Federal Court Cour fédérale

Date: 20241202

Docket: IMM-1055-24

Citation: 2024 FC 1941

Ottawa, Ontario, December 2, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

YUEN CHUN TSANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Yuen Chun Tsang, seeks judicial review of a decision by a visa officer [the Officer] refusing his temporary resident visa [TRV] application and finding him inadmissible to Canada for five years due to misrepresentation under paragraph 40(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] The Applicant submits that the Officer's decision was not reasonable and that procedural fairness was breached when the Officer refused to grant an extension of time for the Applicant to respond to concerns raised during the interview.

[3] For the following reasons, I am not persuaded that the decision reached is unreasonable nor that there was any breach of procedural fairness.

II. Facts

[4] The Applicant, a Hong Kong citizen, completed two diplomas in 2022: an EduQual Diploma through the London School of Planning and Management and a Qualifi Level 6 Diploma through the School of Business and Technology London. He provided World Education Services [WES] education credential assessments dated December 15, 2022, and January 9, 2023, which indicated study periods of 2020-2022 for the EduQual Diploma and 2021-2022 for the Qualifi Diploma.

[5] In January 2023, the Applicant applied for an open work permit under the Hong Kong Public Policy for recent graduates based on his EduQual Diploma, with his wife and children as accompanying dependents.

[6] The Applicant was scheduled for an interview and asked to provide specific documentation including coursework, transcripts, payment receipts, and bank statements related to his diploma programs.

[7] During the interview, the Officer raised concerns about the Applicant's use of his wife's email address for course communications; the contradiction of study durations as indicated by the WES reports and by other evidence; and the potential academic dishonesty related to his coursework. The Applicant provided explanations during the interview and subsequently requested additional time via email to obtain supporting documentation from the institutions.

[8] The Officer denied the extension request on July 25, 2023. The Applicant attempted to make post-interview submissions, but these were all found insufficient.

III. Decision Below

[9] On July 26, 2023, the Officer refused the Applicant's work permit application and declared him inadmissible to Canada for five years due to misrepresentation pursuant to paragraph 40(1)(a) of the Act. The Officer concluded that the Applicant had not legitimately obtained the educational credentials presented in support of his application.

[10] Four main concerns were raised prompting the Officer to recommend the file for a misrepresentation review.

[11] First, the Officer flagged suspicious email usage, concluding that the Applicant's wife had "participated heavily in the applicant's studies to obtain the credentials." This conclusion was based on several observations: communications with the UK school were conducted through a Yahoo email address registered to the Applicant's wife, Carrie; multiple emails sent from the school were addressed to "Carrie" instead of the Applicant; and the Applicant's explanation that the family shared a single email address.

[12] Second, the Officer reasoned that contradictory evidence regarding the duration of the Applicant's studies pointed to the possible use of "untruthful education proofs." The WES reports indicated that studies for the EduQual program took place from 2020 to 2022, and that studies for the Qualifi program took place from 2021 to 2022. However, the Applicant's payment receipts and coursework submission records suggested that his studies for both programs were done only in 2022. The Applicant's explanation that WES had independently determined these dates and made errors in their assessment was not found credible.

[13] Third, the Officer identified issues with academic references in the Applicant's coursework. Multiple references cited in assignments were either inaccessible or had access dates predating the program. The Applicant "could not demonstrate with substantial evidence" how these references were accessed, leading the Officer to conclude there was evidence of academic dishonesty. The Applicant's explanation regarding access through the school library and Google Scholar was found insufficient.

[14] Upon reviewing the file and the concerns raised, the Officer made a final conclusion of misrepresentation that resulted in a five-year inadmissibility period.

[15] The Officer determined that procedural fairness had been observed. The Applicant had been provided with sufficient notice through the interview convocation letter, which outlined the concerns needing to be addressed. During the interview, the Applicant was given an opportunity to address these concerns, and post-interview submissions were received and considered, which did not sufficiently alleviate the concerns. Additionally, the prior refusal to grant further extensions for additional submissions was deemed reasonable, as the onus was on the Applicant

to put his best case forward, especially when he had already received multiple opportunities to respond.

[16] On the substantive side, the reviewing Officer confirmed the findings identified by the interviewing Officer for all three grounds, with the explanations provided by the Applicant being not reasonably sufficient to counter the adverse evidence. The Officer agreed that the evidence presented strongly suggested the educational credentials in question had not been legitimately obtained.

IV. Issues

[17] This application raises two issues. First, whether the Officer's refusal of the Applicant's TRV application due to misrepresentation was reasonable. Second, whether the Officer breached procedural fairness by refusing to grant an extension to address concerns that only arose during the interview.

V. Standard of Review

[18] For procedural fairness, the Applicant submits, and I concur, that the applicable standard of review is best reflected in correctness. The approach to reviewing procedural fairness resembles the correctness standard of review that asks "whether the procedure was fair having regard to all of the circumstances:" *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] at para 54; *Heiltsuk Horizon Maritime Services Ltd v Atlantic Towing Limited*, 2021 FCA 26 at para 107. This approach centers on addressing "the

ultimate question [of] whether the applicant knew the case to meet and had a full and fair chance to respond:" *Canadian Pacific* at para 56.

[19] For substantive review, I also agree with the Applicant that the Officer's decision is reviewable on the standard of reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[20] Reasonableness is a deferential, yet robust, standard of review: *Vavilov* at paras 12-13. The court must give considerable deference to the decision-maker, recognizing that this entity is empowered by Parliament and equipped with specialized knowledge and understanding of the "purposes and practical realities of the relevant administrative regime" and "consequences and the operational impact of the decision" that the reviewing court may not be attentive towards: *Vavilov* at para 93. Absent exceptional circumstances, reviewing courts must not interfere with the decision maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[21] For decisions on TRVs, the reasons need not be extensive for the decision to be reasonable: *Vavilov* at paras 91, 128; *Wardak v Canada (Citizenship and Immigration)*, 2020 FC 582 at para 71. This is in light of the "enormous pressures [visa officers] face to produce a large volume of decisions every day:" *Patel v Canada (Citizenship and Immigration)*, 2020 FC 672 at para 10. Further, visa officers are afforded considerable deference, given the level of expertise they bring to these matters: *Vavilov* at para 93. The onus is on the applicant to satisfy a visa officer that they meet the statutory requirements.

VI. Legal Framework

[22] Paragraph 40(1)(a) of the *Act* governs inadmissibility arising from misrepresenting facts or withholding material facts:

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 facts relating to a relevant matter that induces or could induce an error in the administration of this Act;	a) directement ou indirectement, faire une présentation erronée sur un fait important 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;

[23] Case law confirms that inadmissibility under paragraph 40(1)(a) requires two elements: (1) a misrepresentation; and (2) the misrepresentation must be material, capable of inducing an error in the administration of the *Act*: *Gill v Canada (Citizenship and Immigration)*, 2021 FC 1441, at para 14; *Ragada v Canada (Citizenship and Immigration)*, 2021 FC 639, at para 18; *Malik v Canada (Citizenship and Immigration)*, 2021 FC 1004, at para 11.

[24] Establishing misrepresentation does not require any evidence of mens rea, premeditation, or intent: *Punia v. Canada (Citizenship and Immigration)*, 2017 FC 184 at para 51; *Maan v. Canada (Citizenship and Immigration)*, 2020 FC 118 at paras 24-25. Even innocent omissions of material information may constitute misrepresentation leading to inadmissibility: *Baro v*

Canada (Citizenship and Immigration), 2007 FC 1299 at para 15; *Gobordhun v Canada (Minister of Citizenship and Immigration)*, 2013 FC 971 at para 28.

[25] This strict statutory regime does recognize a narrow exception for innocent mistake. To qualify for it, an applicant must prove "both an honest and reasonable belief that they were not withholding material information": *Kaur v. Canada (Citizenship and Immigration)*, 2024 FC 416 at para 11; *Ram v Canada (Citizenship and Immigration)*, 2022 FC 795 at para 19. This exception only applies in exceptional circumstances: *Singh v. Canada (Citizenship and Immigration)*, 2024 FC 1369 at 19; *Patel v Canada (Citizenship and Immigration)*, 2017 FC 401, at para 25; *Paashazadeh v. Canada (Citizenship and Immigration)*, 2015 FC 327 at para 20.

[26] Other general principles and legal context surrounding paragraph 40(1)(a) have been comprehensively surveyed by Justice Little in *Singh v. Canada (Citizenship and Immigration)*, 2023 FC 747 [*Singh*] at para 28. The core principles are distilled as follows:

1) Section 40 receives broad interpretation to safeguard the integrity of the Canadian immigration system through deterring misrepresentation and ensuring complete, truthful disclosure;

2) The overarching duty of candour under subsection 16(1) of the *Act* requires complete, honest disclosure when seeking entry to Canada, and the duty guides interpretation of section 40;

3) Applicants bear the onus of ensuring accuracy and completeness of the information they provide, and they cannot deflect responsibility by simply claiming innocence or blaming third parties;

4) Paragraph 40(1)(a) expressly captures both erroneous statements and material omissions;

5) Paragraph 40(1)(a) applies to misrepresentations whether deliberate, negligent, intentional, or unintentional;

6) Applicants are responsible for paragraph 40(1)(a) misrepresentations made directly by them or indirectly through others, including immigration consultants or agents; and

7) Responsibility stemming from paragraph 40(1)(a) attaches even to misrepresentations made without the applicant's knowledge, including those by third parties.

VII. Analysis

A. *There was no breach of procedural fairness*

[27] The parties disagree about the level of procedural fairness owed and whether it was met in this case.

[28] The Applicant submits, citing *Chahal v Canada*, 2022 FC 725 [*Chahal*], that a heightened level of procedural fairness applies to the present case due to the serious consequences of a paragraph 40(1)(a) misrepresentation finding. The Applicant identifies three breaches. First, the notice to the interview focused solely on verifying credential legitimacy and payment details, giving no indication of concerns about email usage or academic dishonesty. Second, these new concerns emerged during the interview, yet the interviewing officer

unreasonably expected immediate documentary proof regarding academic source access and WES report date discrepancies. Third, the denial of a reasonable two-week extension to obtain institutional responses from WES and EduQual effectively precluded the Applicant from giving a meaningful response to these newly raised issues.

[29] The Respondent, relying on *Kwong v Canada*, 2024 FC 1727 [*Kwong*], argues that only minimal procedural fairness was required given the temporary nature of the visa application. The Respondent maintains this standard was met. First, the interview notice clearly indicated the focus on credential verification by requesting specific documentation. Second, the Applicant had a full opportunity during the interview to address all concerns. Third, post-interview submissions were actually considered, though found insufficient. Drawing parallels to *Kwong*, where an interview alone without prior notice of specific concerns to be addressed still satisfied procedural fairness, the Respondent contends that the Applicant in this case was afforded even greater procedural protection through the acceptance and consideration of post-interview submissions.

[30] I agree with the Applicant that the "findings of misrepresentation under s 40(1)(a) of the IRPA attract a higher level of procedural fairness, because a finding of misrepresentation precludes an applicant from re-applying for a five-year period… and may also reflect on an applicant's character:" *Chahal* at para 21. This elevation is well-established in other decisions: *Likhi v Canada (Citizenship and Immigration)*, 2020 FC 171 at paras 26-27; *Damangir v Canada (Citizenship and Immigration)*, 2024 FC 599 at para 23; *Samra v Canada (Citizenship and Immigration)*, 2024 FC 1649 at para 18.

[31] However, reviewing on this heightened standard, I find the procedural safeguards met the required threshold. The process aligns with the safeguards upheld in *Kwong* regarding both notice adequacy and opportunity to respond.

[32] The notice provided to the Applicant adequately communicated the interviewing Officer's concerns. As in *Kwong*, the interview convocation letter explicitly requested documentation to verify the legitimacy of the Applicant's educational credentials, including coursework, transcripts, payment receipts, and bank statements. It further warned that failure to provide the requested documents could result in the refusal of the application. While the Applicant argues that the notice should have specifically identified concerns about email usage and academic dishonesty, procedural fairness does not require all concerns to be disclosed before the interview, provided that the interview itself serves as a vehicle for raising and addressing additional issues: *Kwong* at paras 34-37. In this case, the interviewing Officer raised specific concerns about the email address, study durations, and academic dishonesty during the interview, and allowed the Applicant to respond in real time. This combination of the interview notice and the interview itself ensured that the Applicant was aware of the case to meet and had the opportunity to meet it.

[33] The Applicant received multiple meaningful opportunities to address the concerns raised. During the interview, the Applicant explained that his family shared a single email address, that WES independently and incorrectly determined his study durations, and that he accessed academic references through his school library and Google Scholar. The Applicant was also permitted to make post-interview submissions, including an explanatory letter from EduQual's CEO. These submissions were reviewed by the Officer before the final decision was made. This

post-interview opportunity exceeds the procedural safeguards upheld in *Kwong*, where the applicant's response was limited to the interview. Given this further opportunity for post-interview submissions, the Applicant's argument that the Officer's denial of a two-week extension for further submission of supporting documents breached procedural fairness is unpersuasive.

B. *The decision is reasonable*

[34] The Applicant challenges the reasonableness of the Officer's decision on three main grounds: (1) the conclusion regarding his use of a shared email address with his wife; (2) the finding related to differences in study durations provided by his WES report and other evidence; and (3) the assessment of his academic integrity.

[35] For the following reasons, I reject the Applicant's arguments and find the Officer's decision reasonable.

[36] For the issue of shared email address, the Officer reasonably concluded that the Applicant's use of a shared email address with his wife raised legitimate concerns about the authenticity of his academic work. The Applicant consistently used an email address containing his wife's name, "Carrie," for communications with his educational institutions. The Officer observed that these institutions addressed communications to "Carrie," suggesting they believed they were interacting with the Applicant's wife rather than the Applicant himself. The Applicant further admitted during the interview that his wife "might check emails" for him. In an academic context where individual accountability and integrity is fundamental, these circumstances

reasonably raised authenticity concerns. These concerns also directly engage the duty of candour emphasized in subsection 16(1) of the *Act* and in *Singh*.

[37] Despite having the opportunity to provide post-interview submissions, the Applicant did not furnish additional evidence capable of dispelling these concerns, such as showing separate email communications under his own name or submitting affidavits confirming his sole authorship of assignments. While the Applicant argues that the Officer's conclusion was speculative, the inference drawn by the Officer was reasonable and based on concrete evidence. It falls within the range of reasonable outcomes based on the facts and the law.

[38] For study durations, the Officer reasonably found unexplained discrepancies between the WES report and other evidence. The Applicant contends that he never provided false information because his credentials were sent directly from the educational institutions to WES, which he believed independently assigned study dates based on Canadian equivalency assessments. However, since, as stated by the Applicant himself, WES receives information directly from educational institutions, it was reasonable to find it implausible that WES would independently assign incorrect dates without basis, especially given WES's explicit confirmation of "no errors in [the] report."

[39] Moreover, the Applicant admitted during the interview that he "noticed that the duration of [his] studies on the WES is not correct," but "did not bother to clarify with [the] school" because he believed it "was a 2-year program." This conscious disregard of a noticeable error in a key supporting document reasonably raised concerns about his candour and responsibility to ensure the accuracy of his application. The Applicant's attempt to frame the issue as the Officer

unreasonably assuming knowledge of WES's internal procedures overlooks the seriousness of his own admission. The law is clear that applicants cannot deflect responsibility by blaming third parties when they are aware of discrepancies in their submissions.

[40] For the assessment of academic integrity, the Officer's concerns were reasonable and materially distinguishable from those in *Chung v Canada (Citizenship and Immigration)*, 2024 FC 1218 [*Chung*], the authority relied on by the Applicant. In *Chung*, the officer overstepped their expertise by improperly evaluating university-approved research practices without understanding the program context. The officer further proceeded to conclude academic dishonesty without any findings about the university's legitimacy or the degree's authenticity, effectively substituting personal judgment for academic standards imposed by the educational institutions.

[41] The Applicant's reliance on *Chung* lends little strength to his arguments. Unlike *Chung*, the Officer here identified specific, verifiable inconsistencies in the Applicant's studies. There are four glaring inconsistencies. First, references in the Applicant's assignments cited access dates from 2019, before he began his studies in 2022, meaning that he may not have accessed these sources himself. Second, citations included materials requiring subscriptions or special access and the Applicant could not demonstrate how he accessed them. Third, the Applicant's admission of copying references from other sources and possibly neglecting to update access dates. Fourth, during the interview, while the Applicant explained that he accessed materials through the school library and Google Scholar, he could not substantiate these claims when specifically asked for proof of access to these sources. Identifying these inconsistencies requires

no special expertise in plagiarism or academic dishonesty, for they are plainly apparent upon common sense scrutiny.

[42] Unlike *Chung*, where the officer questioned legitimate academic practices, the concerns here relate to objective discrepancies directly affecting the legitimacy of the Applicant's credentials submitted in support of his TRV application. The Officer was not assessing academic merit or methodology, but was instead merely identifying evidence indicating that the Applicant may not have genuinely engaged with the cited sources.

[43] The Applicant's response to these irregularities consisted of general assurances lacking detailed explanations or evidence. The Officer found these explanations insufficient and concluded that the irregularities taken as a whole suggested the Applicant did not have genuine engagement with the cited sources. His claim that these were mere formatting oversights lacks persuasiveness given their systematic nature across multiple assignments. The Officer did not assume the role of an academic supervisor or administrator. The Officer was only pointing out objective evidence suggesting that the credentials were not legitimately obtained, an approach squarely within the Officer's mandate to assess the legitimacy of documents submitted in support of an application.

VIII. Conclusion

[44] In light of the foregoing analysis, I find that the Officer's decision is both procedurally fair and reasonable. The concerns identified by the Officer include repeated use of the wife's email in academic communications, inadequately addressed WES report discrepancies which the Applicant admitted noticing, and inconsistencies in access and citations of academic resources

used to complete study programs. Together, they reflect objective irregularities rather than subjective assessments of academic standards.

[45] While a finding of misrepresentation requires heightened procedural fairness, the multiple opportunities afforded to the Applicant through specific pre-interview notice of concerns, the interview itself, and post-interview submissions satisfied this elevated standard. The Officer's conclusion that these cumulative discrepancies gave rise to misrepresentation under paragraph 40(1)(a) of the *Act* falls within the range of acceptable outcomes on the available evidence.

[46] This application will be dismissed. No question was proposed for certification.

JUDGMENT in IMM-1055-24

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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